

**NOTICE OF MEETING**

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS

**Wednesday, August 21, 2019**

**1:00 PM**

Administration Building  
508 New York Avenue  
3<sup>rd</sup> Floor, Conference Room 302  
Sheboygan, WI

**\* AMENDED AGENDA \***

Call to Order

Roll Call

Seating of Alternates, if needed

Certification of Compliance with Open Meeting Law

Approval of Minutes of the April 17, 2019 Board of Adjustments Meeting

Public Input and Comments on Non-Agenda Items

Election of Officers – Chairman, Vice-Chairman, Secretary

Discussion and Possible Revisions to Procedures

Approval of 2019 - 2020 Calendar

Sheboygan County Board of Adjustments Policies and Procedures (Adopted October 15, 2014)

Adjournment

Prepared by: Karsen Gosh, Recording Secretary

Approved by: Mark Pfaller, Chairperson

A majority of the members of the County Board of Supervisors or of any of its committees may be present at this meeting to listen, observe, and participate. If a majority of any such body is present, their presence constitutes a "meeting" under the Open Meeting Law as interpreted in *State ex rel. Badke v. Greendale Village Board*, 173 Wis. 2d 553 (1993), even though the visiting body will take no action at this meeting. Persons with disabilities needing assistance to attend or participate are asked to notify the County Administrator's Office, 920-459-3103, prior to the meeting so that accommodations may be arranged.

*Posted on 8/16/2019 at 4:00 PM*

SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS

POLICIES AND PROCEDURES

Which Supplement and Elaborate on Those Adopted  
by the County Board for the Board of Adjustments

Approved **October 15, 2014 without revisions**

(initially adopted by the Board of Adjustments on June 27, 2007)

In Accordance with Wis. Stat. § 59.694

## SHEBOYGAN COUNTY BOARD OF ADJUSTMENTS

### POLICIES AND PROCEDURES

The Sheboygan County Board of Adjustments (the BOARD) is not an advisory body but rather a quasi-judicial body. The BOARD's function is not to advise people on what they can do within the Ordinances on which the BOARD hears appeals or applications. Under the variance procedures of the Ordinances, the BOARD can only grant a variance if a hardship is created by the particular Ordinance for a unique property and if the proposed use is within the spirit and intent of the Ordinance. [adopted 8/22/01]

The BOARD shall have the following powers: [adopted 10/27/10]

- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the County Planning & Conservation Department or the Airport Department in the enforcement of Chapters 63, 70, 71, 72, 73, 75 and 78.
- (b) To authorize upon appeal in specific cases such variance from the terms of Chapters 63, 72, 73 and 75 of this Code as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of said Chapters will result in unnecessary hardship and so that the spirit of said Chapters shall be observed, public safety and welfare secured, and substantial justice done.
- (c) To allow alternate reclamation requirements to operators of nonmetallic mining sites pursuant to Section 78.18 of this Code.

#### I. MEETINGS

- A. The BOARD normally holds three types of meetings: 1) Meetings at which hearings are held; 2) on-site inspections; and 3) discussion meetings. [adopted 8/15/12]
- B. In addition to the meeting times listed below, the Chair or two members of the BOARD may call other meetings of the BOARD. [adopted 10/25/89]
- C. Time and Place of Meetings:
  - 1. Meetings at Which Hearings are Held
    - a. Normally, the BOARD will meet on the third Wednesday of the month beginning at 1:00 PM the Sheboygan County Administration Building to hold hearing(s) on any petitions that have been filed in sufficient time to allow the publication of a

Class 2 notice and to conduct its normal business. [adopted 8/15/12]

- b. Each year in August the BOARD will adopt a schedule for such meetings. The schedule will contain a list of the meeting dates and petition filing dates for the upcoming calendar year. [adopted 10/25/89]

2. On-Site Inspections

The BOARD will conduct on-site inspection meetings, beginning at 9:00 AM on the Saturday before the third Wednesday of the month. The BOARD will hold these meetings at the site(s) that are the subject of any new petitions that the BOARD will hear at the upcoming hearing meeting. [adopted 8/15/12]

3. Discussion Meetings

The BOARD may meet at the call of the Chair or two members to discuss such matters as may come before the BOARD. The BOARD will use these meetings for general policy reviews, discussion of Ordinance provisions, meetings with staff or technical experts, or similar. The time and place of these meetings will be established when called. [adopted 8/22/01]

## II. NORMAL ORDER OF AGENDA

A. Meetings at Which Hearings are Held [adopted 1/24/07]

1. Call to Order (1:00 PM)
2. Roll Call
3. Seating of Alternates, if needed
4. Certification of Compliance with Open Meeting Law
5. Approval of Minutes of Previous Meeting(s)
6. Public Comment on Items Not on the Agenda
7. Hearings as Listed in Published Class 2 Notice (beginning immediately thereafter)
8. Closed Session (optional)
9. Other Matters as May Come Before the BOARD
10. Adjournment

