

## AMENDMENT TO BAYFIELD COUNTY ZONING ORDINANCE

Section 13-1-102A of the Bayfield County Zoning Ordinance is created to read as follows:

### Sec. 13-1-102A Board of Adjustment Rules and Procedure

#### (a) General Provisions

- (1) **Authority.** The Bayfield County Board of Adjustment has been established pursuant to Section 59.694 of the Wisconsin Statutes and assumes thereby, all responsibilities, duties and powers as provided therein. These rules apply to members of the Board of Adjustment whether appointed to the Board before or after the date of the adoption of these rules.
- (2) **Conflicts of Interest.**
  - a. 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 1000 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, if such action results in a pecuniary benefit to oneself.

5. 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.
  6. 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.
- b. When a conflict of interest exists, the member shall do all of the following upon determining that a conflict exists:
1. declare that a conflict exists at the next meeting of the Bayfield County Board of Adjustment,
  2. cease to participate at the Board meetings, until the case giving rise to the conflict has been decided; and refrain from representing oneself before the Board or its staff.

(3) **Ex Parte Contact.**

- a. 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 have a duty to not prejudge a case, and to base their decisions only on the material and facts presented at public meetings and hearings on the case.
- b. Despite one's best efforts it is sometimes not possible to avoid ex parte contact. When that happens the member should publicly report the content and context of the ex parte contact in full at the public hearing or meeting on the case prior to the Board making a decision on the issue.

(4) **Board's Office.** The office of the Board shall be located at the Bayfield County Courthouse within the office of the Planning and Zoning Department. All records of the Board shall be available for public

inspection between the hours of 8AM and 4PM, Monday through Friday, except for legal holidays.

(b) **Officers and Duties**

- (1) **Officers.** The Board shall elect a Chairperson and a Vice-Chairperson from among its members at the annual organization meeting in July. These officers shall hold office until their successors are elected. The Board may, at any meeting or hearing, elect from among the membership the replacement for an officer, who dies or for whatever reason is unable to perform the duties of his office. The officer, so elected as a replacement, shall serve until the next organizational meeting of the Board.
- (2) **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. In the absence of both the Chairperson and Vice-Chairperson, the members shall appoint a Chairperson. The Chairperson shall report on all pertinent matters that have not otherwise come to the attention of the Board. 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 or the presiding officer, subject to these rules, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and approved.

The Board may retain legal counsel subject to the approval of the County Board of Supervisors.

(c) **Meetings**

- (1) **Time; How Called.** 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 Secretary at least 48 hours prior to such meeting. All meetings shall be open to the public and in accordance with the Open Meeting Law, except that the Board may call a closed session on issues permissible under the Wisconsin Open Meeting law. Hearings shall be advertised as required by law and these rules.

- (2) **Quorum.** A quorum shall consist of a majority of all members of the Board (3 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.
- (3) **Order of Business.**
- a. The Planning and Zoning Department shall prepare an agenda for each Board meeting, listing the matters of business at all meetings that do not have public hearings in the following order:
1. Call to order
  2. Roll Call
  3. Communications/Correspondence
  4. Statement with regard to compliance with the Open Meetings law.
  5. Old Business
  6. New Business
  7. Report of the Zoning Director
  8. Statement that the Board may go into closed session to confer with legal counsel regarding pending litigation (if such action is anticipated)
- b. The Planning and Zoning Department shall prepare an agenda for each Board meeting that has public hearings, listing the matters of business in the following order:
1. Call to Order
  2. Roll Call
  3. Public Hearings (Name, place, per notice of public hearing, and time, for each hearing)

4. Minutes of Hearings/Meeting, Date
5. Communications/Correspondence
6. Statement in regard to compliance with the Open Meeting Law
7. Old Business
8. New Business
9. Report of the Zoning Director
10. Statement that the Board may go into closed session to confer with legal counsel re: pending litigation (if such action is anticipated)

c. The order of business at any meeting or hearing may be varied from the preceding by consent of the members present. If there is a question of what shall be the order or content of an agenda, that question shall be decided by a majority of the Board, unless the issue comes up before a Board meeting and needs to be resolved beforehand, in which case it will be resolved by the Board Chairperson or Acting Board Chairperson.

