

Zoning Variance
Rusk County Zoning Procedures
...for the promotion and protection of the public
health, morals, and safety or the general welfare...

Zoning regulations create dimensional standards for development - minimum lot sizes, minimum setback distances, maximum building heights, and the like. Unfortunately, one size does not always fit all. The variance process builds some flexibility into the regulations, but only in **very rare cases**.

When applying for a variance, consider the following:

- ✓ Will an unnecessary hardship result if the zoning standard is strictly enforced?
- ✓ Is the hardship caused by the unique physical limitations of the property in question?
- ✓ Will the public interest be protected despite relaxing the zoning regulation?

These are the minimum standards established by the state for a zoning variance that the Board of Adjustment and the courts should follow when making their decisions. Each of these conditions have been defined further...

Unnecessary Hardship

Many regulations make life harder in the short run. But as a community, we have recognized that some small sacrifices are necessary to gain the larger benefits. In order for a hardship to be "unnecessary," it must meet several conditions:

- ▶ The regulation must deny **all** reasonable use of the property
- ▶ The hardship must not be self-imposed
- ▶ Loss of profit or property value is not considered a hardship
- ▶ Additional expense incurred is not considered a hardship
- ▶ The hardship must be created by the regulation

Unique Property Feature

The zoning variance is only one way that flexibility has been built into zoning, and are only appropriate when appealing to the dimensional requirements of the ordinance. For a property to qualify as having a "unique feature," it must meet several conditions:

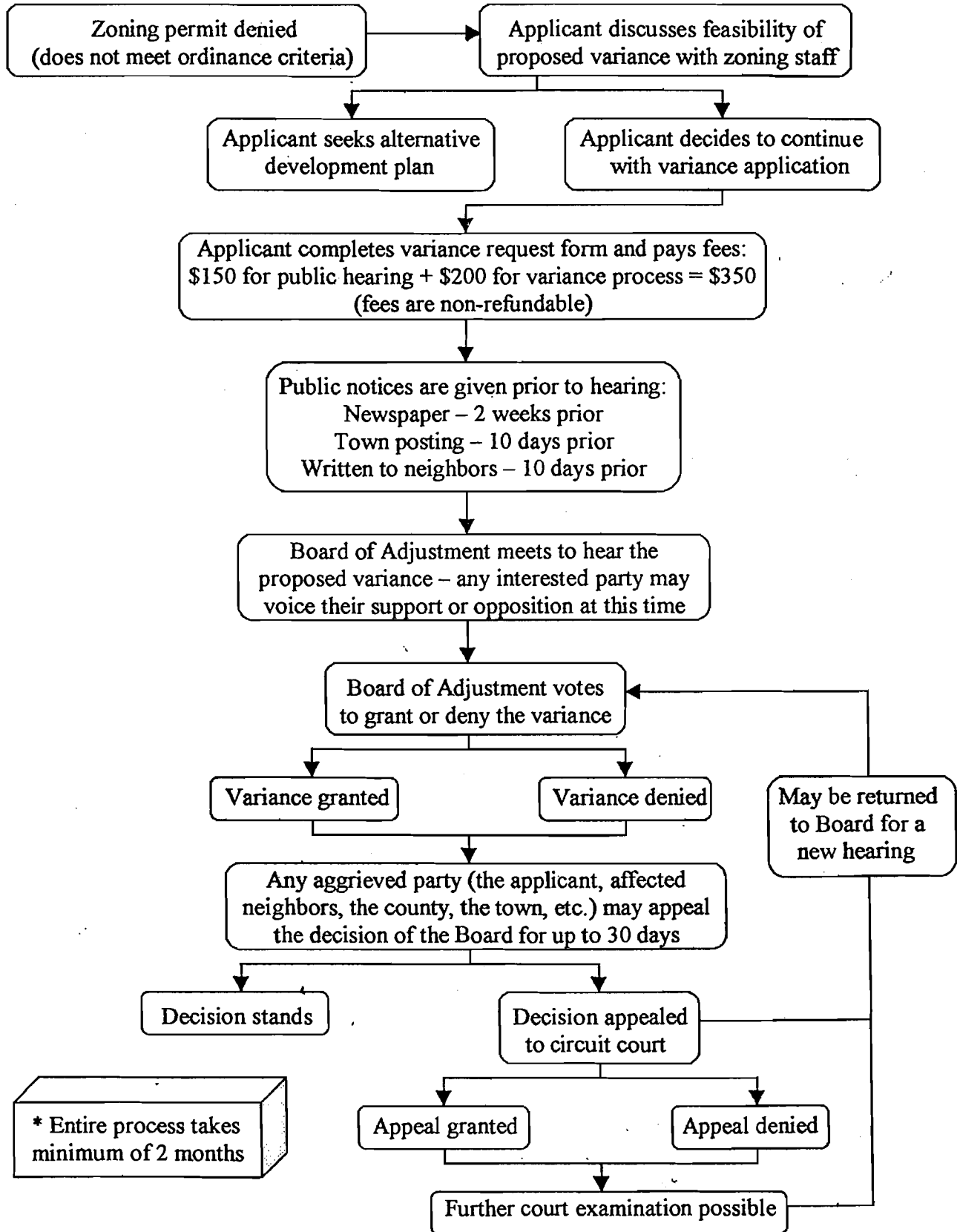
- ▶ It must be a physical feature like wetlands or steep slopes
- ▶ It must apply to the property, not the applicant's circumstances
- ▶ It must not be a situation better addressed by a zoning amendment
- ▶ It must meet these conditions independently of neighboring lots

Public Interest Protected

This final test is the real safety valve for the broader public interest. As property owners we would all like to do as we wish with our land. But can you imagine a landscape where every property owner was allowed to do exactly as they please, regardless of their consideration for their neighbors?

