

AMENDED RULES OF PROCEDURE

BOARD OF APPEALS

VILLAGE OF FONTANA-ON-GENEVA LAKE

SECTION 1.

Establishment.

The Board of Appeals of the Village of Fontana-on-Geneva Lake shall be governed by Section 62.23(7)(e), Wis. Stat., and Section 18-140 of the Zoning Code of the Village of Fontana-on-Geneva Lake, as amended, and by the Rules of Procedure herein adopted. Whenever any conflict exists between these rules and the laws of the State or ordinances of the Village, the state laws and local ordinances shall prevail.

SECTION 2.

Membership, Officers and Their Duties.

- (a) The Board shall consist of five (5) members appointed by the Village President, and confirmed by the Village Board, for staggered terms of three (3) years.
- (b) The President shall appoint, for staggered three (3) year terms, two (2) alternate members of such Board, in addition to the five (5) members above provided for. Annually, the President shall designate one (1) of the alternate members as first alternate and the other as second alternate. The first alternate shall act, with full power, only when a member of the Board refuses to vote because of interest or when a member is absent. The second alternate shall so act only when the first alternate so refuses or is absent or when more than one (1) member of the Board so refuses or is absent.
- (c) The chairman shall be designated by the Village President and shall preside at all meetings of the Board, supervise the work of the Secretary and decide all points of procedure unless otherwise directed by a majority vote of the Board.
- (d) The Secretary shall be selected by a majority vote of the Board. The Secretary, subject to the direction of the Board and its Chairman, shall conduct all correspondence of the Board, receive and file all appeals, send out all notices required by law, ordinance, these Rules or as required by the Board, attend all meetings of the board and all hearings, scrutinize all appeals to insure that these Rules are complied with, prepare and keep the calendars, dockets and minutes of the Board's proceedings, retain in the records the original papers acted upon by the Board, and keep all other records, files and indices required by the Board.
 - (1) **Minute Book.** The Secretary shall keep a minute book and keep the same recorded to date, showing all important facts pertaining to each meeting and hearing, and including a copy of each resolution acted upon by the Board, the vote of each

member upon each resolution or those absent or failing to vote, and such other details as the Board or its Chairman shall direct. The minutes of each meeting and hearing shall be signed by the Secretary, approved by the Board and signed by the Chairman. Copies shall be filed with the Village Clerk.

- (2) **Docket.** The Secretary shall keep a docket of each case, name and address of appellant, brief description of the premises involved, nature of the appeal and final disposition of the case. The Secretary shall also show on the docket for each case all other important date and dates concerning the case, such as date of filing notice of appeal, date of sending out notices and to whom sent, date of posting of notice of hearing, and dates of hearing, inspections, continuances and final determination.
- (e) The building inspector shall attend all meetings for the purpose of providing technical assistance when requested by the Board, unless excused by the Board.
- (f) Official oaths shall be taken by all members in accordance with §19.01, Wis. Stats., within ten (10) days of receiving notice of their appointment.
- (g) Vacancies shall be filled for the unexpired term in the same manner as appointment for a full term.

SECTION 3.

Meetings.

- (a) **Time.** Regular meetings of the Board shall be scheduled, as needed, at a time as may be set by the Board upon proper notice at the Village Hall. A meeting shall be scheduled in May of each year and shall be the annual meeting of the Board.
- (b) **Cancellation.** Whenever there are no appeals to be considered, or there appears to be no other business to be transacted by the Board at any regular meeting, said regular meeting may be dispensed with without notice.
- (c) **Order of business** at meetings shall be substantially as follows or as shall be provided in a properly noticed agenda:

Roll call and declaration of a quorum
Reading and approval of previous minutes
Communications
Unfinished business
Hearing of continuances
Hearing of new appeals and applications
New Business
Miscellaneous
Adjournment

- (d) Hearings. Hearings of appeal may be held at regular or special meetings of the Board, upon public notice, at such hours as shall be determined by the Board.
- (e) Open to public. All meetings shall be open to the public, except that the Board may go into closed session for the purpose of deliberation.
- (f) Quorum. If a quorum is present, the board of appeals may take action under this subsection by a majority vote of the members present.
- (g) Appearances. The appellant or any party in interest may appear in person or by agent or attorney.
- (h) Proof of ownership. Owners of neighboring property appearing for or against the granting of an appeal or application shall, upon request, furnish the Board with descriptions of the neighboring property which they own and with affidavits of such ownership, or in the absence of such descriptions and affidavits of ownership may, after being sworn, testify thereto.
- (i) Oath. All testimony of witness at hearings shall be given under oath, administered by the Secretary, in the form and manner provided by §19.01(1m), Wis. Stats.

