

ARTICLE 15 ZONING BOARD OF APPEALS

15.01 CREATION, MEMBERSHIP, TERMS OF OFFICE

The legislative body of the village may act as a board of appeals upon questions arising under a zoning ordinance. The legislative body shall establish rules to govern its procedure as a board of appeals. In the alternative, if the legislative body of the village desires, the legislative body may appoint a Zoning Board of Appeals consisting of 5 members, one (1) of whom shall be from the Planning Commission and one (1) of whom shall be from the legislative body, and the remaining members shall be appointed from among property owners or residents within the Village. The terms of the members of the Zoning Board of Appeals shall be three (3) years except that the appointment of the first members shall be for terms of 1, 2 and 3 years, respectively, so as nearly as possible to provide for the subsequent appointment of an equal number of members each year. After the initial appointments, each member shall hold office for the full 3-year term. The legislative body may remove members appointed to the Zoning Board of Appeals for cause.

15.02 COMPENSATION

The legislative body of the Village may authorize the remuneration of the members of the Zoning Board of Appeals for attendance at each meeting.

15.03 RULES OF PROCEDURE

The Zoning Board of Appeals shall adopt its own rules and regulations to ensure proper conduct of its meetings. Copies of such regulations shall be made available to the public at the office of the Village Clerk.

Meetings of the Zoning Board of Appeals shall be open to the public and shall be held at the call of the chairman and at such times as the Zoning Board of Appeals may determine.

The Zoning Board of Appeals shall act by resolution. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to grant variances from the requirements of this Ordinance.

Minutes shall be recorded of all proceedings, which shall contain evidence and data relevant to every case considered, the grounds of every determination, the votes of the members and the final disposition of each case. Such minutes shall be attached to the standard forms required of persons appealing as part of the Zoning Board of Appeals permanent records. Such minutes shall become a public record and as such be filed in the

office of the Village Clerk. A copy of the decision shall be sent promptly to the applicant, to the appellant, and to the Zoning Administrator.

The Zoning Board of Appeals shall elect a secretary from among its members whose responsibility shall be to ensure that records of the Zoning Board of Appeal's actions are taken and maintained. The Village Attorney shall act as legal council for the Zoning Board of Appeals and shall, upon request by the Zoning Board of Appeals, be present at designated meetings.

15.04 ALTERNATE MEMBERS

The Village Council shall appoint not more than 2 alternate members for the same term as regular members of the Zoning Board of Appeals. The alternate members may be called on a rotating basis as specified in the zoning ordinance to sit as regular members of the Zoning Board of Appeals in the absence of a regular member. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. The alternate member called shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the Zoning Board of Appeals.

15.05 AUTHORITY OF THE ZONING BOARD OF APPEALS

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decision, or determination made by an administrative official or body charged with the enforcement of the provisions of this ordinance as follows:

1. The interpretation of zoning maps.
2. Hearing and deciding on appeals resulting from any order, requirements, decision or determination made by an administrative body or official charged with the enforcement of this Ordinance.
3. The interpretation of the language of this Ordinance when its meaning is unclear, or when there is uncertainty whether the language applies to a particular situation.
4. The determination of non-conforming uses when such questions of use are an issue.

The Zoning Board of Appeals shall grant variances from the strict application of the Zoning Ordinance based on competent, material and substantial evidence that one (1) or more of the following facts or conditions exist:

1. When by reason of exceptional narrowness, shallowness, shape or topography of the specific parcels of property at the time of the original enactment of this ordinance or

amendments thereto or where the strict application of these regulations or amendments thereto would result in exceptional or undue hardship upon said property; provided, that such relief or variances can be granted without substantial impairment of the intent or purpose of this ordinance. This provision shall not be construed to permit the board under the guides of a variance to change the uses of land.

2. Special conditions or circumstances exist which are peculiar to the land, building or structure involved and which are not applicable to other lands, buildings, or structures in the same district and which conditions or circumstances will cause unnecessary hardship or practical difficulties if this Ordinance is enforced.
3. Literal interpretation of the provisions and requirements of this Ordinance would deprive the appellant of property rights commonly enjoyed by other properties in the same zoning district under the terms of this Ordinance.
4. Special conditions or circumstances do not exist or result from the actions of the Appellant (i.e., self-imposed hardship).
5. Authorization of the variance will not cause substantial detriment to the neighboring properties and will not be contrary to the spirit, purpose, and intent of this Ordinance.
6. The property cannot reasonably be used in a manner consistent with existing zoning requirements.
7. Non-conforming use of neighboring lands, buildings, or structures and other non-related variances shall not in itself be grounds for the authorization of a variance.

15.05 LIMITATIONS ON THE ZONING BOARD OF APPEALS

1. The Zoning Board of Appeals shall not have authority to grant variances from the decisions of the Planning Commission regarding Special Land Uses except for procedural errors or omissions.
2. The Zoning Board of Appeals shall not have authority to reverse or modify any refusal of a permit or any other order requirement, decision or determination which conforms to the provisions of this Ordinance and which therefore is not erroneous.
3. The Zoning Board of Appeals shall not have authority to validate, ratify or legalize any violation of law or any of the regulations of this Ordinance.
4. The Zoning Board of Appeals shall not have authority to amend any portion of this Ordinance or the zoning map.

