

ARTICLE THIRTEEN: ZONING BOARD OF APPEALS

Section 13.1 General

13.1.1 **Purpose:** The purpose of this Article is to establish procedures for appeals from administrative decisions and procedures for relief from the provisions of this Ordinance through variations.

[No Zoning Ordinance can anticipate every situation or condition that will be encountered when administering the regulations. The Zoning Ordinance provides for a form of relief or adjustment. The method of relief has typically been through the Zoning Board of Appeals. The Zoning Board of Appeals hears appeals on administrative interpretations and acts on requests for variations from the Ordinance.]

13.1.2 **Zoning Board of Appeals - established:**

- A. The Zoning Board of Appeals shall consist of seven members appointed by the Village President, and confirmed by the Village Board of Trustees. One member shall be appointed for one year, one for two years, one for three years, one for four years, one for five years, one for six years, and one for seven years; the successor to each member to be appointed to serve for a term of five years. One of the members so appointed shall be named as Chairperson by the Village President, with the consent of the Village Board of Trustees; said chairperson shall also assume the duties of the Zoning Administrator as described in this Ordinance.
- B. One of the members so appointed shall be named as Secretary by the Village President, with the consent of the Village Board of Trustees. In the event of the absence of the Chairperson, the Secretary shall act in their place and stead as acting chairperson.
- C. The appointing authority has the power to remove a member of the Zoning Board of Appeals for cause and after a public hearing. Vacancies shall be filled for the unexpired term of a member whose place has become vacant. All meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson, and at such other times as the Zoning Board of Appeals may determine. The Chairperson, or in their absence the acting chairperson, may administer oaths and compel the attendance of witnesses. All regular meetings of the Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. Every decision upon which the Zoning Board of Appeals is required to act under this Ordinance shall be a public record.

- D. The Zoning Board of Appeals is hereby invested with the following jurisdiction and authority:
1. To hear and decide appeals from any order, requirement, decision, or determination made by the Village Building Official or the Zoning Administrator under this Ordinance.
 2. To hear and decide variations from the terms provided in this Ordinance in the manner set forth in the applicable Statutes of the State of Illinois and subject to the standards set forth in this Ordinance.
 3. To hear and decide all matters referred to it or upon which it is required to pass under this Ordinance.
- E. Decisions - generally:
1. The concurring vote of four members of the Zoning Board of Appeals shall be necessary to decide in favor of the applicant in any matter which it is required to pass under this Ordinance.
 2. Decisions of the Zoning Board of Appeals shall be made at a public meeting by motions made and seconded, and by roll call vote. The motions shall include findings as specified in this Ordinance.
 3. All reports, testimony, exhibits, plans or specifications which were considered by the Zoning Board of Appeals shall be made a part of the record of the case.

Section 13.2 Petitions

13.2.1 Amending petitions:

- A. Applicants, or their authorized agents, may request an amendment of an application for a variation or an appeal, by submitting a request in writing prior to the beginning of the public hearing, or to the Zoning Board of Appeals at the public hearing. The request shall specify the proposed amendment and reason for the request.
- B. The Zoning Board of Appeals shall make a finding as to whether there is substantial difference between the case as it has been described in the public notice and the case as amended. If substantial difference is found, a new public notice shall be required and a new sign shall be posted before the hearing of the case may proceed.

C. The Zoning Board of Appeals shall also determine whether the nature of the amendment is such as to require referral for reexamination by Zoning Board of Appeals members having made reports on the original application. If such referral is found necessary, the Zoning Board of Appeals may proceed with the hearing or may continue it to a time and place specified.

13.2.2 Repeat petitions: An applicant seeking to reapply after denial of a request cannot reapply for an identical or substantially similar request as one considered by the Zoning Board of Appeals within the last twelve months (of final Zoning Board of Appeals action on the request). The Zoning Administrator shall determine if any application is identical or substantially similar to any request made of the Zoning Board of Appeals in the last twelve months.

