

SECTION 11 ZONING BOARD OF APPEALS

1. CREATION, MEMBERSHIP, TERM OF OFFICE

- a. **Creation and Membership** - There is hereby created a Zoning Board of Appeals consisting of five (5) members. Members shall be appointed by the Village Council to serve for a period of three (3) years except the first appointments made hereby; two (2) members shall be appointed for one (1) year, two (2) members for two (2) years, and one (1) member for three (3) years. Thereafter, all appointments shall be made for three (3) years.
- b. **Alternate Members** - The Village Council shall also appoint two (2) alternate members for the same terms as regular members of the Zoning Board of Appeals. The first member so appointed shall serve for a term of two (2) years and the second alternate member shall serve for a term of three (3) years. Thereafter, all appointments shall be made for three (3) years. The alternate members shall be called on a rotating basis to set as regular members of the Zoning Board of Appeals in the absence of a regular member. Upon notification of the planned absence of a regular Zoning Board of Appeals member, an alternate member shall be designated to attend the meeting in place of the regular member. If another regular member should also be absent, the other alternate shall be designated to sit in that regular member's place. If only one alternate member is needed for a meeting, the next time an alternate member is needed, the other alternate shall first be designated to serve. Alternate members shall have the same voting rights as regular members of the Zoning Board of Appeals. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest. In such circumstance, the alternate member shall serve in that case until a final decision has been made.
- c. **Qualifications** - All regular and alternate members of the Zoning Board of Appeals shall be residents of the Village.

2. POWERS AND DUTIES

The Zoning Board of Appeals shall act upon the following questions as they arise in the administration of this ordinance:

- a. The interpretation of the zoning map and zoning ordinance text.
- b. Appeals from a requirement, decision, or determination made by an administrative official charged with the enforcement of this ordinance.
- c. Requests for variance in the dimensional requirements of this ordinance including height, setback building size, lot coverage, lot width, and lot size as well as street parking and loading requirements and sign regulations.
- d. Expansion or change in a nonconforming use, structure or lot.
- e. The Zoning Board of Appeals shall have the authority to review, reverse, revise, or modify any decision made by or condition imposed by the Planning Commission or Zoning Administrator.
- f. The Zoning Board of Appeals does not have the authority to decide or reverse any action taken by the Mayville Village Council.

3. **COMPENSATION**

Each member shall receive a reasonable sum as determined by the Village Council for their services in attending each regular or special meeting of said Board; sums to pay said compensation and the expenses of the Board shall be provided annually in advance by the Village Council.

4. **MEETINGS, RECORDS**

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Board may specify in rules of procedure. The Chairman, or in his/her absence, the acting Chairman, may to the extent permitted by law, administer oaths and compel the attendance of witnesses. All meetings must comply with the "Open Meetings Act", P.A. 267 of 1976, as amended. The Board shall maintain a record of its proceedings, which shall be filed in the office of the Village Clerk and which shall be a public record.

5. **PROCEDURE**

- a. A variance requires approval of 2/3 of the members of the Zoning Board of Appeals.
- b. The public hearing shall be advertised by at least one (1) publication in a newspaper of general circulation in the village not less than 15 days before the date of the hearing. Notice shall be given to the owners of the property that is the subject of the request, to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request, and to all occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction. Notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States Postal Service or other public or private delivery services not less than 15 days before the date of the request will be considered. In the case of occupants of a structure where the identity of each occupant is unknown, it shall be sufficient to address the notice to "occupants" without specifically naming each occupant. Said notice shall indicate the following:
 - i. Describe the nature of the request.
 - ii. Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such address currently exists within the property. If there are not street addresses, other means of identification may be used.
 - iii. State when and where the request will be considered.
 - iv. Indicate when and where written comments will be received concerning the request.
- c. Upon the day for the hearing of any application or appeal, the Board may adjourn the hearing in order to obtain additional information or to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the application or appeal. In the case of an adjourned hearing, persons previously notified and persons already heard need not be notified of the time of resumption of the hearing, if it is set before adjournment.
- d. At the hearing, any party may be heard in person or by agent or attorney.
- e. The Board may reverse or affirm wholly or partly the administrative decision; or may modify the order, requirement, decision or determination at issue, and to that end shall

have all the powers of the officer from whom the appeal was taken. The Board may issue or direct the issuance of a permit.

- f. Each appeal or application for variance shall be accompanied by a filing fee to be determined by the Village Council which shall be deposited by the Zoning Administrator with the Village Treasurer.

6. STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Zoning Board of Appeals after the notice of appeal shall have been filed with him/her that by reason of facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted to the Zoning Board of Appeals or by the Circuit Court, on application, on notice to the Zoning Administrator on due cause shown.

7. TIME TO AND NOTICE OF APPEAL: TRANSMISSION OF RECORDS

Appeals of administrative actions shall be taken to the Zoning Board of Appeals within 21 days of the date of such actions by the filing of a notice of appeal with the Zoning Administrator. The Zoning Board of Appeals shall take final action of an appeal within 90 days of the date of filing. The Zoning Administrator shall transmit to the Board all the papers constituting the record of the action being appealed.

8. CONDITIONS

Reasonable conditions may be imposed with any affirmative decision by the Zoning Board of Appeals. The conditions may include, but are not limited to, conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resource and energy, to insure compatibility with adjacent desirable manner. Conditions imposed shall meet all of the following requirements;

- a. Be designed to protect natural resources, the health, safety, and welfare and the social and economic well being of those who will use the land or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
- b. Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity.
- c. Be necessary to meet the intent and purpose of the zoning ordinance, be related to the standards established in the ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

9. STANDARDS FOR VARIANCES

No variance of the provisions or requirements of this ordinance shall be authorized by the Zoning Board of Appeals unless the Zoning Board of Appeals finds, from reasonable evidence, that all of the following facts and conditions exist:

- a. To issue a variance authorizing the use of a building or land for a use not normally permitted within that zoning district, the applicant must demonstrate unnecessary hardship by showing that:
 1. the property cannot be put to a reasonable use under the requirements of the district that the parcel is located
 2. the problem is due to unique circumstances peculiar to the property and not to general neighborhood conditions
 3. the proposed use would not alter the essential character of the area
 4. the problem is not self created
 5. issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done

- b. To issue a variance that modifies the dimensional requirements of this ordinance, such as setbacks, minimum lot size or maximum building height, the applicant must demonstrate practical difficulty by showing that:
 1. the standard for which the variance is being granted would unreasonable prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome
 2. the variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation of the standard would not provide substantial relief and be more consistent with justice to others
 3. the problem is due to circumstances unique to the parcel
 4. the problem is not self created
 5. issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice is done.