

# Zoning Board of Appeals Rules of Procedure

## Adopted XXXX

- A. Authority.** The Zoning Board of Appeals (“the Board”) is created as authorized by applicable Wisconsin Statutes and Madison General Ordinances Section 28.205.
- B. Meetings and Rules.** Meetings of the Board shall be held as set annually by the Board or by the call of the chair. Notice of special meetings shall be sent to each member of the Board at least forty-eight (48) hours prior to the time set for such meeting, provided further, however, that the announcement of a special meeting at any meeting at all which all of the members are present shall be sufficient notice of such meeting. Notice shall also be given to the City Clerk and to the official newspaper as required by ordinance.
- a. Time.** Regular meetings of the Board shall be held on the third Thursday of each month at 5:00 p.m. or at such other times as the Board may determine. The first regular meeting held in May shall be the annual meeting of the Board. The Board shall establish and post a schedule for meeting locations; either hybrid, virtual or in-person.
  - b. Cancellation.** Whenever there are no appeals or variance applications to be considered and there appears to be no other business to be transacted by the Board at any regular meeting, other than the annual meeting, the chair may dispense with such meeting by notifying each member of the Board, the office of the Mayor and the office of the City Clerk. Such notification shall be made within forty-eight (48) hours of such decision.
  - c. Open to the Public.** All meetings shall be open to the public, including that portion of the meeting of the deliberations.
  - d. Quorum.** A quorum for a meeting by the Board shall consist of a simple majority of the members, but a lesser number may meet and adjourn a meeting to a specified time.
  - e. Votes Required.** Decisions shall be made by a majority vote of members present.
  - f. Minutes.** The Board shall keep minutes of its proceedings, showing the vote for each member upon question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.
  - g. Amendments to the Rules and Suspension of Rules.** Amendments to these rules or the suspension of any rule of procedure may be voted on by the Board at any regular meeting or at any special meeting.

**C. Initiating Cases Before the Board.** The Board meets regularly to hear and decide applications for variances (“variances”) and appeals from a determination made by the Zoning Administrator (“appeals”).

**a. General Requirements for Variances and Appeals.**

- i. Form and Fee.** In order for the Board to hear the item, a complete variance application or appeal must be submitted on a City-provided form along with a paid fee before the applicable deadline. The Zoning Administrator shall determine if the application is complete.
- ii. Docketing Cases.** Each complete variance or appeal filed in the proper form shall be docketed and shall be placed on the agenda of the Board for hearing. The numbers shall be in a format proscribed by the City.
- iii. Notices.** Notice of the date, time and place of the hearing shall be given according to MGO Chapter 28 and to the applicant/appellant not less than five (5) days prior to the date of the hearing. Unless specifically requested otherwise by the applicant/appellant, notice to the parties shall be over e-mail.

**b. Requirements Specific to Variance Applications.**

- i. Time.** Deadlines for completed applications for upcoming Zoning Board of Appeals meetings can be found on the City of Madison Zoning Board of Appeals webpage.
- ii. Form.** Every application shall be made upon the form furnished by the Zoning Administrator. The information and data called for in such form shall be supplied in sufficient detail so as to afford all the information necessary for a clear understanding and considered action by the Board. The list of drawings required for a complete variance application can be found on the City of Madison Zoning Board of Appeals webpage and will be provided to all applicants in preparation of their hearing.

**c. Requirements Specific to Appeals.**

- i. Time.** Every contested appeal shall be made within fifteen (15) days from the date of notice of refusal of a permit or from the date of the making of any written order, ruling, decision or determination being contested. If no written determination was issued and where such determination is made regarding a development proposal heard by a City Board, Commission or Committee, the date of notice shall be the first time a City Board, Commission or Committee considers the item as part of their agenda. Where official notice is mailed, the time to appeal shall begin running from the postmark date. The date of the decision of the Zoning Administrator shall not be counted, but the date of filing the appeal and Sundays and holidays shall be counted,

except that if the last day falls on a Sunday or legal holiday, the time for filing shall be extended to the next business day.

- ii. **Form.** Every appeal shall be made upon the form furnished by the Zoning Administrator. The information and data called for in such form shall be supplied in sufficient detail so as to afford all the information necessary for a clear understanding and considered action by the Board. If additional information is deemed necessary, it shall be supplied by the appellant upon written request by the Zoning Administrator. Any failure or refusal on the part of the appellant to furnish such additional information as may be reasonably required by the Zoning Administrator shall make the application considered incomplete.

