

TERI LEHRKE, WCPC, City Clerk

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September 16, 2016

Stephen F. Matty
5260 Grandwood Pl. E.
La Crosse WI 54601

Re: Appeal of Chief Inspector's Interpretation of the City of La Crosse Zoning Code, Ch. 115
pursuant to Wis. Stat. sec. 62.23(7)(e)7 and La Crosse Municipal Code sec. 115-59(1).

Dear Mr. Matty,

In your letter dated September 15, 2016, you request to be notified of any reason that would preclude the above matter from being noticed and heard by the Board of Zoning Appeals at their regularly scheduled meeting on September 21, 2016.

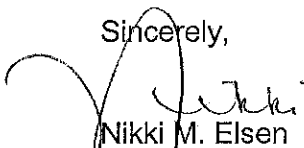
In absence of City Clerk Teri Lehrke, I have reviewed your letter, the La Crosse Municipal Code of Ordinances and the Procedural Rules of the Board of Zoning Appeals; in addition Wis. Stat. sec. 62.23(7)(e).

Pursuant to Municipal Code sec. 115-60(a) *Appeals procedure*, appeals (including those filed per 115-59(1)) "shall be filed with the secretary ... within the time limit provided by the rules of the Board".

Article II (Meetings and Hearings), paragraph 1, of the Board of Zoning Appeals Procedural Rules, states that appeals are to be in the hands of the City Clerk no later than fourteen (14) days prior to the meeting. A copy of the Procedural Rules is provided with this communication for your reference.

With your appeal being filed today, the soonest a hearing can be held is Friday, September 30, 2016. We have notified Chairman Nohr of your appeal and request for a special meeting. Chairman Nohr is contacting board members to determine whether a quorum can be reached on or as soon after that date as possible.

Sincerely,


Nikki M. Elsen
Deputy City Clerk
(608) 789-7555
elsenn@cityoflacrosse.org

enc.

Cc: Chief Inspector
Fire Chief

DIVISION 2. - BOARD OF ZONING APPEALS; VARIANCES AND APPEALS^[2]*Footnotes:**--- (2) ---**Cross reference— Boards and commissioners generally, ch. 2, art. X;**State Law reference— Board of Zoning Appeals, Wis. Stat. § 62.23(7)(e).*

Sec. 115-57. - Created; membership.

A Board of Appeals is hereby established. The Board shall consist of five members and two alternates who shall be appointed by the Mayor, subject to confirmation of the Council. The members of the Board shall serve without compensation. The Mayor shall designate one of the members Chair. The City Clerk shall serve as Secretary of the Board. The term of office of the members of the Board shall be for three years, with no more than two terms expiring the same year. The term of the alternates shall be for staggered terms of three years. Annually, the Mayor shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one member of the Board so refuses or is absent.

(Code 1980, § 15.29(A))

State Law reference— Board of Appeals membership, Wis. Stat. § 62.23(7)(e)2.

Sec. 115-58. - Organization.

The Board of Appeals shall organize and adopt rules of procedure for its own government in accordance with the provisions of this chapter and Wis. Stat. § 62.23(7). Meetings shall be held at the call of the Chair and at such other times as the Board may determine and shall be open to the public. Minutes of the proceedings and a record of all actions shall be kept by the secretary, showing the vote of each member upon each question, the reasons for the Board's determination, and its findings of facts. The records shall be immediately filed in the office of the Secretary and shall be a public record. A copy of any decision granting a variance from floodplain regulations within any floodplain area shall be mailed to the Department of Natural Resources. A representative from the Fire Department - Division of Fire Prevention and Building Safety shall attend all meetings for the purpose of providing technical assistance to the Board.

(Code 1980, § 15.29(B); Ord. No. 4911, § I(attch.), 1-14-2016)

Cross reference— Charter ordinance relative to quorum and vote required for Board to act, app. A, § 18.

