

DOOR COUNTY BOARD OF ADJUSTMENT RULES OF PROCEDURE

SECTION A. GENERAL PROVISIONS.

(1) AUTHORITY.

The Door County Board of Adjustment, hereinafter referred to as "the Board, " is established under the authority of s. 59.694, Wis. Stats . , and the Door County Zoning Ordinance, or as amended. The Board assumes the powers, duties, and responsibilities as provided by Wisconsin law and the Door County Zoning Ordinance. These rules are supplementary to the requirements of the Wisconsin law and the provisions of the Door County Zoning Ordinance as they relate to the powers, duties, and responsibilities of the Board.

(2) CONFLICT AND SEVERABILITY.

In case of conflict between these rules and Wisconsin law, the Door County Zoning Ordinance, or other Door County ordinances, the more restrictive provisions shall prevail, unless precluded by superior authority. In such case, all portions of these rules not in such conflict shall continue in full force and effect.

(3) TITLE.

The official title of the Board is Door County Board of Adjustment.

(4) DEFINITIONS.

Unless otherwise indicated by the context in these rules:

"Administrator" means the Door County Senior Zoning Administrator, or designee, who shall be an employee of the Door County Planning Department.

"Appeal" means a formal request to the Board requesting a change in a decision or relief from requirements of the Door County Zoning Ordinance.

"Appellant" means the person entering an appeal or that person's attorney, agent, or other authorized representative.

"Chairperson" means the member who is the presiding officer at a meeting or hearing.

"Hearing" means a meeting at which witnesses are heard and testimony is taken.

"Meeting" means an assemblage of the Board's members in order to conduct the Board's business .

"Member" means a person who has been duly appointed to serve in all business of the Board .

(5) CONFLICT OF INTEREST.

(a) Any member who has any direct or significant indirect interest in a matter before the Board shall not vote thereon nor participate in the deliberation of such matter at any meeting at which the matter is under consideration.

(b) A conflict of interest shall be deemed to exist when:

1. The member is the appellant or spouse of the appellant, or is related to the appellant within the third degree of consanguinity, or is the spouse or in loco parentis of someone so related, or
2. The appellant is the employer, employee, or partner of the member, or is a corporation in which the member is a major shareholder or has a major financial interest, or
3. The member owns property within 300 feet of the property that is the subject of the appeal, or

4. The member determines that a party in interest is someone for whom an impartial decision could not be made.

(6) EX PARTE DISQUALIFICATION.

A member may disqualify himself/herself from participating in any matter whenever a party in interest has sought to influence the vote of the member on that matter outside of a hearing.

(7) OFFICE OF RECORD.

The office of the Board shall be at the same location as that of the Door County Planning Department, which, at the time of adoption of these rules, is the Door County Government Center, Sturgeon Bay. Wisconsin .

SECTION B. ELECTION OF OFFICERS. DUTIES OF OFFICERS AND STAFF ASSISTANCE.

(1) ELECTION OF OFFICERS.

The Board shall elect a chairperson and a vice-chairperson from among its members at its annual organizational meeting, which shall be the first meeting in July of each year or as soon as possible thereafter. Their term of office shall be until the next annual organizational meeting, or until their successors are elected as soon as possible thereafter. The Board may, at any meeting, elect from among its members a replacement for an officer who is unable to perform the duties of that office. The officer so elected as a replacement shall serve until the next annual organizational meeting of the Board, or until their successors are elected as soon as possible thereafter.

(2) DUTIES OF OFFICERS.

- (a) Chairperson: The chairperson shall preside over and direct the conduct of all meetings of the Board. The chairperson shall, subject to these rules, determine the dates, times, and locations of meetings; direct the official business of the Board; and decide all points of procedure or order. The chairperson may be overruled by a majority vote of a quorum. (See s. C(3)(c)3. for voting requirements.)
- (b) Vice chairperson: The vice-chairperson shall assume the duties of the chairperson if absent from a meeting or temporarily incapacitated. In the event that the vice-chairperson is absent from a meeting or temporarily incapacitated, the Board shall elect a member to assume the duties of the chairperson for the applicable meeting. The term of such chairperson shall not extend beyond the meeting for which the member was elected chairperson.

(3) OTHER ASSISTANCE.

- (a) The administrator shall provide clerical assistance, including acting as recording secretary for the Board. As recording secretary, the administrator shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if abstaining from voting, indicating that fact; shall keep records of the Board's official actions; shall accurately reduce to writing the testimony of those appearing before the Board, when necessary, and keep a verbatim recording of all hearings until the appeal period for the applicable case has been exhausted; shall record the names and addresses of all persons appearing before the Board; conduct the correspondence of the Board; have published in the official Door County newspaper public notices of meetings and hearings as required by law; file minutes and records in the office of record of the Board; and shall be the custodian of the files of the Board and keep all records. The administrator shall attend and advise the Board at meetings and hearings, except as determined otherwise by the chairperson.

