

**BOARD OF ZONING
APPEALS**

**Wednesday, December 4,
2019**

6:30 PM

**McFarland Municipal Center
Conference Room A**

AGENDA

1. CALL TO ORDER
2. APPROVAL OF MINUTES.
 - a. Review and possible approval of minutes from the November 11, 2014 Board of Zoning Appeals meeting.
3. PUBLIC APPEARANCES.
4. BUSINESS.
 - a. Discussion of the roles and responsibilities of applicants, Village Staff, and Board of Zoning Appeals members related to requests for zoning appeals and variances.
5. SCHEDULE NEXT MEETING DATE.
6. ADJOURNMENT.

This meeting notice constitutes an official meeting of the above referenced group and was posted in accordance with all applicable laws related to Open Meetings Law. It is possible that members of and possibly a quorum of members of other governmental bodies of the municipality may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals. For additional information or to request this service, contact the McFarland Municipal Center at (608) 838-3153 or cassandra.suettinger@mcfarland.wi.us.

Board of Zoning Appeals

D R A F T MINUTES

November 11, 2014

Members Present: Gordon Kinder, Charles Larsen, John Robertson, Joe Rademacher (A),
Mike Bradburn

Members Absent: Art Luetke

Staff Present: Marty Pilger

Others Present:

1. Call to order. Chair Kinder call the meeting to order at 6:00 p.m. Roll call was taken.

2. Review and possible approval of the draft Minutes from the January 7, 2013 Board of Zoning Appeals meeting.

Kinder noted the minutes be corrected. Item 3, 3rd paragraph, second sentence should read, "Luetke asked why do they **need** a variance if they are just replacing an existing shed?"

Motion by Robertson, seconded by Larsen to approve the minutes as corrected.
Motion carried unanimously.

3. Kinder stated that he and Luetke had attended the Zoning Board of Appeals Workshop, presented by the Center for Land Use Education on December 3, 2013 and found it very informative.

4. Adjournment. Larsen moved to adjourn the meeting; motion was seconded by Bradburn and unanimously approved. Meeting adjourned at 6:12 p.m.

Respectfully submitted,
Marty Pilger, Building Inspector
Community Development



VILLAGE BOARD SUMMARY SHEET

MEETING DATE: Wednesday, December 4, 2019

SECTION: Business

DEPARTMENT: Community Development

CONTACT: Andrew Bremer, Comm & Eco Dev Director

AGENDA ITEM: Discussion of the roles and responsibilities of applicants, Village Staff, and Board of Zoning Appeals members related to requests for zoning appeals and variances.

PREVIOUS ACTION:

None

ISSUE SUMMARY:

The BZA includes some new members and has not meet since November 2014. Chairperson Kinder requested a meeting of the BZA to provide a brief refresher on (1) the roles and responsibilities of applicants, (2) Village Staff, and (3) BZA members related to requests for zoning appeals and variances. Each of these items is summarized in more detail below.

1. **Applicants.** Applicants seeking variances to building, zoning, and sign code ordinances, and appeals of administrative decisions on the interpretation and application of building codes, are required to submit an application and fee to the Department of Community Development. The meeting packet includes the current application form and pre-meeting letter provided to applicants. The fee in 2020 is \$380. All applications require a public hearing preceded by a Class II notice and written notice to adjacent property owners within 100 feet of the subject parcels at least 15 days prior to the hearing.
2. **Village Staff.** Community Development Department staff provide the pre-meeting letter and application to applicants and prepare public hearing notices and letters. Either the Community Development Director or Building Inspector provides a review and staff report concerning the application.
3. **Board of Zoning Appeals.** The BZA meets on an as needed basis. The duties and responsibilities of the BZA members are addressed in Chapter 2 - Administration, Division 3 - Board of Zoning Appeals and Chapter 62 - Zoning, Article II - Zoning District Regulations Generally, Division 5 - Appeals. Copies of these ordinances are provided in the meeting packet. The BZA powers and duties are authorized under State law reference, Wis. Stats. 62.23(7)(e). Section 62-364(g) provides procedures for the hearing before the BZA. Determinations of applications are made by a majority vote of the members present, if a quorum exists, at the termination of the hearing or within 30 days thereafter. For variance appeals, Section 62-366(e) provides the standards for



granting variances. The BZA provides the final determination of applications. Appeals of BZA decisions are reviewed by a court of record.