State Law reference— Similar provisions, Wis. Stat. § 62.23(7)(e)3.

Sec. 115-59. - Powers.

The Board of Appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Fire Department - Division of Fire Prevention and Building Safety.
- (2) To hear and grant appeals for variances as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in 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. A variance:
 - a. Shall be consistent with the spirit and intent of this chapter.
 - b. Shall not permit any change in established flood elevations or profiles.
 - c. Shall not be granted for a use that is common to a group of adjacent lots or premises. (In such a case, this chapter would have to be amended through proper procedures.)
 - d. Shall not be granted unless it is shown that the variance will not be contrary to the public interest or damaging to the rights of other persons or property values in the area.
 - e. Shall not be granted for actions which require an amendment to the floodplain zoning provisions of this chapter.
 - f. Shall not have the effect of allowing or expanding a use or structure which is prohibited in that zoning district by the floodplain zoning provisions of this chapter or Wis. Admin. Code ch. NR 116.
 - g. Shall not be granted solely on the basis of economic gain or loss.
 - h. Shall not be granted for a self-created hardship.
 - i. Shall not permit a lower degree of flood protection in the Floodway District.
 - j. Should not allow any floor or crawlspace below Regional Flood Elevation for residential or commercial structures as required by Wis. Admin. Code ch. NR 116.

- (3) To hear and decide interpretations of the zoning regulations and the boundaries of the zoning districts. The following procedure shall be used by the Board of Appeals in disputes of a floodplain zoning district boundary:
 - a. Flood district boundaries. When the location of the Flood Zoning Overlay or Floodway district boundaries are established by flood maps or engineering studies pursuant to section 115-110, the flood elevations or "flood profiles" for the point in question shall be the governing factor in locating the district boundary. If no elevation or profiles are available to the Board, any other available evidence may be examined.
 - b. In all cases, the person contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the Board of Appeals and if he chooses, submit his own technical evidence. If the Board determines that the district boundary as mapped is incorrect, the person contesting the location of the boundary may then proceed to petition La Crosse City Council for a map amendment, pursuant to section 115-87.
- (4) To permit a change of nonconforming use to another of the same classification where the Board, after public hearing thereon, deems that the proposed use will be no more harmful to the surrounding neighborhood, from the standpoint of the purposes of this chapter, than the existing nonconforming use; provided, however, the Board of Appeals shall not have authority to authorize structural alterations or additions to be made to the building or structures nor authorize an extension of a nonconforming use.
- (5) 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.
- (6) The Board may reverse, affirm wholly or partly modify the requirements appealed from, and may direct the issue of a permit.
- (7) The Board may request assistance from other City officers, departments, commissions and boards.
- (8) The Chair, or in his absence the Acting Chair, may administer oaths and compel the attendance of witnesses.
- (9) To permit uses listed in section 115-153(a) in the Heavy Industrial District in accordance with the provisions of said section.
- (10) To permit a private garage to house more than three noncommercial automobiles, as an accessory building to a dwelling, hospital, school or other public or semi-public institution, provided that the lot whereon such garage is to be located shall contain an area of not less than 2,000 square feet per motor vehicle housed.

- (11) If recommended by the Public Service Commission of Wisconsin, to permit, in appropriate cases and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter, a building or premises to be erected or used by a public service corporation or for a public purpose in any location and for any purpose which is reasonably necessary for the public convenience and welfare.
- (12) When a variance is granted from the provisions of the floodplain regulations, the applicant shall be notified in writing by the Chair or Secretary of the Board of Appeals that increased flood insurance premiums may result. A copy of this notification shall be maintained with the variance appeal record.

(Code 1980, § 15.29(C); Ord. No. 4911, § 1(attch.), 1-14-2016)

State Law reference— Similar provisions, Wis. Stat. § 62.23(7)(e)7.

Sec. 115-60. - Appeals.

