

Chapter 6

Zoning Board of Appeals

Table of Contents

6.01	Membership	Page 3
	A. Compensation	Page 3
	B. Removal	Page 3
	C. Alternates	Page 3
	D. Zoning Administrator	Page 3
	E. Official Oaths	Page 3
6.02	Officers and Duties	Page 3
	A. Duties of Chairman	Page 3
	B. Duties of Secretary	Page 4
6.03	Meetings	Page 4
	A. Meetings	Page 4
	B. Quorum	Page 4
	C. Order of Business	Page 5
	D. Voting	Page 5
	(1) Personal Interest	Page 5
	(2) Record of Vote	Page 5
6.04	Powers of the Zoning Board of Appeals	Page 5
	A. Appeals	Page 5
6.05	Appeals and Applications	Page 6
	A. Time of Appeal	Page 6
	B. Who May Appeal	Page 6
	C. Appeal and Application Forms	Page 6
	D. Filing Appeal or Application	Page 6
	E. Election to Have Appeal or Application Handled as a Contested Case	Page 6
	F. Fee	Page 7
	G. Insufficient Notice	Page 7
6.06	Hearings	Page 7
	A. Notice of Hearing	Page 7
	B. Time of Hearing, Docketing	Page 7
	C. Appearances	Page 8
	D. Oath	Page 8
	E. Compelling Attendance of Witnesses	Page 8
	F. Order of Hearing	Page 8
	G. Order of Business	Page 8
	(1) General Hearing	Page 8

	(2) Contested Cases	Page 8
	(3) Evidence and Official Notice in Contested Cases	Page 9
	H. Adjournment	Page 9
	I. Withdrawal	Page 9
6.07	Decision and Disposition of Cases	Page 9
	A. Time of Decision	Page 9
	B. Form of Decision	Page 9
	C. Basis of Decision, Findings	Page 9
	D. Vote Required	Page 9
	E. Conditions	Page 10
	F. Filing of Decision	Page 10
6.08	Reconsideration	Page 10
	A. Resubmission	Page 10
	B. Rehearing	Page 10
6.09	Amendments or Suspension of Rules	Page 10

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- 6.01 Membership
- 6.02 Officers and Duties
- 6.03 Meetings
- 6.04 Powers of the Zoning Board of Appeals
- 6.05 Appeals and Applications
- 6.06 Hearings
- 6.07 Decision and Disposition of Cases
- 6.08 Reconsideration
- 6.09 Amendments or Suspension of Rules

State Law requires every community which adopts a Zoning Ordinance to have a Zoning Board of Appeals.

6.01 MEMBERSHIP

The Zoning Board of Appeals consists of five (5) regular members and two (2) alternate member appointed by the Village President subject to confirmation by the Village Board. The term for a member of the Zoning Board of Appeals is three (3) years, except that those first appointed serve staggered terms, one (1) member for one (1) year, two (2) members for two (2) years and two (2) members for three (3) years.

- A. Compensation: Members of the Zoning Board of Appeals shall receive compensation per diem as provided by the Village Board.
- B. Removal: Members of the Zoning Board of Appeals may be removed by the Village President for just cause upon written charges and after a public hearing.
- C. Alternates: Alternate members shall be appointed for staggered terms of three (3) years in addition to the five (5) regular members. Annually the Village President is to designate one (1) of these alternate members as the first alternate and the other as the second alternate. The alternates act and vote in the designated order when a regular member of the Zoning Board of Appeals refuses to vote because of interest or when a member is absent.
- D. Zoning Administrator: The Zoning Administrator and/or the Building Inspector shall attend all meetings for the purpose of providing technical assistance when requested by the Zoning Board of Appeals.
- E. Official Oaths: Official Oaths shall be taken by all members in accordance with Wisconsin State Statute 19.01.

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6.02 OFFICERS AND DUTIES

The Chairman of the Zoning Board of Appeals shall be designated by the Village President. The Village Clerk shall act as Secretary.