Additional information regarding the ZBA can be found on the Village's website:
www.mcfarland.wi.us/board_of_zoning_appeals

Included on this web page is a link to the [Zoning Board Handbook](#). This is a publication of the UW-Extension Center for Land Use Education. In addition, a couple times a year the Center for Land Use Education provides one-day training workshops for BZA members.

FINANCIAL/BUDGET IMPACT:

None.

VILLAGE PLAN REFERENCE:

None.

ORDINANCE REFERENCE:

Chapter 2, Article IV, Division 3 - Board of Zoning Appeals
Chapter 62 - Zoning, Article II, Division 5 - Appeals
State law reference, Wis. Stats. 62.23(7)(e)

BOARD, COMMISSION OR COMMITTEE RECOMMENDATION:

None. Informational meeting only.

ATTACHMENTS:

1. Applicant pre-mtg letter with Logo
2. 2012 BZA Application
3. McFarland, WI Code of Ordinances, Chapter 62, Article II, Division 5 Appeals
4. McFarland, WI Code of Ordinances, Chapter 2, Article IV, Division 5 Board of Zoning Appeals



Dear Applicant:

Before completing your application to the McFarland Board of Zoning Appeals, it is important to understand something about the nature of the Board, its authority and the limits on its authority.

The Board of Zoning Appeals functions in many respects like a court. For that reason, it is referred to as a quasi-judicial body. Its role is to apply local ordinances and related state laws to specific development proposals. A zoning board must apply ordinances as they are written and may not substitute its judgment for that of the elected local governing body. Ordinance proposal, adoption and revision are legislative functions reserved by state law for the planning and zoning committee and the local governing body.

A matter may come before the Board in one of two ways. First, any aggrieved person affected by a decision of a zoning officer may appeal that decision to the Board. State law requires that when zoning ordinance interpretation or an administrative decision is contested the Board of Zoning Appeals is required to resolve the question.

More commonly, an applicant may seek a variance from the land use provisions of an ordinance or an area variance. A variance is a relaxation of a dimensional standard in a zoning ordinance. In order to qualify for such a variance the burden of proof is on the applicant, and all three parts of a three-step test must be met.

First, strict application of an ordinance requirement must result in unnecessary hardship. An applicant may not claim hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have determined that loss of profit or financial hardship, do not, by themselves, justify a variance. Decks and similar minor accessory structures are not essential to the reasonable use of property and are not eligible for variances.

Second, a hardship must be due to unique physical limitations of the property, i.e. compliance with ordinance requirements is prevented by limitations that are not generally shared by other properties. The circumstances of an applicant, such as a growing family or the need for a larger garage, are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance.

Third, a variance may not be granted which results in harm to public interests. In applying this test, the Board must consider impacts of your proposal and the cumulative impacts of similar projects on the interests of the entire community.

We hope this information will be of help to you in preparing your application, and your presentation to the Board.

Community Development Department

5915 Milwaukee St. • P.O. Box 110 • McFarland, WI 53558-0110 • FAX: (608) 838-3619

Administration 838-3153	Community Development 838-3154	EMS 838-3152	Fire 838-3278	Outreach 838-7117	Police 838-3151
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Office Use Only	
Received By	
Date Received	
Fee Received	
Hearing Date	
Notice Published	
Notice Mailed	
Billed	

Notice of Appeal and Application for Review

TO: The Board of Zoning Appeals, Village of McFarland, WI

*\$250.00 filing fee required with each application.
Applicant is responsible for publication fees and notification charges to be billed and paid later.*

1) **Name of Appellant/Applicant** _____
Address _____
Phone _____

2) **Address of Property Street** _____
Parcel No. _____
Lot _____ **Block:** _____

Present use of property _____
Proposed use of property _____
Zoning classification _____
Owner's name/address _____
(if other than shown in #1) _____

3) **Has a previous appeal or application been made with respect to this property?** Yes No **If "yes", state nature of previous appeal:**

Disposition of previous appeal: _____

Date of decision in previous case: _____

4) **Date of decision or order of administrative official from which appeal is taken:**

Date of notice of such decision received by applicant _____

5) **Purpose and grounds of appeal.**
Check below the relief requested by this appeal.