Section 4. Appeals and Applications.

- (a) Time of appeal. Every appeal of a determination by an administrative official shall be taken within thirty (30) days from the date of said determination. The thirty (30) day time period shall include Saturdays, Sundays and legal holidays. If the last day in said thirty (30) day time period falls on a Saturday, Sunday or legal holiday, the time for filing shall be extended to the next secular day.
- (b) Form. Every appeal or application shall be made upon the form furnished by the Secretary, which form shall have been approved by the Board. The information and data called for in such form shall be supplied in sufficient detail so as to afford all the information necessary for a clear understanding and considered action by the Board. If additional information is deemed necessary for a clear understanding and considered action by the Board. If additional information is deemed necessary, it shall be supplied by the appellant upon written request of the Chairman or Secretary of the Board, or upon request made by the Chairman made in open session at a regular or special meeting of Board. Any failure or refusal on the part of appellant to furnish such additional information as may be reasonably required by the Chairman or Secretary shall be grounds for dismissal of the appeal or application by the Board.
- (c) Insufficient notice. Any communication purporting to be an appeal or application to the Board for a permit shall be regarded as a mere notice of intent to seek relief until it is made in full compliance with Section 4(b), above.
- (d) Who may appeal or apply. Each appeal or application shall be made by the owner or lessee of the property affected. Where a lessee is the appellant, the notice of appeal shall be accompanied by an affidavit of ownership and

authorization of the appeal by the owner of the property or his legal representative. This rule shall not prevent the bringing of an appeal by any officer, department or board of the Village seeking the revocation of a permit which is deemed to have been improperly issued by the building inspector or for declaratory interpretation of the zoning ordinance by request of the building inspector or by the motion of the Board.

- (e) List of property affected. In every case involving any variation or exception from a zoning regulation the appellant shall furnish the Secretary of the Board with the names and last known addresses of the last fee owners of record of all land within three hundred (300) feet of the subject property and any information shall be furnished by the appellant to the Secretary of the Board not less than ten (10) days prior to the date of the hearing and the Secretary shall mail notice of the hearing of each such owners not less than five (5) days prior to the date of the hearing. All such names, addresses and dates of mailing shall be entered on the docket of each case by the Secretary.
- (f) Fee. The fee for each appeal or application shall be the amount set forth in the Village Fee Schedule, payable to the Village Treasurer, with the receipt to be attached to the appeal or application.
- (g) Resubmission. No appeal or application which has been dismissed or denied shall be considered again within one (1) year of the Board's decision except upon a finding that substantial new evidence is submitted which could not reasonably have been presented at the previous hearing on the previous appeal or application.

Section 5. Jurisdiction of 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 administrative officer in the enforcement of §62.23(7), Wis. Stats., or of any provision of the Zoning Code of the Village of Fontana-on-Geneva Lake.
- (b) To hear and decide special exception to the terms of the Zoning Code upon which said Board is required to pass under said Code.
- (c) To authorize upon appeal in specific cases such variance from the terms of the Zoning Code of the Village of Fontana-on-Geneva Lake, according to the standard articulated at Section 7, below.

Section 6. Hearings.

- (a) Time of Hearing: All cases shall be set for hearing at the first available regular meeting of the Board of Appeals for which the minimum notice requirement as set forth in sub (b) shall be complied with, unless a different, later date is specifically set for such hearing by the Board.
- (b) Notice: Notice of the date, time and place of the hearing of any appeal shall be given to the appellant and to the building inspector or officer appealed from, by any acceptable means of service, or may be waived by any party, in either case, not less than five (5) days prior to the date of the hearing, and publication as a Class 2 Notice in the official newspaper

(c) Order of business at hearings shall be substantially as follows or as shall be provided in a properly noticed agenda:

Statement of the case

Explanation by the Zoning Inspector or Officer Appealed

Appellant's or Applicant's side to the case

Testimony of interested property owners

Appellant's or Applicant's rebuttal

Rebuttal by the opposition

(d) Adjournment. When all appeals cannot be disposed of on the day set, the Board may adjourn; and such adjourned day shall be construed as a continuance of the hearing and no further notice need be given thereof.

(e) Withdrawal. An appellant or applicant may withdraw his appeal or application at any time prior to decision thereon; but if a motion is pending to grant, deny, or dismiss the appeal, such motion shall have precedence. Withdrawal shall not entitle the appellant or applicant to return of the filing fee.

Section 7. Variances.