- A. Duties of the Chairman: The duties of the Chairman shall be:
- (1) To determine date and time of regular meetings and special meetings or hearings of the Zoning Board of Appeals.
 - (2) To conduct all meetings or hearings in accordance with the Wisconsin Open Meeting Law.
 - (3) To preside at all meetings of the Zoning Board of Appeals.
 - (4) To decide all points of procedure, unless otherwise directed by majority vote of the Zoning Board of Appeals.
 - (5) To supervise the work of the Secretary.
- B. Duties of the Secretary: The duties of the Secretary shall be:
- (1) Prepare all correspondence of the Zoning Board of Appeals.
 - (2) Receive and file all appeals, applications, papers and records.
 - (3) Prepare, publish and mail all notices required by law, ordinance, rule or request of the Zoning Board of Appeals or the Chairman.
 - (4) Prepare and keep calendars, dockets and minutes of the Zoning Board of Appeals proceedings.
 - (5) Attend to all clerical work of the Zoning Board of Appeals.

The Secretary shall keep a record of all Zoning Board of Appeals actions, showing the vote of each member on every appeal, the reason for the Zoning Board of Appeal's determination and its findings of fact, and shall prepare and mail to each person who appears in support of or in opposition to an appeal or application, the Zoning Board of Appeal's decision and its findings in support of that decision.

The Secretary shall report to the Village Board, the Zoning Board of Appeal's recommendation as to the grant or denial of applications for conditional uses with its reasons for such recommendations.

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6.03 MEETINGS

- A. Meetings: All meetings and hearings of the Zoning Board of Appeals shall be held in the Village Council Room, Amherst, Wisconsin, and shall be open to the public, except that the Zoning Board of Appeals may go into an Executive Session to deliberate after a hearing or any appeal to arrive at its decision. The final vote on an appeal shall be taken by roll call vote, recorded and open for public inspection in the Secretary's office. Public Notice of all regular and special meetings shall be given to the public as required by the Wisconsin Open Meeting Law.
- B. Quorum: A quorum for any meeting or hearing shall consist of four (4) members but a lesser number may meet and adjourn to a specified time.
- C. Order of Business:

- (1) Roll Call
- (2) Reading of Minutes of Previous Meeting
- (3) Unfinished Business
- (4) Hearing of Case
- (5) New Business
- (6) Communications and Miscellaneous
- (7) Executive Session to Deliberate on Case(s) Heard

D. Voting

- (1) Personal Interest: No member on the Zoning Board of Appeals shall participate in the decision of or vote upon any case in which the member is financially interest, directly or indirectly, but the Chairman shall direct an alternative member to act instead. Disqualification of a member for interest shall not decrease the number of votes required for acting upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.
- (2) Record of Vote: The Secretary shall record the vote of each member on every question in the minutes or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.

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6.04 POWERS OF THE ZONING BOARD OF APPEALS

By State Law, the Zoning Board of Appeals is given specific powers.

A. Appeals

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance or any ordinance adopted under Section 62.23 of the Wisconsin State Statute.
- (2) To hear and decide special exceptions to the terms of the Zoning Ordinance
- (3) To authorize upon appeal in specific cases such variance from the terms of the Zoning Ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the Zoning Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (4) To permit in appropriate cases, and subject to appropriate conditions and safeguards consistent with the general purpose and intent of the Zoning Ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
- (5) To hear all applications for conditional uses and report and recommend action on such applications to the Village Board.

In exercising the powers above, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination

appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.

The Zoning Board of Appeals shall not grant use variances.

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6.05 APPEALS AND APPLICATIONS

- A. Time of Appeal: Appeals from decisions or orders of the Zoning Administrator shall be filed within thirty (30) days after the date of receipt of the written decision or order from which the appeal is taken. Applications for exceptions or public utility variances may be made directly to the Zoning Board of Appeals.
- B. Who May Appeal: Appeals or applications to the Zoning Board of Appeals may be made by:
- (1) The owner, mortgagee or purchaser under a land contract of the property for which relief is sought.
 - (2) Any municipal office, department, board or bureau affected by a decision or order of the Zoning Administrator other than the Zoning Administrator.
 - (3) Any person aggrieved by a decision or order of the Building Inspector and/or Zoning Administrator.
- C. Appeal and Application Forms: Every appeal or application shall be made upon forms furnished by the Secretary which have been approved by the Zoning Board of Appeals. A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the Chairman or Secretary which is necessary to inform the Zoning Board of Appeals of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application.
- D. Filing Appeal or Application: The appellant or applicant shall file the required appeal form in duplicate with the Secretary of the Zoning Board of Appeals. The Secretary shall deliver one copy to the Zoning Administrator. Upon receipt of an appeal, the Building Inspector and/or Zoning Administrator shall transmit to the Secretary of the Zoning Board of Appeals all notes or papers in his custody relating to the order or decision from which the appeal is being taken.
- E. Election to have appeal or application handled as a contested case: The applicant or appellant may elect to have his or her appeal or application handled as a contested case. The appeal or application form shall explain that a contested case includes the right of all parties to cross-examine witnesses, to object to improper evidence and to have a record of the proceedings made by a court

