

# Rules of Procedure

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## Section 1: General Governing Rules

The Board of Zoning Appeals (the Board) of the City of Milwaukee, Wisconsin shall be governed by the Zoning Law as contained in section 62.23 of the Wisconsin Statutes and the Zoning Ordinances of the City of Milwaukee, as amended, and by the rules of procedure hereinafter set forth. Whenever any conflict shall exist between these rules and the laws of the State or the Ordinances of the City, the State laws and local Ordinances shall prevail.

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## Section 2: Officers and Duties

A. Selection of Officers. The Chair of the Board shall be designated by the Mayor. A Vice-Chair may be selected by the Chair. The Board May employ a Secretary.

B. Duties of the Chair. The duties of the Chair shall be:

1. To preside at all meetings of the Board.
2. To decide all points of procedure, unless otherwise directed by a majority vote of the Board.
3. To supervise the work of the Secretary, excepting matters relative to the office staff payroll, department purchasing, and other administrative functions.
4. In the absence of the Chair, the Vice-Chair shall assume all duties of the Chair. An acting-Chair may be designated by the Chair, or, in the acting Chair's absence, by the members of the Board.
5. Sign the decisions of the Board.

C. Duties of the Vice-Chair. The duties of the Vice-Chair shall be:

1. The Vice-Chair shall assume the duties of the Chair in the Chair's absence or incapacity.

D. Duties of the Secretary. The Secretary shall conduct all correspondence of the Board; receive and file all appeals, papers and records; chair the Zoning Administration Group; summarize and report all recommendations of the Zoning Administration Group to the Board; prepare, post and mail all notices required by law, ordinance, rule or request of the Board or Chair; prepare and keep calendars, dockets and minutes of Board proceedings; and generally attend to all administrative work of the Board, including office staff, payroll, purchasing and other administrative matters.

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### Section 3: Appeals and Applications

A. Time of Appeal. Appeals of the orders of the Commissioner of City Development (the Commissioner) shall be filed within thirty (30) days after the date of receipt of written notification of the decision or order from which the appeal is taken. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal; Saturdays, Sundays and legal holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next working day.

B. Who May Appeal. Appeals or applications (hereinafter collectively referred to as "appeals") to the Board may be made by:

1. The owner, purchaser under a land contract, optionee, the purchaser under an offer to purchase or tenant under a written lease of the property for which relief is sought, or their legally designated agent or attorney.
2. Any person aggrieved or any officer, department, board or bureau of the City affected by a decision or order of the Commissioner.
3. The Board upon its own motion, supported by the affirmative vote of the majority of the voting members, may review any action of the Commissioner.

C. Appeal Forms. Every appeal shall be made upon forms furnished by the Secretary, which have been approved by the Board. The appellant shall provide all information requested on the form and any additional information requested in writing by the Chair or the Secretary which is necessary to inform the Board of the facts of the appeal. Failure to supply such information within sixty (60) days of the date of the Board's request shall be grounds for dismissal of the appeal.

D. Filing Appeals. All appeals shall be filed with the Secretary. The Secretary shall transmit one copy to the Commissioner or other officer or body from whom the appeal is taken. Upon receipt of an appeal, the Commissioner or other officer or body responsible for the original determination shall transmit to the Secretary of the Board all notes or papers relating to the order or decision from which the appeal is taken.

E. Fees. All appeals filed with the Secretary shall be accompanied by a receipt from the City showing payment of such fee as required by the Milwaukee Code of Ordinances (the Code). No fee shall be refunded after a notice of appeal is filed, except that in the event of an error by the Board staff. Refunds shall be issued upon request.