- (a) *Appeals procedure.* Appeals from the decision of the Fire Department - Division of Fire Prevention and Building Safety concerning the literal enforcement of this chapter may be made by any office, department, board or bureau of the City. Every appeal shall be filed with the secretary with a complete copy to Fire Department - Division of Fire Prevention and Building Safety on forms provided by the Fire Department - Division of Fire Prevention and Building Safety and the City Clerk's Office, within the time limit provided by rules of the Board. The Secretary of the Board shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. Such appeals shall include the following:
 - (1) Name and address of the appellant or applicant and all owners of property in the City of La Crosse within 100 feet of the property which is the subject of the appeal.
 - (2) Map showing 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, off-street parking areas, and driveways; existing highway access restrictions; existing and proposed street, side and rear yards. In addition, the map shall show the location and use of any abutting land and their structures within 20 feet of the subject site. Additional information may be required as specified in the forms provided by the Fire Department - Division of Fire Prevention and Building Safety and City Clerk's Office.
 - (3)

- If the appeal seeks a variance or determination to place a structure, except a fence, within four feet or less of a property line, then the applicant shall submit with its application or appeal an affidavit in recordable form that is signed by the adjacent property owner agreeing to the location of the joint lot line. A copy of the affidavit shall be presented to the Chief Inspector.
- (4) Additional information required by the Board of Appeals Fire Department - Division of Fire Prevention and Building Safety.
- (5) Fee receipt from the Director of Finance/Treasurer in the amount established by resolution.
- (b) *Hearings.* The Board of Appeals shall fix a reasonable time and place for the hearing of the appeal, give public notice as required by State statute, and shall give due notice to the parties in interest including the Fire Department - Division of Fire Prevention and Building Safety and Department of Natural Resources if such appeal involves floodway or floodplain zoning provisions. At the hearing, the appellant may appear in person, by agent or by attorney.
- (c) *Decision.* The Board of Appeals shall decide all appeals within a reasonable time after the final hearing and shall transmit a signed copy of the Board's decision to the appellant and to the Department of Natural Resources if such appeal involves Floodway or Flood Plain Zoning provisions.
- (d) *Shoreland-wetland zoning.* As to appeals involving provisions in chapter 109:
- (1) Before making a decision on an appeal, the Board of Appeals shall, within a reasonable period of time, hold a public hearing. The Board shall give public notice of the hearing by publishing a Class 2 notice under Wis. Stat. ch. 985 specifying the date, time and place of the hearing and the matters to come before the Board. At the public hearing, any party may appear in person, by agent or by attorney and present testimony.
- (2) A copy of such notice shall be mailed to the parties in interest and the appropriate district office of the Department at least ten days prior to all public hearings on issues involving shoreland-wetland zoning.
- (3) The final disposition of an appeal to the Board of Appeals shall be in the form of a written decision, made within a reasonable time after the public hearing, signed by the Board chairperson. Such decision shall state the specific facts which are the basis of the Board's determination and shall either affirm, reverse, or modify the order, requirement, decision or determination appealed.
- (4)

A copy of such decision shall be mailed to the parties in interest and the appropriate district office of the Department of Natural Resources within ten days after the decision is issued.

(Code 1980, §§ 15.29(D)—(F), 15.36(E)(4)(C), (E)(4)(D); Ord. No. 4911, § I(attch.), 1-14-2016)

State Law reference— Appeals, Wis. Stat. § 62.23(7)(e)4—(7)(e)6.

Sec. 115-61. - Review by Court of Record.

Any person or persons aggrieved by any decision of the Board of Appeals may present to the Court of Record a petition duly verified setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days after filing of the decision in the office of the Board of Appeals.

(Code 1980, § 15.29)

State Law reference— Appeals to court, Wis. Stat. § 62.23(7)(e)10.

Secs. 115-62—115-80. - Reserved.

