Dane County
Board of Adjustment

Rules and Procedures

Resolution 176, 2007-2008 – As Adopted by Dane County Board on January 17, 2008.

As Amended by the Dane County Board of Adjustment on ~~January 27~~XXXX XX, 202~~52~~.

Formatted: Font color: Red

TABLE of CONTENTS

1. General Provisions
   - Rules
   - Staff

2. Meetings and Agendas
   - Meetings open to public
   - Meeting schedule and special meetings
   - Quorum
   - Meeting format

3. Board Duties and Powers

4. Variances, Appeals and Applications
   - Time limit for filing
   - Variance and Appeal documentation
   - Contested cases
   - Fees

5. Hearings
   - Schedule
   - Notification
   - Required appearance
   - Order of Business standards
   - Withdrawal of application

6. Decisions and Dispositions of Cases
   - Notification of decisions

7. Reconsideration

8. Amendments or Suspension of Rules

1. GENERAL PROVISIONS

a) The Board of Adjustment (hereinafter referred to as "the Board") shall be governed by s. 59.694 Wis. Statutes, the Dane County Code of Ordinances Sections 10.101(9) and 10.101(10), and these Rules and Procedures (hereinafter referred to as 'the Rules'). Whenever any conflict exists between these rules and the laws of the State or County, State laws and County ordinances shall prevail in that order. All references are to the current Wisconsin Statutes.

b) The Board shall have a Chairperson, Vice Chairperson, and Secretary. The Board shall elect these positions. The Chairperson shall run the meeting of the Board in adherence to the items on the agenda with action on items and procedural matters generally managed as prescribed by Robert's Rules of Order except where these rules indicate otherwise. The Chair may deviate from Robert's Rules at any time with the concurrence of the Board.

Commented [HH1]: This section could be revised to include reference to Chapter 7 DCCO rules of the County Board, etc.

c) In the absence of the Chair or if the Chair chooses to relinquish, the Vice Chair shall take on the responsibilities of the Chair, likewise the Secretary may take over for the Chair or Vice Chair.

d) For specific purposes, the Board may suspend these Rules and Procedures as they determine appropriate by a majority vote of those present.

e) Staff from the Department of Planning and Development, Zoning Division (hereafter "Staff"), shall take minutes, prepare agendas, prepare findings of fact, coordinate communications, and otherwise staff the operation of the Board. If staff, for any reason, is not available at any meeting, the Secretary or a designee of the Chair shall take the minutes of the meeting.

2. MEETINGS AND AGENDAS

a) All meetings of the Board shall be properly noticed as required by s.19.84 Wis. Statutes. All meetings and hearings of the Board shall be open to the public, except that the Board may go into closed session as allowed under s. 19.85(1) Wis. Statutes. The final vote on an appeal shall be taken in open session, recorded and open for public inspection in the Zoning Division office. Public notice of all regular and special meetings shall be given to the public and news media as required by the Wisconsin Open Meetings Law.

b) Regular Public Hearing meetings for Variance Appeals and Special Exception Appeals shall be held at the call of the Chair on the fourth Thursday of the month at 6:30 p.m. In-person meetings are held at the City-County Building.

c) Site visit meetings shall be held at the call of the Chair at least two weeks prior to the public hearing at a day and time agreed upon by the Board. The purpose of these site visits is exclusively to view the applicant's site. The Board will not accept testimony at a site inspection. The Board will not take action on a variance, other appeal, or any business that requires a Public Hearing Notice during a site visit meeting.

d) Special meetings may be called by the Chair. At the request of at least two (2) members, the Secretary shall call a special meeting. Notice of a special meeting shall be sent by U.S. Postal Service or by facsimile or by electronic mail or by hand-delivery to each member at least 48 hours prior to the time set for the meeting, unless announcement of the meeting is made at any meeting at which all members are present.

e) In the event it is unreasonable for the Board to hold an in-person meeting, the Board shall meet electronically by means prescribed by the office of the Dane County Board of Supervisors. Electronic meetings shall be properly noticed per these Rules and shall be hosted by Staff. Under this section,

unreasonable shall include, but not be limited to, the closure of the City-County Building to the public, any order from Public Health Madison & Dane County or the Dane County Department of Administration preventing public gatherings.

f) Administrative Appeals and other contested cases may be held at a Special Public Hearing called by the Chair on a date and at a time agreeable to members of the Board, Alternates (if needed), appellants, the Zoning Administrator, and other interested parties.