Section 13.3 Appeals

13.3.1 Notice of appeal: An appeal from any order, requirements, decision, or determination made by the Zoning Administrator, may be taken to the Zoning Board of Appeals by any person aggrieved thereby. The appeal shall be taken by filing a Notice of Appeal with the Zoning Administrator within twenty calendar days of a written decision of the Zoning Administrator. The notice of appeal shall contain the following information:

- A. Name and address of applicant.
- B. The Section of the Ordinance subject to the appeal.
- C. A description of the order, decisions, or determination of the Zoning Administrator being appealed.
- D. The grounds or reasons that appeal is being filed.

13.3.2 Procedure for appeals: Upon receipt of the Notice of Appeal, the Zoning Administrator shall place the matter on the business agenda of the next regular meeting of the Zoning Board of Appeals. The Zoning Administrator shall give at least seven days notice of the hearing in writing to the applicant by first class mail, to the members of the Zoning Board of Appeals, and to any other person directly interested in the outcome of the appeal. Persons interested in the appeal shall mean owners of the subject properties identified; party which last paid the property taxes on the property; and all property owners immediately adjacent thereto.

13.3.3 Findings for appeals: On an appeal from any order, decision or determination made by the Zoning Administrator, the Zoning Board of Appeals shall be limited to a determination of the propriety of the questioned action taken by the Zoning Administrator. The Zoning Board of Appeals may reverse, affirm, or modify the action appealed. In order to reverse or modify an action, any one or combination of the following findings must be satisfied:

- A. That the provision in question is unclear and an interpretation is necessary to determine the intent and application of the provision.
- B. That the Zoning Administrator misinterpreted the provisions of this Ordinance.
- C. That the section of this Ordinance does not apply in this situation.

13.3.4 Rulings on appeals:

- A. The Zoning Board of Appeals shall decide the appeal by the next regular meeting after the close of the hearing.
- B. The Zoning Board of Appeals shall not, based on its decision on an appeal, grant a variation in the application of the regulations of this Ordinance.
- C. The Zoning Board of Appeals may only reverse any order, requirement, decision, or determination of the Zoning Administrator with a concurring vote of four members of the Zoning Board of Appeals.
- D. If the Zoning Board of Appeals reverses or modifies any action of the Zoning Administrator, such decision shall state the findings that support the ruling.

Section 13.4 Variations

13.4.1 Variation - purpose: A variation is a grant of relief from the terms of this Ordinance. The purpose of a variation is to ensure that no property shall be deprived unreasonably of the development opportunities commonly enjoyed by other property in the same locality and district. A variation from the requirements of the Ordinance may only be granted to the Zoning Board of Appeals finding that the criteria, as specified herein, have been satisfied.

[It is important to note that a variation is not a matter of right. There should be some hardship or unique conditions which prevent the property from being used as other similarly situated properties.]

13.4.2 Applicants for variations: An application for a variation may be filed by the property owner, contract purchaser with the owner's consent, or the owner's agent.

13.4.3 Applicant requirements: Each application for a variation shall be filed with the Zoning Administrator. The application shall contain the following information:

- A. Name and address of the applicant.
- B. Existing zoning classification.
- C. The provision of this Ordinance that the applicant is seeking to vary and a description of the variation being sought.
- D. Legal description and common address for each property for which zoning action is requested.
- E. A description of the facts supporting each of the required findings of fact.
- F. A drawing sufficient to illustrate the nature of the variation request.

[The drawing required in paragraph F. may be a site plan, building plan, elevation, landscape plan or other type of drawing depending on the request.]

- G. Other relevant characteristics about the subject property as indicated on the application form.
- H. Evidence that design options which comply with the provisions of the Ordinance are not feasible.

13.4.4 Evidence of ownership: Applicants for a variation shall submit evidence of their interest in the property along with complete disclosure of the legal and equitable ownership in any real estate affected by the requested variation. Evidence of ownership may include a policy of title insurance, warranty deed, a legally binding contract to purchase, or other indication of ownership. If title is in a land trust in addition to proof of ownership, the trustee shall provide certification of the names, addresses, and percentage of interest of each beneficial owner. When the petitioner is someone other than the owner, a letter of authorization from the legal owner shall accompany the application.

