

ARTICLE 5: PROCEDURES AND REQUIREMENTS FOR APPEALS & VARIANCES

- 500 GENERAL.
- 501 APPEALS.
- 502 STAY OF PROCEEDINGS.
- 503 VARIANCES.
- 504 APPLICATION AND STANDARDS FOR VARIANCES.
- 505 ADDITIONAL CONDITIONS AND SAFEGUARDS.
- 506 PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.
- 507 NOTICE OF PUBLIC HEARING IN NEWSPAPER.
- 508 NOTICE TO PARTIES IN INTEREST.
- 509 ACTION BY BOARD OF ZONING APPEALS.
- 510 TERMS OF VARIANCE.
- 511 AUTHORIZED VARIANCE.

ARTICLE 5

PROCEDURES AND REQUIREMENTS FOR APPEALS AND VARIANCES

500 GENERAL.

Appeals and variances shall conform to the procedures and requirements of Sections 500 to 511 inclusive of this Ordinance. As specified in Section 1409 and 1410, the Board of Zoning Appeals has appellate jurisdiction relative to appeals and variances.

501 APPEALS.

Any appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer or bureau of the legislative authority of the Village affected by any decision of the Zoning Inspector/Administrator. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Inspector/Administrator and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Inspector/Administrator shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed was taken.

502 STAY OF PROCEEDINGS.

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

503 VARIANCES.

The Board of Zoning Appeals may authorize, upon appeal in specific cases, such variance 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 would result in unnecessary hardship. No nonconforming use of neighboring lands, structures, or buildings in the same district and no permitted or nonconforming use of neighboring lands,

structures, or buildings in other districts shall be considered grounds for issuance of a variance. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance would result in unnecessary hardship.

504 APPLICATION AND STANDARDS FOR VARIANCES.

Except as otherwise permitted in this Ordinance, no variance in the strict application of the provisions of this Ordinance shall be granted by the Board of Zoning Appeals unless the Board shall find that the written application for the requested variance contains all of the following requirements:

1. Name, address, and telephone number of applicant(s);
2. Legal description of property and proof of ownership;
3. Description or nature of variance requested;
4. A fee as established by Ordinance;
5. Narrative statements establishing and substantiating that the variance conforms to the following standards:
 - A. The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by this Ordinance on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare;
 - B. The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district;
 - C. There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or buildings. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land;
 - D. There must be proof of hardship created by the strict application of this Ordinance. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered;

- E. The granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish this purpose;
- F. The proposed variance will not impair an adequate supply of light and air to adjacent property, and substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area; and
- G. The granting of the variance requested will not confer on the applicant any special privilege that is denied by is regulation to other lands, structures, or buildings in the same district.

505 ADDITIONAL CONDITIONS AND SAFEGUARDS.

The Board of Zoning Appeals may further prescribe any conditions and safeguards it deems necessary to insure the objectives of the regulations or provisions to which the variance applies will be met. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation under this Ordinance.

506 PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.

The Board of Zoning Appeals shall hold a public hearing within thirty (30) days after the receipt of an application for an appeal or variance from the Zoning Inspector/Administrator or an applicant.

507 NOTICE OF PUBLIC HEARING IN NEWSPAPER.

Before conducting the public hearing required in Section 506, notice of such hearing shall be given in one or more newspapers, of general circulation in the Village, at least ten (10) days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

508 NOTICE TO PARTIES IN INTEREST.

Before conducting the public hearing required in Section 506, written notice of such hearing shall be mailed by the Chairman of the Board of Zoning Appeals, by first class mail, at least ten (10) days before the day of the hearing to all parties in interest and to adjoining property owners. The notice shall contain the same information as required of notices published in newspapers as specified in Section 507.

509 ACTION BY BOARD OF ZONING APPEALS.

Within thirty (30) days after the public hearing required in Section 513, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 512, or disapprove the request for appeal or variance. The Board of Zoning Appeals shall further make a finding in writing that the reasons set forth in the application justify the granting of the variance that will make possible a reasonable use of the land, building, or structure. Appeals from the Board's decision shall be made in the manner specified in Section 1410.

510 TERMS OF VARIANCE.

No order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than twelve (12) months from the date of such order unless the building permit or zoning approval is obtained within such period, and the erection or alteration of a building is started or the use is commenced with such period.

511 AUTHORIZED VARIANCE.

Variances from the regulations of this Ordinance shall not be granted unless the Board of Zoning Appeals makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed in Section 504 and Section 505, if applicable, have been met by the applicant. Variances may be granted as guided by the following:

1. To permit any yard or setback less than the yard or setback required by the applicable regulations;
2. To permit the use of a lot or lots for a use otherwise prohibited solely due to the insufficient area or width of the lot or lots, but generally the respective area and width of the lot or lots should be less than eighty (80) percent of the required area and width;
3. To permit the same off-street parking facility, to qualify as required facilities for two or more uses, provided substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week;
4. To reduce the applicable off-street parking or loading facilities required but generally by not more than thirty (30) percent of the required facilities;
5. To allow for the deferment of required parking facilities for a reasonable period of time, such period of time to be specified in the variance;

6. To increase the maximum distance required parking spaces are permitted to be located from the use served but generally not more than forty (40) percent;
7. To increase the maximum allowable size or area of signs on a lot but generally by not more than twenty-five (25) percent; and
8. To increase the maximum gross floor area of any use so limited by the applicable regulations but generally not more than twenty-five (25) percent.