B. Discussion Meetings [adopted 1/24/07]

1. Call to Order (1:00 PM)
2. Roll Call
3. Seating of Alternates, if needed
4. Certification of Compliance with Open Meeting Law
5. Approval of Minutes of Previous Meeting(s)
6. Public Comment on Items Not on the Agenda
7. Items or Issues for Discussion

8. Closed Session (if appropriate)
9. Adjournment

### III. COMMENTS TO AND CORRESPONDENCE WITH THE BOARD

- A. The BOARD will accept and review any letters or other correspondence received regarding its decisions. [adopted 10/25/89]
  1. The BOARD will not take official action, nor provide comments on Ordinance provisions outside of the context of the public hearing where a valid petition has been filed. [adopted 8/22/01]
  2. The BOARD will not take action, provide comments on Ordinance provisions, nor advise persons on whether proposed or already taken actions are consistent with the Ordinance or are likely to be granted a variance. [adopted 10/25/89]
- B. The procedures and standards to be used at hearings are found in Section V, PROCEDURES AND STANDARDS AT HEARINGS. [adopted 10/25/89]
- C. If a discussion meeting has been called, the BOARD will provide a time at which members of the audience may address the BOARD. When such audiences are held, they should not be viewed as providing for a question and answer session. The BOARD may establish a reasonable, maximum time limit for each such audience. [adopted 10/25/89]
- D. During On-Site Inspection meetings, the BOARD will hear from any interested person at the meeting. The BOARD will refrain from expressing opinions or engaging in a debate regarding Ordinance provisions or the petition before the BOARD. [adopted 10/25/89]

### IV. VALID PETITIONS

- A. For a petition to be valid it must be on the appeal/application notice forms developed by the BOARD, include all information required by Ordinance or BOARD policy (see C & D below), and must be accompanied by the required filing fee. [adopted 10/25/89]
- B. The original and 9 copies of the petition along with 10 copies of any other information required by Ordinance or the adopted policies of the BOARD (see C & D below) shall be submitted to the Planning & Conservation Department in Room 335 of the Sheboygan Administration Building. [adopted 10/27/10]

- C. Petitioners should submit the following information along with the appeal/application notice and fee: [adopted 10/27/04]
  - 1. Full size copies of a line drawing showing the project drawn to scale with the scale and all dimensions identified. The drawing should include the project's relationship to neighboring lots, roads, lakes, rivers, septic systems, wells, etc.
  - 2. Detailed floodplain boundaries, if applicable.
- D. The BOARD would find the following information helpful if it can be provided: [adopted 2/15/89]
  - 1. Topographic map or slope determination, if applicable.
  - 2. Land elevations in relation to some permanent benchmark.

## V. PROCEDURES AND STANDARDS AT HEARINGS

Petitioners have sometimes appeared at hearings unprepared to present their cases properly. The purpose of this Section is to explain the hearing process and the way the BOARD reaches its decision on petitioner. If you are considering filing a petition, the BOARD urges you to prepare thoroughly. [adopted 10/25/89]

- A. Procedures. The order of each hearing will be as follows: [adopted 8/22/01]
  - 1. Reading of the petition.
  - 2. Reading of any letters or other correspondence and documents the BOARD has received regarding the petition.
  - 3. BOARD member summaries of observations at site visit(s).
  - 4. BOARD will ask Petitioners to the table to provide an overview and testimony regarding the petition.
  - 5. BOARD will ask staff for additional comments, with opportunity for BOARD member questions.
  - 46. Staff report and questions of staff by BOARD members.
  - 57. Petitioners provide any additional information they may have, followed by BOARD members questioning of the petitioners.
  - 68. The BOARD will ask for anyone else who wishes to comment on the petition to do so, with BOARD members having a chance to question those commenting.
  - 8. ~~Others asked for any additional comments, followed by BOARD member questions.~~

79. Petitioners asked for any additional comments followed by BOARD member questions.

910. Closing of the hearing.

11. Petitioners return to seats.

4012. The Chair will ask BOARD members to indicate whether they desire a closed session regarding the petition. If a closed session is not desired, immediately after the close of the hearing the BOARD will discuss the petition and may make a decision on the petition. If a closed session is desired, the BOARD will hold it after all hearings are completed. Following the closed session, the BOARD will reconvene in open session for the motion and vote on the petition(s) discussed in closed session.

13. Corporation Counsel outlines legal standards for variance.

14. BOARD deliberates and votes.

- B. Control of Testimony. The Chair of the BOARD has a role similar to the presiding Judge at a court hearing. To control decorum and to promote efficiency, the Chair may rule comments or questions out of order and may terminate testimony of a witness if the testimony becomes unduly repetitive or irrelevant. The rules of evidence in Circuit Court proceedings will not be strictly followed, but they are guides to presenting a persuasive case in an efficient manner. [adopted 10/25/89]
- C. Closing of Hearings. Once the hearing is closed, the BOARD will not accept additional comments or questions from the floor unless the BOARD reopens the hearing. Once the BOARD has reached a decision, the BOARD speaks as a single entity. [adopted 8/22/01]
- D. Legal Standards for Variances. The BOARD can grant variances only in accordance with State statutes as interpreted by the Wisconsin Appellate Courts. These laws state that the BOARD can grant a variance for a particular property only if the following four things are proven to the satisfaction of the BOARD:
1. Owing to special conditions, a literal enforcement of the Ordinance will result in unnecessary hardship. The hardship must be based on conditions unusual to the property, not personal to the property owner, and the hardship cannot be self-created. A reduction in the value of the property if a variance is not granted does not constitute an unnecessary hardship.

