

ADDENDUM I



**RULES GOVERNING
ST. CROIX COUNTY
BOARD OF ADJUSTMENT**

Adopted on July 28, 1994

Last Revised on September 24, 2015

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RULES GOVERNING COUNTY BOARD OF ADJUSTMENT

ARTICLE I. GENERAL PROVISIONS

SECTION 1. AUTHORITY

The Board of Adjustment is established pursuant to Wisconsin Statutes § 59.694. The Board of Adjustment is an independent decision-making body not subject to County Board control. The Board of Adjustment shall act in a fair and impartial manner, without bias or prejudice, and render its decisions based on law, facts and rational analysis. A copy of these rules shall be filed with the County Clerk to be kept as a permanent public record. Copies of the rules shall also be available to the public. These rules are supplementary to the provisions of the land use ordinances of the County Code as they relate to the procedures of the Board of Adjustment.

SECTION 2. TITLE

The official title of this Board is the St. Croix County Board of Adjustment.

SECTION 3. MEMBERS AND TERMS

- A. The Board of Adjustment: 5 members comprised of at least 1 but not more than 2 Supervisors with the balance citizen members plus 2 alternate citizen members. The alternate citizen members shall be designated First Alternate and Second Alternate and shall only serve when 1 or 2 of the 5 voting members (Supervisor or citizen) are absent. The County Administrator shall appoint the members with the approval of the County Board for terms of three years beginning on the date of the first Board of Adjustment meeting following County Board approval at its May meeting each year. If members cannot be appointed at the May County Board meeting, members shall serve until their successors are appointed. In the event a citizen member of the Board of Adjustment is elected to the County Board, the newly elected board member will be allowed to fulfill his/her term on the Board of Adjustment. The terms shall be staggered so that one or two terms expire each year.
- B. If a supervisor member of the Board of Adjustment is not re-elected to the County Board and the term he/she is serving on the Board of Adjustment does not expire in the year the County Board term begins, a vacancy will be deemed to have occurred on the Board of Adjustment and another supervisor will be appointed to serve the remainder of the term.
- C. Any vacancy on the Board of Adjustment shall be filled for the remainder of the term in the same manner as appointments are made.
- D. All members of the Board of Adjustment shall reside within unincorporated areas of the County and no two members shall reside in the same town. Members of the Community Development Committee shall not serve on the Board of Adjustment.

SECTION 4. CONFLICTS OF INTEREST

Any member of the Board, who:

- A. Believes his/her relationship, prior knowledge or prior action prevents him/her from deciding without bias; or
- B. Has any direct or indirect interest, personal or financial, in a matter before the Board;

shall not vote thereon or participate in the deliberation of such matter at any meeting or hearing at which said matter is under consideration. A disqualifying conflict of interest shall be deemed to exist when:

- a. the Board member is the applicant or spouse of the applicant, or is related to the applicant within the third degree of consanguinity, or is the husband or wife of someone so related; or
- b. the applicant 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
- c. the member owns property within 300 feet of the property which is the subject of the application.

SECTION 5. LIMITATIONS

Nothing herein shall be construed to give or grant to the Board, the power or authority to alter or change the County land use ordinances or zoning or other official maps of the county, which authority is reserved to the County Board of Supervisors.

SECTION 6. BOARD'S OFFICE

The office of the board shall be located at the St. Croix County Community Development Department. All records of the Board shall be available for public inspection between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, except for legal holidays.

ARTICLE II. OFFICERS AND DUTIES

SECTION 1. OFFICERS

Officers. The Board of Adjustment shall choose a chair and a vice-chair. The chair shall conduct the proceedings of the Board of Adjustment pursuant to State law, the County Land Use Code and Board of Adjustment written rules. In the absence of the chair the vice-chair shall conduct the proceedings.

SECTION 2. DUTIES OF OFFICERS

The chair, if present, otherwise the vice-chair, shall preside over and direct the conduct of all meetings and hearings of the Board and may administer oaths and compel the attendance of witnesses. In the absence of both the chair and the Vice-chair, the members shall appoint a chair. The chair shall report on all official transactions that have not otherwise come to the attention of the Board. The chair shall, subject to these rules and further instructions from the Board, direct the official business of the Board, supervise the work of the Board and request necessary help when required. The chair or the presiding officer, subject to these rules, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and approved.

The Board shall maintain permanent minutes. The Board shall record hearings and proceedings and keep such recordings for one year; County staff shall assist the Board of Adjustment in performing its clerical duties.

