

SECTION 23 BOARD OF ADJUSTMENT

SUBDIVISION 1. CREATION AND MEMBERSHIP

1. A Board of Adjustment (BOA) is hereby established and vested with such authority as is hereinafter provided and as provided by Minnesota Statutes 394.21 through 394.37.
2. The BOA shall consist of five members. One member shall be appointed from each of the five commissioner districts. At least one member shall also be a member of the Planning Commission. No elected official of the County or any employee of the County shall serve as a member of the BOA.
3. Member Terms. Each member shall serve for a period of three years, and the terms of the members shall be staggered so that no more than two terms expire in any one year. The term of each member shall begin on January 1 and continue through December 31 of the last year of the term; provided, however, that any member shall continue to serve after the expiration of their term until a successor is appointed. No member shall serve more than three consecutive terms of appointment. Any member who misses three consecutive meetings without a reasonable excuse may be replaced by the Board.
4. Compensation. The members of the BOA may be compensated in an amount determined by the Board for their necessary expenses to attend meetings and conduct business of the BOA including mileage and trainings.
5. The BOA shall elect a chairman and a vice-chairman from among its members. It shall adopt rules for the transaction of its business and shall keep a public record of the proceedings, findings and determinations. The Zoning Office Staff shall act as secretary of the Board.
6. Meetings and Quorum. The meeting of the BOA shall be held at the call of the Zoning Administrator or the BOA Chair. A majority of the BOA shall constitute a quorum, and a majority vote of that quorum is sufficient to conduct business and take action. The BOA Chair has full voting privileges at all times, may vote on any issue, and need not confine his/her voting to break ties. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a BOA member from voting shall be decided by a majority vote of all members except the member being challenged following legal review by the Attorney.

SUBDIVISION 2. DUTIES AND RESPONSIBILITIES

1. Administrative Appeals. The BOA shall have the exclusive authority to hear and decide administrative appeals from and review any order, requirement, decision, or determination made by the Zoning Administrator.
2. Variances. The BOA shall have the exclusive power to order the issuance or denial of Variances from the terms of any official control including restrictions placed upon nonconformities.

SUBDIVISION 3. PROCEDURE

1. Notice and Hearing Procedures.

- A. Upon receipt of an application that contains all required information, the Zoning Administrator shall refer the matter to the BOA and establish a date and time for a public hearing on the application.
- B. The BOA shall hold a public hearing for all Variances and Administrative Appeals. Notice of time, place, and purpose of the public hearing shall be given by publication in a newspaper of general circulation serving the town, municipality or other area concerned and in the official newspaper of the county at least 10 calendar days prior to the date of the hearing. Notice of the public hearing shall also be given to the affected Board of Township Supervisors and the City Council of any municipality within two miles of the affected property. In unincorporated areas of the County, property owners of record within 500 feet of the affected property shall be notified in writing of the public hearing for any application for a Variance or Administrative Appeal.
- C. All written notices shall be mailed no less than 10 calendar days prior to the hearing. The failure to give mailed notice to individual property owners or defects in the notice shall not invalidate any proceedings provided a bona fide attempt to comply with this section has been made.
- D. The applicant or his/her representative shall appear before the BOA in order to address questions regarding the proposed application.
- E. The BOA and Department shall have the authority to request additional information from the applicant in the case of an administrative appeal or application for a Variance that is declared necessary to verify information or establish performance conditions in relation to all pertinent sections of this Ordinance. Failure of the applicant to supply all necessary supportive information may be grounds for the denial of the request or administrative appeal.

2. BOA Findings of Fact and Certification of Final Action

- A. In conducting a public hearing in a case of an administrative appeal or application for a Variance, the BOA shall prepare written findings of fact setting forth its findings and reasons for its decision.
- B. The BOA shall forward to the Zoning Administrator the written findings of fact and its order regarding the administrative appeal or Variance application. The Zoning Administrator shall then file a certified copy of the BOA's order with the County Recorder. After recording, a copy of the BOA's order shall be sent to the affected applicant.

