

Article L: Administration

Sec. 13-1-220 General Administrative System.

This Chapter contemplates an administrative and enforcement officer entitled the "Zoning Administrator" to administer and enforce the same. Certain considerations, particularly with regard to granting of permitted conditional uses, planned unit development conditional uses, changes in zoning districts and zoning map, and amending the text of this Zoning Chapter require review and recommendation by the Plan Commission and ultimate action by the Village Board. A Zoning Board of Appeals is provided to assure proper administration of the Chapter and to avoid arbitrariness.

Sec. 13-1-221 Zoning Administrator.

(a) **Appointment.**

(1) The Village Board shall designate the Zoning Administrator as the administrative enforcement officer for the provisions of this Chapter. The duty of the Zoning Administrator shall be to interpret and administer this Chapter and to issue, after on-site inspection, all permits required by this Chapter.

(2) Due to the size of the Village of Bangor it may not be feasible to find a suitable person willing to take on the responsibility of being Zoning Administrator on a part-time basis. It is therefore provided that the function of the Zoning Administrator can be delegated to a committee of the Village Board, to another Village official, or a single member of the Village Board or the Village President. An officer other than a Village Board member or another employee of the Village may also be designated to handle the duties of Zoning Administrator or part-time basis in addition to the other duties performed by such person.

(b) **Duties.** In enforcing and administering this Chapter, the Zoning Administrator shall perform the following duties:

(1) Issue the necessary building permits and occupancy and zoning use permits required by the provisions of this Chapter, provided its provisions have been complied with.

(2) Keep an accurate record of all permits, numbered in the order of issuance, in a record book for this purpose.

(3) In case of any finding of a violation of a provision of this Chapter, notify, in writing, the actual violator where known, the owner of the property on which the violation has taken place and the Village Board, indicating the nature of the violation and the action necessary to correct it.

(4) Receive, file and process for action all applications for conditional uses, variances and amendments to this Chapter which are filed in the zoning office.

- (5) Initiate, direct and review, from time to time, a study of the provisions of this Chapter and make reports of the recommendations to the Plan Commission and Village Board for investigation and appropriate action.
 - (6) Carry out such additional responsibilities as are hereinafter set forth by the provisions of this Chapter.
- (c) **Authority.** In the enforcement of this Chapter, the Zoning Administrator shall have the power and authority for the following:
- (1) At any reasonable time and for any proper purpose to enter upon any public or private premises and make inspection thereof.
 - (2) Upon reasonable cause or question as to proper compliance, to revoke any building or occupancy permit and issue cease and desist orders requiring the cessation of any building, moving, alteration or use which is in violation of the provisions of this Chapter, such revocation to be in effect until reinstated by the Zoning Administrator or the Zoning Board of Appeals, or take any other action as directed by the Village Board to insure compliance with or to prevent violation of its provisions.
 - (3) In the name of the Village and with authorization of the Village Board commence any legal proceedings necessary to enforce the provisions of this Chapter or the Building Code, including the collection of forfeitures provided for herein.

Sec. 13-1-222 Role of Specific Village Officials in Zoning Administration.

- (a) **Plan Commission.** The Plan Commission, together with its other statutory duties, shall make reports and recommendations relating to the plan and development of the Village of Bangor to the Village Board, other public officials and other interested organizations and citizens. In general, the Plan Commission shall have such powers as may be necessary to enable it to perform its functions and promote municipal planning. Under this Chapter, its functions are primarily recommendatory to the Village Board pursuant to guidelines set forth in this Chapter as to various matters and, always, being mindful of the intent and purposes of this Chapter. Recommendations shall be in writing. A recording thereof in the Commission's minutes shall constitute the required written recommendation. The Commission may, in arriving at its recommendation, on occasion of its own volition, conduct its own public hearing. The Plan Commission shall have the powers to conduct and hold public hearings on all proposed amendments to the Village Zoning Ordinance as provided in Sec. 62.23(7)(d), Wis. Stats.
- (b) **Village Board.** The Village Board, the governing body of the Village of Bangor, subject to recommendations by the Plan Commission and the holding of public hearings by said Board, has ultimate authority to grant planned unit development applications, issue conditional use permits, make changes and amendments in zoning districts, the zoning map and supplementary floodland zoning map and to amend the text of this Chapter. The

Village Board may delegate to the Plan Commission the responsibility to hold some or all public hearings as required under this Chapter.