- ▶ The property must still meet the basic objectives of the ordinance
- ▶ The larger public must be considered, not just the local neighbors
- ▶ The relaxation of the standard must be the minimum necessary

The Zoning Variance Process



VARIANCE APPLICATION

RUSK COUNTY BOARD OF ADJUSTMENT
RUSK COUNTY COURTHOUSE
311 EAST MINER AVENUE
LADYSMITH WI, 54848

NAME OF APPLICANT(S) _____

LEGAL DESCRIPTION OF PROPERTY _____

FIRE NUMBER _____ NEAREST ROAD _____


I (we) submit the following information for the purpose of securing a variance from the dimensional standards of the Rusk County Zoning Ordinance. I understand that by submitting this application and paying the required fee, I am requesting the Rusk County Board of Adjustment to hear the case presented and make a decision regarding the proposal.

SPECIFY THE SECTION OF THE RUSK COUNTY ZONING ORDINANCE FROM WHICH A VARIANCE IS SOUGHT: _____

During the hearing, the applicant will need to show evidence supporting the three statutory points that govern the granting of variances. The three points are:

- 1) Unnecessary hardship is a situation where, in the absence of a variance, an owner can make no reasonable use of a property or strict conformity is unnecessarily burdensome. Self imposed hardships and financial hardships are not grounds for a variance. The hardship must be peculiar to the parcel in question.

EXPLAIN THE **UNNECESSARY HARDSHIP** IMPOSED BY THE ZONING ORDINANCE:

OVER 

- 2) Unique property limitations must prevent the applicant from developing in compliance with the zoning ordinance. They may include wetlands, steep slopes and/or parcel shape.

DESCRIBE THE **UNIQUE PROPERTY FEATURES** OF THE PARCEL:

- 3) The granting of a variance must neither harm the public interest nor undermine the purposes of the ordinance. The purpose statement can be found at the beginning of the ordinance and includes the protection of water quality, shoreland buffer areas and the separation of conflicting land uses. Lack of local opposition does not in itself mean that a variance will not harm the public interest.

EXPLAIN HOW THE PROPOSED VARIANCE WILL **PROTECT THE PUBLIC INTEREST**:

I (WE) CERTIFY THAT ALL INFORMATION ON THIS APPLICATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

SIGNATURE(S)

DATE

If you have any questions about filling out this application, contact:
Rusk County Zoning Office
311 East Miner Avenue
Ladysmith, WI 54848
(715)532-2156

**BOARD OF ADJUSTMENT
RUSK COUNTY, WISCONSIN
RULES AND BYLAWS
POLICIES AND PROCEDURES**

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DEFINITIONS

GENERAL

For purposes of this Ordinance, the following definitions shall be used. It is understood that words used in the present tense includes the future, singular includes plural, plural includes singular, masculine includes feminine, feminine includes masculine, and the word "shall" is mandatory and not directive.

ADMINISTRATOR - Rusk County Zoning Administrator or representative.

ANNUAL ORGANIZATIONAL MEETING - A meeting held each July for the purpose of electing officers. This meeting may be held in conjunction with any other meeting or hearing but must be separately listed on the agenda and held prior to transacting any other business or any hearing.

APPELLANT - The person, or his/her agent, attorney, etc., requesting the review of another's decision.

APPLICANT - The person, or his/her agent, attorney, etc., requesting any action by the Board over which it has jurisdiction including matters of original jurisdiction or appeals.

BOARD - The Rusk County Board of Adjustment.

CHAIRPERSON - when presiding at a meeting or hearing shall mean the person actually presiding, whether or not actually elected to that position at the annual meeting.

FILING(S) - Act or condition of filling out and handing in to the Secretary the forms and other required items and paying the required fees to commence the process of making an application or appeal to the Board.

RELEVANT EVIDENCE - evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Evidence which is not relevant is not admissible.

RESPONDENT - The person, administrative officer, department, committee, or other entity or the representative thereof, which, under the terms of applicable Ordinance(s): (a) has made a decision, (or failed to make a decision) from which the appellant or applicant files for relief or, (b) Is responsible for the administration of a County Ordinance from the terms of which the applicant or appellant seeks relief.

ARTICLE I. GENERAL PROVISIONS

SECTION 1. ESTABLISHMENT

There is hereby established a Board of Adjustment for Rusk County Wisconsin for the purpose of granting special exceptions to the provisions of Rusk County Zoning ordinances adopted pursuant to Sect. 59.97 Wisconsin Statutes and other County Ordinances in harmony with the intent of such Ordinances and in compliance with the provisions of such Ordinances and applicable Wisconsin Statutes.

SECTION 2. AUTHORITY

The Rusk County Board of Adjustment (hereinafter referred to as the "Board") is established pursuant to Section 59.99 Wis. Stats. as amended, the Rusk County Comprehensive Zoning Ordinance including the Rusk County Shoreland and Shoreland/Wetland District Ordinance and the Rusk County Floodplain Zoning Code (Ch 20, Rusk County Ordinances hereinafter referred to as the "Floodplain Ordinance") and other County Ordinances. The Board assumes thereby all the responsibilities, duties, and powers as provided therein and by related statutes and ordinances. These rules are supplementary to the provisions of all Rusk County Zoning or other Ordinances as they relate to the procedures of the Board.