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## Section 4: Meetings

- A. Open to the Public. All meetings and hearings of the board shall be open to the public except as provided by Wisconsin Statute 19.85(1). The final vote on an appeal shall be taken in open session, recorded and available for public inspection in the Board's office. Public notice of all regular and special meetings shall be given to the public and news media as required by the Wisconsin Open Meetings Law.
- B. Regular Meetings. Regular meetings shall be held at the call of the Chair.
- C. Special Meetings. Special meetings shall be called by the Chair or by the Secretary at the request of two Board members. Notice of a special meeting must be mailed to each Board member at least 48 hours prior to the time set for the meeting or announcement of the meeting must be made at any meeting at which all members are present.
- D. Cancellation of Regular Meetings. Whenever there are no appeals or other business to be considered at any regular meeting, the Chair may cancel such meeting by notifying each Board member not more than five (5) days nor less than 24 hours prior to the time set for such meeting.
- E. Quorum. A Quorum for any meeting or hearing shall consist of four (4) members, but a lesser number may meet to adjourn to a specified time and place.
- F. Order of Business. The order of business at regular meetings shall be substantially as follows:
1. Roll call.
  2. Approval of the minutes.
  3. Hearing of cases.
  4. Communications and miscellaneous business.
- G. Voting.
1. Personal Interest. No Board member shall take any official action, including participating in and voting upon, any matter in which the Board member, or a member of his or her immediate family, or an organization, with which the Board member is associated, has a substantial financial interest. Nor shall any member use his or her position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the Board member, or a member of his or her immediate family, or an organization with which the Board member is associated. In the event a Board member cannot serve, the Chair shall direct the alternate member to act in his or her stead. Disqualification of a member for interest shall not decrease the number of votes required for action upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business. If four (4) financially disinterested Board members are not available to transact business, the business shall be adjourned until such time as four (4) financially disinterested Board members are available. Any issue of financial interest shall be brought to the attention of the Chair prior to the hearing of the appeal in question. In the event a Board member has an issue of a possible conflict, the Chair shall be asked to make a determination. If the Chair has an issue of a possible conflict, it shall be referred to the Vice-Chair, or to the Board if no Vice-Chair has been approved.

2. Record of Vote. The Secretary shall record in the minutes the vote of each member on every question, or, if the member is absent or fails to vote, such fact shall be indicated in the minutes.

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## Section 5: Hearings

A. Notice of Hearing. Notice of the time, date, and place of the hearing of an appeal shall be given in the following manner:

1. By posting notice not less than five (5) days prior to the meeting in at least three (3) places likely to give notice to the parties affected, in accordance with ch.985 of the Wisconsin Statutes.
2. By mailing to three (3) newspapers in the City at least five (5) days prior to the hearing.
3. By mail or personal service, not less than five (5) days prior to the date of the hearing, to the appellant, the appellant's attorney or representative as noted in the appeal, and to the Commissioner or other administrative body from whose decision an appeal is taken.
4. In every case involving a Variance or Special Use, the Secretary shall give written notice by mail to the owners of property under consideration and owners of property immediately surrounding and within at least one hundred fifty (15) feet thereof, inclusive of streets and alleys, as listed in the office of the City Assessor. In addition, notice may be mailed to additional parties at the discretion of the Chair.
5. Notice of an appeal for a proposed Special Use in a shoreland-wetland district shall be mailed to the District office of the Wisconsin Department of Natural Resources at least ten (10) days prior to the hearing.

B. Time of the Hearing, Docketing. Each appeal properly filed shall be numbered, docketed and placed upon the calendar by the Secretary.

1. All appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Commissioner in the enforcement of the code shall be scheduled for a hearing before the Board.
2. Based on evidence submitted by the application and information received from the Zoning Administration Group, all appeals for Special Uses and Variances shall be placed on the agenda, after giving due notice of the hearing, and hearing no objections, the Board may grant the appeal on a consent agenda based upon evidence contained in the file and the reviews conducted by ZAG. At the request of any interested party, City agency, or member of the Board, the appeal may be adjourned for a hearing at the next available agenda.

C. Appearances. The appellant may appear in person at the hearing, or may be represented by an attorney or a duly authorized agent having a power of attorney.