The County Corporation Counsel, or his/her designated representative, shall be the legal counsel for the Board. Any offered advice of counsel shall be received before disposition of any question.

ARTICLE III. MEETINGS

SECTION 1. TIME: HOW CALLED

Meetings and hearings of the Board shall be held upon notice of the chair pursuant to Wis. Stats. Sec. 19.84. Hearings shall be advertised as required by law.

SECTION 2. QUORUM

A quorum shall consist of a majority of all members of the Board and no action may be taken except by a majority vote of such quorum, except a lesser number may meet and adjourn any meeting duly called and noticed to a time certain.

SECTION 3. ORDER OF BUSINESS

The Chair shall prepare an agenda for each Board meeting, listing the matters of business at all meetings in the following order:

- A. Call to order
- B. Action on the minutes of previous meeting(s).
- C. Roll call.
- D. Public hearings
- E. Site visits
- F. Business Items
- G. Announcements and correspondence.
- H. Date of next meeting.
- I. Adjournment.

The order of business may be varied from the preceding by consent of the members present.

SECTION 4. ROBERT'S RULES OF ORDER

Robert's Rules of Order shall govern actions of the Board and conduct of its meetings if not covered by these rules or the County Code of Ordinances.

ARTICLE IV. POWERS AND DUTIES OF THE BOARD

SECTION 1. GENERAL POWERS

The powers and duties of the Board of Adjustment are identified in Section 59.694 of the Wisconsin Statutes and in the various land use ordinances that have been adopted by the County. The Board shall have the following general powers:

- A. To hear and decide appeals where it is alleged there is error in an order, requirement, decision or determination made by an administrative official in the enforcement of Wisconsin Statutes §§ 59.69 and 59.692 or of any County land use ordinances.
- B. To hear and decide special exceptions (conditional uses) to the terms of an ordinance enacted pursuant to Wisconsin Statutes § 59.69 or of any County land use ordinances.
- C. To authorize upon appeal in specific cases variances from the terms of any ordinance enacted pursuant to Wisconsin Statutes §§ 59.69 or 59.692 or of any County land use ordinances that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.
- D. To grant special exceptions and variances for renewable energy resource systems. If the board denies an application for a special exception or variance for such a system, the board shall provide a written statement of its reasons for denying the application. “Renewable energy resource system” means a solar energy system, a waste conversion energy system, a wind energy system or any other energy system which relies on a renewable energy resource.
- E. Interpret the zoning district maps.

SECTION 2. SCOPE OF ORDERS

In exercising the powers under Section 1, the Board of Adjustment 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 from whom the appeal is taken, and may issue or direct the issuance of a permit.

SECTION 3. CONDUCT OF MEMBERS AND SUPPORT STAFF

Members of the Board of Adjustment shall not discuss with anyone, including other members of the Board of Adjustment and Community Development staff, matters to come before or that are before the board outside of formal Board of Adjustment proceedings. Members of the Board of Adjustment may seek legal advice.

The above does not prevent members of the Board of Adjustment and county staff from discussing hypothetical scenarios, procedural matters and possible land use ordinance amendments.

ARTICLE V. APPLICATIONS AND APPEAL PROCEDURES

SECTION 1. WHO MAY FILE

Applications to the Board of Adjustment and appeals from the land use code administrator's decisions shall be filed with the land use code administrator by the applicant or appellant, his/her agent or attorney. Appeals may be filed by any person aggrieved or by any officer, department, Board of Adjustment, or bureau of the county or town affected by the land use code administrator's decision.

The land use code administrator shall transmit copies of applications for variances, special exception permits, and appeals to the affected towns and other agencies with interest and jurisdiction for review and comment.

SECTION 2. TIME TO APPEAL

Applicants may request a written decision from the land use code administrator. Appeals from the land use code administrator's decision must be filed within 30 days after the date of a written decision.

SECTION 3. REQUIRED INFORMATION

Failure of the appellant to supply the required information within 30 days of filing of an appeal or application may be considered by the Board of Adjustment as a failure to comply with application and appeal procedure and the case may be dismissed for failure of timely filing. Applications or appeals shall be made on forms provided by the Board of Adjustment or land use code administrator. Any communication, except on prescribed forms, purporting to be an appeal shall be deemed a mere notice of intention to file and shall not be deemed a filing to comply with requirements of timely filing.

SECTION 4. REASONS TO BE STATED

The reason for the application or appeal must be stated and the reasons why the request should be approved must also be stated by the applicant or appellant. If a variance is requested, facts should be stated upon which findings may be made by the Board of Adjustment to justify the granting of the variance. If a special exception permit is requested, facts should be stated upon which findings may be made by the Board of Adjustment to justify granting the special exception. If an appeal is based upon an alleged error or abuse of discretion of the land use code administrator, facts should be stated as to the nature thereof.

