

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

SECTION 9.0 ZONING BOARD OF APPEALS

9.01 ESTABLISHMENT

There is hereby established a Zoning Board of Appeals for the City of Kenosha for the purpose of hearing appeals, granting variances and exceptions to the provisions of this Zoning Ordinance and issuing special permits provided for by this Ordinance. Hereafter, the Zoning Board of Appeals shall be referred to as "Board".

9.02 MEMBERSHIP

The Board of Appeals shall consist of five (5) members appointed by the Mayor subject to confirmation of the Common Council for terms of three (3) years, as provided in Section 62.23(7)(e)(2) of the Wisconsin Statutes. All terms shall commence on the first day of May of the year of appointment and shall terminate on the 30th day of April of the final year of the term of office. The members of the Board shall be removable by the Mayor for cause upon written charges and after public hearing. The Mayor shall designate one (1) of the members as Chairperson. The Board may employ a secretary and other employees. Vacancies shall be filled for the unexpired terms of members whose terms become vacant. The Mayor shall appoint, for staggered terms of three (3) years, two (2) alternate members of such Board, in addition to the five (5) members above provided for. 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 member of the Board so refuses or is absent. The above provisions, with regard to removal and the filling of vacancies, shall apply to such alternates. The Zoning Administrator shall act as Secretary of the Board.

9.03 ORGANIZATION

The Board shall adopt rules for the conduct of its affairs not inconsistent or in conflict with the provisions of this Ordinance.

A. Meetings and Deliberations. The meetings of the Board shall be held at the call of the Chairman, or any three (3) regular members and at such other times as the Board shall determine. All meetings, hearings, deliberations and voting of the Board shall be open to the public. However, after a public hearing has been closed, no one, except with permission of the Board, shall interrupt or participate in the deliberations of the Board.

B. Minutes. The Board shall keep minutes of the proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact. The Board shall keep records of its official actions, all of which shall immediately be filed in the office of the Administrator and shall constitute a public record.

C. Concurring Vote. A majority vote of the Board shall be necessary to grant a variance or reverse any order, decision, determination or requirement of the Administrator, or to decide on any matter upon which the Board is required to pass under the provisions of this Ordinance. The grounds for every such action shall be stated within the minutes of the hearing. A quorum of four (4) members is required to conduct a meeting or hearing.

9.04 POWERS AND DUTIES

The Board shall have all of the powers and duties prescribed by law and by this Ordinance and which are more particularly specified below. The Board must, in any appeal, make findings of fact and in considering special permits, require compliance with the standards of **§9.05** of this Ordinance, when taking the following actions:

A. Interpretation. Hearing an appeal from a decision by the Administrator, to decide any question involving the interpretation of the words, terms, rules, regulations, provisions and restrictions of this Ordinance, where there is doubt as to the meaning thereof, including the determination, under **§2.02 A.5.** of this Ordinance, whether other uses are permitted in a zoning district by virtue of being similar and compatible to the permitted or accessory uses allowed in the same district.

B. Variances. Hearing an appeal from a decision by the Administrator, to vary or adopt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions, whereby such strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land, building or structure involved. However, no action of the Board shall have the effect of permitting in any district uses which are prohibited in such district by this Ordinance.

C. Assistance. The Board may request assistance from other City officers, departments, commissions and boards.

D. Oaths. The Chairman may administer oaths

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

and compel the attendance of witnesses.

9.05 FINDINGS AND STANDARDS FOR APPROVAL

A. Factual Findings for Interpretations. No appeal upon the interpretation of the words, terms, rules, regulations, provisions and restrictions of this Ordinance shall be granted by the Board unless it finds by the preponderance of the evidence that all of the following facts and conditions exist and so indicates such in the minutes of the proceedings:

1. That there is a reasonable difference of interpretation as to the specific intent of the word, term, rule, regulation, provision and restriction of the Ordinance.

2. That the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

3. That the resulting interpretation is in the best interest of the City of Kenosha and consistent with the spirit and intent of this Ordinance.