15.06 APPEALS FOR ADMINISTRATIVE REVIEW

An appeal for administrative review may be made by any person where it is alleged that there is error in any order, requirement, decision, grant or refusal made by ruling or administrative action in enforcement of the provisions of this Ordinance. An appeal under this section shall be filled with the Zoning Administrator within thirty (30) days after the date of the action appealed.

15.07 APPEALS FOR A VARIANCE

An appeal for a variance from the requirements of any provision or requirement of this Ordinance may be made at any time. An appeal under this section shall be filled with the Zoning Administrator in the form of a written application. The applicant shall present a statement and adequate evidence showing:

1. That there are exceptional or extraordinary circumstances or conditions applying to the land, building, or structure referred to in the application which circumstance or conditions do not apply generally to land, buildings and or structures in the same district.
2. That the granting of the application is necessary for the preservation and employment of substantial property rights of the petitioner.
3. That the granting of such application will not, under the circumstances of the particular case, materially affect adversely the health or safety of persons residing or working in the neighborhood of the property of the applicant and will not under the circumstances of the particular case be materially detrimental to the public welfare or injurious to property or improvements in said neighborhoods.

15.08 APPLICATION AND PROCEDURE

1. A petition for an appeal shall be filed with the Zoning Administrator and shall state the action, ruling or section of the Ordinance to be appealed, the date of the action or ruling being appealed, name and title of the person making the action or ruling, the facts or circumstances which the petitioner believes are grounds for appeal. The petition shall be signed and dated by the petitioner, and shall be accompanied by a nonrefundable fee as set by resolution of the village council to cover administrative and publication costs.
2. The Zoning Administrator shall immediately transmit to the Zoning Board of Appeals the application and all the papers constituting the record upon which the action appealed from was taken.

3. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal and give notice of the appeal to persons whom real property within 300 feet of the premises in question and to the occupants of single and 2 family dwellings within 300 feet and to the parties making the appeal. The notice shall be served personally or by mail at least five (5) business days prior to the date of the scheduled hearing addressed to the respective owners and tenants at the address given in the last assessment roll. If a tenant's name is not known, the term "occupant" may be used. The notice shall:
 - a. Describe the nature of the Appeal request.
 - b. Indicate the property that is the subject of the appeal request.
 - c. State when and where the Appeal request will be considered.
 - d. Indicate when and where written comments will be received concerning the request.
4. A public hearing, with notification as required in this section, shall be held before a decision on the Appeal request.
5. Any party may appear at such hearings in person or by agent or by attorney, but attendance at hearings is not mandatory.
6. The Zoning Board of Appeals shall have the authority to adjourn the scheduled hearing prior to the date thereof by public notice in the manner prescribed for calling such a hearing and at or during the time of such hearing either on its own motion or of any interested party. Adjournments shall be for the purpose of obtaining additional information or evidence, to cause such further notice as it deems proper to be served on other property owners or interested persons, or to ensure a quorum of its membership
7. An appeal stays all proceedings in furtherance of the action from which appealed.

15.09 FINDINGS BY THE ZONING BOARD OF APPEALS

1. In all cases where the Zoning Board of Appeals shall grant or deny a variance of any provision or requirements of this Ordinance, the Zoning Board of Appeals shall specifically declare its finding of fact in accordance with the following:
 - a. That there are special physical conditions fully described in the findings of the Zoning Board of Appeals applying to the land or building for which the variance is sought which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood.
 - b. That special conditions or circumstances do not exist or result from the actions of the appellant (i.e. self-imposed hardship).
 - c. That literal interpretation of the provisions and requirements of this Ordinance would deprive the appellant of property rights commonly enjoyed by other properties in the

same zoning district under the terms of this Ordinance and the granting of variances is necessary for the reasonable use of land or buildings and that the variance granted by the Zoning Board of Appeals is the minimum variance that will accomplish this purpose.

2. In all cases where the Zoning Board of Appeals grants a variance from the strict application of the requirements of this Ordinance it shall be the duty of such Zoning Board of Appeals to attach such conditions and safeguards as may be required including the posting of a bond to secure the performance of any condition in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this Ordinance and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
3. In granting a variance the Zoning Board of Appeals may require any wall, fences, or landscaping which it deems necessary to protect the value of adjacent properties or to prevent any hindering of the appropriate development of adjacent land.

15.10 DECISIONS

The Zoning Board of Appeals shall return its decision as to each appeal within a reasonable time, and shall promptly mail a copy of its decision to the applicant or appellant and to the Zoning Administrator.

The decision of the Zoning Board of Appeals is final. However, a person having an interest affected by the zoning Ordinance may appeal to the Circuit Court.

No appeal for a variance which has been denied in whole or in part by the Zoning Board of Appeals shall be accepted for reconsideration for a period of one (1) year from the date of last denial except on grounds of newly discovered evidence or proof of changed conditions.

15.11 EXPIRATION

Each variance granted shall become null and void unless the appellant has utilized the provisions of the variance within six (6) months of the date specified in the variance.