

Chapter 17 BOARD OF ADJUSTMENT (Rep. & recr. #30-2006)

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17.01 GENERAL PROVISIONS.

- (1) **AUTHORITY.** The Oneida County Board of Adjustment is established under authority of §59.694, Wis. Stats., and the County Zoning and Shorelands Protection Ordinance, as amended. Its

organization and procedures shall be governed by Wisconsin law, these Rules, and other applicable Oneida County ordinances. The Board assumes the responsibilities, duties, and powers as provided therein, and by related statutes or laws. These Rules are supplementary to the provisions of the Oneida County Zoning and Shorelands Protection Ordinance as they relate to the procedures of the Board of Adjustment.

- (2) CONFLICT AND SEVERABILITY. In case of conflict between these Rules and other Oneida County ordinances, Wis. Admin. Code, or Wis. Stats., the more restrictive provisions shall prevail unless precluded by superior authority. In such case, all portions of these Rules not in such conflict shall continue in full force and effect.
- (3) TITLE. The official title of the Board is Oneida County Board of Adjustment.
- (4) DEFINITIONS. Unless otherwise indicated by the context in these rules:

Alternate Member means a person duly appointed to serve in Board proceedings when one or more Regular Members is absent or has recused himself/herself.

Appeal means appeals from actions by administrative officials or county committees, requests for grant of variances and requests for interpretations.

Appear or *Appearance* at a meeting or hearing means to be physically present. (Am. #1-2009 (Res. #95-2009))

Appellant means the person entering the appeal or that person's attorney, agent, or other authorized representative.

Board means the County Board of Adjustment, and each and every member thereof.

Chairperson when presiding at a meeting or hearing means the member actually presiding regardless of whether having been elected to that office.

Director means the Oneida County Zoning Director or his/her legal representative or agent thereof.

Exercise of a permit or other privilege granted by Board action means to obtain all required permits and to substantially commence work; including beginning excavation if that is part of the grant.

Meeting also means "hearing" where appropriate and shall include on-site inspections when applicable.

Member means either a regular or alternate member of the Board.

Regular Member means a person who has been duly appointed to serve regularly in all proceedings of the Board.

Secretary means the regular member elected to that office and any other person performing prescribed duties under the direction of the Secretary.

Zoning Ordinance means the Oneida County Zoning and Shorelands Protection Ordinance and any other applicable ordinance.

- (5) MEMBERSHIP. The Board shall consist of five regular members and two alternate members, each appointed for staggered terms of three years by the Chairperson of the Oneida County Board subject to approval by the Oneida County Board. Members must reside within the County but outside the city limits of any incorporated city or village at the time of appointment. No two members may reside in the same town. Annually, the Chairperson of the Oneida County Board shall designate one of the alternate members as first alternate and the other as second alternate.
- (6) PARTICIPATION. The regular members shall participate in all proceedings of the Board except in the case of a conflict of interest, disqualification, excused absence, or other manifest inability to

serve. The first alternate shall act, with full power, only when a regular member refuses to participate because of a conflict of interest or when a regular member is absent. The second alternate shall act only when the first alternate refuses to participate because of a conflict of interest or is absent, or if more than one regular member refuses to participate because of a conflict of interest or is absent.

(7) CONFLICT OF INTEREST.

(a) Any member who has any direct or significant indirect interest in a matter before the Board shall not participate in any of the proceedings of such matter at any meeting or hearing at which the matter is under consideration. However, a member may choose to temporarily step down from the Board and testify as a witness in that matter. In such case, that member shall not participate in subsequent Board proceedings on that matter.

(b) A conflict of interest shall be deemed to exist when:

1. The member is the appellant or spouse of the appellant, or is related to the appellant within the third degree of consanguinity, or is the spouse or in loco parentis of someone so related; or
2. The appellant is the employer, employee or partner of the member, or is a corporation in which the member is a major shareholder or has a major financial interest; or
3. The member owns property within 300' of property which is the subject of the appeal.

(8) EX PARTE DISQUALIFICATION. A member may disqualify himself/herself from participating in any proceeding whenever the appellant has sought to influence the vote of the member on that matter outside of the public hearing.

(9) LIMITATIONS. Nothing herein shall be construed to give or grant to the Board the authority to alter or change the Zoning Ordinance or zoning or other official maps of the county, which authority is reserved to the County Board of Supervisors.