- (c) **Zoning Board of Appeals.** A Zoning Board of Appeals is established to provide an appeal procedure for persons who deem themselves aggrieved by decisions of administrative officers in enforcement of this Chapter. See Article N of this Chapter for detail provisions.

Sec. 13-1-223 Zoning Permit.

- (a) **Zoning Permit Required.** No building permit for a new structure, new use of land, water or air, or change in the use of land, water or air shall hereafter be issued and no structure or part thereof shall hereafter be located, erected, moved, reconstructed, extended, enlarged, converted, or structurally altered unless the application for such permit has been examined by the office of the Zoning Administrator and has issued a zoning permit indicating that the proposed use of land, buildings or structures and any future proposed buildings or structures comply with all of the provisions of this Chapter.
- (b) **Application.** Applications for a zoning permit shall be made to the Zoning Administrator and shall include the following where pertinent and necessary for proper review:
- (1) Names and addresses of the applicant, owner of the site, architect, professional engineer and contractor.
 - (2) Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; existing and proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site lies.
 - (3) Plat of survey prepared by a land surveyor registered in the State of Wisconsin or other map drawn to scale and showing such of the following as may be required by the Zoning Administrator: the location, boundaries, dimensions, uses, and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; public utilities; off-street parking, loading areas and driveways; existing highway access restrictions; high water; channel, floodway and floodplain boundaries; and existing and proposed street, side and rear yards.
 - (4) Additional information as may be required by the Zoning Administrator.
- (c) **Application; Dimensions.** All dimensions shown relating to the location and size of the lot shall be based on actual survey. The lot and the location of the building thereon shall be staked out on the ground before construction is started.
- (d) **Issuance or Denial.** The Zoning Administrator shall issue or refuse to issue a zoning permit within thirty (30) days after receipt of an application therefor. Refusal to issue a zoning permit shall be given in writing, with the reasons for such refusal.
- (e) **Proper Applicants; In General.** The Zoning Administrator may request proper proof of the applicant showing that he/she is a proper applicant, under the terms of this Chapter.

The application for a zoning permit or certificate of compliance shall not be considered filed until such time as the requested proof is filed with the Zoning Administrator office. The Zoning Administrator may revise the form of application for zoning permit and certificate of compliance to conform with the terms of this Chapter. If the applicant is not the fee simple owner of the property involved, the name of the owner of any lienholder shall be included in the application. The following shall be considered proper applicants for a zoning permit or certificate of compliance under the terms of these zoning regulations:

- (1) Record title owner under properly recorded instrument of conveyance;
- (2) Vendee under properly recorded land contract;
- (3) Vendee under written contract of sale, agreement to sell, earnest money agreement, or similar real estate agreement;
- (4) Duly authorized agent for any of the above.

(f) **Permit Validity.**

- (1) A zoning permit shall be granted or denied in writing by the Zoning Administrator within thirty (30) days of application and the applicant shall post such permit in a conspicuous place at the site.
- (2) The zoning permit shall expire within six (6) months unless substantial work has commenced or within eighteen (18) months after the issuance of the permit if the structure for which a permit is issued is not substantially completed, in which case of expiration, the application shall reapply for a zoning permit before commencing work on the structure.

(g) **Conditions for Refusal; Appeal Procedure.** The Zoning Administrator shall not issue a zoning permit for any property, the improvement of which might tend to interfere with the exterior lines of planned new streets, highways, parkways, parks or playgrounds, or the exterior lines of planned widening or extending of existing streets, highways, parkways, parks or playgrounds. Any person who feels aggrieved by the decision of the Zoning Administrator may appeal to the Zoning Board of Appeals pursuant to Article N of this Chapter.