- (b) The Door County Corporation Counsel, or designated representative, shall be the legal counsel for the Board, except in those cases where independent legal counsel is obtained or in those cases where ethical considerations prevent such counsel .

SECTION C . MEETINGS.

(1) ORDER OF BUSINESS.

- (a) Call to order and declaration of quorum.
- (b) Hearing of cases and decisions.
- (c) Approval of minutes of previous meeting.
- (d) Specified old business.
- (e) Specified other business.
- (f) Adjournment.

(2) RULES OF ORDER.

Robert's Rules of Order in the most recent published version shall govern during meetings, except where otherwise prescribed by Wisconsin law, Door County Zoning Ordinance, or these rules .

(3) VOTING

- (a) Who Shall Vote. Unless abstaining because of a conflict of interest, each member, including the chairperson, shall vote on each motion or other decision to be taken by the Board.
- (b) Abstention. Any member having a conflict of interest in a matter shall not participate in the discussion of, or decision on, that matter. A member having such conflict of interest shall exit the meeting room before the matter is taken up and shall not return until after a decision on the matter. Abstentions shall be recorded in the minutes of the proceedings.
- (c) Decisions.
 - 1. Decisions on appeals shall be by majority vote of the Board. Therefore, 3 concurring votes are needed to determine a decision. If only 3 members are voting on a motion, the motion is lost if the vote is other than unanimous. A vote on a motion that results in a tie means that the motion is lost.
 - 2. Decisions on amending these rules shall be by majority vote of the Board. Therefore, 3 concurring votes are needed to determine a decision. If only 3 members are voting on a motion, the motion is lost if the vote is other than unanimous. A vote on a motion that results in a tie means that the motion is lost.
 - 3. Decisions on all other matters shall be by a majority vote of a quorum. A vote on a motion that results in a tie means that the motion is lost.

(4) RECONSIDERATION DISALLOWED.

To lend finality to decisions of the Board, the Board shall not reconsider its decisions.

SECTION D. POWERS AND DUTIES OF THE BOARD.

The powers and duties of the Board are identified in applicable sections of the Wisconsin Statutes and in the Door County Zoning Ordinance. The Board shall have the following general powers :

- (1) To hear and decide appeals where error is alleged, pursuant to s. 59.694, Wis. Stats., and ss. 10.02(4) (a) and 11.07, Door County Zoning Ordinance. (See Section E.)
- (2) To hear and decide appeals from a Conditional Use Permit decision by the Door County Resource Planning Committee. (See Section F.)
- (3) To hear and authorize upon appeal variances pursuant to ss. 10.02(4)(b) and (c) and 12.04, Door County Zoning Ordinance, and s. 59.694(7)(d), Wis. Stats. (See Section G.)

SECTION E. APPEALS WHERE ERROR IS ALLEGED.

(1) STANDARD OF REVIEW

The standard of review for such appeals shall be certiorari. That is, review shall be confined to the record related to the decision being appealed.

(2) HEARING TESTIMONY.

Public hearing testimony shall be limited to facts and relevant information pertinent to the decision being appealed. To aid the Board in understanding the facts and relevant information, the Board may ask questions of those testifying.

(3) ORDER OF HEARING.

- (a) Reading of the appeal by the Chairperson.
- (b) Discussion of the record by the Board.
- (c) Testimony by the appellant to support the challenge to the decision.
- (d) Testimony by the officer to support the decision.
- (e) Rebuttal by the appellant.
- (f) Rebuttal by the officer.
- (g) Close the hearing.
- (h) Consideration and decision.

(4) BASES FOR DECISION.

- (a) Whether the officer kept within its/his/her jurisdiction.
- (b) Whether the officer acted according to applicable laws and common law concepts of due process and fair play.
- (c) Whether the officer's action was arbitrary, oppressive, or unreasonable and represented the officer's will and not the officer's judgment.
- (d) Whether the evidence was such that the officer might reasonably make the order or determination in question.

SECTION F. APPEALS FROM A CONDITIONAL USE PERMIT DECISION BY THE DOOR COUNTY RESOURCE PLANNING COMMITTEE .

(1) STANDARD OF REVIEW .

The standard of review for such appeals shall be de novo. That is , the original decision of the Door County Resource Planning Committee shall be given no further consideration.

Consequently, the Board shall consider the application for such Conditional Use Permit anew and without any consideration given to the Door County Resource Planning Committee's prior decision on the matter. Accordingly, the Board shall:

- (a) Conduct a hearing about the appeal.
- (b) Independently take evidence.
- (c) Render a decision on the appeal.

(2) FILING AN APPEAL.

