

ARTICLE 14 ZONING BOARD OF APPEALS

Sec. 14.01 Membership of Zoning Board of Appeals

- A. The Village Council may act as the Zoning Board of Appeals. Alternately, the Village may appoint a Zoning Board of Appeals. It shall consist of five (5) regular members and may include two (2) alternate members all of whom shall be appointed by the Village Council. Not more than one (1) regular member of the Zoning Board of Appeals may be a member of the Planning Commission and not more than one (1) regular member may be a member of the Village Council.
- B. If a Zoning Board of Appeals is appointed, the remaining regular and any alternate members of the Zoning Board of Appeals shall be selected from the electors of the Village. An employee or contractor of the Village may not serve as a member of the Village Zoning Board of Appeals. Members of the Zoning Board of Appeals shall be removable by the Village Council for non-performance of duty or misconduct in office upon written charges and after a Public Hearing. A member shall disqualify himself from a vote in which he has a Conflict of Interest. Failure of a member to disqualify himself from a vote in which he has a Conflict of Interest shall constitute misconduct in office.
- C. If a Zoning Board of Appeals is appointed, the terms of each regular member shall be for three (3) years, however the terms of office shall be staggered so that not more than two (2) or less than one (1) appointment shall expire in any given year. All vacancies for unexpired terms shall be filled for the remainder of the terms.
- D. If a Zoning Board of Appeals is appointed, the Village Council may appoint not more than two (2) alternate members of the Board of Appeals to serve for a three (3) year term. An alternate member of the Zoning Board of Appeals shall serve as a regular member of the Zoning Board of Appeals in the absence of a regular member. An alternate member may also be called to serve as a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of a Conflict of Interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member shall have the same voting rights as a regular member of the Zoning Board of Appeals. An alternate member shall be called to serve on a rotating basis by the Chairman of the Zoning Board of Appeals or the Acting Chairman in the absence of the chairman, when the absence, unavailability or Conflict of Interest of a regular member becomes known to the Chairman or Acting Chairman.

Sec. 14.02 Meetings

- A. Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman, and at such times as the Zoning Board of Appeals may determine. If the Village Council is acting as the Zoning Board of Appeals, it may combine Village Council and ZBA meetings provided it is clear at which points in the meeting they are acting as the ZBA.
- B. The Village Zoning Board of Appeals shall not conduct business unless a majority of the regular or alternate members of the Village Zoning Board of Appeals are present.
- C. All meetings of the Zoning Board of Appeals shall be open to the public.
- D. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and shall keep records of its findings, decisions, evidence presented at the hearing, proceedings at hearings and other official actions, all of which shall be filed as soon as they are available in the office of the Village Clerk and shall be a public record.

- E. The Zoning Board of Appeals shall adopt Rules of Procedure for the operation of the Board and the conducting of hearings. The Rules of Procedure must include a definition of conflict of interest, procedures for determining if a conflict exists and the limitations on a ZBA members participation in a matter in which they have a conflict.

Sec. 14.03 Powers of the Zoning Board of Appeals

The Zoning Board of Appeals shall have the authority to:

- A. Grant non-use variances from the requirements of this Ordinance.
- B. Interpret the Zoning Ordinance and the Zoning Map.
- C. Hear appeals of administrative decisions including approval or denial of site plan or Conditional Use Permits.
- D. Permit a legal non-conforming use of land or structures to be changed to another non-conforming use under the procedures contained in Sections 15.06 and 15.07 of this Ordinance.

Sec. 14.04 Non-use Variances

The Zoning Board of Appeals shall have the power to authorize variations to any requirement of this Ordinance which can be expressed in terms of numbers. The Zoning Board of Appeals may not authorize a use variance. In consideration of all non-use variances, the Zoning Board of Appeals shall review each case individually as to its compliance with each of the following standards and may only approve non-use variance requests which comply with all of them:

- A. The standard for which the non-use variance is being granted would unreasonably prevent the owner from using property for a permitted purpose or would render conformity unnecessarily burdensome.
- B. The non-use variance would do substantial justice to the applicant as well as to other property owners in the zoning district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others.
- C. The problem is due to circumstances unique to the property and not to general conditions in the area.
- D. The problem that resulted in the need for the non-use variance was not created by the applicant or previous owners of the property.
- E. Issuance of the non-use variance would still ensure that the spirit of the Ordinance is observed, public safety secured and substantial justice done.