(h) **Fees.** Prior to issuing a zoning permit the Zoning Administrator or his/her designee shall collect from the applicant to defray the cost to the Village of processing the application, a permit fee.

(i) **Additional Requirements.** In addition to other requirements of this Chapter, no building or zoning permit shall be issued unless:

- (1) Sanitary sewer and water is available, or installation thereof has been approved by the Village Board or, alternatively, with the approval of the Village;
- (2) A sanitary sewer system in accordance with SPS 382, Wis. Adm. Code, and related sections thereof, has been approved for the premises and the premises is in compliance with NR112.01 through NR112.25, Wis. Adm. Code.
- (3) Site plan approval pursuant to Section 13-1-224 may be required.

Sec. 13-1-224 Certificate of Compliance.

- (a) **In General.** No vacant land shall be occupied or used, and no building erected, altered or moved shall be occupied until a certificate of occupancy has been issued by the Zoning Administrator. Such certificate shall show that the building or premises or part thereof and the proposed use thereof are in conformity with the provisions of these zoning regulations. Such certificate shall be applied for when the application is made for a zoning permit and shall be issued within ten (10) days after the completion of the work specified in such land permit application, but only if the building or premises and the proposed use thereof conform with all the requirements of these zoning regulations.
- (b) **Temporary Certificate.** Under such rules and regulations as may be established by the Village Board, the Zoning Administrator may issue a temporary certificate of occupancy for part of a building.
- (c) **Issuance.** Upon written request from the owner, the Zoning Administrator shall issue a certificate of occupancy for any building or premises certifying, after inspection, the extent and kind of use made of the building or premises, and whether or not such use conforms to the provisions of this Chapter.

Sec. 13-1-225 Site Plan Approval.

- (a) **Site Plan Approval.** All applications for zoning permits for any construction, reconstruction, expansion or conversion (including mobile home parks and subdivisions) in an R-5, B-1, B-2, BI-3 or SP-1 District shall require site plan approval by the Plan Commission in accordance with the requirements of this Section.
- (b) **Application.** The applicant for a zoning permit shall also submit a site plan and sufficient plans and specifications of proposed buildings, machinery and operations to enable the Plan Commission or its expert consultants to determine whether the proposed application meets all the requirements applicable thereto in this Chapter.
- (c) **Administration.** The Zoning Administrator shall make a preliminary review of the application and plans and refer them, along with a report of his/her findings, to the Plan Commission within ten (10) days. The Plan Commission shall review the application and may refer the application and plans to any expert consultants selected by the Village Board to advise whether the application and plans meet all the requirements applicable thereto in this Chapter. Within thirty (30) days of its receipt of the application, the Plan Commission shall authorize the Zoning Administrator to issue or refuse a Zoning Permit based on the sufficiency of the site plan.
- (d) **Requirements.** In acting on any site plan, the Plan Commission shall consider the following:
 - (1) The appropriateness of the site plan and buildings in relation to the physical character of the site and the usage of adjoining land areas.

- (2) The layout of the site with regard to entrances and exits to public streets; the arrangement and improvement of interior roadways; the location, adequacy and improvement of areas for parking and for loading and unloading and shall, in this connection, satisfy itself that the traffic pattern generated by the proposed construction or use shall be developed in a manner consistent with the safety of residents and the community, and the applicant shall so design the construction or use as to minimize any traffic hazard created thereby.
 - (3) The adequacy of the proposed water supply, drainage facilities and sanitary and waste disposal.
 - (4) The landscaping and appearance of the completed site. The Plan Commission may require that those portions of all front, rear and side yards not used for off-street parking shall be attractively planted with trees, shrubs, plants or grass lawns and that the site be effectively screened so as not to impair the value of adjacent properties nor impair the intent or purposes of this Section.
- (e) **Effect on Municipal Services.** Before granting any site approval, the Plan Commission may secure such professional recommendations from retained experts as may be deemed necessary, with special attention to the effect of such approval upon existing municipal services and utilities. Should additional facilities be needed, the Plan Commission shall forward its recommendations to the Village Board and shall not issue final approval until the Village Board has entered into an agreement with the applicant regarding the development of such facilities.

