

# WATERFORD TOWNSHIP



*"where the path from the past and the future meets"*

## ZONING ORDINANCE #2001-5 AMENDMENT #2020-1

### Section 5 – Section 5.03 Board of Appeals and Adjustments

**SECTION 1. Amendment to Section 3.** Section 5.03 of the Waterford Township Zoning Ordinance 2001 regarding the Board of Appeals and Adjustments is hereby amended to delete the existing language and replace it with the following:

#### **5.03 Board of Appeals and Adjustments**

##### **A. Powers of the Board of Appeals and Adjustments**

The Town Board of Waterford shall, pursuant to the authority contained in Minnesota Statutes Chapter 462, as amended, act as the Board of Appeals and Adjustments. The Board of Appeals and Adjustments shall have the following powers with respect to the Zoning Ordinance:

1. To hear and decide appeals where it is alleged that there is an order, requirement, decision or determination made by the Zoning Official or other administrative officer in the enforcement of this Ordinance.
2. To hear requests for variances from the literal provisions of this Ordinance in instances where their strict enforcement would cause practical difficulties because of circumstances unique to the individual property under consideration, and to grant such variances only when it is demonstrated that such actions will be in keeping with the spirit and intent of this Ordinance.
3. Appeals shall be taken to the Board of Adjustment within 45 days of receipt of notice from the Zoning Official of any order, requirement, decision or determination made by him.
4. An appeal stays all proceedings in furtherance of the action appealed, unless the Board of Adjustment certifies that, by reason of the facts stated in the certificate, a stay would cause imminent peril to life or property.
5. Appeals from Planning and Zoning Commission decisions may be made as provided by law.

##### **B. Applications, Hearings, Decisions, and Criteria**

1. Applications
  - A. An application for a variance shall be filed with the Zoning Official on a proper form provided for that purpose. Appeals shall be filed in a manner prescribed by the Zoning Official.
  - B. Application forms shall be complete, and shall clearly specify the grounds of the appeal. Where required by the nature of the appeal, the application shall be accompanied by detailed plans, drawn to scale, showing all details of the land area and the nature of the circumstances surrounding the appeal.

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- C. The application shall be accompanied by the required fee.
  - D. The Zoning Official shall reject, and refuse to refer to the Board of Adjustment any application not accompanied by the required fee or by other materials and information as required by this Ordinance.
2. Hearings
- A. The Board of Adjustment shall conduct a public hearing on each variance or appeal.
  - B. The Board of Adjustment shall set a reasonable time for the hearing of the variance or appeal.
  - C. The Town Clerk shall cause to be published a notice of the public hearing before the Board of Adjustment in the official newspaper at least ten (10) days prior to the hearing date. Notices shall be mailed to all owners of property within 350 feet of the parcel included in the request not less than ten (10) days prior to the hearing. Failure to give such notice or defects or errors in the notice shall not invalidate the proceedings, provided a good faith attempt to comply with the notice requirements was made.
  - D. Such hearings shall be conducted according to applicable Minnesota Statutes and to the rules of procedure of the Board of Adjustment.
3. Criteria for Decisions
- A. The Board of Adjustment shall always act with due consideration to promoting the public health, safety, and welfare, encouraging the most appropriate use of land and conserving property value, and shall permit no structure, building or use detrimental to a neighborhood.
  - B. Variances
    1. Variances shall not allow a use not provided for in a zoning district.
    2. Variances shall run with the land and are transferable with the real estate.
    3. Variances may be granted when the applicant establishes:
      - a. There are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the landowner proposes to use the property in a reasonable manner not permitted by the zoning ordinance. Economic considerations alone do not constitute practical difficulties; and

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- b. The plight of the landowner is due to circumstances unique to the property not created by the landowner; and
  - c. The variance will not alter the essential character of the locality; and
  - d. The variance is in harmony with the general purposes and intent of the ordinance; and
  - e. The variance is consistent with the comprehensive plan.
4. The Board of Adjustment may impose conditions in the granting of a variance, provided such conditions are directly related to and bear a rough proportionality to the impact created by the variance.
  5. When in the opinion of the Board of Adjustment a variance may result in a material adverse effect on the environment, the appellant may be required by the Board of Adjustment to demonstrate the nature and extent of the effect.
  6. It shall be the burden of the applicant to demonstrate sufficient practical difficulty to sustain the need for a variance. Absent a showing of practical difficulty as provided in Minnesota Statutes and this Ordinance, the Board of Adjustment shall not approve any variance.

#### C. Appeals

The Board of Adjustment may reverse or affirm wholly or partly, or modify the order, requirement, decision or determination appealed and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit.

#### 4. Decisions

- A. The Board of Adjustment shall keep a written record of its proceedings showing the vote of each member on each question, or if absent or failing to vote indicating such fact.
- B. The Board of Adjustment shall render its decisions in writing stating its reasons in sufficient detail so that it can be determined that the decision was made in reliance on testimony given at the public hearing, and according to the criteria contained in this Ordinance.
- C. A certified copy of an approved order issued by the Board of Adjustment acting upon any variance or appeal shall be filed with the County Recorder or Registrar of Titles for record. The order shall include a legal description of the property involved. It shall be the responsibility of the Zoning Official to carry out this provision.
- D. After any variance or appeal to the Board of Adjustment has been approved the appellant shall have 60 days, after receipt of notice of the decision, to make application to the Zoning Official for any permit necessary to begin the structure or the use for which the variance or

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appeal was made.

#### C. Appeals from Board of Adjustment Decisions

All decisions by the Board of Adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the State shall have the right to appeal within 30 days, after the receipt of notice of the decision, to the District Court of the County on questions of law and fact.

**SECTION II. Incorporation of Amendments.** The Township Zoning Administrator is hereby authorized and directed to incorporate the amendments made by this Ordinance into the Waterford Township Zoning Ordinance 2001 and such updated version shall constitute the official Waterford Township Zoning Ordinance.

**SECTION III. Severability.** Should any section, subdivision, clause or other provision of this Ordinance be held invalid in any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole, or any part thereof, other than the part held invalid.

**SECTION IV. Effective Date.** This Ordinance shall be effective upon its passage and the first day of publication in summary format.

**ADOPTED** by the Waterford Township Board of Supervisors this 13<sup>th</sup> day of February 2020.

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Liz Messner, Chairperson/Supervisor

Attest:

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Elizabeth Wheeler, Clerk

Public Hearing – February 13, 2020

Adopted by Board – February 13, 2020