

SECTION 21.19 BOARD OF APPEALS**(1) Establishment of Board.**

In order that the objectives of this ordinance may be more fully and equitably achieved and a means for interpretation provided, there is established a Board of Appeals for the Village of North Fond du Lac.

(2) Membership and Terms of Office.

- (a) **BOARD MEMBERS.** The Board of Appeals shall have five (5) citizen members of recognized experience and qualifications. The President shall designate one of the members as chairman. Members shall be removable by the Village President for cause upon written charges and after a public hearing. A secretary, who does not have to be a Board of Appeals member, shall be appointed by the Board of Appeals. (2-7-04)
- (b) **ALTERNATE MEMBER.** The Village President shall appoint two (2) alternate members, for staggered terms of three years, to the Board of Appeals. The alternates shall act, with full power, only when a member of the Board of Appeals is absent or disqualifies himself from a vote due to conflict of interest. The provisions for removing members shall also apply to the removal of the alternate. (2-7-04)
- (c) **TERMS.** The members of the Board of Appeals shall be nominated by the Village President and confirmed by the Village Board. Effective May 1, 2004, the terms of the office shall be staggered for three (3) years commencing the first Monday in May in the year of appointment. (2-7-04)
- (d) **VACANCIES.** Vacancies shall be filled for the unexpired terms of members whose terms become vacant.

(3) Procedures, Meetings, Records and Decisions.

- (a) **PROCEDURES.** The Board of Appeals shall be governed by the provisions of Chapter 62.23(7) of the Wisconsin Statutes, this zoning ordinance, and rules and procedures adopted by the Board of Appeals. The Board of Appeals shall have power to adopt rules and regulations for its own government consistent with law and with the provisions of this or of any other ordinance of the Village.

- (b) 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. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.
- (c) All meetings of the Board of Appeals shall be public. The Board of Appeals shall keep minutes of its proceedings showing the action of the Board of Appeals and the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examination 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.
- (d) The presence of four (4) members shall constitute a quorum. The Board of Appeals shall act by motion. The concurring vote of four (4) members of such Board of Appeals shall be necessary to reverse any order, decision of determination of the Zoning Administrator, or to decide in favor of the applicant any matter upon which it is required to pass under this Ordinance, or to effect any variation in this Ordinance. (2-7-c4)
- (e) The Board of Appeals may call on other Village departments for assistance in the performance of its duties, and it shall be the duty of such other departments to render such assistance to the Board of Appeals as may be reasonably required.
- (f) All variances granted by the Board of Appeals shall be valid for a period of six (6) months from the date of the meeting at which such action was taken. If no building permit is applied for within such six (6) month period, the action of the Board of Appeals shall be null and void, and a new variance or special use permit must be granted under the normal procedures outlined in this section. A six (6) month extension may be granted by the Board of Appeals upon submission of a written request setting forth the facts which require an extension.

(4) Jurisdiction.

In addition to these powers enumerated elsewhere in this Code of Ordinances, the Board of Appeals shall have jurisdiction in the following matters:

- (a) **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 other administrative official in the enforcement of the Zoning Code or any ordinance adopted under Sections 61.35, 62.23, 62.231 (wetlands), 87.30 or 144.26 (flood plains) or Chapter 91 (farmland preservation), Wis. Stats.
- (b) **VARIANCES.** To hear and grant appeals for variances as will not be contrary to the public interest where, owing to practical difficulty or unnecessary hardship, so that the spirit and purposes of this Chapter shall be observed and the public safety, welfare and justice secured.
- (c) **INTERPRETATIONS.** To hear and decide application for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.

- (d) **SUBSTITUTIONS.** To hear and grant applications for substitution of more restrictive nonconforming uses for existing nonconforming uses provided no structural alterations are to be made and the Plan Commission has made a review and recommendation. When ever the Board permits such a substitution, the use may not thereafter be changed without application.
- (e) **UNCLASSIFIED USES.** To hear and grant applications for unclassified and unspecified uses provided that such uses are similar in character to the principal uses permitted in the district and the Plan Commission has made a review and recommendation.
- (f) **TEMPORARY USES.** To hear and grant applications for temporary uses, in any district provided that such uses are of a temporary nature, do not involve the erection of a substantial structure and are compatible with the neighboring uses and the Plan Commission has made a review and recommendation. The permit shall be temporary, revocable, subject to any condition required by the Board of Zoning Appeals and shall be issued for a period not to exceed twelve (12) months. Compliance with all other provisions of this Chapter shall be required.

(5) General Powers.

In exercising its jurisdiction in matters described under Subsection (4), the Board of Appeals may reverse or affirm, wholly or partly, or may 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 or direct the issuance of a permit.

(6) Application Procedures.

- (a) **PROCEDURES.** 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 zoning-related decision of an administrative official within thirty (30) days of the decision involved 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 a hearing on the appeal and give public notice thereof as well as due notice to parties in interest, and shall decide the same within a reasonable time.
- (b) **PRELIMINARY REVIEW.** The secretary of the Board of Appeals shall as promptly as possible inform the Board of Appeals concerning the appeal, and the Board of Appeals may either discuss the matter with the applicant if the applicant desires or proceed directly to order public notice of hearing. If the applicant elects to withdraw the appeal any time before final determination is made by the Board of Appeals, this fact shall be noted on the application with the signature of the applicant attesting withdrawal. Copies of the withdrawn application shall be returned to the secretary for the files of the Board of Appeals, to the Zoning Administrator and to the applicant. If the appeal is

not withdrawn, the Board of Appeals may request the applicant to provide such additional information as may be needed to determine the case and shall instruct the secretary to proceed with public notice of a hearing on the case.