Sec. 13-1-226 Violations and Penalties.

- (a) **Violations.** It shall be unlawful to use or improve any structure or land, or to use water or air in violation of any of the provisions of this Chapter. In case of any violation, the Village Board, the Zoning Administrator or any property owner who would be specifically damaged by such violation may cause appropriate action or proceeding to be instituted to enjoin a violation of this Chapter or cause a structure to be vacated or removed.
- (b) **Remedial Action.** Whenever an order of the Zoning Administrator has not been complied with within thirty (30) days after written notice has been mailed to the owner, the resident agent or occupant of the premises, the Village Board, the Zoning Administrator or the Village Attorney may institute appropriate legal action or proceedings.
- (c) **Penalties.**
 - (1) Any person, firm or corporation who fails to comply with the provisions of this Chapter or any order of the Zoning Administrator issued in accordance with this Chapter or resists enforcement shall, upon conviction thereof, be subject to a forfeiture and such additional penalties as provided for in Section 1-1-6 of this Code of Ordinances.

- (2) Failure to obtain a permit prior to commencement of work under this Chapter shall double the fee for the required permit.
- (3) The Village of Bangor may refuse to issue a building permit for structures/parcels in violation of any provision of this Zoning Code.

Sec. 13-1-227 Fees.

The following fees shall be applicable for this Chapter:

- (a) **Rezoning and Zoning Permit Application.** A fee per application (including repetitions of previous applications) is required, as prescribed by the fee schedule in Section 1-3-1.
- (b) **Conditional Use Permit Application.** All conditional use applications shall be filed with the Village Administrator along with a filing fee prescribed in Section 1-3-1.
- (c) **Variance and Appeals Applications.** All applications for variances and appeals shall be filed with the Village Administrator along with a filing fee prescribed in Section 1-3-1.
- (d) **Building Permit Application.** The fees for building permits shall be established in Title 15, Building Code, of this Code of Ordinances.

Sec. 13-1-228 through Sec. 13-1-239 Reserved for Future Use.

Article M: Changes and Amendments to the Zoning Code

Sec. 13-1-240 Authority.

Whenever the public necessity, convenience, general welfare or good zoning practice requires, the Village Board may, by ordinance, change the district boundaries established by this Chapter and the Zoning Map incorporated herein and/or the Supplementary Floodland Zoning Map incorporated herein, or amend, change or supplement the text of the regulations established by this Chapter or amendments thereto. Such change or amendment shall be subject to the review and recommendation of the Plan Commission.

Sec. 13-1-241 Initiation of Changes or Amendments.

The Village Board, the Plan Commission, the Zoning Board of Appeals and other government bodies and any private petitioners may apply for an amendment to the text of this Chapter to the District boundaries hereby established or by amendments hereto in the accompanying zoning map made a part of this Chapter and/or the Supplementary Floodland Zoning Map to be made a part of this Chapter by reference.

Sec. 13-1-242 Procedure for Changes or Amendments.

(a) Petition.

- (1) Petitions for any change to the district boundaries and map(s) or amendments to the text regulations shall be addressed to the Village Board and shall be filed with the Village Administrator. The person requesting such action shall provide all information requested on the petition including:
 - a. Name and street address of the petitioner.
 - b. The lot number of any real estate owned by the petitioner adjacent to the area proposed to be changed.
 - c. Legal description of the property to be altered.
 - d. The existing use of all buildings on such land.
 - e. The principal use of all properties within three hundred (300) feet of such land.
 - f. Purpose for which such property is to be used.
 - g. Reciting of facts indicating that the proposed change will not be detrimental to the general public interest and the purposes of this Chapter.
 - h. Names and addresses of all abutting and opposite property owners within three (300) feet of the property to be altered.