SECTION 3. CONFLICT AND SEVERABILITY

In the case of a conflict between these rules and any other Rusk County Ordinance, The Wisconsin Administrative Code, or The Wisconsin Statutes, the more restrictive provisions shall prevail unless precluded by superior authority. In any such case, all portions of these rules not in conflict shall continue in full force and effect.

SECTION 4. SECRETARY OF THE BOARD

The secretarial services required by the Board shall be provided by the Rusk County Clerk or the Clerk's designee. The Clerk or the person so appointed by the County Clerk shall be referred to as "Secretary" but that person shall not be a member of the Board.

SECTION 5. LOCATION OF THE OFFICE AND RECORDS OF THE BOARD

The mailing address, the office of record, location of the Board's Secretary, and the location of the records of the Board shall be the office of the County Clerk of Rusk County; Rusk County Courthouse; 311 Miner Avenue East; Ladysmith, Wisconsin, 54848.

The Secretary may be contacted during regular working hours in the County Clerk's office for the purpose of inspection of the Board's records, filing applications with the Board, paying required fees, or conducting other proper business.

SECTION 6. COUNTY SUPPORT

The Board shall have the power to call on any County department for assistance in the performance of its duties and it shall be the obligation of any such department to render all such assistance as may be within the scope of that department's duties and which may be reasonably provided.

SECTION 7. MEETINGS

Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine except that there shall be an Annual Organizational Meeting each July.

ARTICLE II. ORGANIZATION OF THE BOARD

SECTION 1. MEMBERSHIP

The Board shall consist of three regular members and two alternate members. The regular members shall each be appointed for staggered terms of three years and the alternate members shall each be appointed for staggered terms of two years by the Chairperson of the Rusk County Board of Supervisors. All such appointments shall be subject to the approval of the Rusk County Board of Supervisors. Members must reside within Rusk County but outside the limits of any incorporated city or village at the time of appointment and thereafter. No two members shall reside in the same township.

SECTION 2. PARTICIPATION

It is hereby declared that it shall be the policy of Rusk County that one alternate member (in addition to the three voting members) shall attend each meeting or public hearing to observe in a non voting capacity for the purpose of becoming familiar with the operation of the Board. Such member shall be paid the same remuneration as a voting member. It shall be the responsibility of the Chairperson to designate which alternate shall attend a particular meeting(s) and to assure proper notification of such alternate member. An alternate member cannot be called more than three times in a row unless other alternate cannot make or refuses in writing.

A regular member shall participate in all proceedings of the Board except in the case of a conflict of interest, disqualification, excused absence, or any other manifest inability to serve.

SECTION 3. REPLACEMENT OF MEMBERS

Any regular or alternate member who resigns, moves away, or becomes permanently unable to serve, shall be replaced by appointment as above. The person so appointed shall fill the unexpired term of the member replaced. In a case where an alternate member is appointed to a regular member position, there shall also be an appointment to fill that alternate position.

In any case where a regular member cannot participate in a particular meeting because of illness, disqualification, or some other reason, the Chairperson shall make every reasonable attempt to replace that member with an alternate member for that particular meeting. It is incumbent upon the regular member in such a case to so inform the Chairperson (the Vice-Chairperson in the case of the Chairperson not being able to participate) as much in advance as possible.

When a "regular" member will not be appointed to another term, it shall be the policy of Rusk County to, when possible, fill that vacant position with an "alternate" member. This is to be done because Rusk County will have invested considerable time and money in alternate members and can therefore obtain the best qualified person in the regular position.

SECTION 4. CONFLICTS OF INTEREST

Any member of the Board who has any direct or indirect interest, personal or financial, in a matter before the Board shall not vote thereon or participate in the deliberation thereof, at any meeting or hearing at which said matter is under consideration. A disqualifying conflict of interest shall be deemed to exist when: (a) the Board member is the applicant or the spouse of the applicant, or is related to the applicant within the third degree of consanguinity or is the spouse of someone so related, or (b) the applicant is the employer, employee, or partner of the member or is a corporation in which the member is a shareholder or has a major financial interest, or (c) the member owns property within 300 feet of the property which is the subject of the application.

SECTION 5. EX PARTE DISQUALIFICATION

A Member may disqualify himself/herself from participating in any proceeding at his/her option for reasons of conflict or prejudice.

SECTION 6. FULL BOARD REQUIRED FOR HEARINGS

It is hereby declared that a quorum for all hearings and on-site visits is three members and that such three vote in the case. These members may be regular or alternate. It is the obligation of members to notify the Chairperson (the Vice-Chairperson in the case of the Chairperson) when he or she is unable to participate so that an alternate may be obtained. When, notwithstanding these rules, a hearing convenes with only two members present, the Chairperson shall postpone the hearing until three members can be present, as outlined in ARTICLE VIII SECTION 13 of this Ordinance.

SECTION 7. TRAINING REQUIRED

It is hereby declared that it shall be the policy of Rusk County that all members of the Board, regular and alternate, be required to attend training at least annually and that all members be paid the normal Rusk County remuneration for such sessions. Such training may be done in-house or outside and it may be formal or informal. It shall be the responsibility of the Chairperson to plan and schedule such training as far in advance as possible and to submit the schedule to the Rusk County Finance Committee.