Sec. 14.05 Interpretation

The Zoning Board of Appeals may interpret provisions of this Ordinance as outlined below. Each such interpretation shall establish the precedent for future treatment of the issue being addressed. To achieve the objective of consistent enforcement of this Ordinance, whenever an interpretation question arises which has been addressed previously by the Zoning Board of Appeals, the earlier interpretation shall apply without requiring further action by the ZBA. The Zoning Administrator shall keep a concise record of all interpretations made by the Zoning Board of Appeals to facilitate such reference.

- A. The Zoning Board of Appeals may determine the precise location of the boundary lines between zoning districts. Standards for this interpretation are provided in Section 4.01 of this ordinance.

- B. The Zoning Board of Appeals may classify any activity which is not specifically mentioned in Article 3 - District Regulations for any Zoning District as a use by right provided that said classification shall be consistent with the classification of similar uses and with the purpose and intent of each Zoning District. In carrying out this interpretation, the Zoning Board of Appeals may not interpret a specific use as being included in a broader class of uses if that specific use is listed separately in other zoning districts.
- C. The Zoning Board of Appeals may determine the off-street parking and loading space requirements of any use for which these requirements are not determinable using the information provided for this purpose in Chapter 3, District Regulations.
- D. The Zoning Board of Appeals may interpret any portion of this Ordinance when the Zoning Administrator is unable to clearly determine its intent or effect.

Sec. 14.06 Appeals

These appeals procedures are instituted to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of the Village Zoning Ordinance.

- A. An appeal shall be filed with the officer from whom the appeal is taken and with the Village Zoning Board of Appeals, through the Village Zoning Administration specifying the grounds for the appeal.
- B. Applications for appeals of administrative actions shall be submitted to the Zoning Administration within thirty (30) days of the date of such actions.
- C. The officer from whom the appeal is taken shall forthwith transmit to the Village Zoning Board of Appeals all papers constituting the record upon which the appeal is taken.
- D. An appeal stays all proceedings in furtherance of action appealed from, unless the officer from whom the appeal is taken certifies to the Village Zoning Board of Appeals after the Notice of Appeal shall have been filed with them, that by reason of facts stated in the certificate, a stay would in their opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Village Zoning Board of Appeals, or by the Circuit Court, on application, on notice to the officer from whom the appeal is taken, and on due cause shown.
- E. The Village Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirements or determination appealed from and in making an order, requirement, decision or determination, shall have the powers of the officer or body from whom the appeal is taken.
- F. In exercising this authority the ZBA shall reverse an administrative decision based on one of the following criteria:
 - 1. The action or decision was arbitrary or capricious, or
 - 2. The action or decision was based on an erroneous finding of a material fact, or
 - 3. The action or decision constituted an abuse of discretion, or
 - 4. The action or decision was based on erroneous interpretation of the zoning ordinance or zoning law.

Sec. 14.07 Procedures

A. Applications

Application for non-use variance, appeal, interpretation or changes in non-conforming uses shall be submitted to the Village Zoning Administrator at least thirty (30) days prior to the Zoning Board of Appeals meeting at which it will be heard.

B. Notice

Notice of the hearing of an appeal, non-use variance, or other matter before the Zoning Board of Appeals shall comply with Section 6.02 E of this Ordinance except for the provisions of that section dealing with notice to residents and property owners within three hundred (300) feet. Those requirements shall only be applied to notices on Zoning Board of Appeals matters that involve a specific parcel.

C. Zoning Board of Appeals Decision

1. Following the hearing on an issue brought before them, the Zoning Board of Appeals may only reverse an administration decision or grant an applicant's request by a majority vote of the members of the Zoning Board of Appeals. If there is less than a full compliment of members, the applicant may request the matter to be tabled prior to the vote.
2. In making a decision on a request, the Zoning Board of Appeals shall state the basis for their decision, including any findings of fact and how those facts relate to the standards used by the Zoning Board of Appeals in making their decision.
3. The Zoning Board of Appeals shall return a decision upon each case within thirty (30) days of the filing of a complete request application unless an extension is agreed to by the applicant.
4. Any decision of the Zoning Board of Appeals shall not take effect until five (5) days after the decision, unless the Zoning Board of Appeals certifies on the record that the decision must be given immediate effect for the preservation of property or personal rights. No Zoning Permit shall be issued until the decision has taken effect.

D. Record of review

A record of any decision shall be filed with the Village Clerk, including:

1. A copy of the submitted application.
2. A copy of any meeting minutes related to the application.
3. A copy of any other relevant records related to the application.

E. Appeal of Zoning Board of Appeals decision

Any person aggrieved by the decision of the Zoning Board of Appeals in granting or denying a request may appeal the decision to Circuit Court.

F. Resubmission

An applicant may not resubmit an application for one (1) year following a decision, unless a change in circumstances or new facts relevant to the decision are presented.

