

CHAPTER 4
SUBCHAPTER 3
PART 12

LAND USE MANAGEMENT AND ZONING, ENVIRONMENTAL
MANAGEMENT AND BOARD OF ADJUSTMENT
Subchapter 3 – Board of Adjustment: Rules and Procedures

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Subchapter 3 – Board of Adjustment: Rules and Procedures

Part 12 – The Board of Adjustment

4.1201 Authorization; Creation

The Rock County Board of Adjustment is hereby created pursuant to Section 59.694 of the Wisconsin Statutes.

4.1202 Appointment of Members

The Rock County Board of Adjustment shall consist of five members, plus one alternate member, appointed by the Chair of the Rock County Board of Supervisors with the approval of the County Board of Supervisors to staggered terms of 3 years beginning July 1, so that no more than two members' terms shall expire at the same time, except that the position of any member whose term becomes vacant shall be filled for the remainder of the unexpired term. The members of the Board of Adjustment shall all reside within Rock County, outside of the limits of incorporated cities and villages, and no two members shall reside in the same town. Members of the County Board of Supervisors and County employees shall not at the same time be members of the Board of Adjustment. The alternate member of the board of adjustment shall act with full power when, and only when, a member of the board of adjustment refuses to vote because of a conflict of interest or when a member is absent, but except as expressly otherwise provided, the provisions of this ordinance providing for the qualifications, terms, duties and compensation of other members shall apply to the alternate member of the Board of Adjustment.

4.1203 Officers; Election

(1) **Officers.** The Board of Adjustment shall elect from its membership a Chair and Vice-Chair, and shall designate a person, who may or may not be a member of the Board of Adjustment, to act as Secretary. Officers shall be elected at the regular meeting of the Board of Adjustment in the month of April and shall hold office for one year. In the absence or disability of the Chair and Vice-Chair, a temporary chair shall be elected from the members present to perform the duties of the Chair at that meeting.

(2) **Duties**

(A) **The Chair:**

1. Shall determine the dates and times of hearings and special meetings of the Board of Adjustment, unless otherwise directed by majority vote of the members.
2. Shall conduct all meetings of the Board of Adjustment in accordance with this Chapter and the Wisconsin Open Meetings Law.

3. Shall preside at all meetings of the Board, calling for the vote of each member on each question coming before the Board, and deciding all points of procedure, unless otherwise directed by majority vote of the members.
 4. Shall supervise the work of the secretary, including keeping of records and compliance with the Wisconsin Public Records Law.
 5. Shall administer oaths and compel the attendance of witnesses as may be necessary to carry out the purposes of the Board.
- (B) The Vice-Chair shall perform all the duties and exercise all the powers of the Chair, in the absence or disability of the Chair.
- (C) The Secretary:
1. Shall conduct the correspondence of the Board.
 2. Shall receive, file and provide public access to all appeals, applications, papers and records submitted to the Board, in accordance with the Wisconsin Public Records Law and the regulations of Rock County.
 3. Shall prepare, publish and mail all notices required by law, ordinance, rule or at the request of the Board of Adjustment or its Chair.
 4. Shall prepare and keep calendars, dockets and minutes of the proceedings of the Board, including an accurate summary (or a verbatim transcript) of the testimony, and the names and addresses, of all persons appearing before the Board.
 5. Shall keep a record of all actions of the Board, showing the vote of each member on every appeal or application, the reasons for the Board's determination, its findings of fact and conclusions of law.
 6. Shall prepare and mail to each person who has so requested in writing, a copy of the Board's decision, and its findings and conclusions.

4.1204 Office Space, Staff, Expenses and Per Diem

- (1) Office Space. Rock County shall provide necessary office and meeting space.
- (2) Staff. The Rock County Planning and Development Department shall provide necessary clerical and technical staff support. In the event of a real or apparent conflict of interest, or where a need for special expertise not available from regular County staff requires it, the County Administrator may be asked to arrange for special assistance to the Board of Adjustment, in accordance with the County's established fiscal procedures.
- (3) Legal Counsel. The Rock County Corporation Counsel's Office shall provide necessary legal counsel for the Board of Adjustment. Where the Corporation Counsel determines that Office is unable to provide needed legal representation due to a real or apparent conflict of interest, special legal counsel for the Board of Adjustment shall be provided, in accordance with the County's established procedures.

(4) Expenses and Per Diem. The actual and necessary expenses incurred by the Board of Adjustment in the performance of its duties shall be paid and allowed as in cases of other claims against Rock County. Members of the Board of Adjustment shall receive per diem as set by the Rock County Board of Supervisors.

4.1205 Duties and Powers

The Board of Adjustment shall have the following duties and powers:

(1) Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made in Rock County's enforcement or administration of secs. 59.69, 59.692, 59.70(1), 87.30, 236.45, or 703.27(1), and Ch. 295 of the Wisconsin Statutes, or of any Rock County ordinance enacted pursuant thereto, or where the Rock County Board of Supervisors has by ordinance expressly provided for appeals to the Board of Adjustment.

