

## ARTICLE XIII. BOARD OF ZONING APPEALS\*

### Sec. 94.205. Establishment and purpose.

There is established a zoning board of appeals for the village as authorized by Wis. Stats. § 62.23(7)(e), for the purpose of hearing appeals from any person aggrieved or from any officer, department, board or commission of the village affected by a decision of the zoning administrator or planning commission, provided the appeal is taken within a reasonable time, as provided by the rules of the zoning board of appeals. The board may also decide special exceptions, other than conditional uses, or grant special condition variances from the terms of this chapter.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

### Sec. 94.206. Membership.

(a) *Size, appointment and removal.* The zoning board of appeals shall consist of five members and two alternates appointed by the president and approved by the board. The president shall make his/her nominations at least one month prior to their appointment, or within one month of vacancies. Members may be removed by the president for cause upon written charges and after public hearing. Cause may include excessive absenteeism.

(b) *Terms of office.* Terms shall be for staggered three-year periods, beginning June 1 of each year.

(c) *Eligibility.* Members shall reside within the village.

(d) *Chairman.* The president shall designate one of the members as chair annually.

(e) *Alternates.* Two alternate members shall be appointed by the president for a term of three years each, designating one as first alternate and the other as second alternate. The first alternate shall act only when a regular member is absent or refuses to vote because of personal interest in a matter to be decided. 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. The provisions of subsection (a) of this section with regard to removal and the filling of vacancies shall apply to such alternates.

(f) *Attendance.* The zoning administrator shall attend all meetings for the purpose of providing technical and secretarial assistance as requested by the board.

(g) *Oaths*. Official oaths shall be taken by all members in accordance with Wis. Stats. § 19.01 within ten days of receiving notice of their appointment, or before their first board meeting.

(h) *Vacancies*. Vacancies shall be filled for the unexpired term in the same manner as appointments for a full term.

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\* **Cross References**--Administration, ch. 2.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

### **Sec. 94.207. Operation.**

(a) *Rules*. The zoning board of appeals shall adopt rules for the conduct of its business, which rules shall be in accordance with the provisions of this chapter and statute. Such rules of operation shall require approval by a majority of the board.

(b) *Meetings*. Meetings shall be held at the call of the chair or at such other times as determined by the board's rules, and shall be open to the public within the provisions of the state open meeting statutes, Wis. Stats. ch. 19, subch. V.

(c) *Minutes*. Minutes of the proceedings and a record of all actions shall be kept by the board, showing the vote or the absence or abstention of each member upon each question, the reasons for the board's determination, and its findings of facts. These records shall be immediately filed in the office of the board and shall be a public record.

(d) *Voting*. The concurring majority vote of members of the board of appeals shall be necessary for all of its actions other than setting its rules of operation. Such votes and discussions between members shall comply with the open meeting law, Wis. Stats. § 19.82.

(Ord. of 6-22-2006)

### **Sec. 94.208. Powers.**

(a) *Listed*. The zoning board of appeals shall have the following powers:

(1) *Errors*. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator or by the planning commission.

(2) *Special condition variances*. To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary

hardship. Such variance shall not be contrary to the public interest and shall be so conditioned that the spirit and purposes of this chapter are observed.

- (3) *Substitutions of conforming uses.* To hear and grant applications for substitution of the same or more restrictive nonconforming uses for existing nonconforming uses as provided for in section 94.202. Whenever the board permits such a substitution, the use may not thereafter be changed without reapplication to the board.
- (4) *Floodplain.* Applications for a special use permit involving construction, the use of fill or the storage of materials within the boundaries of a floodplain district shall require the following:
  - a. Three copies of an aerial photograph (or a plan certified by a person of competence as applicable and in accordance with the state statutes and related administrative codes) which accurately locates the floodplain proposal district limits indicating whether the proposed use is located in the floodway or the area outside the floodway portion of the floodplain district, stream and existing floodplain development together with all pertinent information on the proposal, fill limits and elevations, building floor elevations and floodproofing measures.
  - b. Require the applicant to furnish such of the following additional information as is deemed necessary by the zoning board of appeals and/or the State Department of Natural Resources for the evaluation of the effects of the proposal upon flood flows and floodplain storage in order to render a decision on the proposed use:
    1. A typical valley cross section showing the channel of the stream, the floodplain adjoining each side of the channel, cross sectional areas to be occupied by the proposed development and high water information.
    2. Plan (surface view) showing elevations or contours of the ground; pertinent structure, fill or storage elevation; size, location and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; soil types; drainage plan and other pertinent information.
    3. Profile showing the slope of the bottom of the channel or flow line of the stream.
    4. Specifications for building construction and materials, floodproofing, filling, dredging, grading, channel improvements, storage of materials, water supply and sanitary facilities.
  - c. One copy of the information in subsections (5)a and (5)b of this section, to be transmitted to the state department of natural resources with the request to

have that agency provide technical assistance in evaluating the effects of the proposed project upon flood heights, velocities and floodplain storage areas and the determination of flood protection levels.