(10) OFFICE OF RECORD. The office of record of the Board shall be at the same location as that of the Oneida County Zoning Director, which, at the time of adoption of these rules is the Oneida County Courthouse, Rhinelander, Wisconsin. The mailing address shall be the same as that of the Oneida County Zoning Director which, at the time of adoption of these rules, is Post Office Box 400, Rhinelander, WI 54501-0400. All records of the Board shall be available for public inspection at the office of record during the legal working hours as designated by the Oneida County Board of Supervisors.

17.02 OFFICERS, DUTIES, AND STAFF ASSISTANCE.

(1) OFFICERS. The Board shall elect a chairperson, a vice chairperson, and a secretary from among its regular members at the annual organizational meeting in July. No member shall hold more than one office. These officers shall hold office for one year, or until their successors are elected. The Board may, at any meeting or hearing, elect from among its regular members the replacement for an officer who is unable to continue to perform the duties of that office. The officer, so elected as a replacement, shall serve until the next organizational meeting of the Board.

(2) DUTIES OF OFFICERS.

(a) Chairperson: The Chairperson shall preside over and direct the conduct of all meetings and hearings of the Board, may administer oaths, may compel the attendance of witnesses through the issuance of subpoenas, and shall sign restraining orders when approved by the Board in accordance with subsection 17.05(12) of these rules. The Chairperson shall, subject to these rules and further instructions from the Board, determine the dates, times, and locations of meetings; direct the official business of the Board; supervise the work of the

Secretary; and decide all points of procedure or order. The Chairperson may be overruled by a majority vote of the members present and voting.

- (b) Vice Chairperson: The Vice Chairperson shall assume the duties and authority of the Chairperson or the Secretary in the absence or inability of either to serve.
 - (c) Secretary: The Secretary shall record and maintain permanent minutes of the Board's proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact; shall keep records of its official actions; shall accurately reduce to writing the testimony of those appearing before the Board and keep a verbatim recording of all hearings; shall record the names and addresses of all persons appearing before the Board in person, or by attorney, agent, or representative; and shall, subject to direction of the Board and Chairperson, conduct the correspondence of the Board; have published in the official Oneida County newspaper, public notices of meetings and hearings as required by law and these rules of procedure; file minutes and records in the office of record of the Board, which minutes and records shall be a public record; and shall be the custodian of the files of the Board and keep all records. County staff shall assist the Secretary in performing these clerical duties.
- (3) OTHER ASSISTANCE.
- (a) Clerical assistance, including a person to act as recording secretary for all Board proceedings, shall be provided by the Director. The Director or a staff member designated by the Director may attend and advise the Board at meetings, on-site inspections, and hearings, except closed executive sessions and unless determined otherwise by the Chairperson.
 - (b) The County Corporation Counsel, or designated representative, shall be the legal counsel for the Board, except in those cases where independent legal counsel is obtained. In case of conflict, the Board shall request independent legal counsel from the County Finance and Insurance Committee. Advice of counsel shall be received before disposition of any question of law or matter requiring legal advice, as determined by the Board.

17.03 MEETINGS AND HEARING PROCEDURES. (Am. #88-2008; #1-2009 (Res. #95-2009))

- (1) OPEN TO PUBLIC. In accordance with the state Open Meeting Law, all proceedings of the Board shall be open to the public, except that, with prior public notice, the Board may go into closed executive session to consider, or to consult with, legal counsel on litigation to which the Board may be, or is, a party. Formal decisions on all matters shall be rendered in open session.
- (2) DATE, TIME AND LOCATION. (Am. #1-2009 (Res. #95-2009)) Meetings and hearings shall be held at the call of the Chairperson and at such other times as the Board may determine. Public notice of hearings shall be made in accordance with law and as prescribed in Section 17.05(11) herein. Written notice to each member and the Director shall be hand delivered or sent by mail or electronic means not less than two business days prior to a hearing or meeting date. Should a member or the Director not receive written notice but nevertheless be present, or represented in the case of the Director, unless excused for good cause by the Chairperson, the requirement for written notice is waived.
- (3) QUORUM. A quorum sufficient for the conduct of business at any meeting shall be a majority of members, but not less than three.
- (4) GENERAL ORDER OF BUSINESS. The general order of business shall be:
 - (a) Call to order
 - (b) WI Open Meeting Law statement
 - (c) Roll call
 - (d) Approval of minutes of previous meeting
 - (e) Unfinished business
 - (f) New business
 - (g) Any other lawful business