(A) Request for interpretation of zoning ordinance and reversal of order, requirement, decision, or determination of administrative official. Use the lines provided below stating the reasons why you claim this order, requirement, decision, or determination is erroneous.

(B) Request for variance.

- Use lines below each item for the purpose of explanation.
- For the Board of Appeals to grant a variance, it must find that all six items are met:

1. Why the denial of the variance may result in hardship to the property owner due to geographical consideration. There must 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 the Zoning Code should be changed.

2. The hardship must not be self-created.

3. The conditions upon which a petition for a variance is based are unique to the property for which the variance is being sought and that such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and vicinity.

4. The purpose of the variance is not based exclusively upon a desire to increase the value or income potential of the property.

5. The granting of the variance will not be detrimental to the public welfare or injurious to the other property or improvements in the neighborhood in which the property is located.

6. The proposed variance will not undermine the spirit and general and specific purposes of the Zoning Code, specifically the purpose in Subdivision II – Conditional Uses – Section 62-105.

(C) Other: _____

State relief requested on the lines given below giving reasons why appellant is entitled to such relief.

6) **Do you grant permission for the Board of Zoning Appeals and staff, either individually or as a group, to enter onto the subject property for a site inspection?** Yes No

Each application for appeal must be accompanied by a scale drawing showing the location and size of property, existing improvements, all abutting properties and improvements thereon and the requested change or addition.

I hereby swear that all of the above statements and the statements contained in any papers or plans submitted herewith are true to the best of my knowledge and belief.

Signature of Applicant

Date

DIVISION 5. - APPEALS

Footnotes:

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State Law reference— *Board of appeals, Wis. Stats. § 62.23(7)(e).*

Sec. 62-362. - Appeals to the Board of Zoning Appeals.

- (a) *Scope of appeals.* Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Village affected by any decision of the administrative officer. Such appeal shall be taken within the reasonable 30 days of the alleged grievance or judgment in question by filing with the officer from whom the appeal is taken and with the Board of Zoning Appeals a notice of appeal specifying the grounds thereof, together with payment of the filing fee established by the Village Board from time to time and provided in Appendix A to this Code, as may be established by the Village Board. The officer from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all papers constituting the record of appeals upon which the action appeals from was taken.
- (b) *Stay of proceedings.* An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certified to the Board of Zoning Appeals that, by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause immediate peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the Board of Zoning Appeals or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
- (c) *Meetings.*
- (1) *Open to public.* All meetings and hearings of the Board of Zoning Appeals shall be open to the public, except that the Board of Zoning Appeals may go into executive session to deliberate after a hearing or an appeal. The final vote on an appeal shall be taken in open session by roll call vote, recorded and open for public inspection in the Board of Zoning Appeal's office. Public notice of all regular and special meetings shall be given to the public and news media as required by the Wisconsin Open Meeting Law.
 - (2) *Special meetings.* Special meetings may be called by the chair or by the Clerk of the Board of Zoning Appeals at the request of two members. Notice of a special meeting shall be mailed to each member at least 48 hours prior to the time set for the meeting, or announcement of the meeting shall be made at any meeting at which all members are present.
 - (3) *Hearings.* Hearings may be held at any regular or special meeting at the time set by the chair.
 - (4) *Quorum.* A quorum for any meeting or hearing shall consist of three members, but a lesser number may meet and adjourn to a specified time.
- (d) *Powers of Board of Zoning Appeals.* In addition to these powers enumerated elsewhere in this Code, the Board of Zoning 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, Building Inspector or other administrative official in the enforcement of the Zoning Code or any ordinance adopted under Wis. Stats. §§ 61.351 or 62.231 (wetlands), Wis. Stats. Ch. 87 (floodplains), Wis. Stats. Ch. 91 (farmland preservation), or Wis. Stats. Ch. 236 (subdivisions).
 - (2) *Variances.* To hear and rule on 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.