**BOARD OF ZONING APPEALS
OF THE CITY OF LA CROSSE, WISCONSIN
PROCEDURAL RULES**

**ARTICLE I
Officers and Duties**

1. The Board shall consist of five (5) members, who are appointed for three-year staggered terms. Two (2) additional members shall be appointed as alternates for three-year staggered terms.
2. At the organizational meeting of the Board to be held annually in April, the Board shall elect one of its members as Vice-Chair.
3. The Chair who shall be designated by the Mayor, shall preside at all meetings and hearings of the Board, but in the event of his/her absence or disability, the Vice-Chair shall preside.
4. The Chair shall decide all points of procedure, unless overruled by a majority of the Board then in session.
5. The Chair shall supervise the work of the Secretary.
6. The Secretary, subject to the direction of the Board or Chair, shall conduct all correspondence of the Board, send out all required notices, attend all meetings and hearings of the Board, keep the calendars and minutes of the proceedings, and keep all records and files deemed necessary by the Board.
7. The appellant shall provide the Secretary with such information and data as may be required to advise the Board fully with reference to the appeal or application. Any failure or refusal of appellant reasonably so to do shall be ground for the dismissal of the appeal or application.
8. The records of appeals shall be kept in such a manner as to be accessible to the public at all reasonable hours. The Secretary shall maintain an index of all cases coming before the Board.

**ARTICLE II
Meetings and Hearings**

1. Regular meetings and hearings of the Board shall be held on the third Wednesday of each month at 7:00 P.M. at City Hall, and shall be open to the public. Appeals are to be in the hands of the City Clerk no later than fourteen (14) days prior to the meeting.
2. Special meetings may be called by the Chair, or at the request of two members, provided that notice of the same shall be mailed to each member of the Board at least twenty-four (24) hours prior thereto, except as provided for in Article VII.
3. A quorum at meetings and hearings of the Board shall consist of four members. (*Chart. Ord. #26*)
4. In the absence of any personal appearance on behalf of appellant, the Board shall dispose of the matter on the record.
5. Property owners affected by the application may appear either in person, by agent or by attorney, and may express their written approval of or objection to the granting of the application by filing a letter in the office of the City Clerk, or in lieu thereof may, upon oath, testify thereto.
6. The procedure at hearing shall be as follows, to wit:

- A. City's case.
 - 1. Evidence of Building Inspector/Zoning Administrator.
 - 2. Evidence of City offices or department.
- B. Appellant's case.
 - 1. Evidence of Appellant.
 - 2. Evidence of property owners in favor of appeal or application.
- C. Adverse property owner's case.
- D. Arguments, if deemed necessary.

All witnesses shall testify on oath and when represented by counsel, and shall do so in response to oral interrogations.

Opposing parties shall have the right to cross-examine adverse witnesses and parties.

Public hearings before the Board may be limited to ten (10) minutes for the proponents, ten (10) minutes for the opponents and a three (3) minute rebuttal for each side. The Board reserves the right to extend these time limits as it determines.

Any presentation to the Board is limited to written materials, diagrams and photographs. No electronic devices for presentations will be allowed. This restriction does not apply to the presentation by the Building and Inspections Department. *(Approved 12/19/07)*

7. The concurring vote of four (4) members of the Board shall be necessary to correct any error, grant a variance, make an interpretation, and permit an unclassified or substitute use. *(Chart. Ord. #26)*

8. No request for rehearing will be entertained unless new evidence is submitted, which could not reasonably have been presented at the previous hearing. Requests for rehearing shall be in writing by the property owner, or owner's agent, and shall recite the reasons for the request. If such request is granted, the case shall be put on the calendar for a rehearing, and shall be subject to the same requirements (as to notices and payment of fee) as the original hearing.