(4) **Robert's Rules of Order.** Robert's Rules of Order shall govern actions of the Board and conduct of its meetings where not specifically covered by these rules.

(d) **Powers and Duties of the Board**

(1) **General Powers.** The powers and duties of the Board are set forth in Sec.59.694(7) of the Wisconsin Statutes and in Section 13-1-102 of the Bayfield County Planning and Zoning Ordinance.

(2) **Scope of Powers.** In exercising the powers under Section 1, 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 and shall have all powers of the officer from whom the appeal is taken, and may issue or direct the issuance of a permit.

(e) **Applications and Appeal Procedures**

- (1) **Who May File.** Applications to the Board and appeals from Planning and Zoning Department decisions shall be filed with the Planning and Zoning Department, by the applicant or appellant, or his or her agent or attorney. Appeals may be filed by any person aggrieved or by any officer, department, board or bureau of the County or town affected by the Zoning Administrator's decision.
- (2) **Copies to Be Sent:** The Zoning Administrator shall promptly transmit copies of the application or appeal as follows:
  - a. Original to the Board of Adjustment
  - b. Copy to the Planning and Zoning Department files
  - c. Copy to the applicant or appellant
  - d. In the case of appeals or applications affecting property in shoreland or floodplain districts, one copy shall also be sent to the Wisconsin Department of Natural Resources.
- (3) **Time to Appeal.** Appeals from the Department's decision must be filed as follows: The appeal notice shall be filed with the Planning and Zoning Director within thirty (30) days after written notice of the order or decision appealed from was sent by first class mail to the aggrieved party, or, if such notice was not sent to the aggrieved party, within thirty(30) days after the party first knew of, had reason to know of, or should have known of, the order or decision. The applicable fee must be filed within this time period as well.
- (4) **Required Information.** Applications or appeals shall be made on forms provided by the Planning and Zoning Department. Failure of the appellant to supply the information required by the appeal or variance form within 30 days after filing an appeal or application may be considered by the Board as a failure to comply with application and appeal procedure and the case may be dismissed for failure of timely filing. Any communications, except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing.

- (5) **Reasons to Be Stated.** The reason for the application or appeal must be stated and the reasons why the request should be granted must also be stated by the applicant or appellant:
- a. If a variance is requested, facts should be stated upon which findings may be made by the Board to justify the granting of the variance.
  - b. If an appeal is based upon an alleged error or abuse of discretion of the Planning and Zoning Department, facts should be stated as to the nature thereof.
  - c. All applications shall include maps and an understandable site plan showing the size and relative location of buildings, shoreline and relevant physical features.
- (6) **Time for Hearing.** Each appeal or application shall be considered by the Board at its next meeting, provided there is sufficient time between the date of the appeal and the date of the meeting for the required notices to be published.
- (7) **Notice of Hearing.** The Planning and Zoning Department shall cause notice of each hearing to be given as required by Sec. 13-1-102(d).
- (8) **Representative Filing.** An appellant may file an appeal or application and appear personally or by an agent or attorney. An agent or attorney shall provide written authorization from the applicant.
- (9) **Fees.** Fees shall be as set by the County Board based upon recent past experience of applicable costs, and may be changed from time to time to reflect the cost of hearings.

(f) **Procedure for Hearings**

- (1) **Appearances; Adjournments.** At the time of the hearing, the applicant or appellant may appear in his own behalf or be represented by his counsel or agent. A recess or adjournment of a hearing, made at a properly noticed hearing, to a time and place certain, is adequate notice to the members and public of a new hearing date.

(2) **Witnesses.** The Chairperson, or Acting Chairperson, may compel the attendance of witnesses and may require those wishing to testify to state their names and their interests in the matter before the Board. Testimony shall be taken under oath.

(3) **Order of Hearings.**

Hearings on cases shall normally follow this order:

- a. Hearing call to order by the Chairperson
- b. Roll Call
- c. Notice of Public Hearing (Read by Secretary or Zoning Administrator)
- d. Publication (Statement of publication of notice and distribution)
- e. Filing (Filing of application, date and information)
- f. Summary of the nature of the case (including uncontroverted facts) by the Planning and Zoning Department
- g. Content of Hearing

Hearings shall be conducted with the applicant presenting his or her case first, including any witnesses the applicant wishes to call. After the applicant presents his or her case, anyone else in favor of the applicant's request shall also be allowed to speak. Then all those opposed to the application shall be allowed to speak.