- (3) *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.
 - (4) *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. Whenever the Board of Zoning Appeals permits such a substitution, the use may not thereafter be changed without application.
 - (5) *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.
 - (6) *Temporary uses.* To hear and grant applications for temporary uses, in any district, provided that such uses are of a temporary nature, we 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 12 months. Compliance with all other provisions of this Chapter shall be required.
- (e) *Board of Zoning Appeals action.* In exercising the powers under Subsection (d) of this Section, the Board of Zoning 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.
- (f) *Voting.*
- (1) *Personal interest.* No Board of Zoning Appeals member shall participate in the decision of or vote upon any case in which the member is financially interested, directly or indirectly, but the chair shall direct an alternate member to act instead. Disqualification of a member for interest shall not decrease the number of votes required for acting upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.
 - (2) *Record of vote.* The Clerk of the Board of Zoning Appeals shall record the vote of each member on every question in the minutes or, if the member is absent or fails to vote, shall indicate such fact in the record of the proceedings.

(Code 1998, § 13-1-260; Ord. No. 2003-03, § 1(13-1-260), 3-24-2003)

State Law reference— Board of appeals, Wis. Stats. § 62.23(7)(e).

Sec. 62-363. - Applications for hearings.

- (a) *Time of appeal.* Appeals shall be filed within 30 days after the receipt of the written decision or order from which the appeal is taken by filing in duplicate a notice of appeal with the Village Clerk-Treasurer. The date of receipt of the decision shall not be counted in determining the time for filing of the appeal. Sundays and holidays shall be counted, except if the last day falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
- (b) *Who may appeal.* Appeals or applications to the Board of Zoning Appeals may be made by:
 - (1) The owner, mortgagee, purchaser under a land contract, optionee or occupant under a written lease for

one year or more of the property for which relief is sought.

- (2) Any officer (other than the Zoning Administrator), department, board or bureau affected by a decision or order of the Zoning Administrator.
 - (3) Any person aggrieved and whose use and enjoyment of property within the Village is directly and adversely affected by a decision or order of the Building Inspector, Zoning Administrator or the requested Board of Zoning Appeals action.
- (c) *Appeal and application forms.* Every appeal or application shall be made upon forms furnished by the Village Clerk-Treasurer, which have been approved by the Board of Zoning Appeals. A scale drawing shall accompany each form showing the location and size of the property, existing improvements, all abutting properties and improvements thereon and change or addition requested. The applicant or appellant shall provide all information requested on the form and any additional information requested in writing by the chair or Clerk of the Board of Zoning Appeals, which is necessary to inform the Board of Zoning Appeals of the facts of the appeal. Failure to supply such information shall be grounds for dismissal of the appeal or application.
- (d) *Filing appeal or application.* The appellant or applicant shall file the required appeal form in duplicate with the Village Clerk-Treasurer. The Village Clerk-Treasurer shall deliver one copy to the Zoning Administrator or other officer or body from whose decision an appeal is taken. Upon receipt of an appeal, the Zoning Administrator or other officer or body responsible for the original determination shall transmit to the Clerk of the Board of Zoning Appeals all notes or papers relating to the order or decision from which the appeal is being taken.
- (e) *Fee.* All appeals and applications filed with the Village Clerk-Treasurer shall be accompanied by payment of a required fee as established by the Village Board from time to time and provided in Appendix A to this Code. If the appellant or applicant elects the contested case method, the appellant or applicant shall also pay the amount determined by the Board of Zoning Appeals to cover the additional administrative costs involved.
- (f) *Insufficient notice.* No appeal or application shall be considered by the Board of Zoning Appeals unless it is made on the required form. Upon receipt of any communication purporting to be an appeal or application, the Village Clerk-Treasurer shall supply the applicant with the proper forms which must be filed within ten days, in addition to the 30 days specified in Subsection (a) of this Section, in order to be considered by the Board of Zoning Appeals.

(Code 1998, § 13-1-261; Ord. No. 2003-03, § 1(13-1-261), 3-24-2003; Ord. No. 2006-04, § 2, 2-13-2006; Ord. No. 2006-08, §§ 1, 2, 4-24-2006; Ord. No. 2017-13, §§ 31, 32, 7-24-2017)

State Law reference— Board of appeals, Wis. Stats. § 62.23(7)(e).

Sec. 62-364. - Hearings.

