

A. **Creation and Membership.** The Zoning Board of Appeals is created as authorized by applicable Wisconsin Statutes. The Zoning Board of Appeals shall consist of five (5) members appointed by the Mayor subject to confirmation by the Common Council for terms of three (3) years, commencing from noon on the third Tuesday of April 1960. The members of the Board shall be removable by the Mayor for cause upon written charges and after public hearing. The Mayor shall designate one of the members as chair or direct the Board to elect a chair. The position of secretary shall be filled by a member of the Board, elected by the Board at the first meeting in May of each year or at any other time the position becomes vacant. The secretary shall act as chair in the chair's absence. The Board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The Mayor may appoint, for staggered terms of three years, two alternate members of such Board in addition to the five members above provided for. Annually, the Mayor shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of such Board refused to vote because of interest or when a member is absent. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one member of the Board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.

B. **Initiating Cases Before the Board**

1. **Time of Appeal.** Every appeal shall be taken within fifteen (15) days from the date of notice of refusal of a permit or from the date of the making of any order, ruling, decision or determination from which an appeal is taken. Where official notice is mailed, the time to appeal shall begin running from the postmark date. A written appeal, specifying the grounds therefore, must be filed within fifteen (15) days with the Zoning Administrator. The date of the decision of the Zoning Administrator or other such officer 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 secular day.
2. **Form of Appeal.** Every appeal shall be made upon the form furnished by the Zoning Administrator, which form shall have been approved by the Board. 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. All applications for variances shall include: The application form, two plot plans drawn to scale and an elevation drawing of three views. If additional information is deemed necessary, it shall be supplied by the appellant upon written request by the secretary of the Board or 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 or secretary shall be grounds for dismissal of the appeal by the Board.

3. **Insufficient Form.** Any communication purporting to be an appeal or application to the Board for a permit shall be regarded as a mere notice of intent to seek relief until it is made in the form required. Upon receipt of any such communication, the writer shall be supplied with the proper forms for presenting his or her appeal and if he or she fails to supply the requested data in the proper form within ten (10) days in addition to the fifteen (15) days specified in Subsection (1) of this section, his or her case may be dismissed by the Board for lack of prosecution.
4. **Docketing Cases.** Each appeal filed in the proper form shall be numbered serially, docketed, and shall be placed on the agenda of the Board of the Zoning Administrator for hearing. The serial numbers shall begin anew on January 1 of each year and shall be hyphenated with the date of the hearing (month, day and year) and the item number from the agenda.
5. **Notices of Appeals or Application for Variances.** Notice of the date, time and place of the hearing shall be given according to Chapter 28 and to the appellant by mailing notice to the address stated on the appeal not less than five (5) days prior to the date of the hearing.

C. **Meetings and Rules.** Meetings of the Zoning Board of Appeals shall be held at the call of the chair or by the call of the secretary at the request of two members and at such other times as such Board may determine. Notice of special meetings shall be mailed 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 by phone.

1. **Time.** Regular meetings of the Board shall be held on the second and fourth Thursday of each month at 4:30 p.m. in the Madison Municipal Building or the City-County Building 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.
2. **Cancellation.** Whenever there are no appeals 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.
3. **Hearings.** Hearings of appeals may be held at regular or special meetings of the Board at such hours as shall be determined by the Board.
4. **Open to the Public.** All meetings shall be open to the public, including that portion of the meeting of the deliberations.

5. **Quorum.** A quorum for a meeting by the Board shall consist of four (4) members, but a lesser number may meet and adjourn a meeting to a specified time.
6. **Votes Required.** Decisions relating to a final decision on appeals or variances or suspending of these rules require four affirmative votes. All others may be made by a majority vote.
7. **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.
8. **Appearances and Testimony.** The appellant or any person, as defined in Section 27.03(2) of the City Ordinances, in interest may appear at a hearing and testify in person or by duly authorized agent or attorney.
9. **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 State Statutes.
10. **Evidence and Official Notice**
 - a. 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.
 - b. All evidence, including records and documents in the possession of the administrative officer or the Board of which the administrative officer or Board desires to utilize, shall be duly offered and made a part of the record in the case. The appellant shall be afforded adequate opportunity to rebut or offer countervailing evidence.
 - c. The Board may take official notice of any generally recognized fact or any established technical or scientific fact; but the appellant 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 shall be afforded an opportunity to contest validity of the official notice.