reporter or qualified stenographer. Election to have the matter treated as a contested case must be made in writing at the time of filing of the application.

- F. Fee: All appeals and applications filed with the Secretary shall be accompanied by a receipt from the Clerk/Treasurer showing payment of the appropriate fee as outlined in Chapter 7 – Finance fee schedule. If the appellant or applicant elects the contested case method, he or she shall accompany the appeal or application with the amount determined by the Zoning Board of Appeals to cover the additional administrative costs involved.
- G. Insufficient Notice: No appeal or application shall be considered by the Zoning Board of Appeals unless it is made on the required form(s). Upon receipt of any communication purporting to be an appeal or application, the Secretary shall supply the applicant with the proper forms which must be filed within ten (10) days, in addition to the thirty (30) days specified in A.

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6.06 HEARINGS

- A. Notice of Hearing: Notice of the time, date and place of the hearing of an appeal or application shall be given in the following manner:
- (1) By mail or personal service, to the appellant or applicant and to the Zoning Administrator and Secretary of the Plan Commission not less than ten (10) days prior to the date of the hearing.
 - (2) In every case involving a variance, conditional uses, exception, public utility exception, the Secretary shall mail notice to the owners of record of all land within one hundred (100) feet of any part of the proposed building or premises not less than ten (10) days prior to the hearing. Names and last known address of such owners shall be furnished by the applicant at the time of filing the appeal or application.
 - (3) A notice of the hearing shall be posted on the premises which is the subject of the appeal and at other public places within one-fourth (1/4) mile thereof not less than five (5) days prior to the hearing.
 - (4) Notice of an application for construction of a building in the bed of a future street, highway or parkway shall be published in a newspaper in general circulation in the community not less than fifteen (15) days prior to the hearing.
- B. Time of Hearing, Docketing: Each appeal or application properly filed shall be numbered serially, docketed in a special book provided therefore and placed upon the calendar by the Secretary.
- C. Appearances: The appellant or applicant may appear in person or by his agent or attorney. In the absence of an appearance for or against an appeal or

application, the Zoning Board of Appeals may dismiss the appeal or application or may dispose of the matter on the record before it.

D. Oath: Unless waived by the appellant or applicant and the Chairman, all witnesses shall be sworn in by the Chairman before testifying.

E. Compelling Attendance of Witnesses: The Chairman may compel the attendance of witnesses by subpoena. Written request for subpoenas shall be filed with the Secretary not less than two (2) days prior to the hearing except by special permission of the Chairman.

F. Order of Hearing: Appeals and applications shall be heard in numerical order except for good cause shown.

G. Order of Business:

(1) General Hearing: At the hearing, the order of business shall be as follows:

- a. Statement of the nature of the case by the Chairman.
- b. Appellant's side of the case.
- c. Questions by members of the Zoning Board of Appeals.
- d. Zoning Administrator's side of the case.
- e. Questions by members of the Zoning Board of Appeals.
- f. Statements by interested parties.
- g. Questions by members of the Zoning Board of Appeals.
- h. Appellant or applicant's rebuttal.