ARTICLE III. OFFICERS OF THE BOARD AND THEIR DUTIES

SECTION 1. ELECTION OF OFFICERS

The Board shall elect, from its regular members, a Chairperson and a vice-Chairperson at each Annual Organizational Meeting. No person shall hold more than one office at the same time. These officers shall hold office for one year or until their successors are elected under the provisions of this Ordinance.

The Board shall, at any meeting or hearing, elect from the membership a replacement for an officer who is unable to continue to perform the duties of his/her office. The officer elected as a replacement shall serve in that capacity until the next annual meeting. In the absence of both the Chairperson and the Vice-Chairperson at a particular meeting, the members shall appoint a Chairperson for that meeting only.

Nothing in this Ordinance shall prohibit an officer from succeeding him/herself in a given office if he/she is so elected at successive annual meetings.

SECTION 2. DUTIES OF OFFICERS

The Chairperson shall preside over and direct, in accordance with the Wisconsin Open Meetings Statutes, the conduct of all meetings and hearings of the Board, administer oaths, and compel the attendance of witnesses through the issuance of subpoenas. The Chairperson shall report on all official transactions of the Board that have not otherwise come to the attention of the Board. The Chairperson shall, subject to these rules and further instructions from the Board, determine dates, times, and locations of meetings; direct the official business of the Board; supervise the work of the Board and request necessary help when required. The Chairperson shall decide all points of procedure and order of meetings and hearings as provided in this Ordinance. The Chairperson shall supervise the work of the Secretary.

The Vice-Chairperson shall assume the duties and authority of the Chairperson in the absence or inability of him/her to serve.

SECTION 3. REMOVAL

Board members may only be removed by the Rusk County Board of Supervisors for cause upon written charges and after public hearing.

SECTION 2. SCOPE OF POWERS

In exercising the foregoing powers, and consistent with statutes and case law, the Board may reverse or affirm, wholly or in part, 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 end shall have all the powers of the officer or committee from whom the appeal is taken and may issue or direct the issuance of the permit therefore. In the exercise of the foregoing powers, the Board may attach to its decision any such conditions or limitations as it deems appropriate including but not limited to requiring a written verification from a State licensed plumbing inspector that the on-site waste treatment system currently in use on the property in question is not a failing system as defined in Sect. 145.245(4) Wis. Stats. Lack of such verification is evidence of harm to the public interest.

SECTION 3. LIMITATIONS

Nothing herein shall be construed to give or grant to the Board the power or authority to alter or change any County Ordinance, including any zoning or other official maps of the county. Such authority is reserved to the Rusk County Board of Supervisors.

ARTICLE VI. APPLICATION AND APPEAL PROCEDURES

SECTION 1. GENERAL

The Board is authorized to hear cases as outlined in ARTICLE V & VII of this Ordinance. Accordingly, any given case will be either an "appeal" of someone else's decision, a case of "original jurisdiction" or, as outlined in Article VII, a request that the Board reconsider one of its own previous decisions. In the case of a reconsideration, this ARTICLE, as well as special rules and limitations as outlined in Article VII, apply.

Unless specifically stated otherwise, the rules outlined in this ARTICLE shall apply to all filings with the Board (e.g. variance request, conditional use request, appeal, etc.)

SECTION 2. WHO MAY FILE

Appeals of decisions made by others (e.g. Zoning Administrator, County Zoning Committee or this Board) shall be accepted from any aggrieved person or agent thereof, or from any officer, department, board or bureau of the municipality (county, township or unincorporated city, town or village) affected or an agent thereof. An aggrieved person may be any person or legal entity, including a corporation or partnership, holding an interest in the property involved in the action (including a potential purchaser who has made a written offer to purchase or a purchase under a land contract), or neighbors or owners of other property, upon a showing of injury to themselves or to the use or enjoyment of their property. The Board may dismiss appeals from any appellant(s) that do not have standing for an appeal as described herein.

Applications for a decision in a matter of original jurisdiction for this Board (certain variance matters, certain conditional use issues, etc.) may be accepted from any person or legal entity, including a corporation or partnership, holding an interest in the property involved in the action, including a potential purchaser who has made a written offer to purchase or a purchase under a land contract.

SECTION 3. TIME TO APPEAL

Appeals of any decision from the Zoning Administrator or The County Board Zoning or other Committee must be filed within 30 days after the decision is made.

ARTICLE IV. SUPPORT STAFF AND THEIR DUTIES

SECTION 1. SECRETARY

The Secretary shall: (a) Conduct, subject to the direction of the Board and Chairperson, all correspondence of the Board. (b) Receive, be the custodian of, file and provide public access to all appeals, applications, papers and records as appropriate. (c) Prepare, publish and mail all notices required by law, Ordinance, rule or request of the Board or its Chairperson. (d) Prepare and keep calendars, dockets and minutes of Board proceedings. (e) Generally attend to all clerical work of the Board. (f) Record and maintain permanent minutes of the Board's proceedings including but not limited to; the vote of each member on every question and the reasoning behind that vote, or if absent or failing to vote, indicating that fact, the reasons for the Board's determination, its findings of fact and the conclusions of law, recording the names and addresses of all persons appearing before the board in person or by attorney, agent, or representative. (g) Prepare and disburse copies of Board decisions as required. (h) Attend all meetings, hearings, on-site inspections, and closed sessions.

