



ZONING BOARD OF APPEALS APPLICATION

CITY OF MIDDLETON • 7426 HUBBARD AVE. • MIDDLETON, WI. 53562 • (608) 821-8370 • FAX (608) 827-1080

The following must be submitted before an application is considered complete and a meeting is scheduled:

1. Zoning Board of Appeals application (this packet).
2. A statement that deals with the purpose of the application and grounds for appeal:
 - If you are requesting a variance, the statement must explain: the variance requested, what special conditions exist which will cause practical difficulty or unnecessary hardship if the variance requested is not granted, why the variance being requested is not contradictory to the public interest and will not endanger public safety and welfare, and why the variance requested will be in accord with the spirit of the zoning ordinance.
 - If you are requesting an interpretation of the zoning ordinance and reversal of an order, requirement, decision or determination of an administrative officer, the statement must include the date the decision being appealed was made and the reasons why it may be erroneous.
3. A scale map showing the location and size of the property, existing improvements, abutting properties and improvements and the requested change or addition. Photos are highly recommended.
4. The \$300 (nonrefundable) application fee.

Address of Property: _____

Present Use of Property: _____

Name of Appellant or Applicant: _____

Address of Appellant or Applicant: _____

Phone: _____ Fax: _____ Email: _____

Owner's Name and Address (if other than above): _____

Has a previous application been made with respect to this property? _____ If "yes," state the nature of the previous application: _____

Disposition of Previous Case: _____ Date of Decision in Previous Case: _____

I hereby swear that all of the above statements and the information contained in the documents submitted herewith are true to the best of my knowledge and belief: _____ Date: _____

Owner Signature: _____ Applicant Signature: _____

Staff Contact: Mark Opitz
Assistant Planning Director Zoning Administrator
(608) 821-8394
Email: mopitz@ci.middleton.wi.us
Fax: (608) 827-1080

Please Note:
• The Zoning Board of Appeals meets as needed in City Hall, 7426 Hubbard Avenue.
• Appellant will receive notice of the time and date for the hearing. The public hearing notice will be published in the Middleton Times-Tribune and mailed to all property owners within 200 feet of the subject property.
• Appellant must appear at the time and date set for the hearing to explain the need for the appeal.
• Allow 4 to 5 weeks for notices to be mailed and a hearing date to be set.

For Staff Use Only:
Zoning of Property: _____
Code Section: _____
Notice of Hearing Published: _____
Notice of Hearing Mailed: _____
Hearing Date: _____
Fee Paid (\$300): _____

Zoning Board of Appeals Findings:
Approved: _____ Denied: _____
Subject to: _____

Date Received: _____

ZONING BOARD OF APPEALS PROCEDURE

TO BE USED WHEN APPLYING TO THE ZONING BOARD OF APPEALS FOR A HEARING ON ZONING MATTERS

1. Complete application to Zoning Board Appeals and make statement of intent.
2. Submit a fee of \$300.00 with application.
3. Allow a minimum of two weeks for hearing date to be set.
4. Appellant will receive notice of time and date for hearing. The public hearing notice will be published in the local newspaper and those neighbors within 200' of the subject property will be notified to determine support or objection to the appeal as required by State Statute.
5. Appellant must appear at set time and date to explain the need for consideration of the appeal.
6. Appellant will receive official notice of the decision within five days of hearing.
7. If the appeal is approved, the appellant may apply for a Building Permit.

NOTE: Plans and pictures are necessary prior to the meeting.

ZONING BOARD OF APPEALS INFORMATIONAL HANDOUT: VARIANCES

This informational handout includes City of Middleton Zoning Ordinance sections 10.117 Zoning Boards of Appeals and 10.120 Appeals Board Functions: Variances. Section 10.117 Zoning Board of Appeals pertains to the functions, rules, and procedures of the Zoning Board of Appeals. Section 10.120 Appeals Board Functions: Variances relates the application, review and decision making processes for obtaining a zoning variance from the Zoning Board of Appeals. City Ordinances are also available for review at City Hall, the library or on-line at <http://ci.middleton.wi.us>. For more information, contact city staff at 608-827-1070.

10.117 ZONING BOARD OF APPEALS.

(1) Appointments, Terms, Rules and Procedures. The Zoning Board of Appeals shall be appointed and shall be governed as to terms, vacancies, removals, and as to rules and procedures by Wis. Stat. s. 62.23(7)(e) and the provisions herein.

(2) Functions of Zoning Board of Appeals. Functions of the Zoning Board of Appeals shall be to hear and decide applications for appeal of administrative interpretations.

(3) Public Hearings. The Zoning Board of Appeals shall conduct a public hearing on all administrative appeals, variances and other decision matters before it and shall cause a Class 1 Notice under Wis. Stat. Chapter 985 to be published and shall give due notice of the hearing to all parties in interest.

(4) Procedure and Record. Any party may appear in person or by agent at such hearing. The Chair may administer oaths to parties testifying and may compel attendance of witnesses. All testimony before the Board by persons other than Board members and all documentary evidence or material pertaining to matters before the Board shall be received at hearings conducted by the Board, provided that the content of relevant ordinance or statutory materials shall be deemed to be before the Board in all cases and need not be entered into the record. All parties in interest shall be afforded reasonable opportunity to comment on all materials or information so received. Board members who are in possession of facts that may have a bearing on the matter before the Board shall enter the same into the record of the hearing and opportunity shall be allowed for comment on such entries.