- i. Plot plan or survey plat, drawn to scale, showing the property to be rezoned, location of structures, and property lines within three hundred (300) feet of the parcel.
 - j. Any further information requested to the petition or which may be required by the Plan Commission to facilitate the making of a comprehensive report to the Village Board.
 - (2) Failure to supply such information shall be grounds for dismissal of the petition.
 - (3) A petition for change or amendment submitted by a private property owner shall be prepared in triplicate and filed with the Village Administrator and shall be accompanied by the appropriate fee to defray the cost of giving notice, investigation and other administrative processing.
- (b) **Plan Commission Recommendation.** The Village Board or the Village Administrator shall cause the petition to be forwarded to the Plan Commission for its consideration and recommendation. The Plan Commission shall review all proposed amendments to the text and zoning map(s) within the corporate limits and shall recommend in writing that the petition be granted as requested, modified or denied. A recording of the recommendation in the Plan Commission's official minutes shall constitute the required written recommendation. In arriving at its recommendation, the Plan Commission may on occasion, of its own volition, conduct its own public hearing on proposed amendment(s).
- (c) **Public Hearing.**
 - (1) The Village Board, following receipt of recommendation of the Plan Commission, shall hold a public hearing upon each proposed change or amendment, giving notice of the time, place and the change or amendment proposed by publication of a Class 2 notice, under Chapter 985, Wis. Stats. At least ten (10) days' prior, written notice shall also be given to the clerk of any municipality within one thousand (1,000) feet of any land to be affected by the proposed change or amendment.
 - (2) The Village Board may delegate to the Plan Commission the responsibility to hold public hearings as required under this Section.
- (d) **Village Board Action.** Following such hearing and after consideration of the Plan Commission's recommendations, the Village Board shall vote on the proposed ordinance effecting the proposed change or amendment. A three-fourths (3/4) vote of the full Village Board membership is required to override the Plan Commission's determination.

Sec. 13-1-243 Protest.

- (a) **Statutory Protest – Rezoning.** In the event of a protest against amendment to the zoning map, duly signed and acknowledged by the owners of twenty percent (20%) or more, either of the areas of the land included in such proposed change, or by the owners of twenty percent (20%) or more of the land immediately adjacent extending one hundred (100) feet

therefrom, or by the owners of twenty percent (20%) or more of the land directly opposite thereto extending one hundred (100) feet from the street frontage of such opposite land, such changes or amendments shall not become effective except by the favorable vote of three-fourths (3/4) of the full Village Board membership.

- (b) **Statutory Protest – Zoning Code Text Amendment.** In the event of protest against amendment to the text of the regulations of this Chapter, duly signed and acknowledged by twenty percent (20%) of the number of persons casting ballots in the last general election, it shall cause a three-fourths (3/4) vote of the full Village Board membership to adopt such amendment.

Sec. 13-1-244 through Sec. 13-1-259 Reserved for Future Use.

Sec. 13-1-260 Appeals to the Zoning Board of Appeals.

- (a) **Scope of Appeals.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Village of Bangor affected by any decision of the administrative officer. Such appeal shall be taken within thirty (30) days of the alleged grievance or determination in question by filing with the officer(s) from whom the appeal is taken and/or the Village Administrator a notice of appeal specifying the grounds thereof, together with payment of a filing fee as may be established by the Village Board. The officer(s) from whom the appeal is taken shall forthwith transmit to the Zoning Board of Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) **Stay of Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Zoning Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his/her opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) **Powers of Zoning Board of Appeals.** In addition to these powers enumerated elsewhere in this Code of Ordinances, 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 Zoning Administrator or Building Inspector.
 - (2) **Variances.** To hear and grant appeals for variances as will not be contrary to the public interest where, owing to 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 application for interpretations of the zoning regulations and the boundaries of the zoning districts; the Plan Commission may make a recommendation but is not mandatory.
 - (4) **Substitutions.** To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made; the Plan Commission may make a recommendation but is not mandatory. Whenever the Zoning Board of Appeals permits such a substitution, the use may not thereafter be changed without application.
 - (5) **Unclassified Uses.** To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted

in the district; the Plan Commission may make a recommendation but is not mandatory.