The applicant has the burden of proof to show that he or she is entitled to a variance or other relief being sought.

In more controversial, contested cases, in which parties appear with attorneys, opening and closing statements shall be allowed. If witnesses testify regarding the facts of the case to support or rebut the claim of the applicant, cross-examination may be allowed. Usually cross-examination of witnesses does not occur.

All supporting evidence for or against each case shall be presented to the Board. The applicant or appellant shall be responsible for the presentation of all information supporting the case. The Board may take administrative notice of the ordinances of the County and laws of the State of Wisconsin and of other relevant facts not reasonably subject to dispute, on its own motion or motion of a party.

- h. Closing of testimony (statement and time)
- i. Deliberation: Restricted to the Board. No public or staff participation. Board shall find the appropriate facts and conclusions of the law upon which a decision can be made. The Board may consult with legal counsel.
- j. Decision: The Board shall make an appropriate motion, including findings of fact, conclusions of law, approvals or denials, and conditions or statement of hardship for variances.
- k. Adjournment.

- (4) **Preliminary Matters.** Following the reading of a notice of appeal or application, the Board may hear arguments on the question of jurisdiction or timeliness of the application to the Board and request that briefs be filed on the point. The Board may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question until after the testimony is closed and render a decision on the merits as if it had jurisdiction. The Board may make an immediate determination and close the hearing upon a finding that it lacks jurisdiction. If the Board determines by motion that it lacks jurisdiction, the Secretary shall record the decision as a vote to deny the request.
- (5) **Parties Not to Interrupt.** Orderly procedure requires that each side shall proceed without interruption by the other; that all arguments and factual presentations shall be addressed to the Board; and that there be no questioning or arguments between individuals, except as permitted by the Board.
- (6) **Questions and Debate.** During the hearing, Board members may ask questions and make appropriate comments pertinent to the case. However, no member shall debate or argue an issue with the applicant. The Chairperson and Board members may direct questions to the

applicant or to any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case and may call for questions from members of the zoning staff.

- (7) **Additional Evidence.** The Board may take a case under advisement for later consideration and determination, or may defer action, whenever it concludes that additional evidence is needed or further study is required.
- (8) **Postponement of Hearing.** Cases may be postponed only by prior arrangement with the Chairperson.
- (9) **Rules of Evidence.** The Board shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative or repetitious testimony or evidence.
- (10) **Chairperson to Rule on Admissibility.** The Chairperson shall rule on all questions relating to the admissibility of evidence, provided that he/she may be overruled by a majority of the Board present.
- (11) **Interested Persons May Testify.** Persons having an interest in the case may attend the hearing and may request an opportunity to testify provided they identify themselves and sign an appearance card of persons attending the hearing. All testimony shall be under oath.
- (12) **Record of Hearing.** All proceedings at a hearing shall be tape recorded or recorded by a court reporter. The Zoning and Planning Department designee shall prepare minutes of each meeting and hearing, which shall include a summary of motions, witnesses, appearances, roll calls, votes and all other matters constituting the substance of the proceedings, and which shall be submitted to the Board for review and approval and shall become part of the written record filed in the office of the Board and open to the public. Transcripts of recorded proceedings shall not be prepared unless ordered by the circuit court by a writ of certiorari or requested under the Open Records Law. The party requesting a transcript shall be required to pay the cost of preparation in advance. Any party or member of the public may make a record of the proceeding by any means which does not disturb the hearing or others present.

The Planning and Zoning Department designee shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that

fact; shall keep records of its official actions; shall summarize accurately the testimony of those appearing before the Board and keep a verbatim recording of all hearings; shall record the names and addresses of all persons appearing before the Board in person, or by attorney; and shall, subject to the direction of the Board and chairperson, conduct the correspondence of the Board and have published in a local newspaper, public notices of meetings or hearings as required by law and these rules of procedure; shall file said minutes and records in the office of the Board, which minutes and records shall be a public record; and shall be the custodian of the files of the Board and keep all records.