SECTION 5. DISMISSAL OF CASE

The Board of Adjustment may refuse to hear a case upon the failure of the applicant or appellant to supply the required information called for on the forms and as further reasonably required by the land use code administrator.

SECTION 6. OWNER'S CONSENT AND REPRESENTATION

The forms shall bear the signature of the owner of the property affected or shall be accompanied by a letter from the owner acknowledging the filing of the form. An applicant or appellant may file an appeal or application personally or by an agent or attorney.

SECTION 7. TIME FOR HEARING

Each appeal or application shall be considered by the Board of Adjustment at its next meeting, 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.

SECTION 8. NOTICE OF HEARING

The Board of Adjustment shall give, or cause to be given, notice of each hearing as required by law and these rules. This shall include at least the following: 1) publication of a Class 2 hearing notice in a newspaper of general circulation; 2) mailing a notice of the hearing to the applicant, and where required to the district office of the Department of Natural Resources at least 10 days before the hearing; 3) mailing a notice of the hearing to the town board of the town in which the property is located, not less than one week before the date of the hearing. In addition notice shall be mailed to all property owners within 300 feet of the perimeter of the property affected.

SECTION 9. EFFECT OF APPEAL

An appeal shall stay all proceedings and furtherance of the action appealed from, unless the land use code administrator shall certify to the Board of Adjustment, after the notice for appeal shall have been filed with him or her, 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 of Adjustment, or by a court of record on application and notice to the office from whom the appeal is taken and on due cause shown.

SECTION 10. FEE

The applicant shall pay such fees as may be from time-to-time established by the Community Development Committee, which amount shall be deposited with the Community Development Department for each application filed before a public hearing will be scheduled.

ARTICLE VI. PROCEEDINGS ON HEARINGS

SECTION 1. APPEARANCES, ADJOURNMENTS

At the time of the hearing, the applicant or appellant may appear in his own behalf or be represented by his counsel or agent. A recess or adjournment of a hearing, made at a noticed hearing date, to a time and place certain is adequate notice to the members and the public of a new hearing date.

SECTION 2. WITNESSES

The chair, or Acting chair, may compel the attendance of witnesses and may require those wishing to testify to state their names and their interests in the matter before the Board of Adjustment.

SECTION 3. ORDER OF HEARINGS

Hearings on cases shall normally follow this order:

- (1) Witnesses register and sign the oath.

- (2) Chair makes statement of hearing notice.
- (3) Staff presents report and recommendations.
- (4) Applicant presents evidence.
- (5) Supporters present evidence.
- (6) Objectors present evidence.
- (7) Other interested parties present questions and comments.
- (8) The Board of Adjustment may permit staff and applicants to make rebuttals.
- (9) If the Site Inspection influences the Board, it must be documented in the hearing record to be considered in the decision. Audio recording, videotape or photos taken while on-site and board members' individual testimony on the record may be included on the record when the Board returns from the Site Inspection.

SECTION 4. PRELIMINARY MATTERS

Following the staff report and recommendations, the Board of Adjustment may hear arguments on the question of jurisdiction and request that briefs be filed on the point. The Board of Adjustment may proceed with the hearing and the taking of testimony in any event and reserve its determination on a jurisdictional question and render a decision on the merits as if it had jurisdiction. The Board of Adjustment may make an immediate determination upon a finding that it lacks jurisdiction. If the Board of Adjustment determines by motion that it lacks jurisdiction, it shall be recorded in the decision as a vote to deny the request.

SECTION 5. PARTIES NOT TO INTERRUPT

Orderly procedure requires that each side shall proceed without interruption by the other; that all arguments and pleadings shall be addressed to the Board of Adjustment and that there be no questioning or arguments between individuals.

SECTION 6. QUESTIONS AND DEBATE

During the hearing, the chair, Board of Adjustment members and members of the staff may ask questions and make appropriate comments pertinent to the case; however, members shall not debate or argue an issue with the applicant. The chair and Board of Adjustment members may direct any question to the applicant or to any person speaking in order to bring out all relevant facts, circumstances and conditions affecting the case and may call for questions from members of the staff.