(a) No variance to the provisions of the Zoning Code shall be granted by the Board unless it finds beyond a reasonable doubt that all the following facts and conditions exist and so indicated in the minutes of the proceedings and in the resolution referred to in Section 8, below:

(1) Unique property limitations. There must be unique physical limitations of the property such as steep slopes or wetlands that are not generally shared by other properties must prevent compliance with ordinance requirements. The circumstances of an applicant (growing family, need for a larger garage, etc.) are not a factor in deciding variances. Nearby ordinance violations, prior variances or lack of objections from neighbors do not provide a basis for granting a variance. Property limitations that prevent ordinance compliance and are common to a number of properties should be addressed by amending the ordinance.

(2) No Harm to Public Interests. A variance may not be granted which results in harm to public interests. In applying this test, the zoning board must consider the impacts of the proposal and the cumulative impacts of similar projects on the interests of the neighbors, the entire community and the general public. These interests are listed as objectives in the purpose statement of an ordinance and may include:

- Public health, safety and welfare
- Water quality
- Fish and wildlife habitat
- Natural scenic beauty
- Minimization of property damages
- Provisions of efficient public facilities and utilities
- Achievement of eventual compliance for nonconforming uses, structures and lots

- Any other public interest issues
- (3) Unnecessary hardship. An applicant may not claim unnecessary hardship because of conditions which are self-imposed or created by a prior owner (for example, excavating a pond on a vacant lot and then arguing that there is no suitable location for a home). Courts have also determined that economic or financial hardship does not justify a variance. When determining whether unnecessary hardship exists, the property as a whole is considered rather than a portion of the parcel. The property owner bears the burden of proving unnecessary hardship.
- For an area variance, unnecessary hardship exists when compliance would unreasonably prevent the owner from using the property for a permitted purpose (leaving the property owner without any use that is permitted for the property) or would render conformity with such restrictions unnecessarily burdensome. The board of adjustment must consider the purpose of the zoning restriction, the zoning restriction's effect on the property, and the short-term, long-term and cumulative effects of a variance on the neighborhood, the community and on the public interests.
 - For a use variance, unnecessary hardship exists only if the property owner shows that they would have no reasonable use of the property without a variance.
- (b) In this section, "area variance" means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this section, "use variance" means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
- (c) Variances, substitutions, or use permits granted by the Board shall expire within six (6) months unless substantial work has commenced to such grant.

Section 8. Final Disposition of Cases.

- (a) Form. The final disposition of any appeal shall be in the form of a resolution either granting, reversing, varying or modifying the order, requirement, decision or determination appealed, or affirmed the order and denying the appeal, or dismissing the appeal for lack of jurisdiction or prosecution. Such resolution shall show the reason or reasons for the Board's determination. If a quorum is present, the Board may take action by majority vote of the members present.
- (b) Conditions. Wherever the Board authorizes any variation or imposes any condition with respect to a permit so as to carry out the intent and purpose of the zoning ordinance, such variation and condition shall be specifically stated in the resolution referred to in paragraph (a) of this Section and also in the building permit issued pursuant thereto by the building inspector. Such permit shall remain valid only as long as the conditions upon which it was granted are conformed to or maintained.

(c) Authentication. Every resolution upon adoption shall be signed by the Chairman and attested to by the Secretary as evidence of the action of the Board. The original resolution shall be filed with the Board's record of the case. Copies of each resolution adopted by the Board shall be sent to the building inspector and to the appellant concerned by the Secretary of the Board within seven (7) days of final decision.

Section 9. Amendments.

These Rules of Procedure may be amended or revoked by a majority vote of the Board at any meeting, provided all members are notified, so long as the amendment or revocation of these Rules of Procedure does not constitute a violation of or is inconsistent with the provisions of §62.23(7), Wis. Stat. suspension of the Rules may be ordered at any meeting by a vote of not less than four (4) members.

BOARD OF APPEALS RESOLUTION NO. 102819-01

WHEREAS, it is the intent of the Board of Appeals for the Village of Fontana-on-Geneva Lake to amend its Amended Rules of Procedure as authorized by §62.23(7)(e)3., Wis. Status.;

NOW THEREFORE, BE IT RESOLVED, by the Board of Appeals of the Village of Fontana-on-Geneva Lake that the current Amended Rules of Procedure as previously adopted, be and the same hereby are amended to read as the same are attached hereto as Exhibit "A" and incorporated herein by reference.

Dated this 28 day of October, 2019.

BOARD OF APPEALS
VILLAGE OF FONTANA-ON-GENEVA LAKE

By: Regan L. Allott
Chairman