SECTION 2. LEGAL COUNSEL

The Rusk County Corporation Counsel or designated representative shall be legal counsel for the Board except in those cases where independent legal counsel is required and obtained. The Rusk County Finance Committee shall designate who the independent counsel shall be. Advice of counsel shall be received and entered in the minutes before disposition of any question of law or matter requiring legal interpretation or advice as determined by the Board.

ARTICLE V. POWERS AND DUTIES OF THE BOARD

SECTION 1. GENERAL

The powers and duties of the Board are identified in Section 59.99(7) of the Wisconsin Statutes and in the various Zoning and other Ordinances that have been adopted by Rusk County. The Board Shall have the following general powers:

- (a) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official in the enforcement of Sections 59.97, 59.971, 87.30, or 144.26 of Wisconsin Statutes as amended, or of any County Zoning or other County Ordinance adopted pursuant thereto.
- (b) To hear and decide appeals for conditional use permits denied by the Rusk County Zoning Committee when so authorized by the County Ordinance involved.
- (c) To grant, a variance to the terms of the Zoning Ordinance allowing same. In order to grant any variance, the Board must make appropriate findings supporting its conclusion regarding a variance so a meaningful judicial review is possible. The Board is required to include findings on whether the proposed project will be contrary to the public interest, whether the site has a special condition and whether this special condition would result in unnecessary hardship and whether other relevant provisions of the Zoning or other County Ordinances (e.g. not to be granted solely for an economic gain or loss or a self created hardship) will be satisfied.
- (d) To grant, upon application, a conditional use permit when, under the provisions of Zoning or other County Ordinance, the Board has original jurisdiction in the matter.
- (e) To impose special conditions on any variance or conditional use permit or other request granted by the Board.
- (f) To grant special exceptions and variances for renewable energy resource systems as defined in Section 59.99(7)(d) of the Wisconsin Statutes.
- (g) To Interpret Zoning District Maps.

SECTION 4. FORM OF FILING

All filings with the Board shall be submitted on the form prescribed by the Board for the particular type of filing made. Such forms are to be available from the Secretary.

The applicant shall provide all applicable information requested on said form. A scale drawing shall accompany each form showing the location and size of the property, existing structures, wells, sanitary systems and areas reserved for future sanitary system location, and location of any changes or additions requested. The applicant shall also submit information regarding any known future planned development or construction on the property. The applicant shall also provide, in writing, or verbally in a meeting or hearing, any additional relevant information requested by the Board, Chairperson, Secretary, Counsel, or Respondent, or their authorized representatives. All documents shall be submitted with the application. All such written information, whether written by the applicant or someone else, is deemed to be that of the applicant.

The Forms shall bear the signature of the owner(s) of the property affected or shall be accompanied by a letter from the owner(s) acknowledging the filing of the form.

Failure to submit the application in proper form or to submit all required information at or before the meeting or hearing shall be grounds for continuance of the hearing until such information is received by the Board, denial of the request, or dismissal, as may be appropriate in the particular case.

The reason for the application or appeal and the reasons why the request should be granted must be stated in the request. Facts should be stated upon which findings may be made by the Board to justify the granting of the request. If an appeal is based upon an alleged error or abuse of discretion by the Zoning Administrator, facts must be stated as to the nature thereof.

Any communication purporting to be an application that is short of a complete filing as outlined in this Ordinance shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with any timely filing or filing deadline requirement.

On receipt of a properly filed application and payment of the required fees, the Secretary shall place the matter on the agenda of the next regular meeting that is far enough out to allow for proper notice publication and posting but not usually more than 60 calendar days. Cases shall be numbered and heard in the order that the fees are paid except by order of the Board by motion and for good cause.

SECTION 5. COPIES TO BE SENT

The Secretary shall promptly transmit copies of the properly completed application or appeal as follows: (a) Each regular and alternate member of the Board, (b) The Respondent, (c) The person(s) named as applicants on the forms submitted and, (d) In the cases affecting property in the Shoreland and Shoreland/Wetland or Floodplain Zoning Districts, the Wisconsin Department of Natural Resources District Office.

Each regular and alternate member shall receive a copy of the appeal, a notice of public hearing, and/or a meeting agenda.

The Respondent shall, upon receipt of the copy of application or appeal, make available to the Board complete copies of all such documents related to the case as may be in his/her possession.

SECTION 6. WITHDRAWAL

An applicant may withdraw the application/appeal at any time prior to the decision thereon except that if a motion is pending to act on the matter, that motion shall have to proceed. Withdrawal shall not entitle the applicant to a return of the filing fees.

ARTICLE VII. RECONSIDERATION OF A PREVIOUS DECISION

SECTION 1. GENERAL

The rules in this ARTICLE, unless specifically stated otherwise, apply to the attempt by anyone, whether or not the person(s) brought the original action, to have the Board reconsider its prior decision on a particular issue with respect to a certain parcel of real estate.

The rules in this ARTICLE outline the requirements to be met before the Board may reconsider a prior ruling and, after the Board makes the initial decision to reconsider a particular ruling, to require that there be held a properly noticed hearing for the purpose of reconsideration.

Unless specifically stated otherwise, the rules are the same for all types of cases over which the Board has authority (e.g. variance request, conditional use request, appeal, etc.). Consult ARTICLE VI for other rules that apply to these and all other filings with the Board.

