

In the Board Room: County Boards of Adjustment

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County Boards of Adjustment:


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 - b. Variance requests**
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An aerial photograph of a city with various buildings and green spaces. A semi-transparent white box is overlaid in the center, containing the title text in blue.

County Board of Adjustment: Role in the Zoning Process

- If a County has adopted a zoning ordinance, it must also have a Board of Adjustment (BOA)
- Quasi-judicial body; *not* legislative or policy making
- Specific authority over specific matters
- Statutory requirements for jurisdiction, procedures, powers, and impact of decision.



County Board of Adjustment: Statutory Authority

- Wis. Stat. s. 59.694(7):
 - *Administrative Appeals* - To hear and decide appeals where it is alleged there is an error in an order, requirement, decision or determination by an official in the enforcement of the zoning ordinance
 - *Variances* - To hear and decide special exceptions to the ordinance:
 - Area variance
 - Use Variance
 - *Special exceptions* - Grant special exceptions and variances for renewable energy systems
 - Hear appeals from zoning committee

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County Board of Adjustment: Statutory Procedures

- Wis. Stat. s. 59.694(3): Specific Procedures
 - BOA Rules
 - County Board must adopt BOA rules
 - BOA may adopt additional rules necessary to carry out the directive of the County Board
 - Meetings are called by the chairperson or at other times “as the board of adjustment may determine
 - Chair may administer oaths and compel attendance of witnesses

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County Board of Adjustment: Statutory Procedures

- Wis. Stat. s. 59.694(3): Specific Procedures (continued)
 - Must keep minutes
 - Must show the vote of each member, the facts upon which decision was based
 - Keep record of its examinations and other official actions
 - Record must be “immediately filed” in the BOA office
 - Records a public record subject to Wis. Stat. Ch. 19
- Wis. Stat. s. 59.694(9): Decisions must be by majority

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County Board of Adjustment: Statutory Procedures

- Wis. Stat. s. 59.694(8): Orders – BOA may:
 - Reverse the decision (in whole or in part)
 - Affirm the decision (in whole or in part)
 - Modify the order, requirement decision or determination appealed from
 - “Make the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.”
 - NOT remand back to zoning/planning committee. See Wis. Stat. s. 59.694(8).
- A written decision is not required as long as the BOA’s reasoning is clear from the transcript of its proceedings. *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, 01-3105.



County Board of Adjustment: Administrative Appeals

- Wis. Stat. s. 59.694(4):
 - Appeals to the board of adjustment may be taken by:
 - Any person aggrieved; or
 - By any officer, department, board or bureau of the municipality affected by any decision
...of the building inspector or other administrative officer.
 - Such appeal shall be taken within a reasonable time
 - Must follow BOA Rules
 - File notice of appeal with:
 - The officer from whom the appeal is taken; and
 - The BOA

An aerial photograph of a city, likely Madison, Wisconsin, showing a mix of urban buildings and green spaces. A semi-transparent white box is overlaid on the center of the image, containing the title text in a dark blue font.

County Board of Adjustment: Administrative Appeals

- Wis. Stat. s. 59.694(4): The Record
 - The officer from whom the appeal must transmit to the BOA “all the papers constituting the record upon which the action appealed from was taken.”
 - Why the record is so important: It is the sole basis for BOAs review of the appeal (except when the BOA is reviewing a matter de novo)
- Wis. Stat. s. 59.694(6): Hearings
 - BOA must publish a class 2 notice for the hearing
 - Also “provide due notice to the parties of interest”
 - Decision must be “within a reasonable time”

An aerial photograph of a city, likely Appleton, Wisconsin, showing a mix of residential and commercial buildings, green spaces, and a river. A semi-transparent white box is overlaid on the center of the image, containing the title text in a bold, blue, sans-serif font.

County Board of Adjustment: Administrative Appeals

- Are appeals of zoning committee decisions “administrative appeals”?
 - No – Wis. Stat. s. 59.694(4) specifically references a decision of “the building inspector or administrative officer.”
 - Appeals from zoning committee decisions often come to a BOA as the first step in an appeal based on Wis. Stat. s. 59.694(7)(a): to hear appeals of an alleged error in an order, requirement, decision
 - An aggrieved person has the right to appeal to the board of adjustment from a zoning committee’s decision. *League of Women Voters of Appleton, Inc. v. Outagamie County*, 113 Wis. 2d 313, 334 N.W.2d 887 (1983).

