

## 4.0 BOARD OF APPEALS

### 4.01 Establishment

There is hereby established a Board of Appeals for the Town of Merrimac for the purpose of hearing appeals and granting variances and exceptions to the provisions of this Zoning Ordinance in harmony with the purpose and intent of this Zoning Ordinance.

- 1) Meetings shall be held at the call of the Chairman of the Board of Appeals and shall be open to the public.
- 2) Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.
- 3) The concurring vote of four (4) members of the Board shall be necessary to correct an error, grant a variance, grant a conditional use, or make an interpretation.

### 4.02 Membership

The Board of Appeals shall consist of five (5) members, four citizens and one Town Board Member, appointed by the Town Chairman and confirmed by the Town Board.

- 1) Terms shall be for staggered three-year periods.
- 2) Chairman of the Board of Appeals shall be designated by the Town Chairman.
- 3) An alternate member may be appointed by the Town Chairman for a term of three (3) years and shall act only when a regular member is absent or declines to vote because of conflict of interest.
- 4) At all public hearings the secretary shall be the Town Clerk or an appointed deputy.
- 5) Zoning Administrator shall attend all meetings when requested by the Board for the purpose of providing technical assistance.
- 6) Official oaths shall be taken by all members in accordance with section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of this appointment.

- 7) Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

#### 4.03 Organization

The Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this Ordinance.

- 1) Meetings shall be held at the call of the Chairman of the Board of Appeals and shall be open to the public.
- 2) Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its finding of facts. These records shall be immediately filed in the office of the Board and shall be a public record.
- 3) The concurring vote of four (4) members of the Board shall be necessary to correct an error, grant a variance, grant a conditional use, or make an interpretation.

#### 4.04 Powers

The Board of Appeals shall have the following powers:

- 1) Errors - to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official or body in the course of enforcing this Ordinance.
- 2) Variance - to hear and grant appeals for variances as will not be contrary to the public interest where, owing to special conditions, a literal enforcement will result impractical difficulty or unnecessary hardship, so that the spirit and purposes of this Ordinance shall be observed and the public safety, welfare, and justice secured.

#### 4.05 Appeals and Applications for Variances

Appeals may be made by any person aggrieved or by an officer, Board, or commission of the Town. Such appeals shall be filed with the secretary within thirty (30) days after the date of written notice of the decision or order of the Zoning Administrator. Applications may be made by the owner or lessee of the structure, land, or water to be affected at any time and shall be filed with the secretary. Such appeals and application shall include the following:

- 1) Name and address of the appellant or applicant and all abutting and opposite property owners or record.

- 2) Plot plan showing all of the information required under Section 2.04 of the General Provisions section of this Ordinance.
- 3) Additional information as may be required by the Board of Appeals and Zoning Administrator.
- 4) Hearings - the Board of Appeals shall fix a reasonable time and place for the hearing, give Class 2 notice thereof. At the hearing, the appellant or applicant may appear in person, by agent, or by attorney with written proof of agency.
- 5) Findings - no variance to the provisions of this Ordinance shall be granted by the Board of Appeals unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicates in the minutes of its proceedings.
  - a) Exceptional circumstances: there must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that the Zoning Ordinance should be changed.
  - b) Preservation of property rights: that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
  - c) Absence of detriment: that the variance will not create substantial detriment to adjacent property and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.
- 6) Decision - the Board of Appeals shall decide all appeals and applications within thirty (30) days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Zoning Administrator, and Town Planning and Zoning Commission.
  - a) Conditions may be placed upon any land use permit ordered or authorized by this Board. Approvals granted by the Board shall expire within two (2) years unless work has commenced pursuant to such grant.
- 7) Review by Court of Record - any person or persons aggrieved by any decision of the Board of Appeals may present to the court of record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented

to the court within thirty (30) days after the filing of the decision in the office of the Board of Appeals.

#### 4.06 Conditional Uses

- 1) Permits - the Board of Appeals may authorize the Zoning Administrator to issue a land use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this Ordinance and are found to be not hazardous, harmful, offensive, or otherwise adverse to the environment or the value of the neighborhood or the community.
- 2) Application - applications for zoning permits for conditional uses shall be made to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following:
  - a) Name and addresses of the applicant, owner of the site, architect, professional engineer, contractor, and all opposite and abutting property owners of record.
  - b) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site, type of structure; proposed operation or use of the structure or site; number of employees; the zoning district within which the subject site is located; and indication of whether or not the subject site is located in a floodplain.
  - c) Plot plan showing all of the information required under Section 2.04 of the General Provisions section of this Ordinance.
  - d) Additional information as may be required by the Board of Appeals or Zoning Administrator.
- 3) Hearings - the Board of Appeals shall hold a public hearing on each conditional use application giving Class 2 Notice.
- 4) Review and Approval - the Board of Appeals shall use the standards for conditional uses which are delineated within each zoning district of this Ordinance when reviewing applications for a conditional use.
  - a) Compliance with all other provisions of this Ordinance, such as lot width and area, yards, height, parking, traffic, and highway access shall be required of all conditional uses. Variances shall only be granted as provided in Section 4.05(5).