- (a) *Notice of hearing.* Notice of time, date and place of the hearing of an appeal or application shall be given in the following manner:
 - (1) By certified mail or personal service to the appellant or applicant and to the Zoning Administrator or other administrative official or body from whose decision an appeal is taken and the Village Clerk-Treasurer on behalf of the Plan Commission not less than ten days prior to the date of the hearing.
 - (2) In every case involving a variance, conditional use, exception, planned unit development or public utility exception, the Village Clerk-Treasurer shall mail notice to the owners of record of all land within the area included in the application and within 100 feet of any part of the building or premises affected not less than ten days prior to the hearing. Names and last-known addresses of such owners shall be furnished by the applicant at the time of filing the appeal or application.

- (3) By publication of a class 2 notice under Wis. Stats. Ch. 985.
 - (4) Notice of an application for construction of a building in the bed of a future street, highway or parkway shall be published in the official newspaper not less than 15 days prior to the hearing.
 - (5) Notice of an application for a proposed special exception in a Shoreland-Wetland District shall be mailed to the district office of the Wisconsin Department of Natural Resources at least ten days prior to the hearing.
- (b) *Time of hearing, docketing.* Each appeal or application properly filed shall be numbered serially, docketed in a special book provided therefor and placed upon the calendar by the Clerk of the Board of Zoning Appeals. Cases docketed more than 15 days preceding a regular meeting shall be set for hearing at such meeting. Cases docketed seven days or less prior to a regular meeting shall be scheduled by the Clerk of the Board of Zoning Appeals, or designee, for a hearing on the second regular meeting day thereafter unless otherwise directed by the chair.
- (c) *Appearances.* The appellant or applicant may appear in person or by agent or attorney. In the absence of an appearance for or against an appeal or application, the Board of Zoning Appeals may dismiss the appeal or application or may dispose of the matter on the record before it.
- (d) *Oath.* Unless waived by the appellant or applicant and the chair, or as otherwise specifically provided in this Section, all witnesses shall be sworn before testifying by the chair or presiding officer.
- (e) *Compelling attendance of witnesses.* The chair, or, in the absence of the chair, the presiding officer, may compel the attendance of witnesses by subpoena. Written request for subpoenas shall be filed with the Clerk of the Board of Zoning Appeals not less than two days prior to the hearing except by special permission of the chair.
- (f) *Order of hearing.* Appeals and applications shall be heard in numerical order except for good cause shown.
- (g) *Hearing procedure.* All hearings shall be conducted in accordance with the following procedure unless otherwise stipulated by the parties and approved by the chair:
- (1) The chair shall call each hearing to order.
 - (2) Opening statements may be delivered by the appellant or applicant followed by any opening statement from the Zoning Administrator or Village representative.
 - (3) The appellant or applicant shall first present its case followed by the Zoning Administrator or Village representative. Each witness shall be subject to cross-examination followed by the opportunity for re-direct testimony. Members of the Board of Zoning Appeals shall also be permitted to examine witnesses the timing of which shall be subject to the discretion of the chair.
 - (4) Rebuttal testimony shall be allowed subject to the scope of the matters raised by adverse parties.
 - (5) Evidence from any other aggrieved or interested parties, if any, shall be presented after the Zoning Administrator or Village representative's case in chief.
 - (6) The Board of Zoning Appeals may accept opinion testimony and written testimony from interested parties, which shall not be subject to cross-examination, however, any party may introduce any rebuttal testimony addressing any factual issues raised.
 - (7) Closing statements shall be heard after all evidence is taken.
 - (8) The Board of Zoning Appeals shall deliberate and decide the matter in accordance with Section 62-365.
- (h) *Evidence.* The Board of Zoning Appeals shall not be bound by common-law or statutory rules of evidence except for rules of privilege. The Board of Zoning Appeals shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. Basic principles of

relevancy, materiality and probative force shall govern the proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record. (Code 1998, § 13-1-262; Ord. No. 2003-03, § 1(13-1-262), 3-24-2003; Ord. No. 2006-08, § 3, 4-24-2006; Ord. No. 2006-08, §§ 4, 5, 4-24-2006; Ord. No. 2017-13, § 33, 7-24-2017)

State Law reference— Board of appeals, Wis. Stats. § 62.23(7)(e).

Sec. 62-365. - Decision and disposition of cases.