(2) Contested Case(s): If the applicant or appellant elects to have his or her appeal or application treated as a contested case, the order of business shall be as follows:

- a. Call to order by the Chairman.
- b. Appellant or applicant's opening statement.
- c. Zoning Administrator's opening statement.
- d. Opening statement of persons aggrieved and other interested parties.
The right to make an opening statement is limited to persons who will present evidence.
- e. Applicant or appellant's case-in-chief.
- f. Questions by members of the Zoning Board of Appeals.
- g. Cross Examination. No more than one person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross-examine.
- h. Zoning Administrator's case-in-chief
- i. Questions by members of the Zoning Board of Appeals.
- j. Cross Examination. No more than one person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross examine.
- k. Case-in-chief by other interested parties.
- l. Questions by members of the Zoning Board of Appeals.

- m. Cross Examination. No more than one person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross examine.
 - n. Rebuttal by appellant or applicant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.
 - o. Statements of opinion of neighbors or abutting land owners - not subject to cross examination.
 - p. Closing statements of those made or waived opening statements.
- (3) Evidence and Official Notice in Contested Cases. Section 227.08 of the Wisconsin State Statutes is adopted by reference.

H. Adjournments: When all appeals or applications cannot be disposed of on the day set, the Zoning Board of Appeals may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members.

I. Withdrawal: An appellant or applicant may withdraw an appeal at any time prior to the decision, but a pending motion to grant or dismiss the appeal shall have precedence over withdrawal. Withdrawal of the appeal shall not entitle the appellant or applicant to remission of the filing fee.

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6.07 DECISION AND DISPOSITION OF CASES

A. Time of Decision: The Zoning Board of Appeals shall render its decision either at the termination of the hearing or within thirty (30) days thereafter and shall notify the parties in interest and the Zoning Administrator in writing of its decision.

B. Form of Decision: The final disposition of an appeal or application shall be in the form of a written decision or order signed by the Chairman and Secretary. Such decision shall state the reasons for the Zoning Board of Appeal's determination and its findings of fact and shall either affirm, reverse, vary or modify the order, requirement, decision, or determinations appealed, in whole or in part, dismiss the appeal or grant or deny the application.

C. Basis of Decision, Findings: The Zoning Board of Appeals is a quasi-judicial body and is required to make its determination on the basis of facts present to it at the public hearing where the applicant has an opportunity to be represented by counsel and to question the Zoning Administrator regarding the basis of a decision or any other matter that might be within the Zoning Administrator's knowledge or records.

D. Vote Required: All orders or decisions of the Zoning Board of Appeals granting a variance, exception or conditional uses or reversing any action or order of the Zoning Administrator requires the affirmative vote of four (4) of the five (5)

members of the Zoning Board of Appeals. Whenever only four (4) members are present and the vote stands three (3) to one (1) in favor of the appellant or applicant, the matter shall be laid over for consideration and final determination at a special meeting called for that purpose.

- E. Conditions: Variances or conditions imposed in any permit shall be stated in the decision or order embodying the Zoning Board of Appeal's decision and shall also be set forth in the building, conditional uses or occupancy permit issued under that order by the Zoning Administrator. A permit shall be valid only as long as the conditions upon which it is granted are observed. Whenever the Zoning Board of Appeals grants an appeal or application affecting the used of any premises, such authorization shall be deemed revoked unless the owner, occupant or his agent shall upon request file with the Secretary of the Zoning Board of Appeals have been conformed to and maintained. Variances, substitutions or use permits approved by the Zoning Board of Appeals shall expire six (6) months after issuance if the performance of work is required and substantial work has not commenced.
- F. Filing of Decision: Every order or decision of the Zoning Board of Appeals shall be immediately filed with the Secretary and shall be a public record.

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6.08 RECONSIDERATION

- A. Resubmission: No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one year of the Zoning Board of Appeal's decision except by motion to reconsider made by a member voting with the majority.
- B. Rehearing: No rehearing shall be held except upon the affirmative vote of four (4) or more members of the Zoning Board of Appeals upon finding that substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for rehearing shall be in writing and shall state the reasons for the request and be accompanied by necessary data and diagrams. A Rehearing shall be subject to the same notice requirements as original hearings.

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6.09 AMENDMENTS OR SUSPENSION OF RULES

These rules may be amended or revoked by a majority vote of the Zoning Board of Appeals at any meeting, provided written notice of the proposed amendment or change is given to each member at least ten (10) days before such meeting. Suspension of the rules may be ordered at any meeting by a vote of not less than four (4) members.