SUBDIVISION 4. ADMINISTRATIVE APPEALS

1. A decision by the Zoning Administrator may be appealed by any aggrieved party within 10 calendar days from the date of the order, requirement, decision or determination by filing with the Zoning Administrator a written notice of administrative appeal. The notice of administrative appeal shall state:
 - A. The particular order, requirement, decision, or determination from which the administrative appeal is taken.
 - B. The name and address of the appellant.
 - C. The grounds for the administrative appeal.
 - D. The relief requested by the appellant.
2. The BOA shall follow the appeals process as outlined in Subdivision 3 of this Section in making a decision on an administrative appeal. The BOA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that extent shall have all the powers of the officer from whom the administrative appeal was taken and may direct the issuance of a permit.

SUBDIVISION 5. VARIANCES

1. Application Process.
 - A. An application for a Variance shall be filed with the Zoning Administrator on forms provided by the County. The application shall be accompanied by a copy of the deed or certified survey of the property, a site plan, and any other information the Zoning Administrator may require for the purposes of administering this Ordinance.
 - B. An applicant must have an ownership interest in the property for which the application is made.
 - C. If the application does not contain all required information, the Zoning Administrator, upon receipt of the application, shall notify the applicant, in writing, within the time specified in Minnesota Statutes Section 15.99, noting what information is missing.
2. Re-application. No application for the same Variance as ruled upon by the BOA shall be resubmitted for a period of 12 months from the date of denial of the previous application unless there has been a substantial change in circumstances as it relates to the request.
3. Criteria for Variances
 - A. Variances may be granted when it is determined that there are practical difficulties in complying with the official control. Variances shall only be permitted when they are in harmony with the general purposes and intent of the Zoning Ordinance and when they are consistent with the Comprehensive Plan.

- B. A Variance may be granted only where the strict enforcement of County zoning controls will result in “practical difficulties.” A determination that a “practical difficulty” exists is based upon the consideration of the following criteria:
- 1.) Is the property owner proposing to use the property in a reasonable manner not permitted by the Zoning Ordinance?
 - 2.) Is the need for a Variance due to circumstances unique to the property and not created by the property owner?
 - 3.) Will the Variance maintain the essential character of the locality?
 - 4.) Does the need for a Variance involve more than economic considerations?
- C. The BOA will evaluate the facts according to the criteria set forth in this chapter in deciding whether to approve or deny a Variance application.
- D. Where, in the opinion of the BOA, a Variance may result in an adverse effect on the environment, the applicant may be requested by the BOA to demonstrate the nature and extent of that effect.
- E. It is the responsibility of the applicant to present facts to the BOA sufficient to prove that the criteria for the approval of a Variance have been satisfied.
4. Variance Conditions. The BOA may impose conditions in the granting of Variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the Variance.
5. Township Consideration. In exercising its power under this chapter, the BOA shall take into consideration the affected town board’s recommendations when making its decision.
6. Expiration of Variance. A Variance shall expire and be considered null and void one year after the BOA’s final decision to grant the Variance if the use or construction for which the Variance was granted has not begun. For the purposes of this section, construction shall include significant site preparation work including land clearing, excavation, and the installation of utilities necessary for the placement, assembly, or installation of facilities or equipment, the installation of footings, slab, foundation, posts, walls, or other portions of a building.
7. Use Variance. No Variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located.

SUBDIVISION 6. RECORD OF BOA ORDERS

A certified copy of any order issued by the BOA for an appeal or a request for a Variance shall be filed with the County Recorder. The order issued by the BOA shall include the legal description of the property involved. The Department shall maintain a record of all orders issued by the BOA and a copy of the filed order shall be mailed to the applicant.

SUBDIVISION 7. JUDICIAL APPEALS

All decisions by the BOA in approving or denying Variances or hearing appeals from any administrative order, requirement, decision, or determination shall be final. A copy of the findings of fact and decision shall also be made available for public inspection in the office of the Murray County Environmental Services Office. Judicial review of decisions of the BOA occurs as set forth in Minnesota Statutes, Section 394.27.