SECTION 7. PRESENTATION OF EVIDENCE

All supporting evidence for and against each case shall be presented to the assembled Board of Adjustment. The applicant or appellant shall be responsible for the presentation of all information supporting his/her case. The Board of Adjustment may take administrative notice of the land use ordinances of the County and laws of the State of Wisconsin and of other relevant facts not reasonably subject to dispute on its own motion or motion of a party.

Anyone interested in giving an electronic presentation must notify the land use code administrator at least one week in advance of the scheduled hearing date, subject to the following guidelines:

- A. The presentation should take no longer than five minutes.
- B. The presentation should be limited to graphic images only – such as photos, maps, drawings, or figures - and should not include large blocks of text or bulleted text that can be presented orally.

- C. At least three full business days prior to the hearing date, the presenter must submit to the land use code administrator 12 hardcopies of the presentation to be filed for the record and distributed at the hearing as an exhibit, as well as an electronic file of the presentation.

SECTION 8. ADDITIONAL EVIDENCE

The Board of Adjustment may take a case under advisement for later consideration and determination, or may defer action when it concludes that additional evidence is needed or further study is required.

SECTION 9. POSTPONEMENT OF HEARING

Cases may be postponed only by prior arrangement with the land use code administrator if the request is received in time to publish an amended second notice.

SECTION 10. RULES OF EVIDENCE

The Board of Adjustment shall not be bound by court rules of evidence, but it may exclude irrelevant, immaterial, incompetent, unduly argumentative or repetitious testimony or evidence.

SECTION 11. CHAIR TO RULE ON ADMISSIBILITY

The chair shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board of Adjustment present.

SECTION 12. INTERESTED PERSONS MAY TESTIFY

Persons having an interest in the case 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.

SECTION 13. RECORD OF HEARING

Transcripts of recorded proceedings shall not be prepared unless ordered by the circuit court by a writ of certiorari. Any party or member of the public may make a record of the proceedings by any means that does not disturb the hearing or others present.

SECTION 14. ADJOURNMENTS

When all appeals or applications cannot be disposed of on the day set, the Board of Adjustment may recess from day to day or to a day certain, as it may order, and such recessed day shall be construed as a continuance of the hearing. Notice of such recess shall be given to the absent members of the Board of Adjustment.

SECTION 15. WITHDRAWAL OF APPEAL OR APPLICATION

An appellant or applicant may withdraw an appeal or application at any time prior to the decision, but a pending motion to approve or deny the appeal or application shall have precedence over withdrawal. Withdrawal of the appeal shall not entitle the appellant or applicant to remission of the filing fee.

ARTICLE VII. DECISIONS OF THE BOARD OF ADJUSTMENT

SECTION 1. MAJORITY VOTE REQUIRED

The concurring vote of a majority of all members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, to decide in favor of the applicant on any matter upon which it is required to pass under land use ordinances or to effect any variance.

SECTION 2. FINDINGS AND DECISIONS TO BE WRITTEN

In acting on any matters before it, the Board of Adjustment shall make findings supporting its actions. All decisions shall be in writing and contain the facts and findings upon which the decisions are based.

SECTION 3. DECISIONS TO BE MAILED

Within 30 days of the close of the hearing to which the decision relates, written copies of such decision shall be mailed to the applicant and all parties who have requested a copy or as required by law and made a part of the permanent record. The approval or granting of appeals by the Board of Adjustment is deemed to constitute an order to the land use code administrator to process an application, allow a land use or issue a permit. A denial of the application or appeal by the Board of Adjustment is deemed to be an order to deny the permit.

Decisions on floodplain and shoreland-wetland zoning appeals, variances and conditional uses shall be sent to the district office of the Wisconsin Department of Natural Resources. Decisions granting variances or exceptions in exclusive-agricultural district shall be sent to the Wisconsin Department of Agriculture, Trade and Consumer Protection.

SECTION 4. DECISION TO RELATE TO SPECIFIC PROPERTY

The decision of the Board of Adjustment shall be deemed as applying to the property rather than to the individual and is valid only for the specific premises in the case and is not transferable to other properties.

SECTION 5. INFORMAL ADVICE NOT BINDING

No informal request for advice on moot questions need be given by the Board of Adjustment. Any advice, opinion or information given by any Board of Adjustment member any other official or employee of the County shall not be binding on the Board of Adjustment.

SECTION 6. CASES TO BE DETERMINED INDIVIDUALLY

No action of the Board of Adjustment shall set a binding precedent. Each case shall be decided upon its merits and upon the attendant circumstances, provided the Board of Adjustment shall not act arbitrarily or capriciously.