Commented [HH2]: Consider holding these at regularly scheduled meetings

g) A quorum for any meeting, hearing, or site visit shall consist of three (3) members. If a lesser number is present the Board shall adjourn to a specified time.

h) Use of Alternates: At the call of the chair, alternates may be called upon to ensure a quorum is present at any meeting of the Board. If ~~three (3) or more members~~ any member of the Board will be absent, or recuse themselves in advance due to an agenda item, the chair may call upon one or two of the alternate members to ~~meet the minimum three (3) members required to make a quorum~~have five (5) members present, if at all possible. When possible, members of the Board shall inform the chair or staff at least three (3) days before the site inspection of their absence or recusal so alternates may be informed of their duties.

i) Agendas. The order of business at regular meetings shall be substantially as follows:

I. Call to order
II. Public Comment regarding items not on the Agenda
III. Approval of minutes of previous meetings
IV. Public hearing for current appeals
V. Appeals from previous hearings, requests for reconsideration, and requests for extension of authorization
VI. Other Business -- communications and miscellaneous business
VII. Adjournment

j) The Chair may add or delete any items to the agenda by advising staff in time to provide a legal notice. The Chair may canvas the meeting room to inquire as to how many people are present for a particular item and move those items up or down the agenda with the concurrence of the Board. Appeals and applications shall be heard in numerical order except for good cause shown.

k) The Staff shall record the vote of each member on every question in the minutes or, if the member is absent, fails to vote, or recuses him or herself from the hearing, the minutes shall indicate such fact in the record of the proceedings.

3. BOARD DUTIES AND POWERS

a) See section 10.101(9) and (10), Dane County Code of Ordinances and other references in the Dane County Code of Ordinances, including, but not limited to:

1) Sections 10.806(1) Sign~~s~~ Regulations ~~Ordinance~~
~~2) Section 10.101(7)4. Conditional Use Permits~~
~~3)~~2) 11.99(2) Shoreland & Wetland Zoning Ordinance
~~4)~~3) 17.12(3) and (4) Flood~~zone~~plain Zoning Ordinance
~~5)~~4) 78.08 and 78.09 Airport Height Regulation Ordinance

4. VARIANCES, APPEALS AND APPLICATIONS

a) Appeals of administrative decisions, including appeals of the grant or denial of a conditional use permit, per 10.101(7)4., shall be filed within 30 days after the date of receipt of a written decision or

order from which the appeal is taken by filing a notice of appeal with the Zoning Administrator or the Chair of the Board. The date of receipt by the appellant of the decision, order, requirement or interpretation of the Zoning Administrator or other administrative officer shall be confirmed by the date of the appellant's or other accepting party's signature on a U.S. Postal Service Certified Mail Return Receipt, if any, or by notarized statement of the appellant submitted with the appeal. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day. Failure to meet the time deadline is jurisdictional and the matter will be dismissed on that basis.

Commented [HH3]: Consider language in this section to reflect actual final disposition.

b) An application for a variance shall be made upon forms furnished by the Zoning Division which have been approved by the Board. The applicant or appellant shall provide all information requested on the form, along with any additional information requested by the Chair, or by Staff, which is necessary to inform the Board of the facts of the case. If requested in writing by the applicant, the Chair or Staff shall provide a written list of additional information required. Any variance application that does not substantially comply with the above requirements, as determined by Staff with approval of the Chair, or by the Board, or is in any manner incomplete, may be postponed. Failure to supply such required information may be grounds for dismissal of the application.

c) Any additional information pertaining to a variance shall be submitted a minimum of three (3) weeks prior to the date of the hearing. Applicants wishing to submit information after that date may do so at the Chair's discretion before the hearing or at the time of the hearing. In the event that information is submitted at the time of the hearing, the Board shall be allowed as much time as necessary for consideration of the material. The Board may adjourn from day to day, or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing.