(2) Variances. To authorize upon application in specific cases such variance from the terms of the regulations and ordinances which have been placed within the jurisdiction of the Board of Adjustment by statute or ordinance, as will not be contrary to the public interest, and where, owing to special conditions a literal enforcement of specific provisions will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

(3) Rules of Procedure. The Board of Adjustment may enact additional rules of procedure, not inconsistent with the terms of this Ordinance and other applicable law, to carry these regulations into effect.

4.1206 Meetings

The Board of Adjustment shall hold regular meetings, approximately monthly, at a time and place to be established by the Board, in accordance with Roberts' Rules of Order, and subject to the following provisions:

(1) Notice. Notice of all meetings shall be given as required by the Wisconsin Open Meetings Law and the Rock County Code of Ordinances.

(2) Cancellation. The Chairman may cancel regular meetings when there are no cases pending or other urgent business awaiting action by the Board. Notification shall be given to members of the Board and any other persons previously personally notified of the meeting, individually, if possible and to the public by general announcement.

(3) Special Meetings. Special meetings may be called at the Chair's discretion, or upon the request of two (2) or more members, provided that 24 hours notice is given to each member, and as required by the Wisconsin Open Meetings Law and the Rock County Code of Ordinances.

(4) Quorum. A quorum for any regular or special meeting of the Board of Adjustment shall consist of three (3) members, but the affirmative vote of the majority of the Board of Adjustment (3 members concurring) shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant for a variance.

(5) Order of Business. The order of business for regular meetings of the Board of Adjustment shall be as follows:

- (A) Call to Order and Certification of Notice.
- (B) Approval of Minutes of Previous Meeting.
- (C) Announcement of Decisions from Previous Meeting.
- (D) Unfinished Business.
- (E) Hearing of Cases on Agenda.
- (F) New Business.
- (G) Communications.
- (H) Adjournment.

4.1207 Commencement of Hearing Process

(1) Appeals. Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau affected by any decision described in sec. 4.1205(1) of this ordinance. Except where a different time is expressly established by an applicable ordinance provision, an appeal to the Board of Adjustment shall be initiated by filing a notice of appeal with the Board of Adjustment within thirty days from the date of the decision appealed. The Board of Adjustment may require use of a standardized notice of appeal form, but in any event any notice of appeal shall specify the decision appealed and the grounds for alleging error. A Notice of Appeal shall be filed with the Secretary of the Board of Adjustment and a copy shall be transmitted by the Secretary of the Board of Adjustment to the administrative officer from whom the appeal is taken. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

(2) Applications for Variances. Applications for variances may be made by any property owner or authorized representative by filing an application with the Board of Adjustment. The Board of Adjustment may require use of a standardized variance application form. Each application for a variance shall specify the ordinance or regulatory provision(s) involved and describe with particularity the reason for and the nature of the variance being requested.

(3) Additional Information. In addition to, and at the same time as submitting other material required to initiate an appeal or request for a variance, a party seeking relief from the Board of Adjustment shall provide the following:

(A) A scale drawing showing the location and size of the subject property, including setbacks and dimensions of existing improvements, all adjoining properties and improvements, a detailed description of any work or activity proposed to be conducted on the subject property, and what is being requested of the Board of Adjustment.

(B) A complete list of names and addresses of owners of property within 500 feet of the subject property (when located within an urban or rural development area as shown on the County Development Plan) or within 1,000 feet of said property (when located in an agricultural area as shown on the County Development Plan) shall accompany each application. Additional information may be required by the Board to aid it in reaching a decision. Failure to supply such information shall be grounds for refusing to schedule a hearing on or for dismissal of the application, or may entitle persons not receiving proper notice to a rehearing of the matter.

(4) Fees. The Rock County Board of Supervisors shall establish fees for filing appeals and applications for variances with the Board of Adjustment, as part of the annual budget for the County. No matter shall be scheduled for hearing until required fees have been paid.

(5) Stay of Proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the Board of Adjustment after the notice of appeal shall have been filed with that officer that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order, which may be granted upon application to the Board of Adjustment or by petition to a court of record, with notice to the officer from whom the appeal is taken.

4.1208 Procedure for Conduct of Hearings

(1) Scheduling. The Board of Adjustment shall, within thirty (30) days after receipt of all required materials and proof of payment of the applicable fee, schedule a hearing a hearing on the matter before the Board of Adjustment so that it shall be heard by the Board no later than sixty (60) days following the date such materials and payment have been received. Additional time for scheduling or hearing shall require mutual agreement of the party seeking relief and the Chair of the Board of Adjustment. Matters shall be assigned for hearing in the order in which they are received. Appeals and applications for variances pertaining to the same property may be combined for hearing by the Board of Adjustment where the facts and relevant law are substantially identical.