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County Board of Adjustment: Variances

- Variance Purpose –
 - Provide relief from zoning requirements in very limited circumstances (when not contrary to the public interest and where literal enforcement would result in an *unnecessary hardship*)
 - Ensure zoning ordinances are applied fairly and consistently
- Variance Types –
 - Area Variance (dimensional – e.g. setbacks, height, lot coverage)
 - Use Variance (allow a land use not permitted by ordinance – RARE)
- Authority Wis. Stat. § 59.694(7)(c)

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County Board of Adjustment: Variances

- Area Variance Legal Standard:
 - The property has unique physical limitations
 - Strict compliance would cause an *unnecessary hardship*
 - Variance would not harm the public interest
- *State ex rel. Ziervogel v. Washington County Bd. of Adjustment*, 2004 WI 23 –Eliminated the “no reasonable use” definition for area variances of *unnecessary hardship* in favor of a more practical and functional approach. *Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with the restrictions unnecessarily burdensome.”

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County Board of Adjustment: Variances

- Use variance Legal Standard:
 - No reasonable permitted use
 - Conditions unique to the parcel
 - Variance would not alter the essential character of the area
- “A use variance is effectively a rezoning- to be granted with extreme caution.”
- In all cases (use or area), the applicant bears the burden of proof of the elements and that the hardship was not created by the property owner.

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County Board of Adjustment: Special Exceptions and Conditional Uses

- Special exception and conditional uses: A permitted deviation from the zoning ordinance
- Statutes do not require BOA to be deciding body
- When reviewing a decision to grant or deny a conditional use permit, a BOA has the authority to conduct a de novo review of the record and substitute its judgment for the county zoning committee's judgment and take new evidence. *Osterhues v. Board of Adjustment*, 2005 WI 92, 282 Wis. 2d 228, 698 N.W.2d 701, 03- 2194.
- BOA must not simply provide "conclusory statements." *Lamar Central Outdoor, Inc. v. Board of Zoning Appeals*, 2005 WI 117, 284 Wis. 2d 1, 700 N.W.2d 87, 01- 3105.

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County Board of Adjustment: Certiorari Review

- Wis. Stat. s. 59.694(10) – Certiorari
 - A person aggrieved by any decision of the board of adjustment, or a taxpayer, or any officer, department, board or bureau of the municipality, may,
 - Must be commenced within 30 days after the filing of the decision in the office of the board
 - Filed with the circuit court
 - The court shall not stay the decision appealed from, but may grant a restraining order after notice to the BOA.

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County Board of Adjustment: Certiorari Review

- Wis. Stat. s. 59.694(10) – Certiorari (continued)
 - Forward the record: The BOA must provide (1) the original papers acted upon; or (2) a certified or sworn copies of the original papers.
 - The court may take evidence or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs.
 - Findings constitute a part of the proceedings upon which the determination of the court shall be made.
 - The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

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County Board of Adjustment: Certiorari Review

- Review of a certiorari action is limited to determining:
 - Whether the board kept within its jurisdiction;
 - Whether the board proceeded on a correct theory of law;
 - Whether the board[s action was arbitrary, oppressive, or unreasonable; and
 - Whether the evidence was such that the board might reasonably make its order.

An aerial photograph of a city, likely Chicago, showing a mix of urban buildings and green spaces. A semi-transparent white rectangular box is centered over the image, containing the title text in a dark blue font.

County Board of Adjustment: What is Next?

- After a BOA renders its decision, an applicant may:
 - Follow directive of the BOA's order
 - Appeal BOA's decision to the circuit court
 - Re-apply

An aerial photograph of a city, likely Denver, showing a mix of urban buildings and green spaces. A semi-transparent white banner is overlaid across the middle of the image, containing the title text in a dark blue font.

County Board of Adjustment: Best Practices

- Membership:
 - No more than 5 members; 2 alternates (Counties with population of less than 750,000)
 - County Board Chair, County Administrator or County Executive appoints with County Board confirmation
- Have specific “job requirements”
 - Experience
 - Expertise in land use
 - Appreciation of non-partisan role
 - Desire for public service
- Training:
 - What laws are being applied?
 - What procedures must be followed?

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County Board of Adjustment: Best Practices

- Zoning committee/planning committee and BOA work together
 - Provide feedback on improvements to zoning ordinance
 - Provide feedback on information needed
- Understanding of staff role between zoning committee/planning committee and BOA
- Participation in comprehensive planning process
- Participation in ordinance development and review process