d) An appeal of an administrative decision shall be made in writing to the Board of Adjustment in care of the Zoning Division. The letter shall state the date on which the decision was made, date the appellant received the decision, the name and position of the administrative officer, a description of the project regarding which the decision was made, the specific sections of the Code of Ordinances cited by the administrative officer, and the reason(s) why the person is aggrieved by the decision. A copy of the written decision of the administrative officer shall accompany the written appeal.

e) Parties submitting briefs shall include findings of fact, and conclusions of law for consideration by the Board, along with any other referenced information. Briefs shall:

1. Include pagination, including any exhibits or attachments.
2. Include a table of contents.

All additional information or briefs in an appeal of an administrative decision or other contested case shall be submitted a minimum of three (3) weeks prior to the date of the hearing. Applicants wishing to submit information or briefs after that date may do so at the Chair's discretion before the hearing or at the time of the hearing. In the event that information is submitted at the time of the hearing, the Board shall be allowed as much time as necessary for consideration of the material. The Board may adjourn from day to day or to a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Each party shall supply copies for members of the Board, the Zoning Administrator, Staff, Dane County Corporation Counsel, the Town and all other parties submitting briefs. The information submitted shall be distributed by staff.

f) Contested cases. The appeal of an administrative decision shall be a contested case. All parties involved shall be provided written notice explaining that a contested case includes the right of all parties to cross-examine witnesses as reasonable required for a full and true disclosure of the facts and to have a record of the proceedings made at the appellant's expense by a court reporter or qualified stenographer. A copy of the electronic recording made by the Zoning Division may be obtained at cost.

g) Fees. All applications and appeals filed shall be accompanied by cash, ~~or a~~ check, or credit card remittance for the appropriate amount as noted in Chapter 12, Zoning Fees, Dane County Code of Ordinances.

5. HEARINGS

a) The Board shall set an annual schedule for the hearing of appeals and variances. The schedule shall include a deadline date for the submittal of applications or appeals. All applications or appeals meeting the dates described shall be placed on the corresponding hearing meeting, except the Chair may place an appeal on an earlier or later Public Hearing with the consent of the applicant or appellant.

b) The time, date, and place of the hearing of an application or appeal shall be given by the Zoning Division in the following manner:

1. A notice shall be mailed to all owners of record of properties within five hundred (500) feet of the parcel in question. The notice shall be mailed at least 10 days prior to the hearing.
2. A notice of a public hearing shall be sent by U.S. Postal Service or facsimile or electronic mail or hand-delivery to the appropriate town clerk of the parcel in question at least 10 days prior to the hearing.
3. All variances and appeals that affect shoreland areas as described in the Dane County Code of Ordinances Section 11.02, shall be sent by U.S. Postal Service or facsimile or electronic mail or hand-delivery to the District Office of the Wisconsin Department of Natural Resources (DNR) at least 10 days prior to the hearing. (Reference NR115.)
4. A Class 2 notice shall be published in the Wisconsin State Journal of all hearings thereof under s. 985 Wis. Statutes.

c) The appellant or applicant shall appear or be represented by agent or attorney. In the event that neither the appellant, applicant, nor representative appears at the public hearing, the Board has the discretion to abey the matter to a future meeting or dismiss the appeal or application.

d) The hearing of applications for **variances or other non-contested** cases shall be conducted with the Order of Business as follows below. Written and oral testimony may be received. No hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination. The Board may take official notice of the ordinances of the county, the zoning and location of the subject property and geographical features or other facts that are common knowledge in the county or can be verified by reference to public record.