9. After an appeal has been heard and denied by the Board, no other appeal for the same property may be made for a period of one (1) year from the date of filing of the decision, unless the appeal is substantially different from the appeal which was denied. The determination as to whether the appeal is substantially different is in the discretion of the City's Chief Inspector. The one (1) year waiting period does not apply to appeals for variances which have lapsed due to a failure to commence or complete work as required. *(Approved 11/19/08)*

10. Appellants, witnesses, city staff and all members of the public shall conduct themselves with civility and respect for the Board and each other. They shall not engage in any conduct that may be characterized as uncivil, abrasive, abusive, hostile, disruptive, or obstructive. Failure to do so may result in the Board barring the individual(s) from participating in Board proceedings and/or requiring the individual(s) to leave the proceedings. *(Approved 3/18/09)*

ARTICLE III Proceedings upon Appeal

1. Every appeal shall be taken by filing with the City Clerk a notice of appeal upon a form provided by the Secretary. The notice shall set forth in reasonable detail all information necessary for a complete determination, including the following general guidelines:

- A. Address of the subject property;
- B. Abutting street names and alleys, if any;

- C. Scale of not less than 1"=50';
- D. Size of the subject property;
- E. Improvements and exterior measurements on the subject property;
- F. Distances between improvements on the subject property;
- G. Distance between the nearest part of the improvements to the exterior lot lines of the subject property;
- H. Change(s) and/or addition(s) requested;
- I. Abutting properties and land within 20 feet, showing all improvements on the side facing the subject property and include the distance to the exterior lot line adjoining the subject property;
- J. Legible numbers and/or figures;
- K. Indication of the direction "North";
- L. Easements, streets, driveways, off-street parking areas.

If additional information is deemed necessary by the Chair or Secretary of the Board, it shall be supplied by the appellant upon request and prior to the hearing thereon. In the absence of the appellant providing such additional information or the aforementioned general guidelines, the Board may refuse to hear the appeal.

2. Any communication purporting to be an appeal or application for variation or modification shall be regarded as a mere notice of intent to seek relief until it is made in the required form.

3. Upon receipt of such communication the writer shall be supplied with the proper forms for appeal, and if such form and required information shall not be filed within twenty (20) days the case may be dismissed.

4. Every appeal shall be filed within six (6) months from the date of a refusal to issue a permit or from the date of any order, ruling, decision or determination from which an appeal to this Board may be taken.

5. The Secretary shall cause a Class 1 notice of the time and place of the hearing upon such appeal or application, to be printed in the form prescribed by the Board, in the official newspaper at least five days prior to the time of the hearing. An affidavit of publication of such notice shall be filed with the Secretary of the Board.

6. The Secretary shall serve notice by mail upon the owners of property in the City of La Crosse within one hundred (100) feet of the property affected by such appeal or application at least five (5) days prior to the time set for hearing.

7. Each appeal or application shall be made by the owner, or owner's agent, of the property affected and shall deal with a specific case.

ARTICLE IV Calendar

1. Each appeal or application filed in the proper form and with the required information shall be serial numbered and shall be put upon the calendar of the Board by the Secretary and set for hearing.

2. Cases will be assigned for hearing in the order in which they appear on the calendar, except that an appeal or application may be advanced for hearing by order of the Board upon good cause being shown.

3. When all appeals or applications cannot be disposed of on the day set, the Board may adjourn from day to day or to any future day, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such continuance shall be given in accordance with Wisconsin's Open Meetings Law.

ARTICLE V
Final Disposition of Appeals or Applications

1. The final disposition of any appeal or application shall be by order affirming, modifying or reversing the order or decision of the Building Inspector/Zoning Administrator, and such order shall set forth specifically, the grounds upon which the Board's determination is based. In the case of an application for modification or variation, the order shall grant or deny the request and shall set forth the reason therefore, or shall make such other and further order as may be deemed necessary to dispose of the request.

2. The vote of each member of the Board upon each order shall be recorded. The original order shall be filed with the Board, and a copy thereof shall be filed with the Building Inspector/Zoning Administrator and mailed to the appellant. A copy of any decision granting a variance from flood plain regulations within any flood plain area shall be mailed to the Department of Natural Resources.