With respect to applications for AREA variances, to show unnecessary hardship, the applicant must show that without the variance, the applicant would be unreasonably prevented from using the property for a permitted purpose or would render conformity with the restrictions unnecessarily burdensome.

With respect to applications for USE variances, to show unnecessary hardship, the applicant must show that without the variance, the owner has no reasonable use of the property. If there is any reasonable use of the property, the variance must be denied.

2. The variance must observe the spirit of the Ordinance.
3. Substantial justice must be done by granting the variance.
4. The variance will not be contrary to the public interest.

The BOARD must be able to find all four conditions in order to grant a variance. If the BOARD is unable to find any one of the conditions, the variance cannot be granted by the BOARD.

- E. Where the BOARD is reviewing an appeal application where it is alleged there is error in an order, requirement, decision or determination made by the County Airport Department or County Planning & Conservation Department in the administration of the County Code, the function of the BOARD is to correct any error in the decision or appeal. It is not to re-decide the matter or substitute its thoughts or opinions for those of the Committee or administrator who issued the decision brought on appeal.
- F. In the event that there is a conflict between these policies and procedures and the policies and procedures required under Wis. Stat. § 59.694, or in the event that there is a conflict between these policies and any subsequent judicial interpretation of those policies or the applicable law to be applied by the Board using these policies, Wis. Stat. § 59.694 and the most current judicial interpretation shall control.

## VI. ELECTION OF OFFICERS

- A. The BOARD will elect its officers each year at its August meeting. [adopted 8/22/01]
- B. Nominations for each office will be taken in turn from the members present. A member need not be present to be nominated. [adopted 10/25/89]

- C. A simple majority vote of those members present will be sufficient for the election of an officer. A member need not be present to be elected. [adopted 10/25/89]

## VII. NOTIFICATION OF BOARD DECISIONS

### A. Notice to Administrative Official

- 1. The BOARD will notify the administrative official by letter of its order to issue or deny a permit or to table a petition, as appropriate. [adopted 12/20/89]
- 2. The letter of decision will be dated within 10 days of the close of the hearing at which the BOARD makes its decision. [adopted 12/20/89]
- 3. The letter of decision will note: [adopted 8/22/01]
  - a. The basis on which the BOARD approved, denied, or tabled the appeal or application;
  - b. Any conditions or stipulations which the BOARD attached to the approval or tabling;
  - c. State that the decision of the BOARD to grant or deny can be appealed to the circuit court by the administrative official, petitioner, or other parties in interest, if they are aggrieved by the BOARD's decision within 30 days of the date of the letter;
  - d. Inform all parties that because the decision can be appealed to the Circuit Court within 30 days after the decision, any work completed on the project during that time frame is at the owner's risk.

### B. Notice to the Parties in Interest

- 1. The BOARD will notify the parties in interest within 10 days of the close of the hearing at which the BOARD had made a decision to grant, deny, or table a petition. [adopted 12/20/89]
- 2. Parties in interest are the: [adopted 12/20/89]
  - a. Petitioner;
  - b. Town Clerk of the Town where the property which is the subject of the petition is located;
  - c. Department of Natural Resources (DNR), where required by State law;
  - d. Owners of property within 200 feet of the property which is the subject of the petition.

3. The BOARD will notify the petitioner, Town Clerk, and DNR by sending them a copy of the letter to the administrative official including any attachments to that letter. [adopted 12/20/89]
4. The BOARD will notify the owners of property by a dated notice that: [adopted 12/20/89]
  - a. Bears the same date as the letter to the administrative official;
  - b. Identifies the decision by petitioner's name, property location, hearing date, petitioner's request, and case number;
  - c. Indicates that the BOARD has reached a decision to grant, deny, or table the petition, as appropriate;
  - d. States that the BOARD's written decision can be reviewed at the BOARD's office;
  - e. States that if the property owners are aggrieved by the BOARD's decision to grant or deny, they can appeal to the Circuit Court, but that the appeal must be made within 30 days from the date of the notice.

#### VIII. Per Diem Payments

- A. Meetings at Which Hearings are Held [adopted 1/24/07]

Alternates shall be paid a per diem if they are present at a hearing/meeting for roll call whether or not they are seated. The per diem would be limited to a "1" if the alternate is not seated.
- B. Discussion Meetings [adopted 1/24/07]

Alternates shall be paid a per diem if they are present at a hearing/meeting for roll call whether or not they are seated. The per diem would be limited to a "1" if the alternate is not seated.
- C. On-Site Inspections [adopted 1/24/07]

The entire set of on-site visits conducted in a day shall be considered to be one meeting and the per diem shall be calculated from when the member/alternate leaves home until he/she returns home.