Formatted: Font: Bold

ORDER OF BUSINESS FOR VARIANCE APPEALS OR NON-CONTESTED CASES:

1. The chair shall call for the hearing of the case.
2. Notice: Staff shall read the Public Hearing Notice.
3. Staff report: Staff may present facts of the case as found in the application and in the records of the county.
4. The appellant or applicant shall provide written information and/or oral testimony. The appellant shall be given five (5) minutes to provide their testimony. The Chair may allow the appellant or applicant to read a statement from the appeal file, if available.
5. The Board members shall have the opportunity to question the appellant or applicant.
6. The Zoning Administrator, administrative officer, or designee may provide information, finding of facts, and summary of the ordinance or decision in question. The Zoning Administrator shall be given five (5) minutes to provide his/her testimony or recommendation.

7. The Board members shall have the opportunity to question the Zoning Administrator, administrative officer, or designee.
8. Interested parties such as neighbors, landowners, and town officials shall have an opportunity to provide testimony. Persons shall be given a time limit of five (5) minutes. Redundant testimony shall not be permitted.
9. The Board members shall have the opportunity to question any persons providing testimony.
10. The appellant or applicant shall be provided the opportunity for rebuttal of the testimony. The person shall be given three (3) minutes.
11. The Chair shall call for the hearing of the case to be closed. Board discussion and deliberation may ensue.
12. Board decision: The Board may render a decision, and shall summarize its Findings of Fact and Conclusions of Law.

e) The hearing of an **administrative appeal or other contested case** shall be conducted with the Order of Business as follows below. Each person presenting a case or statement is entitled to be represented by an agent or attorney, who may speak on his or her behalf for any one or more items in the Order of Business. Each person presenting a case may call witnesses. All witnesses shall be sworn, and no person shall be permitted to testify unless he or she submits to cross-examination. (Reference s. 227.45, Wis. Statutes.) Written and oral testimony may be received. No hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination. The Board may take official notice of the ordinances of the county, the zoning and location of the subject property and geographical features or other facts that are common knowledge in the county or can be verified by reference to public record.

Formatted: Font: Bold

ORDER OF BUSINESS FOR ADMINISTRATIVE APPEALS OR OTHER CONTESTED CASES:

CALL TO ORDER

1) Call to order by the Chair. The Public Hearing Notice shall be read.

OPENING STATEMENTS OF ALL PARTIES PRESENTING A CASE ("Case-In-Chief")

2) Appellant's opening statement. The person shall be afforded five (5) minutes, or may waive the right to present an opening statement.
3) Zoning Administrator's opening statement. The person shall be afforded five (5) minutes, or may waive the right to present an opening statement.
4) Opening statement of other interested parties (hereafter "Parties"). The right to make an opening statement is limited to persons who will present evidence. The person shall be afforded five (5) minutes, or may waive the right to present an opening statement.

APPELLANT'S CASE

5) Appellant presents his or her case, presenting evidence and arguments.
6) Board members may question the appellant.
7) Appellant may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.
8) Cross-examination of the Appellant and/or of any witness called by the Appellant, by the Zoning Administrator, and/or by other Parties presenting a case. No more than one person for each party presenting a case shall cross-examine witnesses. The Chair may limit the number of parties who may cross-examine.
9) Board members may question each witness before and/or after cross-examination.

ZONING ADMINISTRATOR'S CASE, IF APPLICABLE

10) Zoning Administrator presents his or her case, presenting evidence and arguments.
11) Board members may question the Zoning Administrator.

12) Zoning Administrator may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.
13) Cross-examination of the Zoning Administrator and/or of each witness called by the Zoning Administrator as under 8., above.
14) Board members may question each witness before and/or after cross-examination.

OTHER INTERESTED PARTIES' CASES, IF APPLICABLE

15) Each interested party presents their case, presenting evidence and arguments.
16) Board members may question each party.
17) Each party presenting a case may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.
18) Cross-examination of other Parties presenting cases and/or of each witness called by other Parties as under 8., above
19) Board members may question each witness before and/or after cross-examination.

REBUTTAL

20) Rebuttal by appellant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.

STATEMENTS OF NEIGHBORS AND OTHERS NOT PRESENTING CASES

21) Statements of opinion of neighbors, landowners, town officials and others not presenting cases. These parties who wish to testify, but who do not wish to act as witnesses, are not subject to cross-examination. Each person shall be afforded three (3) minutes. Redundant testimony shall not be permitted. Board members may question each person presenting a statement.

