



Dane County Planning & Development Division of Zoning

DANE COUNTY BOARD OF ADJUSTMENT

GUIDELINES FOR ADMINISTRATIVE APPEALS OF THE ZONING ADMINISTRATOR'S DECISION OR INTERPRETATION

1. WHAT IS AN ADMINISTRATIVE APPEAL?

- A. An administrative appeal is a legal process provided to resolve disputes regarding ordinance interpretations or decisions made by an administrative official related to zoning.
- B. The Dane County Zoning Ordinance, which was enacted by the Dane County Board of Supervisors, states that the Dane County Zoning Administrator is the administrative official charged with administering and enforcing the Dane County Zoning Ordinance by making decisions and interpretations in specific cases.
- C. The Dane County Board of Adjustment is the body to whom any aggrieved person may apply to challenge a decision or interpretation of the Dane County Zoning Administrator that adversely affects them.
- D. The appeal of an administrative decision or "Administrative Appeal" is considered to be a "contested case."
- E. All parties in a contested case – the person filing the appeal, the Zoning Administrator, and any other interested parties -- may be represented by an attorney or other agent(s).
- F. All parties in a contested case have the right to call and cross-examine witnesses, and to object to improper evidence
- G. A recording is made of all Board of Adjustment meetings for an administrative appeal.

2. WHO MAY CHALLENGE OR "APPEAL" THE ZONING ADMINISTRATOR'S INTERPRETATION OR DECISION?

- A. An "aggrieved person" may challenge the Zoning Administrator's decision or interpretation by filing an Administrative Appeal.
- B. A "person" includes partnerships, corporations, associations, and governmental units.
- C. A person is "aggrieved" when the decision has a direct effect on the person's legally protected interests.
- D. The aggrieved person is not required to have attended a previous hearing on the matter in question.
- E. The aggrieved person is known as the "appellant."

3. WHAT ARE THE REQUIREMENTS FOR FILING AN ADMINISTRATIVE APPEAL?

- A. Submit two (2) copies of a written "notice" of appeal specifying the grounds for the appeal – one to the Assistant Zoning Administrator (as staff to the Board of Adjustment), and one to the Zoning Administrator. The written statement or notice shall include:
 - 1) A copy of the Zoning Administrator's written decision, which ordinarily includes the specific sections of the Zoning Ordinance upon which his or her decision was based.
 - 2) If the Zoning Administrator's written decision does not include the specific references to the Zoning Ordinance, or if the appellant wishes to cite other sections, these should be listed.

- 3) The appellant's own description of the project or proposal upon which the Zoning Administrator's decision was based. Supporting documentation such as complete project plans, surveys,
 - 4) The reasons why the appellant is aggrieved by the decision.
- B. In addition to the written statement, required application materials include:
- 1) A filing fee of \$500.00, payable in cash or by check to Dane County Zoning.
- C. An aggrieved person must meet the filing deadline, as follows:
- 1) Appeals must be filed within 30 days of receipt of a decision, interpretation, or order of the Zoning Administrator, as verified by the U.S. Postal Service (date on receipt of Certified Mail returned to the Dane County Zoning Division office).
 - 2) In counting the 30 days, the date of receipt of the decision shall not be counted; Sundays and holidays shall be counted, except if the last day (day 30) falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
 - 3) Failure to meet the 30-day deadline will result in dismissal of the administrative appeal.