**D. Conduct of Hearings for Variances and Appeals.**

- a. **General.** Appeals and variance requests shall be heard by the Board in the prescribed order under subsection (ii), except that an appeal or variance request may be advanced or postponed for hearing by order of the Board for good cause.
  - i. **Appearances and Testimony.** The applicant/appellant or any person in interest may appear at a hearing and testify in person or by duly authorized agent or attorney.
  - ii. **Order of Meeting.** Unless otherwise decided by the Chair, variances shall be heard (in the order in which they were submitted as complete to the Zoning Administrator) followed by appeals (in the order in which they were submitted as complete to the Zoning Administrator). Referred or continued applications/appeals should be heard before any new applications/appeals unless otherwise decided by the Chair.
  - iii. **Oath.** The Board may require that testimony of witnesses at hearings be given under oath, administered by the chair, in the form and manner provided by Section 906.03 of the Wisconsin State Statutes.
  - iv. **Votes Required.** Decisions shall be made by a majority vote of the members present.
  - v. **Evidence.** The Board shall not be bound by common law or statutory rules of evidence. The Board shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Board shall give effect to the rules of privilege recognized by law. Basic principles of relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

1. All evidence, including records and documents in the possession of the Zoning Administrator of which they want to utilize, shall be duly offered and made a part of the record in the case. The appellant or applicant shall be afforded adequate opportunity to rebut or offer countervailing evidence.
  2. The Board may take notice of any generally recognized fact or any established technical or scientific fact, but the appellant or applicant shall be notified either before or during the hearing or by full reference in preliminary reports or documents provided to the appellant, of the facts so noticed, and the appellant or applicant shall be afforded an opportunity to contest the validity.
  3. The Board shall take notice of all Madison General Ordinances, applicable Wisconsin Statutes and provisions in the Wisconsin Administrative Code.
  4. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, interested persons shall be given an opportunity to compare the copy with the original.
  5. The Board, in its discretion, may allow parties to conduct limited cross examination if it is proven to be reasonably required for a full and true disclosure of facts. Immaterial, irrelevant or unduly repetitious cross examinations shall not be permitted.
  6. The Zoning Administrator and the appellant or applicant shall each have the right, prior to the date set for the hearing, to take and preserve evidence as provided in Chapter 804, Wisconsin Statutes. Such evidence may be excluded from the record unless with respect to a witness:
    - a. Who is beyond reach of the subpoena of the Board;
    - b. Who is about to go out of the state, not intending to return in time for the hearing;
    - c. Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
    - d. Who is a member of the legislature, if any committee of the same or the house of which the witness is a member is in session, provided the witness waives their privileges.
- vi. No appearance.** If either party or their representative fails to appear without notification, the Board may proceed to dispose of the matter on the records before it or defer the matter to a future meeting.

- vii. **Withdrawals.** Any appellant or applicant may withdraw their appeal or application at any time prior to action thereon, with the consent of the Board, but if a motion has been made, and is pending, to either grant or dismiss, such motion shall have precedence.
  - viii. **Adjournments.** When all appeals or variance applications cannot be disposed of on the day set, the Board may adjourn as it may order, and such adjourned day shall be construed as a continuance of the hearing and no further notice need be given thereof.
- b. Order for Variances.** Each registered applicant and member of their application team, and each registered speaker from the public, shall have three (3) minutes. Unless otherwise agreed upon by the chair and the parties, the presentation shall be:
- i. Zoning Administrator’s explanation of the case and presentation of staff report.
  - ii. Applicant’s presentation of the case.
  - iii. Registered speakers, not including the applicant and/or their designee.
  - iv. Applicant rebuttal.
  - v. Questions by members of the Board for the Zoning Administrator, applicant(s) or registrant(s).
  - vi. Deliberation and decision by the Board.
- c. Order for Appeals.** Unless otherwise agreed upon by the chair and the parties, the presentation shall be as outlined in this subsection. The chair may, if agreed upon by the parties, impose time limits on each part of the case.
- i. Appellant’s presentation of the case.
  - ii. City of Madison staff’s presentation of the case.
  - iii. Appellant’s rebuttal.
  - iv. Questions by members of the Board.
  - v. City of Madison closing remarks.
  - vi. Appellant’s closing remarks.
  - vii. Deliberation and decision by the Board.

**E. Final Disposition of Cases**

- a. **Form.** The oral decision shall be considered the date of the final administrative determination of the Board. The hearing record shall show the reason or reasons for the Board’s determination. Following the oral decision by the Board, the City shall send a written decision to the applicant/appellant.
- b. **Finality.** All decisions and findings of the Zoning Board of Appeals, on an appeal or on an application for a variance after a hearing, shall in all

instances be final administrative determinations and shall be subject to review by court as by law may be provided.