13.4.5 Published notice: Notice of time and place of any hearing date shall be published at least once, not more than thirty days nor less than fifteen days before such hearing, in a newspaper in general circulation within the Village. The notice shall give the date, time, and place of the hearing and contain a brief description of the requested variation.

If the variation pertains to a specific parcel or parcels, then the notice shall also contain a legal description and common address of the area for which the change is proposed.

13.4.6 Written notice:

- A. For any variation, the applicant shall submit with an application, the most recent list of taxpayers of record for all property, any portion of which, is located on or within the area defined by a line extended two hundred fifty feet outward in all directions from the perimeter of the subject properties. The list of taxpayers shall be compiled from records maintained by the Champaign County Assessor's Office not more than 30 days before the date the application is filed with the Zoning Administrator. The responsibility for obtaining and providing this information shall be the applicants. The measurement of all public right-of-way shall be excluded in measuring the two hundred fifty foot perimeter. If any part of a condominium property is located within two hundred fifty feet of the subject property, the name of each taxpayer of record of the condominium shall also be submitted to the Village.
- B. Not less than fifteen days, but not more than thirty days before a public hearing, the Zoning Administrator shall give written notice by first class mail to the following:
 - 1. The applicant.
 - 2. The owners of the subject property for which the variation is sought as identified in accordance with this Ordinance. If ownership is in a land trust or partnership, only the trustee or general partner need be notified.
 - 3. The taxpayers for property within two hundred fifty feet of the subject property as identified in accordance with this Ordinance.
- C. The notice shall contain the place and time for the first public hearing on the application, the address of the subject property, a brief statement of the nature of the request, and the name of the applicant. The Village shall make a good faith effort to comply with the provisions in this Ordinance. Failure to send the notice or notices not received by parties identified herein will not invalidate any action by the Village.

13.4.7 Notice by sign:

- A. An applicant seeking a variance for any real estate, which requires a public hearing, shall allow the Village to post weatherproof signs, indicating the upcoming hearing for the property, which are adequate in size and number to be visible from the adjacent roadways. The Village shall post the signs approximately ten days prior to the public hearing. A good faith effort shall be made to keep the signs in place until the close of the public hearing, but in no case shall the signs remain after ten days from the completion of the final public hearing.
- B. The required sign shall contain the words "NOTICE OF PUBLIC HEARING" at the top of the sign. The sign shall indicate that a zoning variation is being requested for this property, the date, time, and place where the hearing shall be conducted, a statement that the public is invited, and the phone number for the Village.
- C. The Zoning Administrator may waive the requirement to post the sign in cases involving multiple lots where other measures are being used to notify interested parties. Such waiver shall be made a record of the case.
- D. The Village shall make a good faith effort to comply with the requirements of this Ordinance, however, failure to comply with these requirements shall not invalidate any zoning action.

13.4.8 Minor variations - defined: The following shall be classified as a minor variation:

[Minor variations are classified as those provisions where relaxation of the requirements does not represent a significant departure from the overall intent and purpose of the Ordinance. If the applicant can demonstrate the need for such relief, the minor variation would have a relatively low impact on the neighborhood. In many cases, such as a variation for a fire escape, granting the relief from a specific provision may actually result in overall improvement of life safety concerns.]

- A. A reduction of up to twenty-five percent of the minimum required lot width or lot area.
- B. A reduction of up to fifty percent of the minimum required side or rear yard.
- C. A reduction of up to twenty-five percent of the minimum required front yard.
- D. A reduction of up to twenty-five percent of the total number of required off-street parking spaces.
- E. An alternative landscape that would reduce the amount of required plant material or reduce the area of landscaping by twenty-five percent.

- F. A reduction of up to one hundred percent of the required side yard for fire escapes or ramps or handicap accessibility when the building was constructed prior to the adoption of this Ordinance.
- G. Allowing parking of a recreational vehicle or watercraft that extends into a front yard.