- (6) **Temporary Uses.** To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses; the Plan Commission may make a recommendation but is not mandatory. The permit shall be temporary, revocable, subject to any condition required by the Zoning Board of Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.
- (7) **Permits.** The Zoning Board of Appeals may reverse, affirm wholly or partly, modify the requirements appealed from and may issue or direct the issue of a permit.

Sec. 13-1-261 Hearing on Appeals.

The Zoning Board of Appeals shall fix a reasonable time for the hearing, cause notice thereof to be published in the official newspaper not less than seven (7) days prior thereto, cause notice to be given to the appellant or applicant and the administrative officer(s) appealed from by regular mail or by personal service not less than five (5) days prior to the date of hearing. In every case involving a variance, notice shall also be mailed not less than five (5) days prior to the hearing of the fee owners of records of all land within one hundred (100) feet of any part of the subject building or premises involved in the appeal.

Sec. 13-1-262 Decisions of Zoning Board of Appeals.

- (a) **Timeframe.** The Zoning Board of Appeals shall decide all appeals and applications within thirty (30) days after the public hearing and shall transmit a signed copy of the Board's decision to the appellant or applicant and the Zoning Administrator.
- (b) **Conditions.** Conditions may be placed upon any zoning permit ordered or authorized by the Zoning Board of Appeals.
- (c) **Validity.** Variances, substitutions or use permits granted by the Zoning Board of Appeals shall expire within eighteen (18) months unless substantial work has commenced pursuant to such grant.

Sec. 13-1-263 Variances.

- (a) **Purpose.**
 - (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause him/her undue hardship or create conditions causing greater harmful effects than the initial condition.

A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.

- (2) The Zoning Board of Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district uses prohibited in that district, permit a lower degree of flood protection that the flood protection elevation for the particular area or permit standards lower than those required by state law.
 - (3) For the purposes of this Section, "unnecessary hardship" shall be defined as an unusual or extreme decrease in the adaptability of the property to the uses permitted by the zoning district which is caused by facts, such as rough terrain or good soil conditions, uniquely applicable to the particular piece of property as distinguished from those applicable to most or all property in the same zoning district.
- (b) **Application for Variances.** The application for variation shall be filed with the Village Administrator. Applications may be made by the owner or lessee of the structure, land or water to be affected. The application shall contain the following information:
- (1) Name and address of applicant and all abutting and opposite property owners of record.
 - (2) Statement that the applicant is the owner or the authorized agent of the owner of the property.
 - (3) Address and description of the property.
 - (4) A site plan showing an accurate depiction of the property.
 - (5) Additional information required by the Village Administrator, Building Inspector, Village Engineer, Zoning Board of Appeals and/or Zoning Administrator.
- (c) **Public Hearing of Application.**
- (1) The Zoning Board of Appeals shall conduct at least one (1) public hearing on the proposed variation. Notice of such hearing shall be given not more than thirty (30) days and not less than seven (7) days before the hearing in one (1) or more of the newspapers in general circulation in the Village of Bangor, and shall give due notice to the parties in interest, the Zoning Administrator and the Village Board. At the hearing the appellant or applicant may appear in person, by agent or by attorney. The Zoning Board of Appeals shall thereafter reach its decision within thirty (30) days after the final hearing and shall transmit a written copy of its decision to the appellant or applicant, Zoning Administrator and Village Board.
- (d) **Action of the Zoning Board of Appeals.** For the Zoning Board of Appeals to grant a variance, it must find that:
- (1) Denial of variation may result in hardship to the property owner due to physiological consideration. 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 the Zoning Code should be changed.

