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Chapter 78 - ZONING

ARTICLE III. - APPEALS AND VARIANCES

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Sec. 78-61. - Generally.

Appeals and variances described in this article shall be considered by either the board of adjustment or the village council. The board of adjustment shall consider appeals and variances relating to single-family properties and structures located within the R-1A and R-1 single-family dwelling districts of the village. The village council shall consider appeals and variances relating to all other properties not within the jurisdiction of the board of adjustment, including properties within the R-1A and R-1 single-family dwelling districts which are not single-family, and structures and properties in all other zoning districts in the village, and appeals and variances relating to subdivisions in any zoning district.

(Ord. No. 7-08, § 2, 4-10-2008)

Sec. 78-62. - Board of adjustment established; membership; rules of procedure.

- (a) A board of adjustment is hereby established, which shall perform its duties as provided by law in such a way that the objectives of this chapter shall be observed, public health, safety, and welfare secured, and substantial justice done.
- (b) The board of adjustment shall consist of five regular members appointed by the village council, who shall serve without compensation and for a term of three years. In addition to the regular board members, two additional members, to be designated as alternate #1 and alternate #2, shall be appointed to serve in that order at meetings of the board when necessary on the board as a quorum. In the case of only three members present, all present shall have to vote in favor of a variance to make it effective. Alternate members shall serve for two years, but of the first appointed alternate members, one shall serve for one year, and one shall serve for two years. Thereafter, alternate members shall be appointed for two-year terms.
- (c) Vacancies in the board membership by resignation, illness or other causes shall be filled by the village council for the unexpired term of the member involved. Members of the board of adjustment may be removed from office by the village council upon written charges and after public hearing. The board shall select its own chair and vice-chair annually at the first meeting of the calendar year. The community development director or a designated representative shall serve as clerk and advisor to the board.
- (d) All members of the board of adjustment shall be qualified electors of the village.

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- (e) The board of adjustment shall adopt rules of procedure for the conduct of its business, consistent with the provisions of this chapter. Meetings of the board shall be held at the call of the chair, and at such time as the board may determine. All meetings of the board and its files or records shall be open to the public.
- (f) The board of adjustment shall also keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent, 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 village clerk and shall be a public record.

(Ord. No. 7-08, § 2, 4-10-2008)

Cross reference— Administration, ch. 2.

Sec. 78-63. - Appeal procedure.

- (a) Appeals to the board of adjustment or the village council, as appropriate, may be taken by an applicant aggrieved by administrative action of the village manager, the community development director or the building official, or their designees, relating to the powers and duties of the board of adjustment or the village council under this chapter, as appropriate. For purposes of this section, the preparation or submittal of a staff report or its equivalent shall not be considered administrative action subject to appellate review. Such appeal shall be taken within 15 days of receipt the written decision being appealed, by filing with the village clerk a notice of appeal specifying the grounds thereof. The person(s) from whom the appeal is taken shall forthwith transmit to the village clerk all of the papers constituting the record upon which the action was taken.
- (b) The board or the village council, as appropriate, shall fix a reasonable time for the hearing of the appeal, give public notice thereof, by sending notice through regular mail to property owners of record within a 300-foot radius of the outermost perimeter of the subject property and by publication in a newspaper of general circulation within the community, a minimum of ten days in advance of the public hearing and decide the same within a reasonable time. Upon the hearing, any party may appear in person, by agent or by attorney.
- (c) The owner of the property for which the appeal is sought or the agent or attorney designated by the owner on the submitted notice of appeal shall be notified by mail of the date and time of the hearing.

(Ord. No. 7-08, § 2, 4-10-2008; Ord. No. 21-11, § 2, 12-8-1011)

Sec. 78-64. - Stay of proceedings pending decision on appeal.

An appeal stays all proceedings in furtherance of the action appealed from, unless the person(s) from whom the appeal is taken certifies to the board of adjustment or the village council, as appropriate, after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

(Ord. No. 7-08, § 2, 4-10-2008; Ord. No. 21-11, § 2, 12-8-2011)

Sec. 78-65. - Powers and duties of board of adjustment and village council; public notice.