13.4.9 Minor variation - finding of fact: Before any variation is granted, the Zoning Board of Appeals shall make a favorable finding of fact, solely based upon evidence presented at a public hearing conducted by the Zoning Board of Appeals, that each of the following criteria has been satisfied:

[Since the minor variation is intended to have a relatively low impact on the surrounding area, the findings of fact that need to be met are not as stringent as they are for a major variation. Generally, the applicant must demonstrate that there is some practical difficulty and no reasonable alternative to comply with the regulation. The applicant must present evidence to this effect per the application requirements established previously. Other findings insure that neighborhood, health, safety, welfare, and other concerns are being met.]

- A. That the variation is consistent with the general purpose and intent of this Ordinance.
- B. That the variation is necessary for a reasonable use of the property.
- C. There is a practical difficulty in meeting the requirements of the Ordinance, that the particular physical surroundings, shape, or topographical conditions of the specific property involved would bring a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulation were to be carried out.
- D. The plight of the petitioner is not common, is due to unique circumstances, and the proposed variation will not serve as a special privilege, but will alleviate conditions not shared by other property in the rest of the Village.
- E. That the petitioner did not knowingly or deliberately create the property condition causing the practical difficulty from which the petitioner seeks a grant of relief through the proposed variation.

[Some examples of a self-created hardship are 1) paying too much for a piece of property and seeking a variation to intensify the use to recapture the investment or there is a personal preference for a particular design; 2) constructing something in violation of the Ordinance regulations and seeking a variation to bring it in conformance after the fact; and 3) selling off a portion of the property and seeking a variation because the lot is now too small for the proposed use.]

- F. The proposed variation will not alter the essential character of the locality.
- G. The proposed variation will not impair an adequate supply of light and air to adjacent property; substantially increase congestion in the streets; increase the danger of fire or crime, diminish the value of nearby property; nor impair the public health, safety, comfort, convenience, or general welfare.
- H. The proposed variation represents the minimum deviation from established standards necessary to accomplish the desired improvement.
- I. That the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations governing the district in which it is located.
- J. That the conditions upon which the petition for variation is based would not be applicable generally to other property within the same zoning classifications.

13.4.10 Minor variations - decisions: The Zoning Board of Appeals shall take action on the variation request within thirty days after the close of the public hearing. The Zoning Board of Appeals may require such conditions and restrictions upon the premises to be benefited by a variation as may be necessary to comply with the standards set forth in this Article to reduce or minimize the injurious effect of such variation upon other property in the neighborhood, and to implement the general purpose and intent of this Ordinance. Failure to maintain such conditions or restrictions as may have been imposed shall constitute grounds for revocation of such variations.

[This Section allows the Zoning Board of Appeals to impose conditions on variations to insure that the proposal does not negatively impact surrounding properties. Some common conditions that could be imposed are requirements for landscaping around parking areas, construction specifications, hours of operation, location of parking spaces or drives, and other similar requirements.]

The Zoning Board of Appeals shall have the authority to take the following actions regarding the request for minor variations as defined herein:

- A. Grant all or a portion of the minor variation being requested.
- B. Prescribe appropriate conditions and safeguards to ensure that the variation is carried out consistent with the purpose of this Ordinance.
- C. Deny the request for a variation.

The Zoning Board of Appeals shall grant the minor variation only upon a favorable finding of fact that each of the criteria specified in each Section have been satisfied. A concurring vote of four members shall be necessary to approve each finding and grant the variation request. Zoning Board of Appeals action on a minor variation is the final action.