d. When floodproofing is required, the zoning board of appeals shall require that the applicant submit a plan or document certified by a registered professional engineer that the floodproofing measures are consistent with the flood protection elevation for the particular area.

(5) *Permits.* To reverse, affirm wholly or partly, or 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, revoke, or direct the issuance or revocation of a permit.

(6) *Oaths and testimony.* To administer oaths and compel the attendance of witnesses by the chair or in his absence the vice-chair.

(7) *Staff assistance.* To request assistance from other village officers, departments, commissions and boards, as well as from non-village agencies such as county, regional, state or federal entities, or as its budget allows, from private sources.

(b) *Limitation of powers.* The authorization of special condition variances in subsection (a)(3) shall not have the practical effect of permitting uses that are otherwise prohibited in a district; of granting or denying a conditional use, including the modifications of any of the conditions if granted, which powers are granted by this chapter solely to the planning commission; or of changing the district classification of a property or of amending the textual regulations of this chapter. Furthermore, in exercising its powers to grant special condition variances, the board shall take care to grant only the minimum variation necessary to relieve the practical difficulty or unnecessary hardship it finds, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done.

(Ord. of 11-18-1991; Ord. No. 17-98-1, § 1(c), 11-16-1998; Ord. of 6-22-2006)

#### **Sec. 94.209. Procedure.**

(a) *Appeals.* Appeals to the zoning board of appeals shall be filed in the office of the zoning administrator within 30 days after the date of the decision or order of the zoning administrator or planning commission which is being appealed. The zoning administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. Such appeals and application shall include the following:

- (1) Name and address of the appellant or applicant and all abutting and opposite property owners of record as found on the tax roll or assessment records.
- (2) Plat of survey prepared by a registered land surveyor in the state or other map drawn to scale and approved by the zoning administrator, showing all of the information required under this chapter for a zoning permit. Where the aggrieved party filing the appeal is not the applicant for the zoning permit or other decision in dispute, this requirement is waived.
- (3) Grounds claimed for the appeal and any other additional information required by the zoning administrator or zoning board of appeals.
- (4) Fee receipt from the zoning administrator required by section 94.119.

(b) *Requests.* Special condition variance requests shall include items in subsection (a)(1)--(4) of this section, except that the appellant in the case of special condition variance request shall also be very specific under subsection (a)(3) to set forth the facts which purport to show where literal enforcement of the terms of this chapter would result in practical difficulty or unnecessary hardship.

(c) *Stay of proceedings.* An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the zoning board of appeals after the notice of appeal shall have been filed with that office, that by reason of facts stated in the certificate a stay would, in the administrator'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 zoning board of appeals or by a court of record on application, notice to the zoning administrator, and on due cause shown.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

### **Sec. 94.210. Hearing.**

The zoning board of appeals shall fix a reasonable time and place for the hearing, giving notice by:

- (1) Publishing class 2 notice in a newspaper of general circulation.
- (2) Mailed notice to parties in interest including the appellant and to abutting owners, including those opposite and fronting on the subject lands across a right-of-way. Such mailed notice shall be postmarked at least ten days before the date of hearing.
- (3) Written notice to the appropriate regional office of the state department of natural resources at least ten days prior to hearings on proposed floodplain and

shoreland/wetland variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments, and submission to the same office of the department of copies of decisions on floodplain and shoreland/wetland variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within ten days after they are granted or denied. Floodplain map and text amendments shall not become effective until reviewed and approved by the state department of natural resources.