SECTION 7. ORDER FOR PERMIT VALID FOR ONE YEAR

An order issued by the Board of Adjustment requiring a land use code administrator to issue a permit shall become void after one year unless the applicant or appellant shall have filed an

application for such permit with the land use code administrator within such time, provided that the time may be extended when so specified by the Board of Adjustment.

SECTION 8. ACTION IN CIRCUIT COURT

Any person or persons jointly or severally aggrieved by any decision of the Board of Adjustment, or any taxpayer, or any officer, department, other board or bureau of the County may commence an action in the circuit court for writ of certiorari to review the legality of such decision in whole or in part, within thirty days after the filing of the decision in the office of the Board of Adjustment.

ARTICLE VIII. REFILINGS AND REHEARINGS

SECTION 1. THREE-YEAR REFILING RULE

No matter which has been acted upon by the Board of Adjustment shall be considered again within three years from the date of action, except as hereinafter provided.

SECTION 2. EXCEPTION TO THREE-YEAR RULE

The Board of Adjustment may hear cases within said three-year period concerning the same property only when: (a) The case does not involve a request for an identical permit or does not allege the same misinterpretation or error, point of non-coverage or hardship as the previous case, or when (b) the case does not contain the original request for specific variance, or when (c) substantial change in the use of adjacent property has occurred since the previous case was heard, or if (d) the previous case was closed without a hearing because the applicant was not present at the time such case was scheduled for a hearing.

SECTION 3. REOPENINGS AND REHEARINGS LIMITED

The Board of Adjustment may not: (a) reopen any case upon which a previous hearing has been held, except to correct a manifest error, but it may reconsider a case as provided by these rules; or (b) hear or rehear any case to determine the location of any district boundary line where the Board of Adjustment has previously determined the location of such boundary line, unless new evidence is submitted.

SECTION 4. CLOSURE OF CASE

A case will be considered as heard and closed at such time as the Board of Adjustment approves or rejects an application or appeal by motion or when it is considered closed by operation of these rules.

SECTION 5. RECONSIDERATION ON BOARD OF ADJUSTMENT MOTION

A decision of the Board of Adjustment may be reconsidered: (a) by motion to reconsider made at the same meeting which may be immediately disposed of without further notice, or (b) by motion to reconsider made not later than the following regular meeting, in which event, the matter shall be placed on the calendar for a subsequent hearing and a new notice given without additional fee.

SECTION 6. RECONSIDERATION BY REQUEST

The Board of Adjustment may entertain a request for reconsideration by a party interested provided the request is in writing and new written evidence is submitted with the request. On receipt of a properly filed request to reconsider, it shall be placed on the next agenda under "Business Items" for consideration at the next regular meeting. A request for reconsideration must be filed with the Board of Adjustment at least 15 days prior to the next regular meeting date.

SECTION 7. RECONSIDERATION TOLLS APPEAL PERIOD

The filing of a request or adoption of a motion for reconsideration shall stop the running of the 30-day period in which a petition to the circuit court must be made. The 30-day period will run in such event from the date a decision not to reconsider is made by the Board of Adjustment, or if the matter is reconsidered, from the date the decision on the reconsidered matter is filed in the Board of Adjustment's office.

SECTION 8. PROCEDURES FOR RECONSIDERATION

A simple majority vote shall be sufficient to reconsider a previous decision. If reconsideration is refused to an interested party who has requested reconsideration, the Board of Adjustment shall enter in the minutes the basis of the request, the reason why it was refused and the vote of the Board of Adjustment members thereon. If reconsideration is approved, the case will be placed on the agenda for the next regular meeting and notice given of the re-hearing as required for an original hearing upon payment of the re-hearing fee.

ARTICLE IX. AMENDMENT OF RULES

These rules may be changed or amended from time to time by a majority vote of the Board of Adjustment at any regular or special meeting.

History of Board of Adjustment Rules

The foregoing rules are hereby adopted by the Board of Adjustment for the County of St. Croix on the 28th day of July, 1994.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 28th day of December, 2006.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 25th day of January, 2007.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 23rd day of February, 2007.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 26th day of April, 2007.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 28th day of June, 2007.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 28th day of January, 2010.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 2nd day of April, 2013 and placed as Addendum I of the St. Croix County Rules and Bylaws of the Board of Supervisors.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 24th day of July, 2014 and placed as Addendum I of the St. Croix County Rules and Bylaws of the Board of Supervisors.

The foregoing rules are hereby amended by the Board of Adjustment for the County of St. Croix on the 24th day of September, 2015 and placed as Addendum I of the St. Croix County Rules and Bylaws of the Board of Supervisors.