B. Factual Findings for Variances. No variance to the provisions of this Ordinance shall be granted by the Board unless it finds by the preponderance of the evidence that all of the following facts and conditions exist and so indicates such in the minutes of its proceedings:

1. **Preservation of Intent.** No variance shall be granted which is inconsistent with the purpose and intent of the regulations for the district in which the use, building or structure is located. No variance shall have the effect of permitting a use in any district that is not a listed permitted use, accessory use, or conditional use in that particular district.

2. **Exceptional Circumstances.** There must be exceptional, extraordinary, or unusual circumstances or conditions applying to the lot, building, structure, or intended use that do not apply generally to other similar lots, buildings, structures or uses in the same district, and the granting of the variance should not be of so general or recurrent nature as to amount to an amendment of this Ordinance or a rezoning.

3. **Economic Hardship and Self-Imposed Hardship Not Grounds for Variance.** No variance shall be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of a variance.

4. No variance shall be granted that is contrary to the health, safety and general welfare of the City of

Kenosha.

5. Additional Requirements in the Floodland Districts.

a. No variance shall be granted where:

(1) Filling and development contrary to the purpose and intent of the FW Floodway District would result.

(2) A change in the boundaries of the FW Floodway District or FFO Floodplain Fringe Overlay District would result.

(3) A lower degree of flood protection at a point two (2') feet above the regional flood height for the particular area would result.

(4) Any action contrary to the provisions of Chapter NR 116 of the Wisconsin Administrative Code would result.

(5) The variance is contrary to the public interest.

(6) The variance is inconsistent with the purpose of this Ordinance as stated in **Section 1.04.**

(7) The variance may cause any increase in the Regional Flood Elevation.

(8) The lot is either more than one-half acre or is not contiguous to existing structures constructed below the Regional Flood Elevation.

(9) There has not been a showing of good and sufficient cause; is more than the minimum relief necessary; or, use pursuant to the variances may cause increased risks to public safety or nuisances, or may increase costs for rescue and relief efforts.

(10) The variance would grant, extend or increase any use prohibited in the zoning district.

(11) The hardship is based solely on an economic gain or loss.

(12) The hardship is self-created.

(13) The variance would damage the rights or property values of other persons in the area.

(14) The variance would allow any alteration of an historic structure, including its use, which would preclude its continued designation as an historic structure.

b. When a floodplain variance is granted, the Board shall notify the applicant in writing that actions taken by the applicant pursuant to the variance may increase risks to life and property, and may increase flood insurance premiums. A copy of the notification shall be maintained with the variance record.

9.06 FLOODLAND BOUNDARY DISPUTES

The following procedure shall be used by the Board in hearing disputes concerning floodland district boundaries:

A. If a floodland district boundary is established by approximate or detailed floodplain studies, the

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

flood elevations or profiles shall prevail in locating the boundary. If none exist, other evidence may be examined.

B. In all cases, the person contesting the boundary location shall be given a reasonable opportunity to present arguments and technical evidence to the Board.

C. If the boundary is incorrectly mapped, the Board should inform the Zoning Administrator or the person contesting the boundary location to petition the governing body for a map amendment according to **Section 10.06**.

9.07 PROCEDURES

A. Application. Appeals to the Board of Appeals may be taken by any person aggrieved or by an officer, department, board or bureau of the community affected by any order, requirement, decision, or determination of the Zoning Administrator or other administrative official. Such appeals shall be taken within a reasonable time, as provided by the rules of the Board by filing with the official whose decision is in question, and with the Board of Appeals, a notice of appeal specifying the reasons for the appeal.

All appeals and applications to the Board shall be made in writing upon forms provided by the Administrator and shall be filed, in duplicate, in the office of the Administrator and shall include a receipt from the City Clerk/Treasurer indicating payment of the fee therefor established by the Common Council, from time to time, by Resolution. No appeal or application to the Board shall be considered until the appellant or applicant pays the applicable fee. Each appeal or application shall refer to the specific provision(s) of the Ordinance in issue and shall set forth the interpretation thereof that is claimed, the details of the variance which is sought and the grounds upon which it is claimed it should be granted, or the use for which the special permit is applied for, whichever is relevant.