- (2) The conditions upon which a petition for a variation is based are unique to the property for which variation is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (3) The purpose of the variation is not based exclusively upon a desire to increase the value or income potential of the property.
 - (4) The granting of the variation 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.
 - (5) The proposed variation will not undermine the spirit and general and specific purposes of the Zoning Code.
- (e) **Conditions.** The Zoning Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.
- (f) **Standards for Qualifying For A Variance.** To qualify for a variance, the applicant must demonstrate that their property meets the following three (3) requirements:
- (1) **Unique Property Limitations.**
 - a. The applicant must show that the property has conditions that are unique or special to that property, that such unique physical characteristics prevent compliance with the regulations of this Zoning Code. Examples, but not limited to, of such conditions are physical limitations unique to the property such as wetlands or exceptionally unique steep slopes.
 - b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unique property limitation" test:
 1. Financial considerations of the applicant.
 2. The personal circumstances of the applicant (i.e. need for an expanded garage, a growing family, an unemployed family member returning home, etc.).
 3. The existence of nearby Zoning Code violations.
 4. Lack of objections from neighbors.
 - (2) **No Harm To Public Interests.** To qualify for a variance, the applicant must demonstrate that the proposed variance is not contrary to the public interest. In applying this test, the Zoning Board of Appeals must consider the impacts of the variance proposal, and, if setting a precedent, the cumulative impacts of similar projects on the interests of the neighbors, the overall Village of Bangor and the general public. Such factors are generally identified in Section 13-1-4.

(3) **Unnecessary Hardship.**

- a. To qualify for a variance, the applicant must demonstrate that the special condition(s) of the property creates an unnecessary hardship. When determining whether an unnecessary hardship exists, the property as a whole shall be considered rather than a portion of the property.
- b. The following are non-exclusive examples of items Wisconsin courts have decided cannot be a basis for granting a variance under the "unnecessary hardship" test:
 1. Conditions which are self-imposed or created by a prior owner (i.e. owner expands home and then argues there is no suitable location for a proposed new garage).
 2. Economic or financial hardship to the applicant (i.e. construction of a new garage in a complying location would cost more than placing the garage in a location requiring a variance).
 3. Lack of objections from neighbors.
- c. Due to Wisconsin court decisions, the "unnecessary hardship" determination requires that the Zoning Board of Appeals apply different tests for use variances and area variances:
 1. For a use variance, unnecessary hardship can be determined to exist only if the property owner can show that he/she would have *no reasonable use of the property* without a variance. A use variance would permit a property owner to put property to an otherwise prohibited use.
 2. For an area variance, unnecessary hardship can be determined to exist only if the property owner can show that compliance with the requirements of the Zoning Code would *unreasonably prevent the property owner from using the land for a permitted purpose* (leaving the property owner without any use that is permitted for the property under the Zoning Code) or would render *conformity with such zoning restrictions unnecessarily burdensome*. Area variances are intended to provide an increment of relief (usually small) from a physical dimensional requirement of the Zoning Code such as building height or setback requirements. In applying the test for an area variance, the Zoning Board of Appeals shall consider the purpose of the Zoning Code, the Zoning Code's restrictions on the applicant's property, and the cumulative effects granting of a variance would have on the neighborhood, community and on the public interests.
 3. Unless the Zoning Board of Appeals finds that a property cannot be used for any permitted purpose, area variances shall not be granted for greater than a forty percent (40%) deviation in the area, setback, height or density requirements specified in this Chapter.

13-1-264

(Note: The above standards reflect the Wisconsin Supreme Court's decisions in *State ex rel. Ziervogel v. Washington County Board of Adjustment*, 2004 WI 23, 269 Wis. 2d 549, 676 N.W.2d 401 and *State v. Waushara County Board of Adjustment*, 2004 WI 56, 271 Wis. 2d 547, 679 N.W.2d 514).

Sec. 13-1-265 through Sec. 13-1-279 Reserved for Future Use.