(5) Deliberations and Decisions. The Board shall deliberate on matters before it. The concurring vote of a majority of the members of the Board present shall be necessary to approve any appeal, variance or other decision by the Board. The vote of each matter decided by the Board shall be recorded in the minutes. If a member is absent or if a member fails to vote, such facts shall similarly be recorded. The minutes of the Board shall show the Board's decisions and votes of members thereon. Each decision of the Board shall be accompanied by written reasons in support of the decision. All decisions shall be made in strict accordance with the standards of the Ordinance and the Board shall decide all matters before it within a reasonable time.

10.119 APPEALS BOARD FUNCTIONS: APPEALS OF INTERPRETATIONS OF THE ZONING ADMINISTRATOR .

(1) Appealable Matters. Decisions by the Zoning Administrator that consist of interpretations of the terms of the Middleton Zoning Ordinance and that are made in the

course of determining whether a permit or approval will be issued by the Administrator are appealable to the

Zoning Board of Appeals as administrative appeals. Decisions by the Zoning Administrator to issue an enforcement demand or to commence other enforcement activities, where the Administrator has determined that a violation of the Ordinance exists, are appealable to the Board of Appeals as an administrative appeal.

(2) Procedures for Initiating an Administrative Appeal.

(a) **Eligible appellants.** Administrative appeals may be initiated by any person aggrieved by the decision or interpretation being appealed, or by any officer, department, board or committee of the City government.

(b) **Time for Appeals.** An appeal shall be commenced within thirty (30) days after decision or interpretation was made.

(c) **Initiating an Appeal.** An appeal may be commenced by filing with the Zoning Administrator a notice of appeal identifying the decision being appealed, the grounds for the requested relief and payment of applicable fees. Upon receipt of such a notice, the Zoning Administrator shall notify the Board of Appeals and shall transmit to the Board all papers and files which constitute the record of the decision being appealed.

(d) **Stays.** An appeal of a decision to issue a permit or approval or to issue an enforcement demand or to commence other enforcement proceedings shall cause the permit or approval action to be suspended or shall stay further enforcement prosecution unless the Zoning Administrator or City Attorney files with the Board of Appeals a certificate, supported by a statement of facts, alleging that suspension or stay will cause imminent peril to life or property. If such a certificate is filed, proceedings shall not be stayed except upon a restraining order issued by a court.

(e) **Decisions of the Zoning Board of Appeals.** Following the procedures specified in sections 10.117(3) through (5) hereof, the Board shall decide the matter based upon whether the decision, determination or interpretation being appealed was in error. The Board may reverse or affirm, wholly or partly, or may modify the decision appealed from, or may make such decision as ought to have been made, and to that end shall have all powers of the officer from whom the appeal is taken. Decisions by the Board on administrative appeals shall be based upon the terms of the Ordinance and evidence as to legislative intent.

10.120 APPEALS BOARD FUNCTIONS: VARIANCES.

(1) **Initiating a Request for a Variance.** Applications for variances in zoning regulations may be filed by any party having a property interest in the property in question, along with payment of the applicable fee as set forth in the Fee Schedule under Section 3.12. The Zoning Administrator shall transmit the application to the Board.

(2) **Review and Decision.** Following a public hearing and other investigations, including review of Plan Commission recommendations, if available, the Board shall decide the matter based upon the following standards:

(a) No variance may be granted that would have the effect of allowing a use of land or property that would violate state law or administrative rules.

(b) To grant a variance, the Board must find that the variance will not be contrary to the public interest where, owing to special and peculiar conditions, applicable only to the specific property in question, a literal enforcement will result in exceptional practical difficulty or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public health, safety and welfare secured and substantial justice done.

(i) Exceptional practical difficulty and unnecessary hardship shall be construed as a whole, with no distinction made.

(ii) When considering a dimensional standard variance that will not involve significant change in the character of the neighborhood, the hardship/difficulty test is whether compliance with the strict letter of the restrictions on lot area, setbacks, frontage, height, lot area coverage or occupancy or density would unreasonably prevent the owner from using the property for an allowed purpose or would render conformity unnecessarily burdensome.

(iii) When considering a dimensional variance that would, if approved, cause significant change in the character of the neighborhood, the hardship/difficulty test is whether, in absence of approval, no feasible use can be made of the property.

(iv) Use variances (variances allowing a use not specified for that district by this Ordinance) should be considered only when the use in question is new or is one not provided for anywhere in the Ordinance. The Board may consider such variances only when the use is very similar in its inherent characteristics and impact characteristics to uses within the district in question.

(c) The Board may grant a variance to extend a zoning district boundary for a distance not to exceed 25 feet, but only where the boundary of a district divides a lot in a single ownership.

(3) An application for a variance that has been rejected shall not be accepted for resubmittal within six (6) months from the date of rejection unless the Zoning Administrator determines that there has been a change in the proposal or, if rejection was based solely upon subsection (2)(a), there has been a change in the applicable state law or administrative rule.