- (a) *Time of decision.* The Board of Zoning Appeals shall render its decision either at the termination of the hearing or within 30 days thereafter and shall notify the parties in interest and the Zoning Administrator in writing of its decision.
- (b) *Form of decision.* The final disposition of an appeal or application shall be in the form of a written decision or order signed by the chair and Clerk of the Board of Zoning Appeals. Such decision shall state the reasons for the Board of Zoning Appeals' determination with findings of fact and conclusions of law and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal or grant or deny the special exception, conditional use of variance. Copies of the decision shall be sent to the applicant, Village Clerk-Treasurer, on behalf of the Plan Commission and any Village committee involved.
- (c) *Vote required.* All orders or decisions of the Board of Zoning Appeals granting a variance, exception or conditional use or reversing any action or order of the administrator shall be made by a majority of the members present if a quorum exists.
- (d) *Conditions.* Variances or conditions imposed in any permit shall be stated in the decision or order embodying the Board of Zoning Appeals' decision and shall also be set forth in the building, conditional use or occupancy permit issued under that order by the Building Inspector. A permit shall be valid only as long as the conditions upon which it is granted are observed. Whenever the Board of Zoning Appeals grants an application or appeal affecting the use of any premises, shall authorization shall be deemed revoked unless the owner, occupant or agent shall, upon request, file with the Board of Zoning Appeals Secretary a written report certifying that all conditions or limitations imposed by the Board of Zoning Appeals have been conformed to and maintained. Variances, substitutions or conditional use permits approved by the Board of Zoning Appeals shall expire six months after issuance if the performance of work is required and substantial work has not commenced.
- (e) *Filing of decision.* Every order of decision of the Board of Zoning Appeals shall be immediately filed with the Clerk of the Board of Zoning Appeals who shall thereupon forward the decision to the Village Clerk-Treasurer and mail a copy to the applicant or appellant by certified mail. Copies of decisions granting conditional uses or variances in a Floodplain, Shoreland or Wetland district shall be mailed to the district office of the Wisconsin Department of Natural Resources.
- (f) *Reconsideration.*
 - (1) *Resubmission.* No appeal or application which has been dismissed or denied shall be considered again without material alteration or revision with one year of the Board of Zoning Appeals' decision, except pursuant to court order or by motion to reconsider made by a member voting with the majority or as provided in Subsection (f)(2) of this Section.
 - (2) *Rehearing.* No rehearing shall be held except upon the affirmative vote for four or more members of the Board of Zoning Appeals upon finding that substantial, new evidence is submitted, which could not reasonably 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.

(Code 1998, § 13-1-263; Ord. No. 2003-03, § 1(13-1-263), 3-24-2003; Ord. No. 2006-08, § 6, 4-24-2006; Ord. No. 2017-13, §§ 34, 35, 7-24-2017)

State Law reference— Board of appeals, Wis. Stats. § 62.23(7)(e).

Sec. 62-366. - Variances.

(a) *Purpose.*

- (1) A request for a variance may be made when an aggrieved party can submit proof that strict adherence to the provisions of this Zoning Code would cause the aggrieved party undue hardship or create conditions causing greater harmful effects than the initial condition. A variance granted to a nonconforming use brings that use into conformance with the district and zoning requirements.
- (2) Persons requesting a variance shall submit such request to the Board of Zoning Appeals, who shall make a determination on the request following notice and hearing.
- (3) The Board of Zoning Appeals may authorize upon appeal, in specific cases, such variance from the terms of the Zoning Code as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the Zoning Code will result in unnecessary hardship and so that the spirit of the Zoning Code shall be observed and substantial justice done. No variance shall have the effect of allowing in any district, permit a lower degree of flood protection than the flood protection elevation for the particular area or permit standards lower than those required by state law.

(b) *Application for variances.* The application for a variance shall be filed pursuant to Section 62-363.

(c) *Public hearing of application.* The public hearing for a variance shall be conducted pursuant to Section 62-364.

(d) *Prohibited variances.* The Board of Zoning 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 conditional 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 of Zoning Appeals' decision and shall not permit variances in yard, area or other requirements of the district in which located.