- (h) Closed executive session to discuss litigation
 - (i) Future meeting schedule
 - (j) On-site inspections
 - (k) Hearing of appeals
 - (l) Decisions on appeals
 - (m) Adjourn
- (5) RULES OF ORDER. Robert's Rules of Order in the most recent published version shall govern during meetings and hearings except where otherwise prescribed by law, ordinance, or these rules.
- (6) VOTING.
- (a) *Who Shall Vote.* Unless absent or abstaining for good cause which shall be disclosed, each member, including the Chairperson and alternate member(s) acting instead of regular members, shall vote on each motion or other decision to be taken by the Board.
 - (b) *Abstention.* Any member having a conflict of interest or ex parte disqualification as defined in these Rules in any matter before the Board shall not participate in the discussion of, or decision on, that matter. A member may choose to temporarily step down from the Board and testify as a witness in that matter. A member shall announce an intent to abstain from an appeal, and the reason(s) therefore, at the beginning of the proceedings of that appeal and prior to each vote thereon. Such announcement and abstention shall be recorded in the minutes of the proceedings. In that event, one or both alternate members shall be seated to replace regular members.
 - (c) *Decision.* Each action of the Board shall be taken by majority affirmative vote of at least three of the members. A tie vote shall cause the action to fail. The action of the majority shall be the action of the entire Board, which speaks as a single entity.
 - (d) *Record of Vote.* The Secretary shall record the vote of each member on every question. If a member is absent, or is present but abstains or otherwise does not vote, and is replaced in voting by an alternate, that fact shall be entered in the record of proceedings.
- (7) COMPENSATION, TRAVEL, AND OTHER PERSONAL EXPENSES. Members, including alternates attending, even if not seated, shall be compensated for time, travel, and other expenses as allowed by the County Board. Assisting administrative staff, when required to travel as part of the official duties in conjunction with proceedings of the Board, shall be entitled to reimbursement of travel and other personal expenses as allowed by the County Board, without requiring specific Board approval in each instance.

17.04 POWERS AND DUTIES OF THE BOARD. (Am. #88-2008)

- (1) GENERAL POWERS. The powers and duties of the Board are identified in applicable sections of the state statutes and in the Zoning Ordinance. The Board shall have the following general powers:
- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision, interpretation or determination made by an administrative official, the Director or the Planning and Zoning Committee in the enforcement of §§59.69 87.30(b) or 145.20 Wis. Stats., or of any part of the Zoning, Floodplain or Private Onsite Wastewater Treatment System Ordinance.
 - (b) To hear and decide appeals for conditional use permits denied by the County Planning and Zoning Committee as provided under the Zoning Ordinance.
 - (c) To authorize, upon appeal, such variance from the terms of the Zoning Ordinance as meet the requirements for unnecessary hardship, unique physical property limitation, and no harm to public interest.

- (2) **SCOPE OF ORDERS.** In exercising the foregoing powers, and consistent with statutes and case law, the Board may reverse or affirm, wholly or partly, 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 a permit, or authorize a privilege, subject to conditions and limitations where deemed appropriate by the Board. On appeals from actions by the Planning and Zoning Committee, the Board may decide to review the record of evidence presented to the Committee. It may also decide to take new testimony and evidence to supplement the record presented to the Committee, regardless of whether new. In either event, the Board shall then render an independent de novo decision.