3. Every order shall be signed by the Chair or Vice Chair and attested to by the Secretary as evidence of the action of the Board.

4. The appellant may withdraw his/her appeal or application at any time prior to determination thereof with the consent of the Board.

ARTICLE VI
Time Limitations

1. All approvals shall remain valid so long as the approved conditions are maintained.

2. Where an application for a permit or variance is granted or an appeal from a decision of the Building Inspector/Zoning Administrator is determined in favor of the appellant, work contemplated by the appeal shall begin within one hundred eighty (180) days of the date of the determination, and the building or alteration shall be completed within the required time-frame established by municipal code. Upon failure to comply with these requirements or with any conditions attached to such permit or variance, such approval shall become void, unless extended, upon due application to the Board.

ARTICLE VII
Amendment to Rule

Amendments to these rules may be made by the Board at any regular or special meeting, provided notice in writing thereof has been given to each member five (5) days prior thereto. Suspension of any rules of procedure may be ordered at any meeting by a vote of not less than four members of the Board.

(e) Board of appeals.

- 62.23(7)(e)2.
1. The council which enacts zoning regulations pursuant to this section shall by ordinance provide for the appointment of a board of appeals, and shall provide in such regulations that said board of appeals may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained. Nothing in this subdivision shall preclude the granting of special exceptions by the city plan commission or the common council in accordance with the zoning regulations adopted pursuant to this section which were in effect on July 7, 1973 or adopted after that date.
 2. The board of appeals shall consist of 5 members appointed by the mayor subject to confirmation of the common council for terms of 3 years, except that of those first appointed one shall serve for one year, 2 for 2 years and 2 for 3 years. The members of the board shall serve at such compensation to be fixed by ordinance, and shall be removable by the mayor for cause upon written charges and after public hearing. The mayor shall designate one of the members as chairperson. The board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The mayor shall appoint, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the mayor shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall so act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.
 3. The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this section. Meetings of the board shall be held at the call of the chairperson and at such other times as the board may determine. The chairperson, or in the chairperson's absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.
 - 3m. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
 4. Appeals to the board of appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the city affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.
 5. An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion,

cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the 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.

6. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it, and give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. In any action involving a listed property, as defined in s. 44.31 (4), the board shall consider any suggested alternatives or recommended decision submitted by the landmarks commission or the planning commission.
7. The board of appeals shall have the following powers: To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this section or of any ordinance adopted pursuant thereto; to hear and decide special exception to the terms of the ordinance upon which such board is required to pass under such ordinance; to authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The council of a city may enact an ordinance specifying an expiration date for a variance granted under this subdivision if that date relates to a specific date by which the action authorized by the variance must be commenced or completed. If no such ordinance is in effect at the time a variance is granted, or if the board of appeals does not specify an expiration date for the variance, a variance granted under this subdivision does not expire unless, at the time it is granted, the board of appeals specifies in the variance a specific date by which the action authorized by the variance must be commenced or completed. An ordinance enacted after April 5, 2012, may not specify an expiration date for a variance that was granted before April 5, 2012. A variance granted under this subdivision runs with the land. The board may permit in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
8. In exercising the above mentioned powers such board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
10. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may, within 30 days after the filing of the decision in the office of the board of appeals, commence an action seeking the remedy available by certiorari. The court shall not stay proceedings upon the decision appealed from, but may, on application, on notice to the board of appeals and on due cause shown, grant a restraining order. The board of appeals shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof. If necessary for the proper disposition of the matter, the court may take evidence, or appoint a referee to take evidence and report findings of fact and conclusions of law as it directs, which shall constitute a part of the proceedings upon which the determination

of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

- 14.** Costs shall not be allowed against the board unless it shall appear to the court that the board acted with gross negligence or in bad faith, or with malice, in making the decision appealed from.
- 15.** All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