The applicant shall also submit a complete list of names and addresses of all surrounding property owners within one hundred (100') feet of the property, excluding street right-of-ways. Such list shall include the names and addresses of the owner appearing on the most current tax roll of the City. When such appeal or application is filed with the Administrator, he shall forthwith transmit to the office of the Board one of the duplicate copies of such appeal or application.

B. Hearings. The Board shall fix a reasonable

time for the hearing of the appeal or application, and shall publish a notice in the official City newspaper, listing the time, place and proposed appeal or application. The Board shall also notify the appellant or applicant of the hearing by mail. At the hearing, the appellant or applicant shall appear in person, or by agent or attorney.

A copy of such notice shall also be mailed to the appropriate district office of the Department of Natural Resources at least ten (10) days prior to all public hearings on issues involving shoreland-wetland zoning or floodland zoning.

C. Notification of Surrounding Property Owners. Utilizing the list of surrounding property owners and postage submitted by the applicant or appellant, the Administrator shall mail to all such listed property owners, by regular mail, a copy of the public notice for the proposed appeal or application. It shall be sufficient that such written notice is addressed to the owner appearing on the most current tax roll of the City and addressed to such owner at the address stated on said roll. If no owner is stated on the tax roll, or no address appears thereon, the written notice to such property shall not be required. Failure of a property owner to receive said notice shall not invalidate any action taken by the Board.

9.08 BOARD OF APPEALS ACTION

A. Decision. Following the public hearing and after careful consideration of the appeal or application, the Board shall decide on the proposed appeal or application. Such decision may reverse, affirm or modify, wholly or in part, the decision of the Administrator appealed from, or may approve or disapprove the proposed variance or special permit. All such decisions and findings of the Board on an appeal or application shall be the final administrative decision thereon and shall only subsequently be subject to judicial review. However, if new facts or evidence are made available to the Board by the appellant or applicant, the Board may decide, upon majority vote, to rehear a previously determined matter. Only the appellant or applicant may request the Board to rehear a previously determined matter and such request must be filed with the office of the Board no later than ten (10) days after the date of the Board meeting at which the decision was previously rendered. If such request is not filed with the Board by the specified date, no request for the Board to rehear the previously determined matter shall be received, considered or granted by the Board.

B. Record of Decision. The Board's final

ZONING ORDINANCE FOR THE CITY OF KENOSHA, WISCONSIN

decision shall contain a full record of the findings of the Board, which shall constitute a public record on file in the office of the Administrator. A signed copy of the Board's decision shall be transmitted to the appellant or applicant.

C. Notice to Department of Natural Resources. The Board shall transmit a copy of each application for a variance to floodland regulations to the Wisconsin Department of Natural Resources (DNR) for review and comment. Final action on the application shall not be taken for thirty (30) days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions relating to variances to floodland regulations shall be transmitted to the DNR within ten (10) days of the effective date of such decision.

A copy of a decision on issues involving shoreland-wetland or floodland zoning shall be mailed to the appropriate district office of DNR within ten (10) days after the decision is issued.

D. Transferability. All variances and other decisions of the Board shall run with the land and be considered transferable to any subsequent owner of the land or premises.

9.09 LEGAL PROCEEDINGS

A. Stays. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board, after the notice of appeal has been filed with the Administrator, that by reason of facts stated in the certificate a stay would, in the Administrator's opinion, cause imminent peril to health, life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.

B. Review by Court of Record. 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 City may, within thirty (30) days after the filing of the decision in the office of the Administrator, commence an action in a court of record seeking the remedy available by certiorari, pursuant to the provisions of §62.23 (7)(e)(10), Wisconsin Statutes.