17.05 APPEAL PROCEDURES.

- (1) **WHO MAY FILE.** Appeals to the Board shall be filed with the Board and the Director. Appeals shall be accepted from any person aggrieved, or agent thereof, or from any officer, department, board, or bureau of the municipality affected, or agent thereof. An aggrieved person may be any person or legal entity, including a corporation or partnership, having an interest in the matter being appealed, including any property involved in the action, and including a potential purchaser who has made an offer to purchase, or a purchaser under a land contract or a tenant for one year or more. Neighbors and residents or other property owners near a property involved may also appeal on a showing of injury to themselves or to the use and enjoyment of property they own or occupy. The Board may dismiss appeals which do not have standing for an appeal as described herein.
- (2) **FORM OF APPEAL.** Appeals shall be submitted on the form prescribed by the Board of Adjustment. The appellant shall provide all applicable information requested on the form. If specific property is involved, a scale drawing shall accompany each appeal form showing the location and size of the property; existing structures, wells, and sanitary systems; all abutting properties and structures thereon; and change or addition requested. The appellant shall state all plans for future development or construction which may affect the property or the action on this appeal. The appellant shall also provide any additional information requested in writing by the Chairperson, Secretary, or their authorized representative. All documents shall be submitted in triplicate. Failure to submit the appeal on the proper form or to supply the requested additional information at or before the hearing without good cause shall be sufficient grounds for dismissal, or denial of the appeal, or continuance of the hearing until such information is received by the Board.
- (3) **COPIES TO BE SENT.** The Director shall promptly transmit the original appeal and associated documents to the Board. In the case of appeals affecting property in the shoreland or floodplain districts, one copy of the appeal shall also be sent to the state DNR. Each regular member, and each alternate who may be required to serve or requests, shall receive one copy of the appeal with the Notice of Public Hearing and meeting agenda. Said copies shall be transmitted not less than 5 business days before the public hearing.
- (4) **TIME TO FILE.**
 - (a) *Consideration.* To be considered by the Board, an appeal must be received at the Board office of record within 30 calendar days of written or constructive notification of the action to be appealed. If the appellant has been mailed a copy or other written notice of the action being appealed, notification shall be deemed effected on the date of hand delivery to the affected individual or agent thereof, or upon deposit in the U.S. mails showing the last known address of the appellant or agent thereof and with sufficient first class postage affixed. If not notified in writing, constructive notice of the action being appealed shall be the date the appellant found out, or reasonably should have found out, about the action to be appealed. In such case, the appeal must show when and the circumstances of the earliest knowledge received about the action being appealed. The Board may reject a late appeal which it deems does not meet the constructive notice deadline.
 - (b) *Proper Form.* If a written communication appearing, or purporting, to be an appeal is received within the period allowed for appeal but is not in the proper form, one extension of ten calendar

days shall be automatically allowed beyond the original 30-day deadline. In that case, the Secretary shall, within 3 business days of receipt of such a communication, cause to be delivered or mailed to the appellant the proper appeal form.

- (c) *Appeal Deadline.* The appeal deadline shall be determined by counting the day after the effective date of written or constructive notification by the Director and all ensuing calendar days, including intervening Saturdays, Sundays, and Federal legal holidays. Should the final day of the appeal period fall on a day the Board office is not open for business, the filing deadline date shall be extended to the next day it is open for business. Appeals must be received at the Board office by close of business on the final day allowed for appeals.
- (5) REASONS TO BE STATED. The reason for the appeal must be stated and the reasons why the appeal should be granted must also be stated by the appellant:
- (a) If a variance is requested, the variance requested must be specifically stated and facts should be stated upon which findings may be made by the Board to address statutory and case law criteria and justify the granting of the variance.
- (b) If an appeal is based upon a disputed or uncertain interpretation of the ordinance, the specific section of the ordinance in question must be identified, along with the appellant's interpretation and supporting rationale.
- (c) If an appeal alleges an error or abuse of discretion of the Director or Planning and Zoning Committee, the specific error or abuse must be clearly and fully identified and facts stated as to why it is in error or abusive.
- (6) REFUSAL TO HEAR APPEAL. The Board may refuse to hear an appeal upon the failure of the appellant to supply the required information called for on the forms and as further reasonably required by the Director, and/or Board Secretary.
- (7) PROPERTY OWNER'S CONSENT. The appeal form shall bear the signature of the owner of the property affected, or legal agent thereof, or shall be accompanied by a letter from that owner or agent acknowledging the filing of the appeal. As an exception, the signature or consent of the owner or legal agent shall not be required where the appellant is in an adversary position with the owner. In that case, the appellant shall attach to the appeal form a signed statement explaining why the signature or consent of the owner or legal agent thereof cannot reasonably be obtained.
- (8) FILING PROCEDURE. The appellant shall submit the required appeal form with accompanying information and evidence of payment of the filing fee to the Secretary at the Board office of record and to the Director. Upon receipt, the Director shall make available to the Board all papers and other evidence constituting the complete record of the action on which the appeal purports to be based, along with any other files or copies of documents which may relate to the appeal.
- (9) FILING FEE. All appeals submitted to the Board must be accompanied by evidence of payment to the County Treasurer of the fee prescribed by the County Board. No appeal will be acted upon without payment of that fee. Such fee is not refundable regardless of final disposition of the appeal. As an exception, if the appeal is withdrawn or otherwise disposed of prior to first publication of the notice of public hearing, the Director or the Board may authorize a refund of the unexpended portion of the fee.
- (10) TIME FOR HEARING. Each appeal shall be considered by the Board as soon as is reasonably possible, normally within 60 calendar days of date of receipt of the appeal, provided there is sufficient time between the date of the appeal and the date of the meeting for the required hearing notices to be published.
- (11) NOTICE OF HEARING. Notice of the time, date, and place of the hearings and related on-site inspections shall be given as follows:
- (a) Notice shall be hand delivered or sent by certified U.S. mail, not less than five business days prior to the hearing to:
1. Appellant, Director and their representative(s) or agent(s), if known.

