
ORDINANCE ESTABLISHING BOARD OF ADJUSTMENT

SECTION 1. Establishment.

There is hereby established a Board of Adjustment ("BOA") for the purpose of hearing appeals and applications and for granting variances and exceptions to the provisions of the Town of Hartland's Animal Manure Management Ordinance, zoning and other ordinances, as may be established by the Town of Hartland. The BOA is hereby established pursuant to Wis. Stat. § 60.65, Wis. Stat. § 92.16, and Wis. Admin. Code § ATCP 50.96.

SECTION 2. Membership.

The BOA consists of 3 members. Not more than one Town Board supervisor may be a member of the BOA. The initial terms of the members of the BOA are one, 2 and 3 years, respectively, starting from the first day of the month next following the appointment. Successors shall be appointed at the expiration of each term and their term of office shall be 3 years and until their successors are appointed. Members of the BOA shall reside within the Town of Hartland. The BOA shall choose a chairperson. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant. The Hartland Town Board may compensate members of the BOA for their service at its discretion.

SECTION 3. Powers and Duties.

The BOA shall hear appeals of decisions by the Town of Hartland Planning & Zoning Committee, and applications for granting variances to the provisions of other Town of Hartland land use ordinances, including but necessarily limited to the town's Animal Manure Management Ordinance. The town board may also authorize the BOA to, in appropriate cases and subject to appropriate conditions and safeguards, permit special exceptions to the terms of any town land use ordinance under Wis. Stat. §. 60.61 consistent with the ordinance's general purpose and intent and with applicable provisions of the ordinance. This subsection does not preclude the granting of special exceptions by the town Planning & Zoning Committee under Wis. Stat. §. 60.61(4) or the town board, in accordance with regulations and restrictions adopted under Wis. Stat. § 60.61.

SECTION 4. Procedure.

The BOA may adopt rules or procedures necessary to carry out its duties to implement this ordinance. Meetings of the BOA shall be held at the call of the chairperson and other times as the BOA may determine. The chairperson or, in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. The BOA shall keep minutes of its proceedings showing the vote of each member upon each question or, if absent, indicating that fact and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the BOA, or with the Town of Hartland Town Clerk if the BOA does not have an office of its own, and shall be a public record. In any

action involving a historic property, as defined in Wis. Stat. § 44.31(3), the BOA shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the town Planning & Zoning Committee.

SECTION 5. Exercise of County Board of Adjustment Powers.

The BOA shall have the powers and duties provided for county boards of adjustment under Wis. Stat. § 59.694 and shall carry out its duties in the manner provided for county boards of adjustment under Wis. Stat. §. 59.694.

SECTION 6. Appeals and Applications.

Appeals to the BOA may be taken from any order or determination of any board, committee, commission, officer, department, or administrative officer except the Town Board of the Town of Hartland under any Town of Hartland zoning, land use or Animal Manure Management Ordinance or any act or thing governed or refused or permitted hereby, and such appeal shall be taken by any person aggrieved and shall be taken within ten (1) days after notice of the act complained of. Such appeal shall be by written notice directed and delivered to the BOA and the Town of Hartland Town Clerk with a duplicate of the notice of appeal delivered to the board or authority from which the appeal is taken within like time. The officer, board or authority from where or which the appeal is taken shall promptly transmit to the BOA all of the papers and documents constituting his or its record in the matter, or a duly certified copy thereof of which the action appealed from was taken, or, if no record, then a written statement outlining the act complained of. Such appeals and applications shall include the following:

- (a) The name and address of the appellant or applicant and all abutting and opposite property owners of record;
- (b) A detailed sketch showing the proposed land use, its location within the Town of Hartland, and all other written information required of the appellant or applicant by the board, committee, commission, officer, department, or administrative officer from which the appeal is made. If the application is for a variance that has not been considered before, the same type of information may be required initially by the BOA itself;
- (c) Any additional information required by the BOA;
- (d) A copy of a fee receipt from the Town Treasurer showing that the appellant or applicant has paid the appeal or application fee of One Hundred Seventy-Five Dollars (\$175.00).

SECTION 7. Hearings.

The BOA shall fix a reasonable time and place for the hearing, give public notice thereof at least ten (10) days prior, and shall give due notice to the parties in interest. At the hearing the appellant or applicant may appear in person, by agent, or by attorney.

SECTION 8. Findings Necessary for the Granting of Variances.

No variance to the provisions of any Town of Hartland ordinance shall be granted by the BOA unless

it finds beyond a reasonable doubt, based on facts and evidence presented to the BOA by the applicant, that the property owner would have an unnecessary hardship unless the variance is granted. In order to find that an unnecessary hardship would exist the BOA must find that there would be no reasonable use of the property in the absence of the variance, and that the conditions creating the need for the variance were not created by the applicant. See *State v. Kenosha County Board of Adjustment*, 218 Wis. Wd 396, 413, 577 N.W.2d 813 (1998).

SECTION 9. Decision.

The BOA shall decide all appeals and applications within thirty (30) days after it holds its final hearing on the matter and shall transmit a signed copy of its decision to the appellant or applicant and the Town Clerk. In deciding appeals and applications the BOA may place any reasonable conditions upon any approval, permit or variance ordered or authorized by the BOA, except that in all cases approvals, permits, and variances granted by the BOA shall expire after six (6) months of the date of approval unless substantial work has commenced by the applicant on the building or land use approved pursuant to such order or authorization.

SECTION 10. Judicial Review.

Any person or persons aggrieved by a decision of the BOA may file a verified petition for review of the BOA's decision by a court of record. The petition for review shall set forth the facts and allegations supporting the petition for review and shall be filed with the court within thirty (30) days after the filing of the final decision by the BOA with the Town of Hartland Town Clerk.

SECTION 11. Effective Date.

This ordinance shall take effect upon passage and publication, and shall remain in full force and effect as may be amended from time to time until repealed by the Town of Hartland Board of Supervisors.

Approved by the Town of Hartland Town Board this 31 day of July 2001

For: 2 Against: 0 Absent 1

Robert Woldt
Robert Woldt - Chairman

William Luepke - Supervisor

Frank Heller
Frank Heller - Supervisor

Wayne D. Moericke
Wayne D. Moericke - Clerk