

## **SECTION 12.00 ZONING BOARD OF APPEALS**

### **12.01 ESTABLISHMENT**

There is hereby established a Zoning Board of Appeals for the Town of Wayne for the purpose of hearing appeals and applications, and granting variances and exceptions to the provisions of this Zoning Ordinance.

### **12.02 MEMBERSHIP**

The Zoning Board of Appeals shall consist of 5 members appointed by the Town Chairman and confirmed by the Town Board.

- A. Terms shall be for staggered 3-year periods.
- B. The Chairman shall be designated by the Town Board Chairman.
- C. Two Alternate Members shall be appointed by the Town Board Chairman for a term of 3 years and shall act only when a regular member is absent or refuses to vote because of interest.
- D. The Secretary shall be the Town Clerk.
- E. The Zoning Administrator shall attend meetings for the purpose of providing technical assistance when requested by the Board.
- F. Official Oaths shall be taken by all members in accordance with Section 19.01 of the Wisconsin Statutes within 10 days of receiving notice of their appointment.
- G. Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

### **12.03 ORGANIZATION**

The Zoning Board of Appeals shall organize and adopt rules of procedure for its own governance in accordance with the provisions of this Ordinance.

- A. Meetings shall be held at the call of the Chairman and shall be open to the public.
- B. Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's

determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.

- C. If a Quorum is Present, the concurring vote of a majority of the members present shall be necessary to correct an error, grant a variance, make an interpretation, or permit a substituted use.

#### **12.04 POWERS**

The Zoning Board of Appeals shall have the following powers:

- A. Errors. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator.
- B. Variances. To hear and grant appeals for variances that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured.
- C. Interpretations. To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Town Board has made a review and recommendation.
- D. Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Town Board has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.
- E. Permits. The Board may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issuance of a permit.
- F. Assistance. The Board may request assistance from other Town officers, departments, commissions, and boards.
- G. Oaths. The chairman may administer oaths and compel the attendance of witnesses.

#### **12.05 APPEALS AND APPLICATIONS**

Appeals from the decision of the Zoning Administrator concerning the literal enforcement of this Ordinance may be made by any person aggrieved or by any officer, department, or board of the Town. Such appeals shall be filed with the secretary within 30 days after the date of written notice of the decision or order of the Zoning Administrator. Applications for other determinations by the Board of Appeals provided by this Ordinance may be made by the owner or lessee of the structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and applications shall include the following information:

- A. Name and Address of the appellant or applicant and all abutting and opposite property owners of the record.
- B. Plat of Survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing all of the information required under Section 2.03 for a Zoning Permit.
- C. Additional Information required by the Town Board, Town Plan Commission, Town Engineer, Zoning Board of Appeals, or Zoning Administrator.

#### **12.06 HEARINGS**

The Zoning Board of Appeals shall fix a reasonable time and place for the required public hearing, and shall give notice as specified in Section 14.00 of this Ordinance. At the hearing, the appellant or applicant may appear in person, by agent, or by attorney.

#### **12.07 FINDINGS**

No variance to the provisions of this Ordinance shall be granted by the Board unless it finds that all the following facts and conditions exist and so indicates in the minutes of its proceedings.

- A. Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated principal use, accessory use, or conditional use in that particular district.
- B. Exceptional Circumstances. There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties of uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.
- C. Economic Hardship and Self-Imposed Hardship Not Grounds for Variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- D. Preservation of Property Rights. The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
- E. Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

**12.08 DECISION**

The Zoning Board of Appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, Town Plan Commission, and the Town Board.

- A. Conditions may be placed upon any zoning permit ordered or authorized by this Board.
- B. Variances or Substitutions granted by the Board shall expire within 6 months unless substantial work has commenced pursuant to such grant.

**12.09 REVIEW BY COURT OF RECORD**

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after the filing of the decision in the office of the Zoning Board of Appeals.