

CHAPTER 3

BOARD OF APPEALS

SECTION:

- 2-3-1: Organization
- 2-3-2: Appeals
- 2-3-3: Jurisdiction
- 2-3-4: Appeals to Court

2-3-1: ORGANIZATION: A Board of Appeals is hereby established in accordance with the provisions of the Statute applicable thereto. Regular meetings of the Board shall be held at such time and place within the Village as the Board may determine. Special meetings may be held at the call of the Chairman, or as determined by the Board. Such Chairman, or in his absence, the Acting Chairman, may administer oaths and compel attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. Such Board shall keep minutes of its proceedings showing the vote of each member on every question. If any member is absent or fails to vote, the minutes shall indicate such fact. The Board shall adopt its own rules of procedure not in conflict with the Statute or the Zoning Title.¹

2-3-2: APPEALS: Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the Village. Such appeal shall be taken within twenty (20) days from the date of the action appealed from, by filing with the Enforcing Officer and the Board of Appeals a notice of appeal, specifying the grounds thereof. The Enforcing Officer shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from unless the Enforcing Officer certifies to the Board, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. The Board of Appeals shall fix a reasonable time for hearing of the appeal and give due notice thereof to the parties and decide the same within a reasonable time. The Board may reverse or affirm, wholly or partly, or may modify the use, requirement, decision or determination as, in its opinion, ought to be made in the premises.

¹ See Title 5 of this Code.

2-3-3: JURISDICTION: The Board of Appeals shall hear and decide appeals from any order, requirements, decision or determination made by the Enforcing Officer. It shall also hear and decide all matters referred to it or upon which it is required to pass under the Zoning Title. The Board may reverse or affirm, wholly or partly, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the Board may decide to be fitting and proper in the premises, and to that end the Board shall also have all the powers of the officer from whom the appeal is taken. When a property owner shows that a strict application of the terms of the Zoning Title relating to the use, construction or alteration of buildings or structures, or to the use of land, imposes upon him practical difficulties or particular hardship, then the Board may make such variations of the strict application of terms of the Zoning Title as are in harmony with its general purpose and intent when the Board is satisfied, under the evidence heard before it, that a granting of such variation will not merely serve as a convenience to the applicant, but is necessary to alleviate some demonstrable hardship so great as to warrant a variation in the following instances:

- (A) To permit the extension of a district where the boundary line of a district divides a lot in single ownership as shown of record.
- (B) To permit the reconstruction of a nonconforming building which has been destroyed or damaged to an extent of more than fifty percent (50%) of its value, by fire or act of God, or the public enemy, where the Board shall find some compelling public necessity requiring a continuance of the nonconforming use, and in no case shall such a permit be issued if its primary function is to continue a monopoly.
- (C) To make a variance, by reason of an exceptional situation, surroundings, or condition of a specific piece of property or by the reason of exceptional narrowness, shallowness or shape of a specific piece of property of record, or by reason of exceptional topographical conditions the strict application of any provision of the Zoning Title would result in peculiar and exceptional practical difficulties or particular hardship upon the owner of such property, and amount to a practical confiscation of property, as distinguished from a mere inconvenience to such owner, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in the Zoning Title.

- (D) To interpret the provisions of the Zoning Title where the street layout actually on the ground varies from the street layout as shown on the district map fixing the several districts.
- (E) To waive the parking requirements in the business or industrial districts whenever the character or use of the building is such as to make unnecessary the full provision of parking facilities or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or convenience.
- (F) To permit a building to be erected, reconstructed, altered or enlarged so that the building lines will extend beyond the distance specified in the Zoning Title into side yards or into front yards, provided that such variance may not be granted; (1) unless there is a building in the block which extends beyond the distance from the front street line specified in the Zoning Title, in which case the building line may be permitted to extend as near to the front street line as such nonconforming building; or (2) unless the lot is irregular in shape, topography or size; or (3) unless the street line of the lot is directly opposite the street line of a lot which is irregular in shape, topography or size.
- (G) To permit in any district such modifications of the requirements of the regulations of the Zoning Title as said Board may deem necessary to secure an appropriate development of a lot where adjacent to such lot on two (2) or more sides there are buildings that do not conform to the regulations of the district.
- (H) 1. No building permits shall be issued under the Zoning Title¹ for construction in new subdivisions not having prior approval of the Board of Appeals.

2. Before approval by the Board of Trustees of the issuance of any special permit for the uses described in Chapter 6, Title 5 of this Code, the Board of Appeals shall be given thirty (30) days in which to make such report to the Board of Trustees; provided, however, that if no report is received from the Board of Appeals within thirty (30) days it shall be assumed that approval of the application has been given by the Board of Appeals.

¹ See Title 5 of this Code

Nothing herein contained shall be construed to give or grant to the Board the power or authority to alter or change the Zoning Title or the district map; such power and authority being reserved to the Board of Trustees. The Board of Appeals may impose such conditions and restrictions upon the use of the premises benefited by a variation, except in a specified case, after an application for a permit has been made to the Enforcing Officer and after duly advertised public hearing held by the Board as prescribed by Statute. The notice of hearing shall contain the address or location of the property for which the variation, or other ruling by the Board, is sought, as well as a brief description of the nature of the appeal. In order to partially defray the expenses of the public hearing involving variances, the applicant shall pay the sum of one hundred dollars (\$100.00) to the Village Comptroller at the time of the filing of the appeal for the variance.

2-3-4: APPEALS TO COURT: All final administrative decisions of the Board of Appeals rendered under the terms of the Zoning Title shall be subject to judicial review pursuant to the provisions of the "Administrative Review Act", approved rules adopted pursuant thereto.