- (13) **Adjustments.** When all appeals or applications cannot be disposed of on a 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. Notice of such adjournment shall be given to the absent members of the Board.
- (14) **Withdrawal of Appeal.** An appellant or applicant may withdraw an appeal at any time prior to the decision, but a pending motion to grant or dismiss the appeal shall have precedence over withdrawal. Withdrawal of the appeal shall not entitle the appellant or applicant to remission of the filing fee.

(g) **Decision of the Board**

- (1) **Majority Vote Required.** If a quorum is present, the Board may take any action by a majority vote of the members present.
- (2) **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.
- (3) **Decisions to be Mailed.** Within 30 days after the close of the hearing to which a decision relates, written copies of such decision shall be mailed to the applicant and all interested parties and delivered to the Zoning Administrator, which shall constitute filing the decision in the office of the Board under Sec. 59.694(10) Stats. The approval or granting of appeals by the Board is deemed to constitute an order to the Zoning Administrator to issue a zoning permit. A denial of the application or appeal by the Board is deemed to be an order to deny the permit. Copies of written decisions authorizing conditional use permits or variances in shoreland/

wetland/ non-metallic mining or floodplain cases shall be mailed to the Wisconsin Department of Natural Resources.

A member may disqualify himself or herself from voting whenever the member has a personal or monetary interest in the property concerning the case, will be directly affected by the decision of the Board, or has, or believes he/she has, any conflict or interest under state statutes or for any other reason. A member may also disqualify himself/herself from voting whenever the applicant or the applicant's agent has sought to influence the vote of the member on his/her case outside the public hearing. All decisions of the Board shall be made at a public meeting, by motion made, seconded and passed.

If conditions are imposed in the granting of a variance, or conditional use, such conditions shall be included in the motion.

- (6) **Decision to Relate to Specific Property.** The decision of the Board shall be deemed as applying to the property rather than to the individual and is valid only for the specific premises in the case and is not transferable to other properties.
- (7) **Informal Advice Not Binding.** The Board need not respond to informal requests for advice or moot questions. Any advice, opinion or information given by any Board member, or any other official or other employee of the County shall not be binding on the Board.
- (8) **Cases to be Determined Individually.** No action of the Board shall set a binding precedent. Each case shall be decided upon its merits and upon the attendant particular facts and circumstances, provided the Board shall not act arbitrarily or capriciously.

(h) **Refilings and Rehearings**

- (1) **Refiling Rule.** No matter that has been previously acted upon by the Board shall be considered upon a new application unless one or more of the following applies:
  - a. The case does not involve a request for an identical permit or does not allege the same misinterpretation or error.
  - b. The case does not contain the original request for specific variance.

- c. Substantial change in the use of adjacent property has occurred since the previous case was heard.
- d. The previous case was closed without a hearing because the applicant was not present at the time such case was scheduled for a hearing.
- e. There is a claim that there should be a rehearing based upon newly discovered evidence. A rehearing will only be granted on this basis when all of the following apply:
  - 1. The evidence has come to the moving party's notice after the initial hearing.
  - 2. The moving party's failure to discover the evidence earlier did not arise from lack of diligence in seeking to discover it.
  - 3. The evidence is material and not cumulative.
  - 4. The new evidence would probably change the result.

(2) **Reopenings and Rehearings Limited.** The Board, on its own motion, may not reopen any case upon which a previous hearing has been held, except to correct a manifest error, or where there is some ambiguity or missing element in a decision that makes it impossible for the Zoning Department to apply or enforce the decision, but it may reconsider a case as provided by these rules. The Board, on its own motion, may also reconsider a case at the next following meeting of the Board regardless of the 30-day time limit in paragraph (3) below.

(3) **Closure of Case.** A case will be considered as heard and closed at such time as the Board approves or rejects an application or appeal by motion. No request for reconsideration by the applicant shall be considered unless filed within 30 days after the written decision of the Board of Adjustment is mailed to the applicant by the Planning and Zoning Department.

(4) **Procedures for Reconsideration.** A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused to an interested party who has requested a reconsideration, the Board shall enter on the minutes the basis of the request, the reason why it was refused, and the vote of the Board members thereon. If reconsideration is approved, the case will be placed on the agenda for the next regular meeting/hearing and notice given as required for an original hearing upon payment of the re-hearing fee.

- (i) **Staff.** The Board may utilize the advice and assistance of the County Zoning staff and may delegate administrative tasks to such staff or to other county employees as authorized by the County Board of Supervisors.