

Forest County Board of Adjustment Rules and Procedures

1.0 Establishment and Intent

The Forest County Board of Adjustment has been established pursuant to Section 59.694 Wis. Stats. for the purpose of hearing appeals from any person aggrieved or from any officer, department, board, or commission of the County affected by a decision of the Zoning Administrator or of the County Zoning Committee, provided said appeal is taken within a reasonable time as provided by Wisconsin Statute and these rules. The Board of Adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules herein contained. Wisconsin State Statute 59.694 is hereby adopted in its entirety and made a part of this ordinance as if set forth at length within.

1.1 Training

In view of the considerable responsibility and power given to this board under Section 59.694 Wis. Stats. And under this ordinance, upon the appointment of new members, the new member and the entire existing board shall attend training seminars as provided or receive updated materials and instruction from the zoning administrator, with assistance by county corporate counsel that shall include both review of Wis. Stats. 59.694, this ordinance, and any practical examples or case law deemed appropriate.

2.0 Appointment and Term

The Board shall consist of three (3) members who shall be appointed for staggered three (3) year terms, commencing on July 1st, by the Chairman of the County Board. Vacancies shall be filled in a like manner for the un-expired term of any member whose term becomes vacant. Members shall reside in Forest County and outside corporate cities and villages. No two (2) members shall reside in the same township while serving on the board of adjustment.

2.1 Operating Rules

A. Board's Office. The office of the board shall be located at the Forest County Courthouse, Room 103. All finalized records of the Board shall be located in the office of the County Clerk. Copies of applications and decisions of past hearings may be located in a landowners property file. All records related to current Board of

Adjustment applications are located and can be accessed through the Forest County Zoning office. The Zoning Administrator or Deputy Zoning Administrator shall act as clerk to the board of adjustment unless the appealable matter concerns an administrative decision. The County Clerk, in this instance, shall appoint a clerk for the board of adjustment until the issue is decided.

- B. Officers.** The Chairperson and Vice Chairperson shall be elected from among the members at the annual organizational meeting in September of every year. These officers shall hold office until their successors are appointed. The board may, at any meeting or hearing, elect from among the membership the replacement for a Chairman or Vice Chairman, who for whatever reason, is unable to perform the duties of his/her office. The member elected as a replacement shall serve until the next organizational meeting of the board.
- C. Duties of Officers.** The Chairperson, if present, otherwise the vice Chairperson, shall preside over and direct the conduct of all meetings and hearings of the Board and may administer oaths and compel the attendance of witnesses. The Chairperson shall, subject to these rules and further instructions from the Board, direct the official business of the board, supervise the work of the Board and request necessary help when required. The Chairperson, subject to these rules, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motions duly made and approved.
- D. Legal Counsel.** The Corporate Counsel of the County shall be the legal counsel to the Forest County Board of Adjustment.
- E. Meetings.** Meetings and hearings of the Board shall be held, or may be cancelled, at the call of the Chairperson and at such other times as the Board may determine, provided that all Board members shall be notified by the Board Clerk at least 48 hours prior to such meeting. All meetings and hearings shall be advertised as required by law. All meetings shall be open to the public and in accordance with the Open Meeting Law. The Board may call a closed session on issues permissible under the Wisconsin Open Meetings Law. The Board may also go into closed session to deliberate on an appeal but shall make those closed session deliberations public in the minutes of that

meeting. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, and all of which shall be filed in the office of the county clerk within 10 business days. Permanent record retention will be in the office of the county clerk. Copies of decision notices, applications and minutes shall also be filed with the property records in the Zoning Office. All records shall be public records.

F. Quorum. A quorum shall consist of a majority of all members of the board (2 members) and no action may be taken except by a majority vote of such quorum, except a lesser number may meet and adjourn any meeting duly called and noticed to a time certain.

G. Order of Business. Robert's Rules of Order shall govern action of the Board and conduct of its meetings where not specifically covered by these rules. The Clerk of the board of Adjustment and the Chairperson shall prepare an agenda for each Board meeting, listing the matters of business at all meetings. The order of business at any meeting or hearing may be varied by motion and consent of the members present.

H. Conflict of Interest

Members of the board shall avoid conflicts of interest. As used here, a conflict of interest shall include, but not necessarily be limited to the following:

1. Reviewing, deliberating upon, or voting on a case concerning oneself or work on land owned by oneself.
2. Reviewing, deliberating upon, or voting on a case concerning a property located adjacent to or within 300 feet of one's property.
3. Reviewing, deliberating upon, or voting on a case involving a corporation, company, partnership, or any other entity in which the person is a part owner, or has any other relationship where the person may stand to have a financial gain or loss.
4. Reviewing, deliberating upon, or voting on a case concerning one's spouse, child, stepchild, grandchild, brother, sister, parent, grandparent, or member of one's household.