D. Compelling Attendance of Witnesses. The Chair may compel the attendance of witnesses by subpoena either upon motion of the Board or as requested by the appellant, any City agency or interested party. Written request for subpoenas must be filed with the Secretary not less than two (2) days prior to the hearing except by special permission of the Chair.

E. Oath. All witnesses shall be sworn by the Chair or Secretary before testifying.

F. Order of Hearing. Appeals shall be heard in the order noticed unless otherwise ordered by the Board.

G. Order of Business for Contested Cases. At the hearing, the order of business shall be designated by the Chair. Time limits may be designated and enforced by the Chair.

H. Evidence and Official Notice. In all hearings, written and oral testimony may be received. The Board may take official notice of the ordinances of the City, the zoning and location of the subject property, and geographical features of other facts that are common knowledge in the City or can be verified by reference to public record. In all hearings, no person shall be permitted to testify unless he or she submits to cross-examination.

I. 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. Notice of such adjournment shall be given to the absent members of the Board.

J. Withdrawal. An appeal may be withdrawn by the appellant, subject to the approval of the Board, any time prior to the merits of the appeal being reached at a hearing, but if a motion is pending to grant or dismiss the appeal, such motion shall have precedence.

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## Section 6: Staff Analysis

A. Zoning Administration Group (ZAG). The Department of City Development, the Department of Public Works, and the Department of neighborhood Services shall, at their option, each assign representative(s) to aid the board in its technical review. The Zoning Administration Group will be chaired and staffed by the Board Secretary. Its duties include:

1. To provide technical assistance to appellants in preparing submissions to the Board.
2. To conduct initial reviews of appeals received by the Board, to determine and identify if any additional information is needed to inform the Board regarding the appeal.
3. Review the cases for compliance with all applicable statutory requirements.
4. Based upon the technical merits of each case, ZAG may evaluate whether the appeal meets the criteria required by the Code:

For Variances:

Preservation of Intent. A variance would not be inconsistent with the spirit, purpose and in regulations for the district in which it is requested.

Exceptional Circumstances. Exceptional, extraordinary or unusual circumstances or conditions to the lot or intended use that do not apply generally to other properties or uses in the same district and the variance is not of so general or recurrent nature to suggest amendment of the regulation.

Preservation of Property Rights. The variance is necessary for the preservation and enjoyment of the same substantial property rights which are possessed by other properties in the same district or same vicinity.

Absence of Detriment. The variance will not create a substantial detriment to adjacent properties and will not materially impair or be contrary to the spirit, purpose and intent of the zoning code or public interest.

Hardship. The alleged difficulty or hardship is not self-imposed nor is it based solely on economic grounds.

For Special Uses:

Protection of Public Health Safety and Welfare. The use will be designed, located and operated in a manner so that the public health, safety and welfare are protected.

Protection of Property. The use, value and enjoyment of other property in the neighborhood will not be substantially impaired or diminished by the establishment, maintenance or operation of the special use.

Traffic and Pedestrian Safety. Adequate measures have been or will be taken to provide safe pedestrian and vehicular access.

Consistency with Comprehensive Plan. The special use will be designed, located and operated in a manner consistent with the city's comprehensive plan.

B. ZAG Evaluations. Evaluations may be reported to the Board jointly or each departmental representative may report to the Board separately. If the ZAG report is not unanimous in its evaluation, the matter shall not be eligible for the consent agenda and shall be scheduled for a public hearing.

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## Section 7: Decisions and Disposition of Cases

A. Time of Decision. The Board shall render its decision at the conclusion of its deliberation and shall notify the appellant and the Commissioner in writing of its decision.