2. The owners of record of all lands within 100' of any part of land involved in the appeal and next contiguous property owners on all sides.
 3. All other known parties believed to have an interest, including municipalities, community organizations, and affected state agencies.
- (b) If the hearing is not to be conducted as a contested case, a combined Class 2 notice and Open Meeting Law notice, in accordance with §59.55(6) and §19.84(2), Wis. Stats., shall be published in the official County newspaper. The notice shall be published during two consecutive weeks with the last publication occurring at least seven consecutive calendar days prior to the hearing. The notice shall include the appellant's name; the nature of the appeal; the location and description of property involved; the fact that an on-site inspection shall be conducted when applicable and the approximate time; the date, time, and place of the hearing; the fact that testimony and other pertinent evidence will be accepted at the hearing; the time and purpose of any closed executive sessions; and who should attend (i.e., concerned, affected, or interested persons).
 - (c) If the hearing is to be conducted as a contested case, a combined Class 2 notice and Open Meeting Law notice shall be published including additional information specified in §227.44(2), Wis. Stats. The first notice of a contested case hearing shall be published not less than 10 days prior to the scheduled hearing.
- (12) EFFECT OF APPEAL. A timely appeal shall stay all proceedings and furtherance of the action appealed from, unless the officer from whom the appeal is taken shall certify to the Board, after the notice of appeal shall have been filed with said officer that by reason of facts stated in the certificate a stay would cause imminent peril to life or property. In such case, proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by the Board, or by a Court of Record, on application and notice to the officer from whom the appeal is taken and on due cause shown.
- (13) REPRESENTATIVE FILING. An appellant may file an appeal personally or by an attorney, agent, or other representative.
- (14) CONTESTED CASE APPEAL REQUEST. An appellant or other interested party may request that the appeal be handled as a contested case appeal in accordance with §227.44, Wis. Stats.
- (a) A request to have the matter treated as a contested appeal must be made in writing to the Chairperson within 30 days of written or constructive notice of the matter to be appealed and not later than 5 business days prior to a scheduled hearing. A final determination on whether to handle the appeal as a contested case appeal shall be at the discretion of the Chairperson.
 - (b) If a request that a hearing be conducted as a contested case is approved, the requestor shall be responsible for payment of a fee determined by the County Board to cover the additional administrative costs involved and any additional expense if rescheduling a hearing is necessary to meet public notice requirements in §224.44(2), Wis. Stats.

17.06 ON-SITE INSPECTIONS AND HEARINGS.

- (1) ON-SITE INSPECTIONS.
- (a) Unless determined to be unnecessary by the Chairperson, an on-site inspection shall be conducted prior to the first public hearing on each appeal. The inspection shall be conducted on the same day, and prior to, that hearing. The Board, accompanied by the Director or a member of his/her staff, or, when possible, the member of the staff who acted on the matter under appeal, shall visit the site in a body on the date and approximate time announced in the public notice.
 - (b) Should a member be absent for good reason during the on-site inspection, and a decision not be reached on the appeal that same day, the absent member may make an independent site inspection. That inspection shall be made only with prior approval of the Chairperson

and the appellant or agent thereof, and under arrangements agreeable to the latter. The conduct of such an independent on-site inspection shall be announced and recorded in the proceedings when next the appeal is heard by the Board.

