

ARTICLE XV
Zoning Board of Appeals

§ 340-154. Establishment.

There is hereby established a Zoning Board of Appeals for the Town of Port Washington for the purpose of hearing appeals and applications and granting variances and exceptions to the provisions of this chapter.

§ 340-155. Membership; terms of office.

The Zoning Board of Appeals shall consist of five members appointed by the Town Board Chairperson and confirmed by the Town Board.

- A. Terms shall be for staggered three-year periods.
- B. The Chairperson shall be appointed by the Town Board Chairperson.
- C. Two alternate members shall be appointed by the Town Board Chairperson. An alternate member shall serve for a term of three years and shall act only when a regular member is absent or refuses to vote because of interest.⁴⁰
- D. One member shall be a Town Plan Commissioner.
- E. The Secretary shall be the Town Clerk.
- F. The Building Inspector shall attend meetings for the purpose of providing technical assistance when requested by the Board.
- G. Official oaths shall be taken by all members in accordance with § 19.01, Wis. Stats., within five days of receiving notice of their appointment.c
- H. Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

§ 340-156. Organization.

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

- A. Meetings shall be held at the call of the Board and shall be open to the public.
- B. 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.

40. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

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- C. The concurring vote of four members of the Board shall be necessary to correct an error; grant a variance; make an interpretation; and permit a utility, temporary, unclassified, or substituted use.

§ 340-157. Powers.

- A. The Zoning 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 the Building Inspector.
- (2) Variances. 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 in practical difficulty or unnecessary hardship, so that the spirit and purposes of this chapter shall be observed and the public safety, welfare, and justice secured.
- (3) Interpretations. To hear and decide applications for interpretation of the zoning regulations and the boundaries of the zoning districts after the Town Plan Commission has made a review and recommendation.
- (4) Substitutions. To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses, provided that no structural alterations are to be made and the Town Plan Commission has made a review and recommendation. Whenever the Board permits such a substitution, the use may not thereafter be changed without application.

- B. Permits. The Board may reverse, affirm wholly or partly, or modify the requirements appealed from and may issue or direct the issuance of a permit.

- C. Assistance. The Board may request assistance from other Town officers, departments, commissions, and boards.

- D. Oaths. The Chairperson may administer oaths and compel the attendance of witnesses. §

340-158. Appeals and applications.

Any officer, department, board, or bureau of the Town or any person aggrieved may make appeals from the decision of the Building Inspector concerning the literal enforcement of this chapter. Such appeals shall be filed with the Secretary within 30 days after the date of written notice of the decision or order of the Building Inspector. 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 applications shall include the following:

- A. Name and address of the appellant or applicant and all abutting and opposite property owners of record.
- B. Plat of survey prepared by a registered land surveyor, or a location sketch drawn to scale, showing all of the information required under Article XBI for a zoning permit.

- C. Additional information required by the Town Plan Commission, Town Engineer, Zoning Board of Appeals, or Building Inspector.

§ 340-159. Hearings.

The Zoning Board of Appeals shall fix a reasonable time and place for the required public hearing and shall give notice as specified in Article XIV of this chapter. At the hearing, the appellant **or applicant may appear in person, by agent, or by attorney.**

§ 340-160. Variances.

The Board shall grant no variance to the provisions of this chapter unless it finds that all of the following facts and conditions exist and so indicates in the minutes of its proceedings:

- A. Preservation of intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use or conditional use in that particular district.
- B. 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 this chapter should be changed.
- C. Hardships. Economic hardship and self-imposed hardship are not grounds for variance: No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- D. Preservation of property rights. The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
- E. Absence of detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this chapter or the public interest.

§ 340-161. Decision.

The Zoning Board of Appeals shall decide all appeals and applications within 30 days after the final hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant, Building Inspector, and Town Plan Commission.

- A. Conditions may be placed upon any zoning permit ordered or authorized by this Board.
- B. Variances, substitutions, or use permits granted by the Board shall expire within six months unless substantial work has commenced pursuant to such grant.

§ 340-162. Review by court of record.

Any person or persons aggrieved by any decision of the Zoning Board of Appeals may, within 30 days after the filing of the decision, commence an action seeking the remedy available by certiorari in accordance with § 62.23(7)(010, Wis. Stats.

ARTICLE XVI
Word Usage and Definitions

§ 340-163. Word usage.

For the purpose of this chapter, certain words or phrases shall have meanings that either vary somewhat from their customary dictionary meanings or are intended to be interpreted to have a specific meaning. Words used in the present tense in this chapter include the future. The word "person" includes a firm, association, partnership, trust, company, or corporation as well as an individual. The word "shall" is mandatory, the word "should" is advisory, and the word "may" is permissive. Any words not defined in this article shall be presumed to have their customary dictionary definitions.

§ 340-164. Definitions.

As used in this chapter, the following terms shall have the meaning indicated: ABOVE-

ROOF SIGN — A sign or part of a sign which is displayed above the roofline.

ACCESSORY USE OR STRUCTURE — A use or detached structure subordinate to the principal use of a structure, land, or water and located on the same lot or parcel serving a purpose customarily incidental to the principal use or the principal structure.

ADMINISTRATIVE APPROVAL — The same approval procedure as a conditional use except a public hearing and notice will not be required.

ALLEY— A special public right-of-way affording only secondary access to abutting properties.

AM MULTI-TOWER PHASED ARRAY — A series of towers physically spaced so as to create a directional signal. The array usually consists of two or more towers placed in a straight line with the distance between towers dependent on the transmitted frequency.

ANTENNA, COMMERCIAL — A building-mounted communications device designed to receive or send a broadcast as part of a commercial operation.

ANTENNA, RESIDENTIAL — A building-mounted communications device designed to receive or send a broadcast for a residential structure.

APPROVAL AUTHORITY — The Town of Port Washington Board of Supervisors.

ARTERIAL STREET — A public street or highway used or intended to be used primarily for fast or heavy through traffic. Arterial streets shall include any street, highway or parkway with more than 80 feet of right-of-way.