B. Form of Decision. The final disposition of an appeal shall be in the form of a written decision signed by the Chair. Such decision shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, or dismiss the appeal for lack of jurisdiction or prosecution, or grant or deny the appeal. Within ten (10) working days of the conclusion of a hearing, the Board should reduce to writing its decision.

writing its findings regarding the proper interpretation and application of the Zoning Code. Written decisions of the Board shall be sent by mail to the appellant, the appellant's attorney or representative as noted in the appeal, and made available to the Commissioner or other administrative body from whose decision an appeal is taken.

C. Vote Required. All orders or decisions of the Board granting a Variance or Special Use or reversing any action or order of the Commissioner shall require the affirmative vote of the majority of the Board members present who have reviewed the file and evidence.

D. Conditions. Conditions stated in the Board's decision shall also be set forth in the building or occupancy permit issued by the Commissioner. Such permit shall be valid only as long as the conditions upon which it is granted are observed. Upon request of the Board, the operator of an approved use shall file with the Commissioner a written report certifying conformity with all conditions or limitations imposed by the Board. Failure to comply with this request may result in revocation.

E. Work Required. Variances or Special Uses approved by the Board shall expire one (1) year after issuance, or as directed within the Board's decision, if the performance of work is required and substantial work has not commenced. Appellants must apply to the Board for an extension of time to comply with such conditions prior to the expiration of the time to act. Failure to do so may result in revocation.

F. Filing of Decision. Every order, requirement, decision or determination of the Board shall be immediately filed with the Secretary and shall be a public record. A decision is filed when it has been signed and dated by the Chair. No appeal or use proposed in an appeal, which has been dismissed with prejudice or denied shall be considered again within three (3) years of the filing if the Board's decision (see s.8-B, Resubmission).

G. Persons Aggrieved by a Decision. Any person or persons, jointly or severally aggrieved by any decision of the Board, or any officer, department, board or bureau of the city, may appeal the decision of the Board to the Circuit Court. Such petition shall be presented to the Circuit Court within thirty (30) days after the written decision of the Board has been filed.

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## Section 8: Resubmission

All reconsideration requests shall be submitted to the Board office and be addressed to the Board Chair. The Board chair shall have sole discretion as to whether or not a reconsideration request will be forwarded to the full Board for a further proceeding. If the Board Chair decided that the circumstances being presented warrant reconsideration, the matter will be forwarded to the full Board for either a rehearing or a resubmission as set forth below:

A. Rehearing. No rehearing shall be held except by the affirmative vote of the majority of voting members of the Board upon finding that substantial new evidence has been submitted which could not reasonably have been presented at the previous hearing. Requests for rehearing shall be submitted in writing within thirty (30) days of the filing of the decision, shall be duly verified and shall recite the reasons for the request and be accompanied by necessary data and diagrams. Rehearings shall be subject to the same notice requirements as original hearings.

B. Resubmission. No appeal which has been dismissed with prejudice or denied shall be considered again within three (3) years of the filing of the Board's decision without material alteration or revision or substantial change in circumstances as determined by the Board except pursuant to court order or by motion to reconsider made by a member voting with the majority. A motion to reconsider shall require the affirmative vote of the majority of voting members. The expiration of three (3) years time from the date of the filing of the Board's decision shall be considered sufficient reason to warrant a new hearing of an appeal previously heard. Such appeal shall be subject to the same requirements as an original appeal and be accompanied by the required filing fee.

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## Section 9: Amendments or Suspension of Rules

A. Amendments. These rules may be amended or revoked by the affirmative vote of the majority of voting members of the Board at any meeting, provided written notice of the proposed amendment or revocation is given to each member at least ten (10) days prior to such meeting.

B. Suspension. Suspension of these rules may be ordered at any meeting by the affirmative vote of the majority of voting members of the Board.

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## Rules Adopted and Amended

Adopted: 5/14/1974

Amended: 2/1/1990, 12/6/1991, 4/15/1993, 9/11/1997, 2/12/1998, 2/25/1999, 9/4/2003, 11/05/2003, 4/21/2005, 7/28/2005, 1/26/2006, 7/6/2006, 2/18/2010

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