

§ 225-19. Board of Appeals.

- A. Established. The Board of Appeals shall consist of five primary members and two alternates who shall be appointed by the Village President and approved by the Village Board. The members of the Board shall serve without compensation. The Village President shall designate one member Chairman, and the Clerk-Treasurer or his deputy shall serve as Secretary of the Board. The terms of office of the members of the Board shall be staggered terms for three years.
- B. Meetings. All meetings of the Board shall be held at the Village Hall unless a different meeting place is announced in a public notice of the meeting and shall be open to the public. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman or, in his absence, the Acting Chairman may administer oaths and compel the attendance of witnesses.
- C. Rules and regulations. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this section and of § 62.23(7), Wis. Stats. The Board shall keep minutes of its proceedings showing the vote of each member upon each question or if absent or failing to vote showing such fact. The final disposition of appeals shall be by recorded resolution indicating the Board's reasons, all of which shall be a public record. The concurring vote of four members of the Board shall be necessary to reverse any order or determination of the Building Inspector or to decide in favor of the applicant any matter upon which the Board is required to pass or to effect any variation from the terms of this chapter.
- D. 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 within 30 days after the date of any decision of an Administrative Officer by filing with the Village Administrator a notice of appeal specifying the grounds thereof. The Village Administrator shall forthwith transmit to the Board of Appeals the notice of appeal and all papers constituting the record upon which the action appealed from was taken. For purposes of this section, the term "Administrative Officer" means the Building Inspector or the Building Board. It does not include the Plan Commission. The Board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or attorney. **[Amended 8-14-2012]**
- E. Powers of the Board. The Board shall have the following powers:
 - (1) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Building Inspector or Building Board in the administration of this chapter, subject to the following: **[Amended 8-14-2012]**
 - (a) The scope of review of a decision of the Building Inspector shall be a de novo review before the Board of Appeals.

- (b) The scope of the review of a decision of the Building Board shall be limited before the Board of Appeals to:
- [1] Whether the Building Board kept within its jurisdiction;
 - [2] Whether the Building Board proceeded on a correct theory of law;
 - [3] Whether the Building Board's action was arbitrary, oppressive or unreasonable and represented its will, not its judgment; and
 - [4] Whether the evidence was such that the Building Board might have reasonably made the order or determination in question.
- (2) To permit the reasonable extension of a district where the boundary line of a district divides a lot in a single ownership at the time of adoption of this chapter.
 - (3) To interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan where the street layout actually on the ground varies from the street layout as shown on the Zoning Map.
 - (4) To permit a temporary building in the "A" Residence District or "B" Residence District which is incidental to residential construction, such permit to be issued for a period of not more than one year.
 - (5) To permit an accessory building, subject to appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter, to exceed 15 feet in height, provided that the top of such accessory building shall not be more than five feet above the mean elevation of the ground adjoining the main building.
 - (6) If recommended by the Public Service Commission of Wisconsin, to permit in appropriate cases and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter a building or premises to be erected or used by a public service corporation or for public utility purposes in any location and for any purpose which is reasonably necessary for the public convenience and welfare.
 - (7) To authorize upon application in specific cases such variance from terms of this chapter as will not be contrary to the public interest and substantial justice, where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. **[Amended 8-14-2012; 7-10-2018]**
- (a) The property owner shall bear the burden of proving "unnecessary hardship," as that term is used in this subsection, as follows:
- [1] For an area variance, by demonstrating that strict compliance with this chapter would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or

would render conformity with this chapter unnecessarily burdensome;

- [2] For a use variance, by demonstrating that strict compliance with this chapter would leave the property owner with no reasonable use of the property in the absence of a variance.
- (b) In all circumstances, the 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.
 - (c) In granting any variance, the Board may impose such reasonable conditions relative to the nature of the requested variance as it may determine, consistent with the provisions of this chapter. Any variance granted shall specify that the action authorized by the variance must be commenced within one year of the date of the variance grant and be completed within three years thereafter, unless the Board determines that different time periods are appropriate given the nature of the variance. A variance granted by the Board runs with the land in question.
- F. In exercising the above-mentioned powers the Board may, in conformity with the provisions of the law, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made to the premises and to that end shall have all the powers of the Building Inspector.
- G. Grievances. Any person or persons jointly or severally aggrieved by any decision of the Board, 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, present to a court of competent jurisdiction a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of the Board shall be subject to review by certiorari as provided by law.