Sec. 14.08 Time Limits

A. Deadline to commence construction/use

A Building Permit for a project with a Zoning Board of Appeals approved non-use variance

shall be filed with the Village Building Inspector within six (6) months from the date of Zoning Board of Appeals approval of a non-use variance. If a Building Permit is not filed within six (6) months, Zoning Board of Appeals approval of the non-use variance shall expire. In cases where construction is not required, the approved use of land or buildings must have commenced within six (6) months.

B. Deadline for completion

A project with a Zoning Board of Appeals non-use variance approved shall be completed within the time frame of the Building Permit issued. If an occupancy permit is not granted within the time frame of the Building Permit issued, Zoning Board of Appeals approval of the non-use variance shall expire.

Sec. 14.09 Conditions

- A. The Zoning Board of Appeals may place conditions on an affirmative decision when such conditions:
1. Would ensure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity.
 2. Would protect the natural environment and conserve natural resources and energy.
 3. Would ensure compatibility with adjacent uses of land.
 4. Would promote the use of land in a socially and economically desirable manner.
- B. In determining appropriate conditions, the Zoning Board of Appeals shall ensure that:
1. There is a rough proportionality between the scope of the conditions in relationship to the impact to be mitigated.
 2. There is a reasonable connection between the condition imposed and the impact it is mitigating.

Sec. 14.10 Performance Guarantees

In the interest of ensuring compliance with the Zoning Ordinance provisions, protecting the natural resources and the health, safety and welfare of the residents of the Village and future users or inhabitants of an area for which a request for Zoning Board of Appeals approval has been submitted, the Zoning Board of Appeals may require the applicant to deposit a performance guarantee as set forth herein. Performance guarantees shall be required in instances where an Occupancy Permit is requested prior to completion of all improvements required as condition of Zoning Board of Appeals approval. The purpose of the performance guarantee is to ensure completion of improvements connected with the proposed use as required by this Ordinance, including but not limited to roadways, lighting, utilities, sidewalks, drainage, fences, screens, walls, landscaping, and widening strips.

- A. Performance guarantee as used herein shall mean a cash deposit, certified check or irrevocable bank letter of credit in the amount of the estimated cost of the improvements to be made as determined by the applicant and verified by the Zoning Administrator.
- B. Where the Zoning Board of Appeals requires a performance guarantee, said performance guarantee shall be deposited with the Village Treasurer prior to the issuance of a Zoning Permit. The Village shall deposit the performance guarantee, if in the form of a cash deposit, certified check or performance bond in a non-interest-bearing account.

- C. An approved site plan shall also prescribe the period of time within which the improvements for which the performance guarantee has been required are to be completed. The period will begin from the date of the issuance of the Building Permit.
- D. In the event the performance guarantee deposited is a cash deposit or certified check, the Village shall rebate to the applicant fifty (50) percent of the deposited funds when sixty (60) percent of the required improvements are completed as confirmed by the Zoning Administrator, and the remaining fifty (50) percent of the deposit funds when one hundred (100) percent of the required improvements are completed as confirmed by the Zoning Administrator. If a request is made by the applicant for a temporary certificate of occupancy without completion of required exterior improvements, the performance guarantee may be applied by said applicant to assure compliance with Zoning Ordinance standards and the specifications of the approved site plan.
- E. Upon the satisfactory completion of the improvements for which the performance guarantee was required, as determined by the Zoning Administrator, the Treasurer shall return to the applicant the performance guarantee deposited and any interest earned thereon.
- F. In the event the applicant defaults in making the improvements for which the performance guarantee was required within the time period established by the Village, the Village shall have the right to use the performance guarantee deposited and any interest earned thereon to complete the improvements through contract or otherwise, including specifically the right to enter upon the subject property to make the improvements, and the right to charge administrative costs related to the performance guarantee. If the performance guarantee is not sufficient to allow the Village to complete the improvements for which it was posted, the applicant shall be required to pay the Village the amount by which the costs of completing the improvements exceeds the amount of the performance guarantee. Should the Village use the performance guarantee or a portion thereof, to complete the required improvements, any amount remaining after said completion shall be applied first to the Village's administrative costs in completing the improvement with any balance remaining being refunded to the applicant. If the applicant has been required to post a performance guarantee or bond with another governmental agency other than the Village to ensure completion of an improvement associated with the proposed project prior to the Village's approval, the applicant shall not be required to deposit with the Village a performance guarantee for that specific improvement. At the time the performance guarantee is deposited with the Village and prior to the issuance of a Building Permit, the applicant shall enter an agreement incorporating the provisions hereof with the Village regarding the performance guarantee.