(e) *Standards for granting variances.*

- (1) *Unnecessary hardship.* Variances shall be granted only where the applicant demonstrates the existence of an unnecessary hardship. An unnecessary hardship exists where compliance with the strict letter of the restrictions governing the property would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. When considering any variance, the Board of Zoning Appeals shall determine whether the particular restriction in question is unnecessarily burdensome in light of the underlying purpose of that restriction. The purpose of the regulation shall be the primary concern, not the burden upon the property owner. Variances may not be granted where they are contrary to the public interest or where granting the variance would violate the spirit of the regulation. A use variance may not be granted unless it is proved that there can be no reasonable use of the property absent a variance. The Board of Zoning Appeals shall consider the following factors to determine whether an unnecessary hardship exists to justify issuance of an area variance:
 - a. The purpose of the zoning restriction in question;

- b. The effect of the restriction on the property; and
 - c. The effect of a variance on the neighborhood and the larger public interest.
- (2) *Hardship may not be self-imposed.* Variances may not be granted to remedy self-imposed hardships.
- (3) *Hardships must be unique to the property.* Where the same hardship is imposed upon other properties in the zoning district, a variance shall not be granted.

(Code 1998, § 13-1-264; Ord. No. 2003-03, § 1(13-1-264), 3-24-2003; Ord. No. 2006-08, § 7, 4-24-2006)

Sec. 62-367. - Review by court of record.

Any person aggrieved by any decision of the Board of Zoning 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 30 days after the filing of the decision in the offices of the Board of Zoning Appeals.

(Code 1998, § 13-1-265; Ord. No. 2003-03, § 1(13-1-265), 3-24-2003)

Secs. 62-368—62-392. - Reserved.

DIVISION 3. - BOARD OF ZONING APPEALS

Sec. 2-233. - Composition.

A Board of Zoning Appeals shall be appointed and governed by the state zoning enabling law as contained in Wis. Stats. § 62.23, the Village Zoning Code and ordinances and this Section. The laws of the state or Village and local ordinances shall prevail in that order. The Board of Zoning Appeals shall consist of five non-Village-Trustee citizen members, and two non-Village-Trustee alternate members, appointed by the Village President subject to confirmation by the Village Board, for a three-year staggered term of office. The members shall be removable by the Village Board for cause upon written charges and upon public hearing. The Village President shall designate one of the members as chairperson. The Village President shall annually 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 of Zoning Appeals refuses to vote because of conflict of interest or when a member 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 of Zoning Appeals so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates.

Sec. 2-234. - Powers and Duties.

The Board of Zoning Appeals shall have the powers prescribed by state law and in Sections 62-362 through 62-367.

Sec. 2-235. - Meetings.

- (a) All meetings and hearings of the Board of Zoning Appeals shall be open to the public, except that the Board of Zoning Appeals may go into closed session to deliberate after a hearing on an appeal. The final vote on an appeal shall be taken in open session by roll call vote, recorded and open for public inspection in the Board of Zoning Appeal's office of the Community Development Department.
- (b) Special meetings may be called by the chairperson or at such other times as the Board of Zoning Appeals may determine. Notice of a special meeting shall be mailed to each member at least 48 hours prior to the time set for the meeting, or announcement of the meeting shall be made at any meeting at which all members are present.
- (c) Hearings may be held at any regular or special meeting at the time set by the chairperson.
- (d) A quorum for any meeting or hearing shall consist of three members, but a lesser number may meet and adjourn to a specified time. If a quorum is present, the Board of Zoning Appeals may take action under this Subsection by a majority vote of the members present.
- (e) The Board of Zoning 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 examination and other official actions, all of which shall be immediately filed in the office of the Village Clerk-Treasurer and shall be public record. The Board of Zoning Appeals shall adopt its own rules of procedure not in conflict with this Code or with the applicable Wisconsin Statutes.
- (f) If a Board of Zoning Appeals member is unable to participate in any case because of a conflict of interest per the Ethics Code (Article V of this Chapter), the chairperson shall direct an alternate member to act

instead. Disqualification of a member for a conflict of interest shall not decrease the number of votes required for acting upon any matter, but such member may be counted in determining whether a quorum is present for the transaction of business.

(Ord. No. 2017-12, § 23, 6-26-2017)

Sec. 2-236. - Offices.

The Village Board shall provide suitable offices for holding hearings and the presentation of records, documents, and accounts.

Secs. 2-237—2-246. - Reserved.