

9.11 VARIANCES AND APPEALS.

Appeals to the Board of 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 Plan Commission or Building Inspector. Such appeal shall be taken within 30 days of the decision a reasonable time, as provided by the rules of the Board of Appeals, by filing with the ~~Plan Commission or Building Inspector~~Village Clerk and with the Board of Appeals a notice of appeal specifying the grounds thereof. The Plan Commission or Building Inspector shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The Board of Appeals shall fix a reasonable time for the hearing of appeals and give public notice thereof as well as due notice to the parties in interest and shall decide the same within a reasonable time. A filing fee in the amount periodically as set by the Village Board must accompany a Notice of Appeal to the Board of Appeals.

1. POWERS OF THE BOARD OF APPEALS. The Board of Appeals shall have the following powers:

- (a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Plan Commission or Building Inspector.
- (b) To hear and decide special exceptions to the terms of this chapter upon which the Board of Appeals is required to pass.
- (c) To 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 peculiar to the property for which the variance is sought, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit of the chapter shall be observed, public safety and welfare secured and substantial justice done, but no action of the Board of Appeals shall have the effect of permitting in any district uses prohibited in such district. Use variances shall not be granted.
- (d) In every case where a variance from these regulations has been granted by the Board of Appeals, the minutes of the Board shall affirmatively show that an "unnecessary hardship" or "practical difficulty" exists and the records of the Board shall clearly show in what particular or specific respects an "unnecessary hardship" or "practical difficulty" has been created by the regulations of this chapter.
- (e) To have the powers provided by §62.23(7) (e) Wisconsin Statutes or by any Ordinance of the Village of Elmwood Park.

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2. VARIANCE STANDARDS.

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No variance to the provisions of this ordinance shall be granted by the Board of Appeals unless it determines that conditions of this Section are met and so indicates in the minutes of its proceedings. In addition, the following provisions shall be met:

(a) Preservation of Intent. No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall have the effect of permitting a use in any district that is not a stated permitted use, accessory use, or conditional use in that particular district.

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(b) Exceptional Circumstances. 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 Ordinance should be changed.

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(c) Economic Hardship and Self-Imposed Hardship Not Grounds for Variance

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1. No variance shall be granted solely on the basis of economic gain or loss.

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2. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

(d) Preservation of Property Rights. The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.

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(e) Absence of Detriment. No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.

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### 3. VARIANCE DECISION

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(a) Authority. The Board of Appeals may reverse or affirm wholly or in part, or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in the premises, and to that end shall have all the powers of the Building Inspector. If a quorum of members or alternates is present, the Board of Appeals may take action by majority vote. The concurring vote of four (4) members of the Board of Appeals shall be necessary to reverse any order requirement, decision or determination appealed from or to decide in favor or the applicant on any matter on which it is required to pass or to effect any variation in the requirements of this Ordinance. The Board of Appeals shall make the reasoning of its decisions clear, either by issuing a written decision or by including adequate detail in the meeting minutes.

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(b) Time for Decision. The Board of Appeals shall decide all appeals and applications, within thirty (30) days after the final hearing. The Board shall transmit a signed copy of the Board's decision to the appellant or applicant, the officer from whom the appeal is taken, and the Plan Commission.

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~~(f)~~ (c) -Expiration of Variances. Variances and substitutions granted by the Board of Appeals shall expire within six (6) months unless substantial work has commenced pursuant to such grant.

(d) Assistance from Other Officials. The Board of Appeals shall have the power to call on any other Village ~~department~~representative for assistance in the performance of its duties and such other ~~departments~~representatives shall render such assistance as may be reasonably required.

~~(g)~~ (e) Establishment of Conditions. In exercising the foregoing powers the Board of Appeals may in appropriate cases establish suitable conditions and safeguards in harmony with the general purpose and intent of this chapter

1. ~~Hardship Variance. The Village Board shall have power to authorize upon appeal after a public hearing in specific cases, such variances from the terms of this Ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this Ordinance will result in unnecessary hardship, or because the subdivision is located outside the corporate limits of the Village, and so that the spirit of this Ordinance shall be observed as substantial justice done, the Plan Commission or Village Board may attach reasonable conditions to the grant of variances, and provided further that the Plan Commission or the Village Board shall have no power to grant variances which will result in making less restrictive the requirements of Chapter 236 of the Wisconsin Statutes of 1965.~~

2. ~~Method of Appeal. Any person aggrieved or any officer, department, board or commission of the Village affected by any decision of the Building Inspector or Plan Commission under this Chapter may appeal to the Village Board by filing a notice of appeal with the Plan Commission, and with the Board, specifying the grounds of appeal within thirty (30) days after the decision or action complained of.~~

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