- (c) The appellant shall give directions to the site. The property owner shall cause to be clearly marked the property lines if applicable, proposed structure outlines, location of sanitary facilities, well, and other pertinent physical features prior to the arrival of the Board. The appellant, or a representative thereof, shall be present to guide the Board. Other interested persons and members of the general public shall be allowed to enter on the property with the Board and to hear and observe the proceedings. Should the appellant or representative agent thereof be absent without good cause, or entrance on the property be denied to the Board or the public, the Board may dismiss, deny, or continue the appeal.
 - (d) Measurements and photographs may be taken as deemed appropriate by the Board and/or the Director or staff member. Questions, comments, and discussion during the inspection shall be limited insofar as possible to the dimensions, location, and appearance of the property, structures, and other physical features, and shall not constitute testimony in the appeal.
 - (e) The Secretary, or in the Secretary's absence a member designated by the Chairperson, shall record who was present at the inspection along with a summary of the observations made and general substance of discussion held, and any other pertinent matters, all of which shall become a part of the record of the appeal.
- (2) APPEARANCE. (Am. #1-2009 (Res. #95-2009)) The appellant shall appear in person, or be represented in person by an attorney, agent, or other representative. If the appellant does not appear and is not represented by a person present at the hearing, and at the on-site inspection if conducted, the Board may dismiss, deny, or continue the appeal, or may dispose of it entirely on the basis of testimony and evidence from others. Testimony shall be accepted only from persons physically present.
- (3) OATH. No oath shall be given at an on-site inspection since no testimony shall be taken or recorded thereat. All persons testifying or presenting evidence at a hearing shall first present themselves before the Board, shall identify themselves by name, address, and interest in the appeal, and shall be placed under oath. Attorneys appearing with a client shall not be sworn unless testifying in their own right. The oath may be administered by the Chairperson or other member under the Chairperson's direction. The oath shall be substantially as follows:
- Do you solemnly declare and 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?
- (4) COMPELLING ATTENDANCE OF WITNESSES. The Chairperson may compel the attendance of witnesses by subpoena.
- (5) ORDER OF APPEALS HEARD. Appeals shall be numbered and heard in the order the appeal fee was paid except by order of the Chairperson or the Board for good cause.
- (6) HEARING ORDER OF BUSINESS. The order of business at a hearing shall be:
- (a) Call to order by Chairperson.
 - (b) Roll call by Chairman or Secretary.
 - (c) Introduction of members and staff assistants by Chairperson.
 - (d) Reading of public notice of meeting by Secretary.
 - (e) Hearing on each appeal:
 - 1. Reading of public notice by Secretary.
 - 2. Consider question of jurisdiction, if applicable.

3. Reading of correspondence by Secretary as appropriate.
 4. Appellant's side.
 5. Director and/or opposition's side.
 6. Testimony of other interested persons.
 7. Appellant's rebuttal.
 8. Director and/or opposition's rebuttal.
 9. Appellant's closing statement.
 10. Closing of hearing on appeal by Chairperson.
- (f) Consideration and further questions by members.
- (g) Motions and votes for disposition of appeals.
- (h) Adjournment.
- (7) DETERMINATION OF JURISDICTION. Following the reading of the public notice, the Board may hear arguments on the question of jurisdiction and request that briefs be filed on the point. The Board may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question until after the hearing is closed and render a decision on the merits as if it had jurisdiction. At any point, the Board may make an immediate determination and close the hearing upon a finding that it lacks jurisdiction. If the Board determines by motion that it lacks jurisdiction, the Secretary shall record the decision as a vote to dismiss the request.
- (8) CONTINUANCES. When all appeals 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 undecided appeals. Such adjourned day shall be construed as a continuance of the hearing. The Board may also continue consideration of an appeal on the request of the appellant or Director for good cause. The date, time, and place of the next adjourned day shall be announced prior to adjournment. Notice of such adjournment shall be given to absent members. Notice shall also be given to the Director and appellants of continued appeals if not represented at the hearing when the continued hearing date, time, and place is announced. Such notice may be by telephone if the next adjourned day is less than four working days hence. If four or more working days hence, such notice shall be given in writing by hand delivery or via the U.S. mails.
- (9) WITHDRAWAL. An appellant may withdraw an appeal at any time prior to the decision thereon, but if a motion is pending to act on the appeal, that motion shall have precedence.
- (10) CONDUCT, RECORDING, AND FILING.
- (a) Hearings shall be conducted as quasi-judicial proceedings.
 - (b) The entire hearing shall be tape recorded and reduced to writing, which shall be retained in the official record of the appeal. Documents and other evidence presented shall be noted in the hearing record and incorporated into the official file on the appeal.
 - (c) Any party or member of the public may make a record of the proceedings by any means which does not disturb the hearing or others present at the discretion of the Chairperson.
- (11) PARTIES NOT TO INTERRUPT. Orderly procedure requires that each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the Chairperson. Questioning or arguments between individuals shall not be permitted.
- (12) QUESTIONS AND DEBATE. During the hearing, the Chairperson and members may ask questions and make appropriate comments pertinent to the appeal. However, no debate or argument with the appellant or any witness shall be allowed. The Chairperson and members may direct any question to the appellant or to any person speaking in order to bring out all relevant facts, circumstances, and conditions affecting the appeal and may call for questions from members of the staff, the appellant or representative thereof, or any other interested person present.