- (a) Any person aggrieved may take appeals to the Board.
- (b) Such appeals shall be commenced by filing a notice of appeal and a nonrefundable fee as established by the Door County Board of Supervisors with the Door County Planning Department within 30 days after the date of written notice of the decision of the Door County Resource Planning Committee.
- (c) The notice of appeal shall specify the decision appealed.
- (d) The appellant may withdraw the appeal anytime prior to the Board's decision.

(3) RECORD ON APPEAL.

- (a) The Door County Planning Department shall cause the record to be compiled and transmitted to the Board in advance of the de novo hearing.
- (b) The record shall comprise of only the application for Conditional Use Permit and addendum or supplement thereto.

(4) ORDER OF HEARING.

- (a) Reading of the appeal by the chairperson.
- (b) Explanation of the appeal by the administrator.
- (c) Testimony by those in support of the Conditional Use Permit application.
- (d) Testimony by those in opposition to the Conditional Use Permit application.
- (e) Rebuttal by those in support of the Conditional Use Permit application.
- (f) Rebuttal by those in opposition to the Conditional Use Permit application.
- (g) Close the hearing.
- (h) Consideration and decision.

(5) BASES FOR DECISION.

The bases for decision shall be as set forth in s. 11.04(5), Door County Zoning Ordinance.

SECTION G. VARIANCES FROM THE TERMS OF THE DOOR COUNTY ZONING ORDINANCE.

(1) STANDARD OF REVIEW.

The standard of review for variance appeals shall be original review. That is, the Board shall render the first decision on the matter.

(2) ORDER OF HEARING.

- (a) Statement by the chairperson of the purpose of the hearing.
- (b) Reading of the variance appeal by the chairperson.
- (c) Explanation of the appeal by the administrator.
- (d) Testimony by those in support of the appeal.
- (e) Testimony by those in opposition to the appeal.
- (f) Rebuttal by those in support of the appeal .
- (g) Rebuttal by those in opposition to the appeal.
- (h) Close the hearing.
- (i) Consideration and decision.

(3) BASES FOR DECISION.

The bases for decision shall be the standards for variance detailed in s. 11.06(3), Door County Zoning Ordinance, the Wisconsin Statutes, and common law.

SECTION H. DECISIONS ON APPEALS AND DISPOSITION OF APPEAL CASES.

(1) TIME OF DECISION.

The Board of Adjustment will render a final decision within a reasonable time after the hearing. Final decisions of the Board of Adjustment will be reduced to writing and executed by the recording secretary.

(2) FORM OF THE DECISION.

The final disposition of an appeal shall be in the form of a written decision signed by the recording secretary. Such decision shall state the vote of each member upon each question and the reasons for the Board's decision. The recording secretary shall transmit the Board's decision to the appellant and other parties of interest. All conditions imposed with respect to the granting of the appeal shall be stated in the Board's decision.

(3) EXPIRATION.

A decision requiring the administrator to issue a zoning permit shall become void after one year, unless the appellant obtains a zoning permit for the project within such time. However, the Board may extend the time period for obtaining the zoning permit .

(4) FILING OF THE DECISION.

Every decision of the Board shall be filed in the office of the Board

SECTION I. SCHEDULING OF HEARINGS.

The Board of Adjustment generally meets on the second and fourth Tuesday of every month at 6:30 p.m. in the Government Center, Peninsula Room, 421 Nebraska Street, Sturgeon Bay, WI 54235.

Matters (i.e., administrative appeals, variances, and appeals from a conditional use permit decision) will be scheduled for consideration at a hearing within the earliest reasonable time period. This earliest reasonable time period will be decided by the Planning Department in consultation with the Board of Adjustment Chairperson, subject to the following limitations:

- (1) No more than 5 appeals shall be scheduled at any one meeting, except as provided in sub. (2).
- (2) Only one appeal from a Conditional Use Permit decision by the Door County Resource Planning Committee shall be considered at any one meeting. No other appeals shall be scheduled at such meeting.

SECTION J . CONSOLIDATION OF APPEALS.

The Board may consolidate separate appeals that involve the same case. Consolidation may occur, with the Board's approval, at the request of one or more of the appellants, or by action of the Board.

SECTION K. AMENDING RULES.

The Board may amend these rules at any meeting. (See s. C(3)(c)2. for voting requirements.)

SECTION L. SUSPENSION OF THE RULES.

These rules may be suspended at any meeting. (See s. C(3)(c)3. for voting requirements.)
Such suspension of the rules shall not extend beyond adjournment of the meeting at which the suspension was approved.

Amended: May 11, 2010

Susan Kohout
Susan Kohout - Chairperson

Lars Johnson
Lars Johnson - Vice-chairperson

James Drascic
James Drascic

Monica Nelson
Monica Nelson

Kristen Peil
Kristen Peil

With concurrence:

(Vacant)
First Alternate

Harvey Kroboth
Harvey Kroboth Second Alternate