

- (a) *Established; authority.* The village board hereby establishes a village board of appeals. The village board of appeals is authorized and empowered to act pursuant to the authority found in Wis. Stats. §62.23(7)(e).
- (b) *Membership.* The board of appeals shall consist of five members appointed by the village president and subject to confirmation by the village board. The terms of the members shall be three years, except that of those initially appointed, one shall serve for one year, two for two years, and two for three years. The village president shall appoint, for staggered terms of three years, two alternate members of such board. The village president 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 when a member is absent. The second alternate shall 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. There shall be no compensation received by the members for their service on the board.
- (c) *Jurisdiction.* The board of appeals shall have the powers granted in Wis. Stats. §62.23(7)(e), including:
- (1) Appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator.
 - (2) Hear and decide special exceptions to the terms of this chapter upon which the board of appeals is required to pass.
 - (3) 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, a literal enforcement of this chapter will result in practical difficulty or unnecessary hardship, so the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.
 - a. In this subsection, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure granted by the board of appeals under this paragraph. In this subsection, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
 - b. A property owner bears the burden of proving "unnecessary hardship," as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property absent a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the property, rather

than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

- (4) To hear and grant applications for substitution of the same or more restrictive nonconforming uses for existing nonconforming uses.
 - (5) To hear and decide application for interpretation of the zoning regulations and the boundaries of the zoning districts after the plan commission has made a review and recommendation.
 - (6) Reverse, affirm wholly or partly, modify the order, decision, determination or requirement 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 offices from whom the appeal is taken, and may issue or direct the issue of a permit.
 - (7) The board of appeals may request assistance from other village officers, departments, commissions and boards.
 - (8) Have the powers provided by Wis. Stats. §62.23(7)(e) or by any ordinance of the village.
- (d) *Officers.* The board of appeals shall choose its own chairperson, vice chairperson, and secretary.
- (e) *Meetings and rules.* The board of appeals shall adopt rules and regulations for its government and procedure. Meetings of the board of appeals shall be held at the call of the chairperson and at such other times as the board may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. However, the board may convene in closed session under Wis. Stats. §19.85.
- (f) *Minutes.* The secretary shall keep minutes of its proceedings, showing the action of the board and vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record. A majority of board members, or of board members and alternates, shall constitute a quorum.
- (g) *Determinations.* If a quorum is present, the board may take action by a majority vote of the members present.
- (h) *Hearings.*
- (1) The board of appeals shall fix a reasonable time and place for the hearing of the appeal or application; and shall give public notice thereof by publication at least once during two consecutive weeks, the last publication being no later than one week before the hearing. In addition, the board shall give due notice to the parties in interest, including the officer from whom the appeal is taken.
 - (2) At the hearing, the appellant or applicant may appear in person, by agent, or by attorney.
 - (3) A copy of all notices of appeals or variances to the floodland provisions of this chapter shall be transmitted to the state department of natural resources (DNR) for review and comment. Final action on floodland appeals and variance requests shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first.

- (i) *Decisions.*
 - (1) *Time limits.*
 - a. The board of appeals shall decide all appeals and applications, except appeals and variance requests to the floodland provisions of this chapter, within 30 days after the final hearing and shall transmit a signed copy of the board's decision to the appellant or applicant, and the officer from whom the appeal is taken. Decisions on appeals to the floodland provisions of this chapter shall be made as soon as is practicable, but not more than 60 days after the required public hearing.
 - b. Decisions on appeals and variance requests to the floodland provisions of this chapter shall not be made for 30 days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions on floodland appeals or variance requests shall be transmitted to the DNR within ten days of their effective date.
 - (2) *Expiration of variances.* Variances and substitutions granted by the board of appeals shall expire within six months, unless substantial work has commenced under such grant. An extension, the duration to be determined by the zoning administrator on a case-by-case basis, may be granted by the zoning administrator before its expiration. The zoning administrator or applicant may request that the board of appeals review and approve the request for extension.
 - (3) *Establishment of conditions.* In exercising any of its powers, the board of appeals may, in any finding or decision, establish appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter.
- (j) *Finality of decision.* All decisions and findings of the board of appeals on any application for a variance, after a public hearing, shall, in all instances, be the final administrative decision and shall be subject to judicial review. No application for a variance which has been denied by the board may be resubmitted for a period of one year from the date of the order of denial, except under extraordinary circumstances or on the grounds of new evidence discoverable after the hearing or proof of substantially changed conditions found to be valid by the board.
- (k) *Review of decisions by court.* Any person aggrieved by any decision of the board of appeals or any taxpayer or any 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, commence an action seeking the remedy available by certiorari.