4. WHAT HAPPENS AFTER THE ADMINISTRATIVE APPEAL APPLICATION IS FILED AND BEFORE THE PUBLIC HEARING?

- A. An appeal number is assigned.
- B. A date is set for the Administrative Appeal Public Hearing. NOTE: Because Administrative Appeals are contested cases, hearings may be lengthy. Board of Adjustment *Rules* provide that a contested case shall be the only Public Hearing agenda item for a Board meeting. Therefore, an administrative appeal may be heard at the next regularly scheduled Board meeting, or a special meeting date may be set to accommodate all principal interested parties and Board members. Zoning staff will communicate with all parties to set a Public Hearing date for the Administrative Appeal.
- C. The Zoning Administrator forwards all official records associated with the original decision or interpretation to the Board of Adjustment. Such records may include, but are not limited to, permit applications, inspection reports, site plans, surveys, photos, and minutes or recordings of any previous hearings or meetings pertaining to the Administrative Appeal.
- D. In most cases, both the appellant and the Zoning Administrator (and any other party that wishes to present a case-in-chief (see 5., below) at the Public hearing) file a "brief" – any additional information pertaining to the appeal, including any written arguments and evidence that Board members may review before the Public Hearing.
- If a brief is filed, a minimum of twelve (12) copies shall be provided (one each for Dane County Zoning Administrator, Assistant Zoning Administrator, Corporation Counsel, Board of Adjustment members and Alternates, Town Clerk and one extra copy); if an electronic copy of the brief is filed, only one (1) paper copy is required.
 - BOARD OF ADJUSTMENT RULES REQUIRE THAT "BRIEFS" OR OTHER INFORMATION MUST BE SUBMITTED THREE (3) WEEKS BEFORE THE DATE OF THE ADMINISTRATIVE APPEAL PUBLIC HEARING.
- E. In most cases, Zoning Division staff conducts a site visit with Board of Adjustment members to view the site (if any) affected by the Zoning Administrator's decision or interpretation. This usually occurs on a regularly scheduled Site Inspection meeting day (see BOA Schedule, attached).
- F. A Public Hearing Notice is published one week and two weeks before the Public Hearing (Class II Notice) to comply with Wisconsin Statutes.

5. WHAT HAPPENS AT THE PUBLIC HEARING OF AN ADMINISTRATIVE APPEAL?

An Administrative Appeal is a contested case. The Board of Adjustment *Rules* for contested cases are as follows:

- A. All parties who wish to present a case-in chief (their arguments, evidence and witnesses) may do so if they have filed a brief (see 4.D. above).
- B. All parties presenting a case-in-chief have the right to call and cross-examine witnesses, and to object to improper evidence.
- C. No hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination.
- D. The Board may take official notice of the ordinances of the county, the zoning and location of the subject property and geographical features or other facts that are common knowledge in the county or can be verified by reference to public record.
- E. No person shall be permitted to testify unless he or she submits to cross-examination.
- F. All witnesses shall be sworn as follows:
 - 1) "Do you swear (or affirm) that the testimony you give before this board will be the truth, the whole truth and nothing but the truth, and do you agree to submit to cross-examination?"
- G. The hearing of a contested case shall be conducted with the Order of Business as follows:
 - 1) Call to order by the Chair
 - 2) Appellant's opening statement. The person shall be afforded 5 minutes.
 - 3) Zoning Administrator's opening statement. The person shall be afforded 5 minutes.
 - 4) Opening statement of other interested parties. The right to make an opening statement is limited to persons who will present evidence. The person shall be afforded 3 minutes
 - 5) Applicant's case-in-chief.
 - 6) Questions by Board members.
 - 7) Cross-examination. No more than one person for each party shall cross-examine witnesses. The Chairman may limit the number of parties who may cross-examine.
 - 8) Zoning Administrator's case-in-chief.
 - 9) Question by Board members.
 - 10) Cross-examination as under 7.
 - 11) Case-in-chief of other parties.
 - 12) Questions by Board members.
 - 13) Cross-examination as under 7.
 - 14) Rebuttal by appellant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.
 - 15) Statements of opinion of neighbors or abutting land owners - -not subject to cross-examination.
 - 16) Closing statements of those who made or waived opening statements. Parties shall be afforded 3 minutes for statement.
 - 17) Board summary of findings and decision.

6. DECISIONS OF THE BOARD OF ADJUSTMENT

- A. The Board of Adjustment has the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Dane County Zoning Administrator. In exercising this authority, the Board may reverse or affirm wholly or partly, or 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 end shall have all the powers of the Zoning Administrator.
- B. The Board members present may vote to take action at the Public Hearing for an Administrative Appeal, or they may abey action to another meeting.
- C. All orders or decisions of the Board reversing any action or order of the Zoning Administrator require an affirmative vote of the majority of the members.

REFERENCES:

Dane County Code of Ordinances, Section 10.25, 10.26

Wisconsin Statutes, Sections 59.694(4), 62.23(7)(e)4, 990.01(26), 227.08

Zoning Board Handbook, 2nd Edition 2006, Markham and Roberts, Center for Land Use Education,
Chapter 13 Administrative Appeals

Dane County Board of Adjustment *Rules and Procedures*, adopted 01/17/2008.

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