(2) Required Notices. The following forms of notice shall be given prior to the hearing of any appeal or application for a variance.

(A) Notice By Mail. The Secretary of the Board shall give interested parties due notice of the place and time for the hearing of an appeal or an application for a variance by first class mail, not less than fifteen (15) days and not more than thirty

(30) days prior to the hearing. The notice shall state the name and address of the appellant or applicant, the name and address of the owner of record of the property, the location of the property, and a brief statement of the nature of the appeal or variance request. Said notice shall be sent to the owners of property located within 500 or 1000 feet of the subject property, depending on whether located in a developed or agricultural area as shown on the County Development Plan, respectively. Determinations of owners entitled to notice shall be based on the parcel maps in the Rock County Real Property Description Office.

(B) Notice By Publication. The Secretary of the Board shall publish a Class 2 Notice, under Chapter 985 of the Wisconsin Statutes, of all hearings on appeals or applications for variances, in a newspaper likely to give notice to interested parties. The notice shall state the place and time, and contain a brief description of the subject matter of the hearing. The address, and/or a description of the subject property shall be included so that the property can be easily located and identified.

(C) Notices Required By Other Laws. Notice shall be provided by the Secretary of the Board to the Wisconsin Department of Natural Resources, and to any other State or Federal office entitled to notice, in accordance with applicable Federal and State laws.

(3) Conflicts of Interest. Any member of the Board of Adjustment having a personal interest in the subject of a hearing coming before the Board which may affect his/her ability to act impartially shall not participate in the hearing or any discussion of the matter by the members of the Board prior to the decision of the Board in the matter. Any member or other person who believes such a conflict exists shall bring the question to the attention of the Chair prior to the time the Board commences the hearing of cases, if at all possible. The Chair shall rule, upon the facts reported, whether such member shall be disqualified.

(4) Presentation of Evidence

(A) Representation. At the time of a hearing, any person may appear personally or be represented by legal counsel or agent.

(B) Required Appearance by Party Seeking Relief. The Board may dismiss any matter coming before it if no knowledgeable and authorized person appears to represent the appellant or applicant for a variance at the time set for a duly scheduled hearing on the matter. The Secretary of the Board shall provide written notice, specifying the grounds of dismissal, to the appellant or applicant.

(C) Submission of Written Materials. Any interested person may appear in person or by agent at a hearing and/or submit written or documentary evidence to the Board of Adjustment for its consideration in the matter. However, no written or other documentary evidence shall be considered by the Board of Adjustment unless it is submitted to the Board of Adjustment prior to the conclusion of testimony, so

that it may be reviewed and commented upon by other parties prior to the close of evidence. In an action involving a historic property, as defined in Section 44.31 (3), Wisconsin Statutes, the Board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning and zoning committee or agency.

(D) Witnesses. The Chair shall administer an oath or affirmation to all witnesses prior to allowing them to testify.

(E) Transcripts. A transcript of the proceedings in each matter coming before the Board of Adjustment shall be made a part of the public record of the Board and acknowledged as to accuracy by the Chairman and the Secretary. Any party shall have the right, at their expense, to have a certified stenographer present to make a record of the proceedings in any matter in which they are interested, provided that an original copy of so much of the transcript as may be ordered transcribed shall be filed with the records of the Board of Adjustment immediately after completion. The Chair may at his/her discretion, or at the direction of a majority of the Board of Adjustment, arrange for a stenographic record to be made at the Board's expense.

(F) Rules of Evidence. The Board of Adjustment shall not be bound by the strict rules of evidence, but may exclude irrelevant, immaterial, incompetent or unduly repetitious testimony or other evidence. The Chair shall rule on all questions relating to the admissibility of evidence, and any member of the Board of Adjustment may immediately after a ruling ask for a vote of the Board on the point. Members of the Board of Adjustment shall base any decision in a matter coming before the Board solely on those facts established in the record during the public hearing(s) held by the Board of Adjustment, and members shall refrain from communications of any sort with any interested party regarding a matter then pending before the Board. A majority vote of the Board shall be final, in case of a tie the Chair's ruling stands.

(G) Continuances. Continuances may be granted at the start of or during the course of a hearing, at the discretion of the Board in any matter for good cause shown, to any interested party who has entered an appearance stating the nature of the party's interest in the matter, provided that the granting of such a continuance does not prejudice the rights of any other party.

(H) Order of Presentation of Evidence. Subject to the discretion of the Board of Adjustment in individual cases, the general order of presentation of evidence shall be as follows:

1. The Chair or a designee shall state of the nature of the matter to be heard, and summarize any written material which has been submitted to the Board of Adjustment for its consideration in the matter.
2. The appellant or applicant.
3. Questions by Board members.

