

OFFICE USE ONLY – Findings of the Board of Appeals after consideration of the criteria

Reason for Application:

Applicant's Appeal Ruling

APPROVED

NOT APPROVED

Reason for Ruling:

* Please verify with the Planning and Development Department prior to placement on the Board of Appeals Agenda whether site plans or other documentation are required.

* A copy of the Board of Appeals Meeting Agenda will be mailed to the applicant/contractor unless otherwise indicated or emailed if an email is provided.

Applicant Signature



Background Information and Guidelines for Appearance before the Village of Shorewood, WI Board of Appeals

Introduction

Although the Shorewood Board of Appeals is a local body that is composed of Shorewood residents, it is one required by state law. Every Village that had enacted a zoning ordinance must have a Board of Appeals.

Derived from state law, the Shorewood Board of Appeals not only hears matters related to zoning but is also empowered to consider, under local Village Code, appeals stemming from any administrative decision by a Village employee or official. Appeals may also be made from any decision of some Village committees, commission, or boards.

Organization of Board

By law, the Board of Appeals consists of five (5) regular members appointed by the Village President and approved by the Village Board. Members serve a three (3) year term. In addition, the Village Code provides for the appointment of two (2) alternative members of the Board of appeals who act or vote when a regular member is absent or refuses to vote because of personal interest. A personal interest includes monetary interest in the outcome of an appeal. A member may also disqualify himself/herself from voting or participating if that member has been the target of personal abuse or criticism by the appellant. Board members receive no compensation. The Village Clerk acts as Secretary to the Board. The Board is required to adopt its own rules for conducting business in accordance with the Village Code which creates the Board of Appeals and describes its duties and procedures.

Powers of the Board

1. Appeals:

The Board has the authority to review interpretations of the Village Code made by a Village employee or official. In exercising this authority, the Board is not authorized to modify the Code or relieve the appellants from the terms of the Code. The Board's role is merely to determine whether, as applied to the particular facts and circumstances presented, the Village employee's or official's interpretation and application of the Code is in accord with the terms of the Code and State laws.

a.) Who May Appeal

Any person aggrieved by any decision of a Village employee or official may appeal to the Board of Appeals within a reasonable time as provided by the Code and Board's rules. Generally, an aggrieved person is one with an interest in the subject matter whether they are individuals, partnerships, corporations, associations or political units of government. They may also appear in opposition to the matter being appealed. The right to appeal to the Board is not a prerequisite to the right to give testimony or evidence before the Board at the hearing on that appeal.

b.) Effect of an Appeal

An appeal to the Board stays the action appealed, including the right to proceed under any approval granted by a Village employee or official.

c.) Records before the Board

Appeals are initiated by the aggrieved party by filling out a Notice of Appeals with the Board of Appeals and the officer with whom the appeals is taken within a reasonable time, as provided by the Board's rules. The Village employee or official must transmit all records constituting the record on which he/she acted. The Board will take additional evidence at the hearing. In proceeding for variances and special exceptions, evidence considered by the Board will be obtained from site inspections, sworn testimony or exhibits at the hearing.

d.) Notice of a Public Hearing

A notice of the hearing must be published giving the date, place, time and subject matter of the appeal request pursuant to state law. Notice of the hearing must be given to all parties within interest which may include the applicant, the owners of the affected property, and all adjacent property owners pursuant to Village Code and rules of the Board.

2. Special Exceptions:

Broad definition of “Special Exception” refers to a use allowed by the Code provided certain conditions are met and a permit is granted after the Board makes its “Findings.” Special Exceptions may be granted for expansion or improvement to nonconforming structures only.

3. Variances:

A variance is a deviation from the terms of the Village Code which is granted by the Board of Appeals under strict limitations. Variances are allowed because those who draft Village Code cannot anticipate every circumstance that may arise, a variance is a mechanism to give ordinance flexibility. Section 62.23 of Wisconsin Statutes states that the Board of Appeals can only grant variances where the variance:

“will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in practical difficulty or unnecessary hardship, so that the spirit the ordinance shall be observed, public safety and welfare secured and substantial justice done.”

This means that variances will only be granted when the Board of Appeals is satisfied that this statutory test has been met. Wisconsin courts have further interpreted this statute to give direction as to whether a variance may or may not be legally available. If your application for variance does not appear to satisfy this test, you should not apply.

a.) Area Variance

Area variances apply to physical dimensional requirements in the Zoning Code such as the height of structures or the setback of structures from property lines. Variances of this type require that unnecessary hardship be established by proving that the dimensional requirement is “unreasonably burdensome.” The courts have determined that this unreasonable burdensome form of hardship must be unique to the property and not solely self-created. The burden of proving this is on the applicant for the variance. The hardship must be unique to the property in terms of its physical and topographical characteristics, and in a way that is not common to neighboring properties. The configuration, condition, and nature of structures you knowingly placed or altered on your property is solely self-created and cannot form the basis for variance. The cost of compliance can likewise not be used for basis for a variance.

b.) Use Variance

Use variances are prohibited in the Village of Shorewood.

4. Conducting a Hearing:

The Board is a quasi-judicial body and is required to make its determination on the basis of facts presented to it at a public hearing. The appellant has an opportunity to be represented by legal counsel and to question the Village employee or official regarding the basis for his or her decision.

5. Vote Requirement:

The concurring vote of majority of the board members is required by law to reverse an order or determination of a Village employee or official on matters related to zoning. On all other matters, a majority vote is required to reverse an order or determination of a Village employee or official. The presence of three (3) members shall constitute a quorum for the purpose of making a decision.

6. Decision:

At the conclusion of a hearing and after completing its deliberation, the Board shall vote and reduce its decision in writing in accordance with the rules of the Board. Notice of the decision shall be given to the appellant, to the Village and to such other interested parties as the rules of the Board shall prescribe.