- (13) **PRESENTATION OF EVIDENCE.** All supporting evidence for and against each appeal shall be presented to the assembled Board. The appellant shall be responsible for the presentation of all information supporting the appellant's appeal. The Board may take administrative notice of the ordinances of the County, and laws of the state, case law and other relevant facts not reasonably subject to dispute on its own motion or motion of a party.
- (14) **ADDITIONAL EVIDENCE.** The Board may take an appeal under advisement for later consideration and determination, or may defer action whenever it concludes that additional evidence is needed or further study is required.
- (15) **RULES OF EVIDENCE.** The Board shall not be bound by judicial rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative, or repetitious testimony or evidence. In contested case appeal hearings, §227.44 Wis. Stats., shall apply.
- (16) **CHAIRPERSON TO RULE ON ADMISSIBILITY.** The Chairperson shall rule on all questions relating to the admissibility of evidence, which ruling may be overruled by a majority of the Board.
- (17) **INTERESTED PERSONS MAY TESTIFY.** All persons having an interest in the appeal may attend the hearing and may request an opportunity to testify provided they identify themselves and sign the list of persons attending the hearing. All testimony shall be under oath.

17.07 DECISIONS OF THE BOARD.

- (1) **MAJORITY VOTE REQUIRED.** The affirmative vote of a majority of all members hearing an appeal, but not less than two affirmative votes, shall be necessary for final action by the Board on any matter in question before it. A tie vote resulting from the absence or abstention of a member shall cause the motion to fail. The action of the majority shall be the action of the entire Board, which speaks as a single entity.
- (2) **TIME OF DECISION.** Unless continued at the request of the appellant or Director, or for other good cause, the Board shall render a decision on each appeal at the conclusion of the hearing thereon, or within 30 days thereafter.
- (3) **FORM OF DECISION.** The decision on an appeal shall be in a form prescribed by the Board. The decision shall be in writing and shall be signed by the Secretary or Chairperson. The decision shall indicate the findings of fact and conclusions of law in the appeal and the rationale for the Board's decision. The decision shall clearly indicate that the appeal is dismissed (for lack of jurisdiction or prosecution), granted in whole or in part or subject to specific conditions, or denied. When applicable, the decision shall specify the subsequent action to be taken by the Director.
- (4) **VARIANCES.** Section 9.84 of the Oneida County Zoning and Shoreland Ordinance is incorporated herein by reference and made a part hereof as though fully set forth fully.
- (5) **CONDITIONS.** Conditions imposed by the Board in the granting of any appeal shall be specifically stated in the decision and shall be fully set forth in any subsequent order or permit issued by the Director. Permits issued or variances approved under a conditional approval by the Board shall be valid only so long as the conditions are observed. Any violation of conditions specified may result in revocation of a permit or other privilege granted by the Board after notice and an opportunity to be heard. The appellant shall report in writing to the Director within 30 days after the terms or special conditions specified in the decision that such terms or conditions are met.
- (6) **FILING AND NOTICE OF DECISION.** (Am. #1-2009 (Res. #95-2009)) Every Board decision on an appeal shall be officially filed in the office of record of the Board not later than by close of business of the third business day after the rendering of the decision unless a later date is set by motion of the Board. Each decision shall be a public record. A copy of the findings and decision shall be sent to the appellant by certified mail within two business days after the filing of the decision. A copy shall be furnished to the Director within two working days of the official filing of the decision.