13.4.11 **Grant of Variation:** As part of the approval of the request for a minor variation, the Zoning Board of Appeals shall complete a written "Grant of Variation" certificate which shall contain the following information:

- A. A legal description and common address of the subject property.
- B. The provision of this Ordinance that the Zoning Board of Appeals is granting relief from and a description of the variation being granted.
- C. Findings of fact on each of the criteria required to be met specifying how each finding has been satisfied.
- D. The terms of the relief as prescribed by the Zoning Board of Appeals, including any conditions or safeguards appropriate to the proposal.
- E. The date the Grant of Variation becomes effective.
- F. Any exhibits containing plans or specifications for the proposed use or variation shall be attached to the Grant of Variation with a statement that the variation is conditioned on the project being built in accordance with such plans.

13.4.12 **Major variation - defined:** A major variation is any grant of relief which has not been defined as a minor variation. No variation shall be granted by the Zoning Board of Appeals which permits a use which is not a permitted use in the district, where the property in question is located, or which permits a use which is expressly or implicitly prohibited by the terms of this Ordinance.

13.4.13 **Major variation - finding of fact:** Before any variation shall be granted, the Zoning Board of Appeals shall make a favorable finding of fact, solely based upon evidence presented at a public hearing conducted by the Zoning Board of Appeals, that each of the following criteria has been satisfied:

- A. That the variation is in harmony with the general purpose and intent of this Ordinance.
- B. That the property cannot yield a reasonable return if subject to a strict and literal application of the regulations imposed by this Ordinance.

[No reasonable return means there is generally little, if any alternatives to develop the property. Without the variation, it is likely that the property cannot be utilized. Merely, the likelihood that the property in question may have a greater value if the variation is granted shall not satisfy this criteria.]

- C. There is an unusual hardship in meeting the requirements of this Ordinance.
[An unusual hardship is created by conditions that are not common to the remainder of the community. Often these conditions are unique to one parcel and could not be anticipated by the Ordinance. Floodplains, irregular lots by creeks or railroad right-of-ways, steep topography, and other existing natural features are typical factors that create hardship.]

- D. The plight of the petitioner is due to such unique circumstances that the proposed variation will not serve as a special privilege, but will alleviate some condition not shared by other property in the same locality and district.

[This finding differs from that of the minor variation. The minor variation allows that if the condition is not unusual for a particular area, it may be appropriate to grant the variation. The standard for “unique circumstances” requires that relatively few if any other property in the Village share these circumstances.]

- E. That the petitioner did not knowingly or deliberately create the unusual hardship from which the petitioner seeks a grant of relief through the proposed variation.

- F. The proposed variation will not alter the essential character of the locality.

- G. The proposed variation will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the streets, increase the damage of fire or crime, diminish the value of nearby property, nor impair the public health, safety, comfort, convenience, or general welfare.

- H. The variation represents the minimum deviation from established standards necessary to accomplish the desired improvement.

13.4.14 Major variations - decisions:

- A. **Zoning Board authority.** The Zoning Board of Appeals shall take action on the variation request within thirty days after the close of the public hearing. The Zoning Board of Appeals shall take one of the following actions regarding the request for a major variation:
 - 1. Recommend all or a portion of the major variation being requested.

2. Prescribe appropriate conditions and safeguards to ensure that the variation is carried out consistent with the purpose of this Ordinance.
3. Deny the request for a major variation, and so notify the Village Board of Trustees of this action.

[Further actions must follow the procedures stated in Article 14]

The Zoning Board of Appeals shall recommend a request for a major variation only upon a favorable finding of fact that each of the criteria specified for major variations have been satisfied. A concurring vote of four members shall be necessary for the Zoning Board of Appeals to make a recommendation.

- B. Village Board of Trustees authority.** Within thirty days of the Zoning Board of Appeals recommendation to approve a major variation, the Village Board of Trustees shall act to approve or disapprove a resolution issuing a Grant of Variation. Unless extended by mutual agreement, if Village Board of Trustees does not act on the resolution to approve the Grant of Variation, the variation is deemed approved.

- 13.4.15 Termination of grant: In the event that a variation is granted for a property, the owner has one calendar year to begin work or construction on the property. If construction does not commence within that one year, then the Grant of Variation is terminated. In the event the variation is terminated, the owner must reapply for the variation.

END OF ARTICLE THIRTEEN.