(Ord. of 11-18-1991; Ord. of 9-21-1998; Ord. No. 17-98-1, § 1(d), 11-16-1998; Ord. of 6-22-2006)

### **Sec. 94.211. Standards and findings.**

Pursuant to Wis. Stats. § 66.23(7)(e)1., wherein the creation of a zoning board of appeals by ordinance may include establishing appropriate conditions, safeguards, and general or specific rules to guide the board, the following standards, in addition to the limitation of powers of section 94.208, are imposed to provide the board with direction consonant with this chapter in the conduct of the board's powers; and the board in each case in granting a petition shall first render findings that satisfy itself that all of the following facts and conditions exist and the board shall so indicate in its minutes:

- (1) *Physical conditions v. convenience.* That there are present actual physical conditions applying to the lot, parcel, building, structure, use or intended use on that premises that are creating the practical difficulty or unnecessary hardship in the application of this chapter, as distinguished from a mere inconvenience to the owner if the strict letter of the regulations are required.
- (2) *Unique versus general conditions.* That the conditions of subsection (1) of this section are unique, exceptional, extraordinary or unusual circumstances applying only or primarily to the property under appeal and are not of such a general or recurrent nature elsewhere in the same zoning district as to suggest or establish the basis for changes or amendments to this chapter, or of having that effect if relied upon as the basis for granting an appeal.
- (3) *Absence of precedent.* That in granting an appeal, there will not be created a general precedent that encourages the filing of similar appeals to take advantage of the precedent without the existence of properly qualifying conditions.
- (4) *Absence of detriment.* That in granting an appeal there will not be created initial detriment to the subject, adjacent, or neighborhood properties or to the general public interest. (See section 94.218(b) 1 for public interest criteria.)

- (5) *Conditions not created by appellant.* That the alleged conditions of subsection (1) of this section creating the difficulty or hardship were not caused by the appellant nor by any person still having an interest in the property.
- (6) The purpose of the variance is not based exclusively upon a desire to make more money out of the property.
- (7) The alleged difficulty or hardship is caused by this ordinance and has not been created by any persons presently having an interest in the property;
- (8) The granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.
- (9) The proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood.

The zoning board of appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this Section.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

#### **Sec. 94.211.1 Authorized Variances.**

Variances from the regulations of this ordinance shall be granted by the zoning board of appeals only in accordance with the standards established in Section 94.210, above, and may be granted only in the following instances and in no others:

- (1) To permit any yard or setback less than a yard or a setback required by the applicable regulations.
- (2) To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but in no event shall the respective area and width of the lot or lots be less than 80 percent of the required area and width.
- (3) To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week.

- (4) To reduce the applicable off-street parking or loading facilities required by not more than one parking space or loading space, or 20 percent of the applicable regulations, whichever number is greater.
- (5) To increase by not more than 25 percent the maximum distance that required parking spaces are permitted to be located from the use served.
- (6) To increase by not more than 10 percent the maximum gross floor area of any use so limited by the applicable regulations.
- (7) To permit a reasonable variation in the height restrictions on fences.
- (8) To permit the height of a building or structure to be greater than the maximum heights required by the applicable regulations.
- (9) To permit variations from the density requirements of the applicable regulations.
- (10) To permit the floor area of a building or structure to be less than the minimum required by the applicable regulations.

The concurring vote of four members of the zoning board of appeals shall be necessary to grant a variance. No order of the zoning board of appeals granting a variance shall be valid for a period longer than six (6) months from the date of such order unless the building permit is obtained within such period and the erection or alteration of the building is started or the use is commenced within such period.

(Ord. of 6-22-2006)

**Sec. 94.212. Decision.**

(a) *Time of decision.* The zoning board of appeals shall decide all appeals and applications within 15 days after the final hearing and shall transmit a signed copy of the board's decision to the appellant or applicant and the zoning administrator.

(b) *Conditions.* Conditions may be placed upon any zoning permit ordered or authorized by this board.

(c) *Expiration of permits.* Permits granted by the board shall expire within six months unless substantial work has commenced pursuant to such grant.

(Ord. of 11-18-1991; Ord. of 6-22-2006)

**Sec. 94.213. Review by court of record.**

Any person aggrieved by any decision of the zoning board of appeals may present to the court of record a petition, duly verified, appealing such decision as provided for in Wis. Stats. § 62.23(7)(e)10. Such petition shall be presented to the court within 30 days after the filing of the decision in the offices of the board. Filing shall consist of the completion of the transcription of the minutes of the meeting wherein the board decision being appealed from was finally made, the accuracy of the transcription to be first reviewed by the zoning administrator.

(Ord. of 11-18-1991; Ord. of 6-22-2006)