CLOSING STATEMENTS

22) Closing statements of those who made or waived opening statements. Parties shall be afforded three (3) minutes for their statement.

BOARD ACTION

23) Board members may discuss the merits of the case and deliberate upon their decision.
24) Board members shall summarize Findings of Fact and Conclusions of Law when reaching a Decision, and may use certiorari review standards.
25) Staff shall create a separate, written Decision document that may be distributed before the Board's next meeting to provide an opportunity for review. Approval of this document shall be placed on the agenda for the next Public Hearing or Special Meeting of the Board. The Board may clarify the language or add reasons for the Decision but may not alter its decision. The Board shall vote to approve the Decision as presented or amended.

~~f) The hearing of an appeal of the grant of denial of a conditional use permit, per 10.101(7)4. shall be conducted with the Order of Business as follows below. Each person presenting a case or statement is entitled to be represented by an agent or attorney, who may speak on his or her behalf for any one or more items in the Order of Business. Each person presenting a case may call witnesses. All witnesses shall be sworn, and no person shall be permitted to testify unless he or she submits to cross-examination. (Reference s. 227.45, Wis. Statutes.) Written and oral testimony may be received. No hearsay evidence will be allowed or relied upon as the sole evidence of any factual determination. The Board may take official notice of the ordinances of the county, the zoning and location of the subject property and geographical features or other facts that are common knowledge in the county or can be verified by reference to public record.~~

ORDER OF BUSINESS FOR APPEAL OF GRANT OR DENIAL OF CONDITIONAL USE PERMIT:

CALL TO ORDER

1) Call to order by the Chair. The Public Hearing Notice shall be read.

BOARD SHALL MAKE A FINDING THAT THE APPEAL IS TIMELY AND THE APPEALANT IS AGGRIEVED BY THE DECISION OF THE ZLR OR THE TOWN BOARD

2) If such a finding cannot be made the Board shall jurisdictionally dismiss the appeal.

3) Upon making such a finding the Board shall determine if the submitted information provided by the appellant is satisfactory to render a decision upon. If the Board finds that the information is sufficient the Chair shall close the public hearing and the Board shall proceed to 6. DECISIONS AND DISPOSITIONS OF CASES below.

4) In the event that additional evidence or testimony is needed, the Board shall proceed as follows.

APPELLANT'S CASE

5) Appellant presents his or her case, presenting evidence and arguments.

6) Board members may question the appellant.

7) Appellant may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.

8) Cross-examination of the Appellant and/or of any witness called by the Appellant, by any Party presenting a case. No more than one person for each party presenting a case shall cross-examine witnesses. The Chair may limit the number of parties who may cross-examine.

9) Board members may question each witness before and/or after cross-examination.

ZLR OR TOWN BOARD, OR REPRESENTATIVE THEREOF, CASE, IF APPLICABLE

10) ZLR or Town Board, or representative thereof, case, presenting evidence and arguments.

11) Board members may question the party.

12) Party may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.

13) Cross-examination of the party and/or of each witness called by the party as under 8., above.

14) Board members may question each witness before and/or after cross-examination.

OTHER INTERESTED PARTIES' CASES, IF APPLICABLE

15) Each interested party presents their case, presenting evidence and arguments.

16) Board members may question each party.

17) Each party presenting a case may call witnesses. All witnesses shall be sworn and no person shall be permitted to testify unless he or she submits to cross-examination, as per s. 227.45, Wis. Statutes.

18) Cross-examination of other Parties presenting cases and/or of each witness called by other Parties as under 8., above

19) Board members may question each witness before and/or after cross-examination.

REBUTTAL

20) Rebuttal by appellant. Rebuttal is limited to matters raised by the adverse parties by way of evidence or argument.

