

CITY OF HUDSON
ORDINANCE NO. 7-24
AN ORDINANCE AMENDING THE MUNICIPAL CODE RELATING TO THE
BOARD OF APPEALS

Whereas, The City of Hudson Common Council wishes to adopt changes to the organization, powers and duties of the Board of Appeals to:

- 1) align the Municipal Code with Wisconsin Statutes,
- 2) to require the appointment of two alternate members,
- 3) to require vacancies on the Board to be filled,
- 4) to disclose to the Board any ex parte communications by members,
- 5) to require annual training for Board members,
- 6) to establish a quorum requirement of four members,
- 7) to retain independent legal counsel whenever necessary or advisable for the Board subject to Council approval,
- 8) to remove the supermajority requirement and allow Board action by majority vote,
- 9) update and clarify the decision criteria, and
- 10) to define terms.

Now therefore, The City of Hudson Common Council does ordain that Municipal Code sections 14-4, 255-90 and 255-91 are amended to read as follows.

§ 14-4 Board of Appeals.

- A. The Board of Appeals shall consist of five members appointed by the Mayor, subject to confirmation of the Council, for terms of three years, with the terms so staggered that no more than two members are appointed each year.
- B. The Mayor shall appoint, for a term of three years, two alternate members of such Board who shall act with power only when a member of the Board refuses to vote because of interest or when a member is absent.

§ 255-90 Creation; organization; powers and duties.

- A. Creation and membership. A Board of Appeals shall be appointed pursuant to W.S.A. s. 62.23. The Board of Appeals shall consist of five members appointed by the Mayor subject to confirmation by the Common Council. The members of the Board shall serve at such compensation as is fixed by the Common Council and shall be removable by the Mayor for cause upon written charges only after public hearing. The Mayor shall designate one of the members Chair. The Board may

appoint a secretary and other employees.

- (1) Vacancies. Vacancies shall be filled for the unexpired terms of members and alternates whose terms become vacant.
 - (2) Alternate Members. The Mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such Board, in addition to the 5 members above provided for. Annually, the Mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent.
 - (3) Ex Parte Communications. The members and alternate members of the Board of Appeals shall be strongly discouraged against having any communication regarding a variance, appeal or conditional use before the board or which may come before the board except during a noticed meeting or hearing. If a member is not able to avoid ex parte communication, the member shall disclose such communication to the Board and be part of the record.
 - (4) Training. The members and alternate members of the Board of Appeals shall be required to annually complete at least 2 hours of training on the roles, duties and responsibilities of members, similar to the training workshops provided by the University of Wisconsin-Stevens Point Center for Land Use Education. Members participating in training shall be reimbursed for expenses incurred for training, travel, meals, and other compensation as determined by the Common Council.
- B. Meeting and rules. All meetings of the Board shall be held at the call of the Chair and at such other times as the Board may determine. A quorum of the Board shall consist of four members or acting members. All hearings conducted by the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or indicating the fact of absence or failure to vote, and shall keep records of its examination and other official actions, all of which shall be immediately filed in the office of the Board and shall be public record. The Board shall adopt its own rules of procedure not in conflict with this chapter or the applicable Wisconsin statutes. When deemed necessary or advisable, the Board may retain legal counsel, separate and apart from the City Attorney, subject to any policies adopted by the Common Council for

preapproval based upon Council budgetary considerations.

- C. Offices. The Common Council shall provide suitable offices for holding hearings and presenting records, documents and accounts.
- D. Appropriations. The Common Council shall appropriate funds to carry out the duties of the Board, and the Board shall have the authority to spend, under regular procedure, all sums appropriated to it for the purpose and activities authorized herein.
- E. Jurisdiction and authority. The Board of Appeals shall have the following jurisdiction and authority:
 - (1) To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Building Inspector and Planner/Zoning Administrator.
 - (2) To hear and decide special exceptions to the terms of this chapter upon which the Board of Appeals is required to pass.
 - (3) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions peculiar to a specific property, a literal enforcement will result in practical difficulty or unnecessary hardship so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. Except as specifically provided, no action of the Board of Appeals shall have the effect of permitting in any district uses prohibited in such district. Where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists, and the records of the Board shall clearly show in what particular and specific respect an unnecessary hardship or practical difficulty is created.
 - (4) The Board of Appeals may reverse or affirm wholly or in part or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all the powers of the Building Inspector and Planner/Zoning Administrator. The concurring vote of four members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination appealed from or to decide in favor of the applicant on any matter on which it is required to pass or to effect any

variation in the requirements of this chapter.