4. Zoning Administrator or other County official.
5. Questions by Board members.
6. Appearances in support.
7. Questions by Board members.
8. Appearances in opposition.
9. Questions by Board members.
10. The appellant or applicant for a variance shall be allowed a rebuttal.
11. Questions by Board members.
12. The Zoning Administrator or other County official involved shall be allowed a rebuttal.
13. Questions by Board members.
14. The Chair may allow other appearances, and permit interested parties to direct questions at the testimony of previous witnesses, as may be requested and deemed appropriate by the Chair or a majority of the members of the Board of Adjustment, so that all relevant evidence shall be heard and the duties of the Board of Adjustment shall be discharged in a timely manner.

4.1209 Decisions

(1) Form of Decisions. All decisions of the Board shall be made in public session by motion adopted by roll call vote. A motion to decide an appeal or application for a variance shall be in the form of findings of fact and conclusions of law, and shall state the reasons for the Board's disposition of the matter. If conditions are imposed in the granting of a variance, such conditions shall be included in the motion.

(2) Majority Vote. A majority vote of the Board of Adjustment (3 members concurring) shall be necessary to reverse any order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant for a variance.

(3) Time. The Board of Adjustment shall render its decision in public session at the meeting in which the taking of evidence on an appeal or application for variance is concluded, unless the Board determines that additional time for deliberation is necessary, in which case the Board shall render its decision at a public session to be held within thirty (30) days thereafter, unless in the absence of any objection, the matter is further continued. But in no event shall a matter be continued more than 120 days from the date of the first session at which considered by the Board of Adjustment.

(4) Findings Required for Granting of Variance. No motion to grant a variance shall be voted upon in the absence of proposed findings of fact, based upon the evidence presented in each specific case, addressing each of the criteria set forth in subparagraphs (a) through (c), below. No variance shall be granted in any case unless the findings and conclusions with regard to each criterion are affirmative:

(A) Has the applicant shown that, in the absence of a variance, no feasible use can be made of the property in compliance with the regulation(s) or ordinance(s) involved?

(B) Has the applicant shown that the hardship imposed in complying with the regulation(s) or ordinance(s) involved relates to a unique condition affecting the owner's land, and is not a condition which is personal to the landowner, self-created, or merely a matter of personal convenience?

(C) Has the applicant shown that granting the requested variance(s) will not be contrary to the public interest?

(5) Notification. The Secretary of the Board shall notify interested parties of the decision of the Board of Adjustment, within five (5) workdays after the rendering of the decision. The appellant or applicant for a variance, their attorneys and agents, and any other person appearing in the matter, who has so requested in writing, shall be notified by first class mail. A copy of the notice given shall also be directly provided by the Secretary of the Board of Adjustment to the Planning and Development Committee of the Rock County Board of Supervisors and any Rock County department and State agency which has participated in the hearing or requested receipt of such notices. The notice shall state that rights to judicial review of the decision are provided for by statute and ordinance, specifically mentioning Section 59.964(10) of the Wisconsin Statutes and section 4.1213 of this Ordinance.

4.1210 Expiration of Variances

Unless otherwise specified by the Board, any order or decision of the Board authorizing a variance shall expire if the applicant fails to apply for all necessary permits within ninety (90) days, and to substantially complete any work authorized by the Board within six months, of the date of the decision.

4.1211 Rehearing

No appeal or application for a variance which has previously been dismissed or denied may be submitted to the Board of Adjustment for rehearing or reconsideration within ninety (90) days of the original Board action unless a written statement setting forth newly discovered facts is included as part of the renewed application. All fees, notices and other provisions applicable to an original appeal or application shall apply to any subsequent rehearing or reconsideration. If the Chair determines that the renewed application does not allege significant newly discovered facts, the Chair may direct the Secretary to notify the party seeking relief that the matter will not be scheduled as presented. Review of the Chair's determination by the full Board of Adjustment may be sought at the next hearing of the Board. If a majority of the Board of Adjustment reverses the previous determination of the Chair, the matter shall be scheduled for hearing.

4.1212 Review by Circuit Court

A person aggrieved by any decision of the Board of Adjustment, or a taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the Board, commence an action seeking the remedy available by *certiorari* in accordance with sec. 59.694 of the Wisconsin Statutes.

4.1213 Definitions

Unless otherwise expressly stated, the following shall, for the purpose of this Ordinance, have the meaning herein indicated. Any pertinent word or term not a part of this listing but vital to the interpretation of this Ordinance shall be construed to have its legal definition.

- (1) **STAY.** A kind of injunction where all activities or proceedings related to a case are suspended usually, to await the official action of the Board.
- (2) **VARIANCE.** Authority granted to the owner to use property in a manner which is prohibited by the zoning ordinance.