STATEMENTS OF NEIGHBORS AND OTHERS NOT PRESENTING CASES

~~21) Statements of opinion of neighbors, landowners, town officials and others not presenting cases. These parties who wish to testify, but who do not wish to act as witnesses, are not subject to cross-examination. Each person shall be afforded three (3) minutes. Redundant testimony shall not be permitted. Board members may question each person presenting a statement.~~

~~CLOSING STATEMENTS~~

~~22) Closing statements of those who made or waived opening statements. Parties shall be afforded three (3) minutes for their statement.~~

~~BOARD ACTION~~

~~23) Board members may discuss the merits of the case and deliberate upon their decision.~~

~~24) Board members shall summarize Findings of Fact and Conclusions of Law when reaching a Decision, and may use certiorari review standards.~~

~~25) Staff shall create a separate, written Decision document that may be distributed before the Board's next meeting to provide an opportunity for review. Approval of this document shall be placed on the agenda for the next Public Hearing or Special Meeting of the Board. The Board may clarify the language or add reasons for the Decision but may not alter its decision. The Board shall vote to approve the Decision as presented or amended.~~

g) When appeals or applications cannot be disposed of on the hearing day set, the Board may adjourn from day to day or ~~to~~ a day certain, as it may order, and such adjourned day shall be construed as a continuance of the hearing. Notice of such adjournment shall be given to the absent members of the Board.

h) An appellant or applicant may withdraw an appeal or application at any time prior to a Board motion to grant or deny a variance appeal or to affirm or reverse an administrative appeal. Withdrawal of the appeal shall not entitle the appellant or applicant to a refund of the filing fee.

6. DECISIONS AND DISPOSITIONS OF CASES

a) The Board shall render its decision either at the termination of the hearing or within 30 days thereafter and shall notify the interested parties and the Zoning Administrator in writing of its decision.

b) The final disposition of an appeal or application shall be in the form of a written decision or order signed by the Chair. The Minutes of the Board of Adjustment may serve as the written decision for variance appeals. The decision shall state the reasons for the Board's determination with findings of fact and conclusions of law. The decision may affirm, reverse, vary or modify the order, requirement, decision or determination appealed in whole or in part. The decision may grant or deny the variance.

At the direction of the Chair, or by action of a majority of the Board, Staff may prepare a separate, written Decision document to be distributed to Board members for review. Approval of the Decision shall be placed on the agenda of the next Public Hearing or Special Meeting of the Board. The Board may act to clarify the language of the Decision document or add reasons for the Decision, but may not alter its decision. The Board shall vote to approve the Decision document as presented or amended.

c) Every decision of the Board shall be filed with the Dane County Zoning Division within five (5) business days after the decision of the Board. Each decision shall be public record and a copy of the decision shall be sent by certified mail to the appellant or applicant within five (5) business days after the decision.

d) Decisions made affecting shoreland, wetland, or floodplain areas shall be sent to the District Office of the Wisconsin Department of Natural Resources (DNR) within ten (10) days after the decision.

e) All orders or decisions of the Board granting a variance or reversing any action or order of the administrator require the affirmative vote of the majority of the members present.

f) Variances or conditions imposed by any appeal shall be stated in the decision or order embodying the Board's decision and shall also be set forth in any permit issued as a result of the variance or decision and in the final certification of compliance issued under that order by the Zoning Administrator. The certificate of compliance shall be valid only as long as the conditions upon which it is granted are observed. Variances approved by the Board shall expire 12 months after issuance if the performance of work is required and substantial work has not commenced.

7. RECONSIDERATION

a) No appeal or application which has been dismissed or denied shall be considered again within one year of the Board's decision without significant material alteration or revision, except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in sub. b).

b) No rehearing shall be held except upon the affirmative vote of the majority of the members of the Board upon finding that substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. Requests for rehearing shall be in writing, shall state the reasons for the request and shall be accompanied by necessary data and diagrams. Rehearings shall be subject to the same notice requirements as original hearings.

8. AMENDMENTS OR SUSPENSION OF RULES

a) These rules may be amended or rescinded by a majority vote of the Board members at any meeting provided written notice of the proposed amendment or change is given to each member at least 10 days before such meeting. Suspension of the rules may be ordered at any meeting by a majority vote. No suspension or amendment of rules shall be permitted in any contested case without consent of the applicant or appellant or his/her counsel.