(5) In addition to the foregoing, the Board of Appeals shall have the following specific powers:

- a. To interpret the provisions of this chapter to carry out the intent and purpose of the plan as shown on the district map made a part of this chapter where the street layout actually on the ground varies from the street layout on the aforesaid map.
- b. To call on any other City department for assistance in the performance of its duties. Such other departments shall render such assistance as may be reasonably required.

- F. Decisions of the Board. If a quorum is present, the Board of Appeals may take action by a majority vote of the members present to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to pass under the provisions of this chapter or to approve a variance from this chapter. The grounds of every such determination shall be stated in writing.
- G. Scope of appeals. Appeals to the Board may be made by any person aggrieved or by any officer, department, board or bureau of the City affected by any decision made by an administrative official in the enforcement of this chapter. Such appeal shall be made within 60 days of the alleged grievance or judgment in question.
- H. Hearings of appeals. The Board shall fix a time, not more than 60 days from the date of filing, for the hearing of an appeal and shall give due notice thereof to all parties involved. The Board or any of its officers it may designate shall cause such hearings to be published in a newspaper of general circulation in the City.

§ 255-91 Variances.

- A. Purpose. The Board of Appeals may vary the regulations of this chapter in harmony with its general purpose and intent, but only in specific instances where the Board makes a finding of fact based on the standards prescribed in Subsection E. Variances may be granted:
 - (1) To permit any yard of less dimension than that required by this chapter.
 - (2) To permit the use of a lot prohibited solely because of insufficient area of the lot.

- (3) To permit construction of a building, structure or sign which will exceed the dimensional limit(s) for the district in which it is to be built.
 - (4) To permit off-street parking which does not conform in quantity or other particulars to the requirements of this chapter.
- B. Application for variance. The application for a variance shall be filed with the Planner/Zoning Administrator.
- (1) The application shall contain the following information:
 - a) Name and address of the applicant.
 - b) Statement that the applicant is the owner or the authorized agent of the owner of the property.
 - c) Address and description of the property.
 - d) An accurate drawing of the site and surrounding area for a distance of at least 100 feet from each boundary with the proposed variance shown on the drawing.
 - (2) The application shall be accompanied by a filing fee as established by the Common Council.
- C. Hearing of application. The Board of Appeals shall conduct at least one public hearing on the proposed variance. Notice of such hearing shall be given not more than 30 days and not less than 10 days before the hearing in a newspaper of general circulation in the City.
- D. Disposition by Board of Appeals. The Board of Appeals shall make an affirmative or negative decision within 30 days after the public hearing. If a quorum is present, the Board of Appeals may take action by a majority vote of the members present. A copy of the variance shall be supplied to the Planner/Zoning Administrator within 10 days of passage, and it shall be accompanied by a written finding of fact and reasons for granting the variance.
- E. Standards. For the Board of Appeals to make an affirmative decision it must find that:

- (1) Unnecessary Hardship. Denial of the variance would result in unnecessary hardship to the property owner due to physical characteristics of the site.
- (2) Unique Property Limitations. The unnecessary hardship is based on conditions unique to the property and were not created by the property owner.
- (3) No Harm to Public Interests. The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

- F. Burden of Proof. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.
- G. Financial Hardship. Economic loss or financial hardship do not justify a variance. The test is not whether a variance would maximize economic value of a property or be the least expensive option for the applicant.
- H. Uniqueness of the property. Unnecessary hardship must be due to unique physical limitations of the property, such as steep slopes or wetlands that prevent compliance with the ordinance. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Where the hardship imposed upon an applicant's property is no greater than that suffered by nearby lands, the Board of Appeals may not grant a variance to relieve it.

Effective Date. This Ordinance shall be effective upon adoption and publication as required by law.

[ADOPTION DATE AND SIGNATURES ON NEXT PAGE]

First Reading:

August 19, 2024

Passed and Adopted:

September 3, 2024

APPROVED:

A handwritten signature in blue ink, appearing to read "Rich O'Connor", written over a horizontal line.

Rich O'Connor, Mayor

ATTESTED:

A handwritten signature in blue ink, appearing to read "Becky Eggen", written over a horizontal line.

Becky Eggen, City Clerk