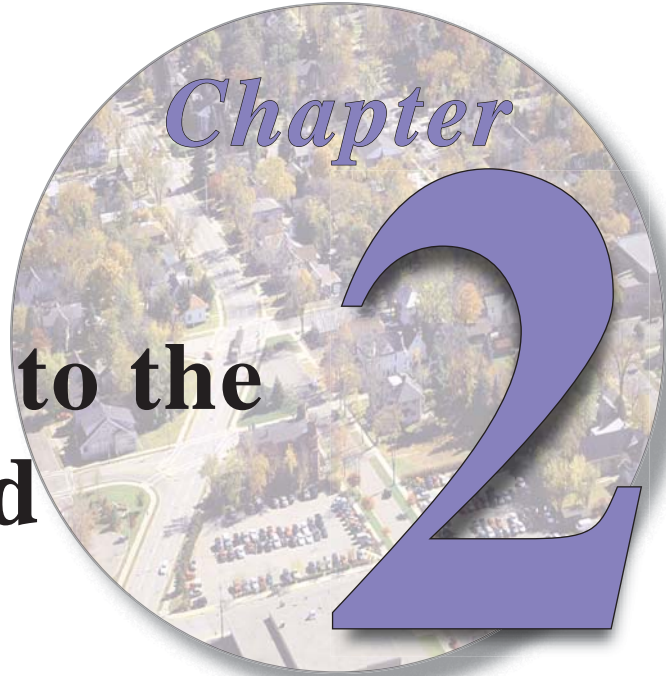


Introduction to the Zoning Board



Role of the Zoning Board

Communities that have adopted a zoning ordinance are required to appoint a zoning board of adjustment or appeals. The primary role of a zoning board is to review and decide cases where there is an alleged error in a zoning decision or where a relaxation of the ordinance is sought. Zoning boards may be authorized to participate in three types of decision-making:⁸

- **Administrative appeal** - a legally contested order or decision of the zoning official (usually associated with a contested map or text interpretation).
- **Variance** – a relaxation of a dimensional or use standard specified in the zoning ordinance.
- **Special exception/conditional use** – a use or dimensional exception listed in the zoning ordinance that is not permitted by right but may be granted if certain conditions are met. (Zoning boards do not have this authority unless authorized by local ordinance.)

While it is tempting to think of zoning boards as providing flexibility in administration of zoning, flexibility is strictly limited by state and local

⁸ County or town – Wis. Stat. § 59.694(7); City, village or town exercising village powers – Wis. Stat. § 62.23(7)(e)7.

Section I – Zoning Board Basics

A note on special exceptions and conditional uses

Wisconsin Statutes authorize zoning boards to make **special exceptions** to the terms of a zoning ordinance when also authorized by local ordinance. Wisconsin court decisions utilize the terms special exception and conditional use interchangeably. Some Wisconsin communities use the terms interchangeably while others make a distinction.

Special exceptions generally refer to any exception made to the zoning ordinance including dimensional changes.

Conditional uses, in some ordinances, refer only to land *uses*.

Any exception to the zoning ordinance, whether dimensional or use in nature, must be specifically listed in the zoning ordinance. Throughout the remainder of the text we will consider these terms together and refer to them as conditional uses.

laws that determine the authority of zoning boards and provide criteria for decision-making. Local governing bodies and the public must look beyond the zoning board for added flexibility. Map and text amendments, performance standards, alternative design standards, standards for conditional uses and mitigation requirements that compensate for adverse effects of development all provide opportunities for flexibility that can be integrated into local ordinance provisions.

Zoning Board Authority

Authority for zoning board decision-making is determined by Wisconsin Statutes. The primary role of the zoning board, as outlined in state statutes is to hear and decide administrative appeals and variances related to general zoning. In almost all cases, zoning boards also assume this role related to shoreland zoning, shoreland-wetland zoning, exclusive agricultural zoning, construction site erosion control and storm water management zoning. Unless provisions are adopted for county zoning boards under Wis. Stat. § 59.69, zoning boards do not have authority to hear and decide administrative appeals or variances related to subdivision ordinances. This authority is reserved for the governing body or plan commission.