5. Reviewing, deliberating upon, or voting on a case where an employee or employer of the member is an applicant or agent for an applicant, or has a direct interest in the outcome.

Upon recognizing that a conflict of interest exists, the member shall immediately notify the chairman and recuse themselves from all proceedings until the case giving rise to the conflict has been decided.

3.0 Powers and Duties of the Board. The powers and duties of the Board of Adjustment are as set forth in Section 59.694 of the WIS. Stats. In exercising those powers, the Board 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 powers of the officer from whom the appeal is taken. The board of Adjustment shall have all the following powers.

- A. To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of s. 59.69 or of any ordinance enacted pursuant thereto.
- B. To hear and decide special exceptions to the ordinance upon which the board is required to pass under such ordinance.
- C. To authorize upon appeal in specific cases variances from the terms of the ordinance that 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 unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.
- D. To grant special exceptions and variances for renewable energy resource systems. If the board denies an application for a special exception or variance for such a system, the board shall provide a written statement of its reasons for denying the application. In this paragraph, “renewable energy resource system” means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.

4.0 Procedures When Applying to the Board of Adjustment

Applications and instructions for variance, special exceptions and appeals to the board of adjustment are available in the Forest County Zoning Office. After completion of an application with the required information and payment of the appropriate fee, as set forth in the

Forest County Zoning Master List of Fees, the following shall commence:

- A.** The clerk of the board of adjustment shall notify the chairman of the board of adjustment and a meeting date shall be chosen that fulfills the requirements of a class two notice.
- B.** The clerk shall publish a class two notice in the paper of record, and at the same time, notify, by regular mail, the applicant, the property owners within 300 feet of the subject property, the town board where the property is located, and if shoreland property, the DNR, of the specific request, the location, date and time of the hearing, and location of application copies for examination by interested parties. The clerk shall forward an agenda and copies of the application to each board member before the meeting date. Notifications shall be recorded by affidavit of mailing. Failure to accomplish all or every procedure shall not invalidate or prejudice the proceedings, provided the board concludes that reasonable efforts were made to comply.
- C.** Applications to the board of adjustment may require site visits. All site visits shall be itemized in the agenda of the meeting and shall include the time the board of adjustment leaves the courthouse to visit the site. The board of adjustment shall not take any testimony at the site or discuss the application.
- D.** All testimony before the board by persons other than board members and written or documentary evidence or material pertaining to matters before the board shall be received at the hearings conducted by the board. Ordinance or statutory materials are considered to be before the board in all cases.
- E.** Members of the board shall attempt to avoid ex parte contact. As defined here, ex parte contact refers to communication that occurs outside of a noticed meeting. Members of the board shall report the content and context, in full, at the public hearing, prior to a decision on an issue, for all ex parte communications.
- F.** Members of the board, in making decisions, shall utilize the terms and definitions of the ordinance from which the applicant seeks relief. If the term or definition is not included in the ordinance the board shall utilize Blacks's law Dictionary in its most current available form.

5.0 Appeals to the Board

Appeals to the board of adjustment are as enumerated in Section 59.694 (4) through (6) State Statutes. Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or

bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. 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.

6.0 Initiating an Appeal.

An appeal shall be commenced within 30 days after written notice of the appealable decision is recorded. The applicant shall file, with the office of the board of adjustment, a notice of appeal, specifying the decision being appealed, and the grounds for the requested relief, and payment of the fee specified in the Forest County Master List of Fees. Upon receipt of such a notice, the clerk shall immediately notify the board of adjustment and shall transmit to the board all papers and files which constitute the record of the decision being appealed.

7.0 Certiorari

A person aggrieved by any decision of the board of adjustment, or a taxpayer, or any other officer, department, board or bureau of the county, 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 as enumerated in Section 59.694 (10) State Statutes. The court shall not stay the decision appealed from, but may, with notice to the board, grant a restraining order. The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination or the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

8.0 Decisions of the Board

- A. **Majority Vote Required.** If a quorum is present, the board may take any action by a majority vote of the members present.
- B. **Decisions to be Written.** All decisions shall be in writing and contain the findings of facts and conclusions of law upon which the

decision is based. Legal counsel may assist the board in drafting the written decision. Decisions are to be filed within 10 business days in the county clerk's office and copied to the applicant, the property file, and DNR, if necessary.