- (a) The board of adjustment and the village council shall have the following powers in regard to appeals and variances within their jurisdiction as defined under [section 78-61](#)

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- (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this chapter or of any ordinance adopted pursuant thereto.
- (2) Authorize upon application 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 the provisions of this chapter will result in unnecessary hardship. The power to grant any such variance shall be limited by and contingent upon a finding by the board or council that:
 - a. 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 zoning district.
 - b. The special conditions and circumstances do not result from the actions of the applicant.
 - c. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.
 - d. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
 - e. The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
 - f. The grant of the variance will be in harmony with the general intent and purpose of this chapter and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- (b) In granting any variance, the board of adjustment or village council may prescribe appropriate conditions and safeguards in conformity with this chapter and any other ordinance enacted by the village council. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.
- (c) In reviewing matters brought before it pursuant to the provisions of this article, neither the board of adjustment nor the village council shall exercise authority or jurisdiction over matters which are specifically reserved to other officers, boards or agencies of the village. Where site plan review is necessitated pursuant to the provisions of this chapter, no decision of the board of adjustment or the village council with respect to a variance, or other matter, pertaining to the property in questions shall obviate the necessity for such site plan review. Where a requested building permit has been withheld by the building official for want of compliance with applicable laws and ordinances beyond the jurisdiction of the board of adjustment or the village council, no building permit shall be issued regardless of any decision of the board or village council until the requirements of such laws and ordinances have been met.
- (d) Under no circumstances shall the board of adjustment or the village council grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this chapter in the zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures or buildings in other zoning districts shall be considered grounds for the authorization of a variance.
- (e) Notice of public hearing of the board of adjustment shall be advertised a minimum of ten days in advance of the public hearing in a newspaper of general circulation in the area.

(Ord. No. 7-08, § 2, 4-10-2008)

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Sec. 78-66. - Decisions; required vote; resubmission after denial.

In exercising the powers mentioned in [section 78-65](#), the board of adjustment or the village council may, in conformity with the provisions of this article, 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. The concurring vote of three members of the board of adjustment or the village council shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter, or to effect any variation in this chapter. Any request denied by the board of adjustment or the village council shall not be resubmitted for a period of 90 days after the date of denial.

(Ord. No. 7-08, § 2, 4-10-2008)

Sec. 78-67. - Appeal to circuit court.

Any person or persons aggrieved by any decision of the board of adjustment or the village council under this article, may appeal such decision in accordance with state law.

(Ord. No. 7-08, § 2, 4-10-2008)

Sec. 78-68. - Time limitation on variances.

The board of adjustment or the village council may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. However, if no time limit is specified by the board of adjustment or the village council, then the variance shall expire within six months from the date of grant, unless a building permit based upon and incorporating the variance is issued within the six-month period and construction has begun thereunder.

(Ord. No. 7-08, § 2, 4-10-2008)

Sec. 78-69. - Filing fee.

- (a) Upon filing an application with the board of adjustment or the village council under this article, the applicant shall pay a fee to the village at the time of filing of such application. The fee shall be in an amount as set by resolution of the village council and on file in the village clerk's office, shall not be reimbursable, and is intended to defray the costs of administering, processing and reviewing the application. Additionally, to cover all additional administrative costs, actual or anticipated, including, but not limited to, advertising costs, engineering fees, consulting fees, attorneys' fees and special studies, the applicant shall compensate the village for all such costs prior to the processing of the application, or not later than 30 days after final application approval, whichever is determined as appropriate by the community development director, or designee.
- (b) The building official may waive the filing fee when the applicant seeks a variance to replace an existing screened swimming pool enclosure with a new screened swimming pool enclosure having the same dimensions but a greater height than the existing screened swimming pool enclosure.

(Ord. No. 7-08, § 2, 4-10-2008)

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Secs. 78-70–78-90. - Reserved.

FOOTNOTE(S):

⁽⁶⁴⁾ **Editor's note**— Ord. No. 7-08, § 2, adopted April 10, 2008, amended article III in its entirety to read as herein set out. Former article III, §§ 78-61—78-69 pertained to similar subject matter, and derived from app. A, §§ XIII(A)—(I) of the 1977 Code. [\(Back\)](#)