- (c) **AMENDMENTS.** Amendments of an appeal by the applicant may be permitted at any time prior to or during the public hearing, provided that no such amendment shall be such as to make the case different from its description in the notice of public hearing. If the amendment is requested by the applicant after public notice of the hearing has been given, and such amendment is at variance with the information set forth in public notice, the applicant shall pay an additional fee to cover the cost of amending the public notice. If the amended notice can be published within the time frame specified for the public hearing, the hearing on the amended appeal may be held on that date, otherwise the chairman shall announce that the hearing originally scheduled on the case will be deferred to a future meeting, before which appropriate public notice will be given, and will state the reasons for the deferral.
- (d) **FEES.** Any application for an appeal or variance shall be accompanied by the current established fee to compensate the village for publication of notices and other expenses. No action shall be taken until such fees have been paid.
- (e) **RECONSIDERATION.**
 - 1. **Resubmission.** No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision within one (1) year of the Board's decision, except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided below.
 - 2. **Rehearing.** No rehearing shall be held except upon the affirmative vote of four (4) or more members of the Board upon finding that substantial, new evidence is submitted which could not reasonable have been presented at the previous hearing. Requests for rehearing shall be in writing, shall state the reasons for the request, and shall be accompanied by necessary data and diagrams. Rehearings shall be subject to the same notice requirements as original hearings.

(7) Appeals from Administrative Decisions.

- (a) **POWERS.** The Board of Appeals shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator, or other administrative official in the enforcement of this ordinance. The Board of Appeals may reverse or affirm wholly or in part or may modify any 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 administrative official, and may issue or direct the issue of a permit.

(8) Appeals for a Variance.

- (a) **POWERS.** The Board of Appeals shall have the power to grant a variance by varying

the strict application of any requirement or this ordinance where the strict application of such requirements would result in practical difficulty and unnecessary hardship depriving the owner of reasonable use of land or buildings.

- (b) **REQUIREMENTS FOR A VARIANCE.** In general, the power to authorize a variance from the requirements of the ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances. No variance shall be granted for actions which require an amendment to this ordinance. Variances shall only be granted when the Board finds that:
1. The variance is not contrary to the public interest and that such a variance will be in general harmony with the purposes and intent of this ordinance.
 2. The variance will not permit the establishment of a use which is not permitted in the district and will not be unduly detrimental to adjoining properties and will not alter the essential character of the neighborhood.
 3. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district and there is no practical way for the applicant to accomplish the intended objective by observing bulk requirements specified in this ordinance (yard size, frontage, coverage, building height, etc.).
 4. The literal interpretation of the provisions of this ordinance would deprive the applicant of a right commonly enjoyed by other properties in the same district.
 5. The hardship is not shared generally by other land or buildings in the area.
 6. The hardship results from the strict application of this ordinance and is not the result of self-created or self-imposed circumstances.
- (c) **PROHIBITED VARIANCES.** The Board of Appeals shall not grant use variances in floodplain or wetland and conservancy districts. In all other districts, no use variance shall be granted unless the applicant has first petitioned for a zoning amendment or a special use permit, if applicable, and upon a showing that no lawful and feasible use of the subject property can be made in the absence of such variance. Any use variance granted shall be limited to the specific use described in the Board's decision and shall not permit variances in yard, area or other requirements of the district in which located.
- (d) **DOCUMENTATION OF DECISION.** 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 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.

Variances or conditions imposed in any permit shall be stated in the decision or order embodying the Board's decision and shall also be set forth in the building, special use

or occupancy permit issued under that order by the Zoning Administrator. A permit shall be valid only as long as the conditions upon which it is granted are observed. Whenever the board grants an application or appeal affecting the use of any premises, such authorization shall be deemed revoked unless the owner, occupant or his agent shall, upon request, file with the Board Secretary a written report certifying that all conditions or limitations imposed by the Board have been conformed to and maintained. Variances, substitutions or conditional use permits approved by the Board shall expire six (6) months after issuance if the performance of work is required and substantial work has not commenced.

(9) Appeals for Interpretations.

The Board of Appeals shall have the power to hear and decide applications for interpretations of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.

(10) Public Hearings.

- (a) **TIME PERIOD.** Upon filing with the Board of Appeals an application for an appeal or variance, the Board of Appeals shall fix a reasonable time (not more than sixty (60) days from the filing date) for public hearing.
- (b) **NOTICE OF HEARING.** A Class 2 notice pursuant to Chapter 985, Wisconsin Statutes, shall be published in the official newspaper of the Village specifying the date, time and place of the hearing and matters to come before the Board of Appeals. Notices shall also be mailed to the parties at interest, as determined by the Board of Appeals.

(11) Appeal of Board of Appeals Decisions.

Any person or persons aggrieved by any decision of the board of Appeals may present to a court of record a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the court within thirty (30) days after the filing of the decision in the offices of the Board of Appeals.

SECTION 21.20 AMENDMENTS

(1) Power of Amendments.

The Village Board may from time to time on its own motion or on petition, amend, supplement, or change this ordinance, including the Official Zoning Map.

(2) Initiation.

Amendments may be proposed by the Village Board or any member thereof, the Plan Commission, Board of Appeals, or any person, firm, corporation, or organization.

(3) Procedures.