- d. The Board shall take official notice of all Madison General Ordinances, applicable Wisconsin Statutes and provisions in the Wisconsin Administrative Code.
- e. 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.
- f. The Board, in its discretion, may allow interested opposing persons 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.
- g. The administrative officer and the appellant 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:
 - (1) Who is beyond reach of the subpoena of the Board;
 - (2) Who is about to go out of the state, not intending to return in time for the hearing;
 - (3) Who is so sick, infirm or aged as to make it probable that the witness will not be able to attend the hearing; or
 - (4) 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 his or her privileges.

11. **No Appearances.** In the absence of any person appearance on behalf of the appellant, or in opposition thereto, or both, the Board may proceed to dispose of the matter on the records before it or defer the matter to a future meeting. If the appellant fails to appear initially or otherwise notify staff, and at the meeting to which the matter is deferred, then the Board shall dispose of the matter on the records before it and may not defer the matter again to a future meeting.

12. **Withdrawal.** Any appellant may withdraw his appeal 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.

13. **Order of Testimony.** At the hearing the order shall be as follows:

- a. Statement of the case by the chair.
- b. Administrative officer's explanation of the case.
- c. Appellant's presentation of the case.
- d. Interested people's position on the case.
- e. Appellant's rebuttal.
- f. Rebuttal by other persons.

At any time members of the Board may ask questions.

14. **Order of Hearing.** Appeals shall be heard by the Board in the order in which they are set for the hearing on the agenda except that an appeal may be advanced or postponed for hearing by order of the Board upon good cause therefor being shown.
15. **Adjournments.** When all appeals cannot be disposed of on the day set, the Board 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 and no further notice need be given thereof.

D. **Final Disposition of Cases**

1. **Form.** The final disposition of any appeal shall be in the form of a decision either granting, revising, varying or modifying the order, requirement, decision or determination appealed, or affirming the order and denying the appeal, or dismissing the appeal for lack of jurisdiction or prosecution. The record shall show the reason or reasons for the Board's determination. Notice of decision shall be sent to the appellant and to the Unit Director of the Inspection Unit.
2. **Conditions.** Wherever the Board authorizes any variation or imposes any condition with respect to a permit so as to carry out the intent and purpose of the Zoning Ordinance, such variation and condition shall be specifically stated in the decision referred to in Paragraph (1) of this section and also in the building permit issued pursuant thereto by the building inspector. Such permit shall remain valid only as long as the conditions upon which it was granted are satisfied.
3. **Finality of Decision of the Zoning Board of Appeals.** All decisions and findings of the Zoning Board of Appeals, on appeal or upon application for a variance after a hearing, shall in all instances be final administrative

determinations when the case is declared closed by the chair and shall be subject to review by court as by law may be provided.

4. **Rehearing.** Any interested person, including a member of the Zoning Board of appeals, may request a rehearing. No request to grant a rehearing shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing or which causes a reasonable belief that evidence at the prior hearing was materially inaccurate or incomplete. Requests for a rehearing shall be in writing, reciting the reasons for the request, and shall be duly verified and accompanied by the necessary data and diagrams. Requests for rehearing by the applicant of a denied variance shall be submitted to the Zoning Administrator within thirty (30) calendar days of the Board's action. Requests for rehearing by any other interested party shall be submitted to the Zoning Administrator within ten (10) calendar days of the Board's action. The person requesting the rehearing shall be notified to appear before the Board on a date to be set by the Board, of which the requestor shall be notified. A request for a rehearing shall be considered at the end of the regular agenda. If a motion to grant a rehearing receives the affirmative votes of a majority of members present and voting, the case shall be put on the calendar for a rehearing. Rehearings shall be subject to the same notice requirements as the original hearing. When a case is reheard, decisions relating to a final decision on appeals or variances shall require four affirmative votes. (Amended 12-5-91).
 5. **Authentication.** Every decision upon adoption shall be signed by the chair or the secretary as evidence of the action of the Board. The original resolution shall be filed with the Board's record of the case. Copies of each decision adopted by the Board shall be sent to the building inspector and to the appellant concerned, by the secretary of the Board.
- E. **Amendments to the Rules.** Amendment to these rules may be made by the board of Appeals at any regular meeting or at any special meeting provided notice in writing thereof has been given to each member of the Board at least ten (10) days prior to such meeting, or provided such amendment was read at the last preceding regular meeting of the Board. The suspension of any rule of procedure may be ordered at any meeting by an affirmative vote of not less than four (4) members of the Board.