- (7) CLOSURE OF APPEAL. An appeal will be considered as heard and closed at such time as the Board grants, denies, rejects, or dismisses an appeal by motion or when it is considered closed by operation of these rules.
- (8) DEADLINE FOR ACTION ON GRANTED APPEAL. Unless otherwise specified by the Board, any permit and/or other privilege granted as part of a decision must be exercised by the appellant within two years of official filing of the decision. If not exercised within the time allowed, the permit and/or other privilege shall be automatically null and void. However, an extension for exercise of the permit or privilege may be granted by the Board upon written application by the appellant without additional fee and for good cause as determined by the Board.
- (9) DECISION TO RELATE TO SPECIFIC PROPERTY. When property is involved in an appeal, the decision of the Board shall apply to the property rather than to any individual, is valid only for the specific premises in the appeal, and is not transferable to other properties.
- (10) INFORMAL ADVICE NOT BINDING. No informal request for advice or action on moot questions shall be accepted or considered by the Board. Any advice, opinion or information given by any individual member or any other official or employee of County in a matter before the Board shall not be binding on the Board.
- (11) APPEALS TO BE DETERMINED INDIVIDUALLY. No decision of the Board shall set a binding precedent. Each appeal shall be decided upon its merits and upon the attendant circumstances, provided the Board shall not act arbitrarily or capriciously.
- (12) DECISIONS TO BE FILED WITH THE STATE. Decisions on floodplain and shoreland-wetland zoning appeals, variances and conditional uses shall be sent to the regional office of the DNR. Decisions granting variances or exceptions in exclusive agricultural districts shall be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection. Decisions involving substantial health and safety matters shall be sent to the Wisconsin Department of Industry, Labor, and Human Relations. Said decisions shall be furnished to the specified agencies within ten days of the official filing date.
- (13) ACTION IN CIRCUIT COURT. Any person or persons jointly or severally aggrieved by any decision of the Board; any taxpayer; or any governmental officer, department, board or bureau; may petition the Circuit Court for a writ of certiorari to review the legality of such decision in whole or in part, within thirty (30) days after the filing of the decision of the Board. The expiration of the thirty day period in which petition may be filed with the Court shall be determined in the same manner as specified in §17.05(4)(c) of these rules, unless otherwise determined by the Court.

17.08 REFILINGS AND REHEARINGS.

- (1) REFILING RULE. No appeal if substantially similar to an appeal which has been acted upon by the Board shall be considered again within one year of the official filing of the decision, except as hereinafter provided. A petition that seeks relief that could have been requested in a previously filed petition that has already been acted upon by the Board will not again be heard by the Board. A change of ownership or the passage of time shall not constitute a basis for another hearing before the Board.
- (2) REOPENING, REHEARING, REVERSAL OF A DECISION. The Board shall not reopen, re-hear, and/or reverse a decision previously made on an appeal unless there is public necessity or other good cause to do so, such as a significant procedural error. In such case, a new and properly noticed hearing shall be held on the appeal reopened. The evidence in the previous hearing shall be made a part of the evidence before the new hearing. Additional evidence shall be accepted.
- (3) BOARD ACTION ON PETITION TO REOPEN OR RE-HEAR AN APPEAL. A majority vote shall be sufficient to reopen or re-hear an appeal. The decision to grant or deny a petition to reopen or re-hear shall restate the basis for the petition, the reason why the Board granted or denied the petition and the vote of the Board members. If a petition is granted, the scope of the hearing may be limited

to the matters that constitute the basis of the petition to reopen or re-hear the appeal and the matter shall be subject to all of the Board's applicable rules of procedure.

- (4) **EFFECT OF PETITION TO REOPEN OR RE-HEAR.** The filing of a petition to reopen or re-hear shall stop the running of the 30-day period during which an action must be commenced seeking the remedy available by certiorari. If the Board decides to not reopen or re-hear the appeal, the remaining balance of the said 30-day period will be gin to run from the date the written decision to not reopen the appeal is filed in the office of record of the Board. If the Board decides to reopen the appeal a hearing shall be scheduled and any decision filed by the Board shall be subject to a new 30-day period during which such certiorari action must be commenced.

17.09 SUPPLEMENTS TO AND SUSPENSION OF RULES.

- (1) **SUPPLEMENTS.** These rules of procedure may be supplemented by unanimous vote of all members at any meeting, provided written notice of the proposed action, including the complete wording proposed, has been given to each member at least ten calendar days before such meeting, and provided that public notice shall have been given of a proposed action to supplement these rules, and further provided that no supplement shall be contrary to law or Oneida County ordinances. Upon adoption of such supplements, the Board may submit them to the County Board through the Planning and Zoning Committee for consideration as an amendment to this chapter of the Oneida County code.
- (2) **SUSPENSION OF RULES.** This section and provisions of these Rules prescribed by law or other ordinance, including public notice requirements, may not be suspended by action of the Board. Any other part of these rules or Robert's Rules of Order may be temporarily suspended for an explicitly stated good cause at any meeting by unanimous vote of all Members present. Such temporary suspension shall not extend beyond adjournment of that meeting or hearing at which the suspension was approved.