In some but not all communities, zoning boards are authorized to hear and decide special exceptions/conditional use permits related to the types of zoning previously mentioned. A local ordinance must specifically authorize one of three bodies to perform this role: the governing body, the plan commission or the zoning board.

Statutory references for zoning board authority and exceptions are provided in Figure 3 and referenced in the footnotes.

Figure 3: Statutory Authority of Zoning Boards

| | County | City | Village | Town |
|---|---|----------------------------|--------------|------------------------------|
| General zoning | 59.694(7) | 62.23(7)(e)7 | 61.35 | 60.62(1) and 60.65(3)&(5) |
| Shoreland zoning | 59.692(4)(b) | 62.23(7)(e)7 | 61.35 | |
| Shoreland-wetland zoning | 59.692(4)(b) | 62.231(4)(a) | 61.351(4)(a) | |
| Floodplain zoning | NR 116.19 | NR 116.19 | NR 116.19 | No authority ⁹ |
| Construction site erosion control & storm water management zoning | 59.693(4)(b) | 62.234(4)(b) | 61.354(4)(b) | 60.627(4)(b) |
| Exclusive agricultural zoning | 91.73(1) ¹⁰ | | | |
| Livestock facility siting | 93.90 ¹¹ | | | |
| Renewable energy systems | 59.694(7)(d) | 62.23(7)(c) ¹² | | |
| Public utility permits | No authority (unless adopted under 59.69) ¹³ | 62.23(7)(e)7 ¹⁴ | | |
| Solid waste management | No authority (unless adopted under 59.69) ¹⁵ | No authority ¹⁶ | | |
| Subdivision/land division | No authority (unless adopted under 59.69) ¹⁷ | No authority ¹⁸ | | |
| Uniform Dwelling Code | No authority ¹⁹ | | | |
| Well codes | No authority ²⁰ | | | |
| Private sewage systems | No authority ²¹ | | | |

⁹ Wis. Admin. Code §§ NR 116.05 & 116.19 do not mention town authority to implement floodplain zoning.

¹⁰ Wis. Stat. § 91.73(1) requires administration of local farmland preservation ordinances consistent with the general zoning authority for county, city, village, and town jurisdictions.

¹¹ Appeals of livestock facility siting decisions are taken directly by the Livestock Facility Siting Review Board within 30 days of the decision and are appealed to circuit court thereafter. Authority to decide conditional use permits required under general zoning or exclusive agricultural zoning reverts to the decision-maker authorized under those ordinances.

¹² Not explicit in statutes. Stated purposes of zoning include: “to provide adequate light and air, including access to sunlight for solar collectors and to wind for wind energy systems” [Wis. Stat. § 62.23(7)(c)]. Zoning board powers apply to all ordinances adopted pursuant to this chapter [Wis. Stat. § 62.23(7)(e)7].

¹³ No express mention of authority for zoning board unless such an ordinance is adopted under Wis. Stat. § 59.69.

¹⁴ Wis. Stat. § 62.23(7)(e)7 states “The board may permit... a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for public convenience and welfare.”

¹⁵ Under Wis. Stat. § 59.70(2h) counties may adopt ordinances necessary to conduct solid waste management activities, but there is no express authority for zoning board unless related ordinances are adopted under authority of Wis. Stat. § 59.69.

¹⁶ There is no express authority for solid waste management activities by cities, villages or towns.

¹⁷ Wis. Stat. §§ 236.10(1)&(3) delegate this authority to the governing body or a plan committee/commission unless provisions are adopted under Wis. Stat. § 59.69.

¹⁸ Wis. Stat. §§ 236.10(1)&(3) delegate this authority to the governing body or a plan committee/commission.

¹⁹ Wis. Admin. Code § Comm 20.02 requires strict conformity with Uniform Dwelling Code (UDC) provisions. Wis. Admin. Code § Comm 20.19 allows only the Department of Commerce to consider variances to UDC provisions.

²⁰ Under Wis. Stat. § 280.21 only counties are able to assume administration of the state well code, and requests for variances and interpretations are made to the DNR (Wis. Admin. Code § NR 845.06).

²¹ Under Wis. Stat. § 145.24(1) the Dept. of Commerce considers variances to siting and design standards for privately owned wastewater treatment systems.

Section I – Zoning Board Basics