SECTION 2. ONE YEAR REFILEING RULE

No matter which has been acted upon by the Board shall be considered again within one year from the date of decision, except as hereinafter provided.

SECTION 3. EXCEPTIONS TO THE ONE YEAR RULE

The Board may rehear cases within the one year period only when: (a) The case does not involve a request for an identical permit or does not allege the same misinterpretation or error, point of non coverage or hardship as the original case, or when (b) The case does not contain the original request for a specific variance or conditional use except as provided in these rules, or when (c) Substantial change in the use of the adjacent property has occurred since the original hearing, or if (d) The case was previously closed without a hearing pursuant to a provision of this Ordinance, or if (e) Manifest error is shown.

SECTION 4. FEES FOR REFILEING

Fees will apply to any refileing within or after the one year period and will be based on the fee schedule in effect at the time of the refileing and will be computed as though the subject were new; there will be no credit for past action. In any case where a hearing would follow if the board approves the request being filed, any fees for such hearing are due and must be paid at the time of said filing. If the Board refuses the request, the hearing fees shall be refunded.

SECTION 5. REOPENINGS AND REHEARINGS LIMITED

Unless new and compelling relevant evidence is submitted, the Board may not : (a) reopen any case upon which a decision has been issued except to correct a manifest error and even then, such reopening must be done in accordance with these rules. (b) rehear any case to determine the location of any zoning district boundary line where the Board has previously determined the location of such boundary line.

The Board may, by motion approved by a majority of the members, refuse to accept or consider any further filings in a particular case where it is determined by the Board that a particular request is capricious, for the purpose of delaying the effect of the Board's decision on the appeal, for extending the period in which a petition to Circuit Court may be filed or, is manifestly or totally without merit. In such a case, the Board may order an end, by a specified date, to any further consideration or extensions of deadline(s).

SECTION 6. PROCEDURES FOR RECONSIDERATION

The Board may entertain a request for reconsideration, subject to the rules of this Ordinance, by any party in interest provided the request is in the form outlined in Section VI of this Ordinance. Also, the request shall explain the manifest error, the substance of the new and compelling relevant evidence, the reason the evidence was not available at the original hearing and, any other specific relevant information required by the Respondent, the Board Chairperson, or the Secretary.

The Board shall, at the meeting so scheduled, consider the request. The Board may take testimony for and against the request. The Board may then by motion approved by a simple majority approve the rehearing. The disposition of the request, the votes of each member and the reasons therefore, shall be entered in the minutes.

If reconsideration is approved, the case shall be placed on the agenda for the earliest possible scheduled meeting which will allow for proper notice and notification, normally within 60 calendar days.

Rehearing procedures shall conform in all respects, including noticing, to original hearings.

SECTION 7. RECONSIDERATION AFFECTS THE APPEAL PERIOD

The acceptance of a proper filing for a reconsideration by the Secretary and the payment of fees by the appellant shall stop the running of the 30 day period during which the appeal petition to the Circuit Court must be made. The 30 day period will start again from the date a decision not to reconsider is made by the Board or, if the matter is reconsidered, from the date the decision on the reconsidered matter is rendered.

ARTICLE VIII. PROTOCOL AND PROCEDURES FOR HEARINGS

SECTION 1. GENERAL

This ARTICLE establishes the order of business for the conducting of any public hearing before the Board on any matter over which the Board has jurisdiction. As with all meetings of the Board, ROBERT'S RULES OF ORDER shall be observed except where superseded by the application of the rules in this Ordinance.

Hearings shall be conducted as quasi-judicial proceedings. The Secretary shall record notes and prepare a summary of motions and votes, witnesses' testimony, and other matters constituting the substance of the proceedings. Documents and other evidence presented shall be incorporated into the record. The record so compiled shall be filed as public record.

SECTION 2. ORDER OF BUSINESS

1. Call to order by Chairperson.
2. Roll call of members and establishment of a quorum.
3. Verification by Secretary of proper meeting posting.
4. Agenda items.
5. Introduction of members and staff by the Chairperson.

6. Open public hearing on each case as scheduled:
 - a. Verification of notice publication, notification, and reading of the public notice by the Secretary.
 - b. Consider and establish questions of jurisdiction of the board and standing of the applicant(s).
 - c. Reading of applicable correspondence by the Secretary.
 - d. Where applicable, reading of the reason for denial by an administrative official or other respondent.
 - e. Reading by the Secretary of the appeal or application.
 - f. Applicant presents evidence.
 - g. Others in support of applicant present evidence.
 - h. Administrator/respondent presents evidence.
 - i. Others in support of the Administrator/respondent present evidence.
 - j. When appropriate, announce place and approximate time to reconvene meeting and recess for on-site visit.
 - k. On-site visit.
 - l. Reopen meeting at time and place previously announced.
 - m. Additional evidence presented by applicant.
 - n. Additional evidence presented by the administrator/respondent.
 - o. Rebuttals and questions by the Board of any participant.
 - p. Administrator's/respondent's recommendations and options, if any.
 - q. Close public hearing.
7. Reopen regular meeting.
8. Roll call vote to enter closed session where appropriate (see Sec. 1, Article IX).
9. Resume open session.
10. Motion and votes for disposition of the case.
11. Open next hearing (see #5/6 above) or adjournment, as may be appropriate.

