



ARTICLE VII Administration, Enforcement and Penalties § 245-54. Board of Appeals.

A. How constituted: members, meetings and records.

- (1) **Members.** The Board of Appeals shall consist of five members appointed by the Village President, subject to confirmation by the Village Board, for three-year staggered terms. The members shall serve for such compensation as shall be fixed from time to time by the Village Board and shall be removable by the Village President for cause upon written charges and after public hearing. The Village President shall designate one of the members as Chairperson. The Village President shall appoint two alternate members for staggered three-year terms, in addition to the five members above provided for, and annually shall designate one of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or is absent. 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. Vacancies shall be filled for the unexpired term of members, including alternate members, whose terms become vacant. The Board of Appeals may employ a secretary and other employees. **[Amended 10-10-2005 by Ord. No 485]**
- (2) **Rules and meetings.** The Board of Appeals shall adopt rules for its government and procedure. Meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as the Board of Appeals may determine. The Chairman or, in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public.
- (3) **Records.** The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board of Appeals and shall be a public record.

B. Appeal procedure. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the Village affected by any decision of the Zoning Administrator, Building Inspector, Plumbing Inspector or Electrical Inspector. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board of Appeals, by filing with the Zoning Administrator and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The Board of Appeals shall fix a reasonable time for the hearing of appeals, give public notice and decide the same within a reasonable time.

C. Variances. The Board of Appeals shall transmit a copy of each application for a variance to floodland regulations to the Wisconsin Department of Natural Resources (DNR) for review and comment. Final action on the application shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions relating to variances to floodland regulations shall be transmitted to the DNR within 10 days of the effective date of such decision.

D. Powers of the Board of Appeals. The Board of Appeals shall have the following powers:

- (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator, Building Inspector, Plumbing Inspector or Electrical Inspector.
- (2) To hear and decide conditional uses, special exceptions to the terms of this chapter upon which the Board of Appeals is required to pass.
- (3) 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 peculiar to a specific property, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done. No variances to the provisions of this chapter shall be granted by the Board unless it finds by a preponderance of the evidence that all the following facts and conditions exist and so indicate in the minutes of its proceedings:
 - (a) **Preservation of intent.** No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use or conditional use in that particular district.
 - (b) **Exceptional circumstances.** There shall be exceptional, extraordinary or unusual circumstances or conditions applying to the lot or parcel, structure, use or intended use that do not apply generally to other properties or uses in the same

district and the granting of the variance would not be of so general or recurrent nature as to suggest that this chapter should be changed.

- (c) Economic hardship and self-imposed hardship not grounds for variance. No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.
- (d) Preservation of property rights. The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
- (e) Absence of detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this chapter or the public interest.
- (f) Additional requirements in floodland districts. No variance shall be granted where:
 - [1] Filling and development contrary to the purpose and intent of the Urban Floodway District would result.
 - [2] A change in the boundaries of the Urban Floodway District or the Floodplain Fringe Overlay District would result.
 - [3] A lower degree of flood protection than a point two feet above the 100-year recurrence interval flood for the particular area would result.
 - [4] Any action contrary to the provisions of Wis. Admin. Code ch. NR 116 would result.
- (4) In every case where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that an unnecessary hardship or practical difficulty exists by the standards set forth in Subsection D (3) of this section and the records of the Board shall clearly show in what particular and specific respect an unnecessary hardship or practical difficulty would be created by the literal application of such regulations.
- (5) The Board of Appeals may reverse or affirm wholly or in part or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises and to that end shall have all powers of the Zoning Administrator. If a quorum is present, a majority vote of the members present shall be necessary to reverse any order, requirement, decision or determination appealed from or to decide in favor of the applicant on any matter on which it is required to pass or to effect any variation in the requirements of this chapter. **[Amended 10-10-2005 by Ord. No. 485]**
- (6) In addition to the foregoing, the Board of Appeals shall have the following specific powers:
 - (a) To grant a permit for a temporary building for commerce or industry in a residence district which is incidental to the residential development, such permit to be issued for a period of not more than one year.
 - (b) To grant a permit for the extension of a district boundary for a distance of not more than 35 feet only where the boundary of a district divides a lot in a single ownership at the time of the adoption of this chapter.
 - (c) To permit the change of a nonconforming use to another nonconforming use of the same or higher classification. See § 245-10F.
 - (d) To interpret the provisions of the chapter in such a way as to carry out the intent and purpose of the plan as shown on the District Map accompanying and made a part of this chapter, where the street layout actually on the ground varies from the street layout on such map.
 - (e) The Board of Appeals shall have the power to call on any other Village department for assistance in the performance of its duties, and it shall be the duty of such other departments to render such assistance as may be reasonably required.
- (7) In exercising the foregoing powers, the Board of Appeals may, in appropriate cases, establish suitable conditions and safeguards in harmony with the general purpose and intent of this chapter.
- (8) Any person aggrieved by any decision of the Board of Appeals, or any taxpayer or officer, department, board or bureau of the Village may, within 30 days after the filing of the decision in the office of the Board of Appeals, but not thereafter, present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the Board shall be subject to review as provided by law.