SECTION 3. APPEARANCES REQUIRED

The applicant may appear at the hearing in his/her own behalf or may be represented by his/her counsel or agent. If he/she either does not appear or is not represented at the hearing or on-site inspection, the Board may dismiss, deny, or continue the case, or dispose of it entirely on the basis of the testimony and evidence of others.

SECTION 4. WITNESSES

Any person may attend the hearing and may request an opportunity to be heard provided they sign the list of persons in attendance and comply with the rules of this Ordinance.

The Chairperson or acting Chairperson may compel the attendance of witnesses by subpoena and may require those so compelled or wishing to testify to state their name, address, and interest in the case and to be placed under oath. The oath shall be administered by the chairperson or under his/her direction. The oath shall be substantially as follows:

Do you solemnly declare or affirm that the testimony and other evidence you shall give in this matter shall be the truth, the whole truth, and nothing but the truth, to the best of your knowledge, under penalty of perjury?

SECTION 5. JURISDICTION & STANDING (See ARTICLES V, VI, & VII)

Following the reading of the public notice, the Board may hear arguments on the question of jurisdiction and standing. The Board may, by motion, make an immediate determination that it lacks jurisdiction or that the applicant lacks standing and close the hearing. The Board may proceed with the hearing and the taking of testimony and render a decision on the merits of the case and reserve its determination on the jurisdictional or standing questions until the public hearing portion of the meeting

is closed. If the Board determines by motion that it lacks jurisdiction or that the applicant lacks standing, the Secretary shall record the decision as a vote to deny the request.

SECTION 6. CASES TO BE DETERMINED INDIVIDUALLY

No decision of the Board shall set a binding precedent. Each case shall be decided upon its own merits and upon attendant circumstances. The Board shall not act arbitrarily or capriciously.

SECTION 7. QUESTIONS AND DEBATE

During the hearing, the Chairperson and members may ask questions and make appropriate comments pertinent to the case. However no debate or argument with the applicant or any witness shall be allowed. The Chairperson and members may direct any questions to any person present in order to bring out all relevant facts, circumstances, and conditions affecting the case.

SECTION 8. PARTIES NOT TO INTERRUPT

During the hearing phase of a meeting, any person (including Board members) who wishes to speak shall be recognized by the Chairperson and shall direct their comments to the Chairperson. Since orderly procedure requires that anyone so recognized be allowed to speak without interruption, questioning and arguing between individuals shall not be permitted.

SECTION 9. RULES OF EVIDENCE AND TESTIMONY

The Board shall not be bound by statutory rules of evidence but may exclude irrelevant, hearsay, incompetent, immaterial, unduly argumentative, or repetitious testimony or evidence.

The Chairperson shall rule on all questions relating to the admissibility of evidence or testimony. In deciding the admissibility of evidence or testimony, the following shall apply as general rules and guidelines insofar as practicable:

- a. Relevancy - Sections 904.01, 904.02, & 904.03 Wisconsin Statutes. See "definitions" section this Ordinance also.
- b. Hearsay - Sections 908.01, 908.02, & 908.03 Wisconsin Statutes.
- c. Competency - Sections 906.01 & 906.02 Wisconsin Statutes.

SECTION 10. RULES OF PROCEDURE

Evidence for and against each case shall be presented to the assembled Board.

According to Wisconsin case law, when a request for a variance is submitted, the applicant becomes responsible to provide certain information to the Board. If there is a failure to show any or all of this information, the Board shall not grant a variance. To that end, the applicant shall, through the introduction of evidence, the giving of testimony, or the calling of witnesses, address only those issues in the particular case.

It shall be the responsibility of the Chairperson, subject to the various rules in ARTICLE VIII of this Ordinance, to control the introduction of evidence and testimony such that only the issues involved in the particular case at hand are addressed. For example, in the case of a variance request, all testimony and evidence must address the statutory requirements - unnecessary hardship, unique property limitation, and protection of the public interest (as these points are defined by statute and case law)

It shall be the responsibility of the Chairperson to insure that the minutes of the hearing reflect all allowed evidence and testimony addressed to the specific issues at hand.

The Board may take administrative notice of the ordinances of Rusk County, laws of the State of Wisconsin, and of other relevant facts not reasonably subject to dispute.

SECTION 11. ADDITIONAL EVIDENCE

The Board may take a case under advisement for later consideration and/or determination or may defer action whenever it concludes that additional evidence is needed or further study is required. In such a case, SECTION 13 of ARTICLE VIII shall apply.

SECTION 12. ON-SITE INSPECTIONS

Unless determined to be unnecessary by the Chairperson, which determination may, by motion, be overruled by a simple majority, an on-site inspection shall be conducted in its proper sequence in the "ORDER OF BUSINESS" during the hearing. The applicant shall provide directions to the site and cause to be clearly marked the property lines, proposed structure outlines, location of sanitary facilities, well, and other pertinent features prior to the arrival of the Board. The applicant, or a representative thereof, shall be present to guide the Board. Other interested persons and members of the public shall be allowed to enter on the property with the board and to hear and observe the proceedings. Should the applicant or representative therefore be absent without prior arrangement or entrance on the property be denied to the Board or to the public, the Board may dismiss, deny, or continue the case, except that in cases where the characteristics of the property are such that uncontrolled access by unlimited or uncontrolled numbers of people may cause harm or damage either to the public or the property, and when such facts were made known at the hearing before adjournment for the on-site inspection, reasonable limits may be set by the applicant with the concurrence of the Chairperson to limit, but not prevent, public access but Board access shall not be limited.

Measurements and photographs may be taken as deemed appropriate by the Board, the applicant, or the respondent and may be used as testimony in the case.

Questions, comments, and discussions during the inspection shall be limited insofar as possible to the dimensions, location, and appearance of the property, structures, and other physical features.

The Secretary shall record who was present at the inspection along with a summary of the observations made and the general substance of discussions held and any other pertinent matters, all of which shall become a part of the record of the case.

SECTION 13. CONTINUANCES

When any case cannot be disposed of on the day set, the Board may adjourn, from day to day or to a certain future day, as it may order, to complete consideration of any undecided case(s). Such adjournment shall be a continuance of the case(s). The Board may also continue a case on the request of the applicant or the respondent for good cause. The date, time, and place of the continuance shall be announced prior to adjournment. A recess or adjournment of a hearing, made at a noticed hearing to a future time and place certain is adequate notice to the members and the public of the new hearing. Notice of such continuance shall be given to the absent members of the Board.

ARTICLE IX. PUBLIC NOTICE AND OPEN MEETING LAW REQUIREMENTS

SECTION 1. GENERAL

The agenda shall be posted and/or a class 2 notice shall be published in accordance with Sect. 59.99(6) and Subchapter V of Chapter 19, Wisconsin Statutes for any meeting and/or hearing of the Board. Such notice shall include all information pertaining to any anticipated closed session as required by Section 19.85 Wisconsin Statutes, including the issue to be discussed in closed session and the specific statute that allows such a discussion in closed session.

The hearing notice shall include the applicant's name, the nature of the case, the location and description of the property involved, the fact that an on-site inspection shall be conducted and the approximate time thereof, the date, time and place of the hearing, the fact that a closed session is planned (if any), and the statutory authority for and the purpose of such closed session.

Notice shall be hand delivered or sent by US. mail, not less than 5 business days prior to the day of the scheduled hearing to the applicant, the respondent, owners of record of all lands within 300 feet, except that it shall be 500 feet in cases involving property within the Shoreland and Shoreland/Wetland District, of any part of the land included in the case, any Lake District created under Subchapter IV of Chapter 33 Wisconsin Statutes and any Lake Property Owners' Association if such District or Association includes the property in the case and has notified the Zoning Office of its desire to be so notified, the Rusk County Finance Committee, the Rusk County Zoning Committee, the Rusk County Corporation Counsel, the Town Board Chairperson of the Town in which the property is located, and all Board members (regular and alternate).

Should a member, the respondent, or Corporation Counsel not receive written notice but nevertheless be present at the meeting/hearing, the requirement for written notice is waived as to that individual(s) only.

All decisions shall be rendered in open session except as provided by Wisconsin Statutes.

ARTICLE X. DECISIONS OF THE BOARD

SECTION 1. GENERAL

The concurring vote of a majority of the Board shall be necessary to decide any matter upon which the Board is required to pass under any Ordinance or to effect any variance.

The decision shall be in writing, signed by all members voting, and contain the findings of fact and the rationale upon which the decision is based. The decision shall clearly indicate that the case is either dismissed and the reasons therefore (jurisdiction, standing, etc.), granted in whole or in part and/or subject to certain conditions or limitations (if any) and the reasons therefore, or denied and the specific reasons therefore. When applicable, the decision shall specify the subsequent action to be taken by the Respondent and/or the Administrator.

SECTION 2. DECISION TO RELATE TO SPECIFIC PROPERTY

The decision of the Board shall be deemed as applying to the specific property rather than to the individual and is valid for the specific premises in the case and is not transferable.

SECTION 3. CONDITIONS AND LIMITATIONS

Conditions or limitations imposed by the Board in the granting of requests shall be stated in the motion for approval, specifically included in the written decision, and set forth in any subsequent order or permit issued. Permits so issued or variances or conditional uses so granted shall be valid only so long as the conditions are observed. The applicant shall report in writing to the Respondent within 60 days, or such shorter time, or by a date certain, as the Board may decide as part of its ruling, that the terms or special conditions of the decision have been met. Failure to meet the conditions or limitations shall constitute non-compliance and shall nullify the permit.

Any permit or other privilege granted in a decision shall be valid for 1 year from the date of the decision. If substantial and ongoing progress is not made within the year or if on an earlier date the applicant sells the property without substantial progress having been made, the permit or privilege shall become null and void. However, an extension may be granted by the Board upon written application from the original applicant or the new owner without additional fees and for good cause as determined by the Board.

SECTION 4. FILING AND NOTICE OF DECISION

Every Board decision shall become part of the public record of a particular case and on file in the Secretary's office. A copy of the findings and decision shall, within 5 working days be: (a) Filed in the office of the Board. (b) Sent to the applicant by certified mail. (c) Furnished to the Zoning Administrator or other respondent and the Rusk County Board oversight committee for the Ordinance involved. (d) In cases involving property in the Floodplain or Shoreland, Shoreland /Wetland Zoning Districts, mailed to the District office of the Wisconsin Department of Natural Resources. (e) Mailed to the Chairperson of the Town Board of the Town in which the property in question is located. (f) Mailed to any other State, County, or Local agency or official as determined by the Board.

SECTION 5. COURT APPEALS

Appeals of any decision of the Board to Court are subject to Sect. 59.99 (10) Wis. Stats.

Adopted at Rusk County Board of Supervisors meeting on November 12, 1997.