

## ARTICLE 7

### PROCEDURES AND REQUIREMENTS FOR APPEALS AND VARIANCES

#### 7.0 General

Appeals and variances shall conform to the procedures and requirements of 7.1 to 7.11 inclusive, of this Ordinance. The Board of Zoning Appeals has appellate jurisdiction relative to appeals and variances.

#### 7.1 Appeals

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. Such appeal shall be taken within twenty (20) days after the decision by filing, with the Zoning Inspector and with the Board of Zoning Appeals, a notice of appeal specifying the grounds upon which the appeal is being taken. The Zoning Inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

#### 7.2 Stay of Proceedings

An appeal stays all actions by the Zoning Inspector seeking enforcement of or compliance with the order or decision appealed from, unless the Zoning Inspector certifies to the Board of Zoning Appeals that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Appeals or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Zoning Inspector.

#### 7.3 Variances

A variance may be granted by the Board of Zoning Appeals if it concludes that strict enforcement of the ordinance would result in unnecessary hardships for the applicant and that, by granting the variance, the spirit of the ordinance will be observed, public safety and welfare secured, and substantial justice done. No nonconforming use of neighboring lands, structures or buildings in the same district and no permitted or nonconforming use of 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.

#### 7.4 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 phone number of applicant(s);
2. Legal description of property;
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 accordance 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 land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building. 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, substantially increase the 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.

g. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures or buildings in the same district.

#### **7.5 Additional Conditions and Safeguards**

The Board may further prescribe any conditions and safeguards that it deems necessary to insure that 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.

#### **7.6 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 of variance from the Zoning Inspector or an applicant.

#### **7.7 Notice of Public Hearing in Newspaper**

Before conducting the public hearing required in Section 7.6 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.

#### **7.8 Notice to Parties in Interest**

Before conducting the public hearing required in Section 7.6, 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. The notice shall contain the same information required of notices published in newspapers as specified in Section 7.7.

#### **7.9 Action by Board of Zoning Appeals**

Within thirty (30) days after the public hearing required in Section 7.6, the Board of Zoning Appeals shall either

approve, approve with supplementary conditions 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 decision shall be made in the manner specified in Section 4.10.

#### 7.10 Term 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 within such period.

#### 7.11 Authorized Variances

Variances from the regulations of this Ordinance shall not be granted unless the Board 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 7.4 and Section 7.5 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 because of the insufficient area or width of the lot or lots should not 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 that 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 that 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.

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.

## ARTICLE 8

### AMENDMENT

#### 8.1 Procedure for Amendment or District Changes

This Ordinance may be amended utilizing the procedures specified in Sections 8.1-8.14.

#### 8.2 General

Whenever the public necessity, convenience, general welfare, or good zoning practices require, Village Council may by ordinance, after receipt of recommendation thereon from the Planning Commission and subject to procedures provided by law, amend, supplement, change or repeal the regulations, restrictions and boundaries or classification of property.

#### 8.3 Initiation of Zoning Amendments

Amendments to this ordinance may be initiated in one of the following ways:

1. By the adoption of a motion by the Planning Commission;
2. By the adoption of a resolution by Village Council;
3. By the filing of an application by at least one (1) owner or lessee of property within the area proposed to be changed or affected by said amendment.

#### 8.4 Contents of Application for Zoning Map Amendment

Applications for amendments to the Official Zoning Map adopted as part of this Ordinance by Article 11 shall contain at least the following information:

1. The name, address and phone number of the applicant;
2. The proposed amending ordinance, approved as to form by the Village Legal Advisor;
3. A statement of the reason(s) for the proposed amendment;
4. Present use;
5. Present zoning district;
6. Proposed use;
7. Proposed zoning district;
8. A vicinity map at a scale approved by the Zoning Inspector showing property lines, thoroughfares, existing and proposed zoning and such other items as the Zoning Inspector may require;
9. A list of all property owners and their mailing addresses who are contiguous to or directly across the street from the parcel(s) proposed to be rezoned and others that may have a substantial interest in the case, except that addresses need not be included where more than ten (10)

- parcels are to be rezoned;
10. A statement on the ways in which the proposed amendment relates to the Erie County Master Plan or Comprehensive Plan;
  11. A fee as established by Village Council.

#### **8.5 Contents of Application for Zoning Text Amendment**

Applications for amendments proposing to change, supplement, amend or repeal any portion(s) of this Ordinance, other than the Official Zoning Map, shall contain at least the following information:

1. The name, address and phone number of the applicant;
2. The proposed amending ordinance, approved as to form by the Village Legal Advisor;
3. A statement of the reason(s) for the proposed amendment;
4. A statement explaining the ways in which the proposed amendment relates to the comprehensive or master plan;
5. A fee as established by Village Council.

#### **8.6 Transmittal to Planning Commission**

Immediately after the adoption of a resolution by the Village Council or the filing of an application by at least one (1) owner or lessee of property, said resolution or application shall be transmitted to the Commission.

#### **8.7 Submission to Director of Transportation**

Before any zoning amendment is approved affecting any land within three hundred (300) feet of the centerline of a proposed new highway or highway for which changes are proposed as described in the certification to local officials by the Director of Transportation, or within a radius of five hundred (500) feet from the point of intersection of said centerline with any public road or highway, the Commission shall give notice, by registered or certified mail, to the Director of Transportation. The Commission may proceed as required by law; however, the Village Council shall not approve the amendment for one hundred twenty (120) days from the date the notice is received by the Director of Transportation. If the Director of Transportation notifies the Village that he shall proceed to acquire the land needed, then the Village shall refuse to approve the rezoning. If the Director of Transportation notifies the Village that acquisition at this time is not in the public interest, or upon the expiration of the one hundred twenty (120) day period or any extension thereof agreed upon by the Director of Transportation and the property owner, the Village Council shall proceed as required by law.

#### **8.8 Recommendation by Planning Commission**

Within sixty (60) days from the receipt of the proposed amendment, the Planning Commission shall transmit its recommendation to the Village Council. The Planning Commission may recommend that the amendment be granted as requested, or it may recommend a modification of the amendment as requested, or it may recommend that the amendment be denied. The written decision of the Planning Commission shall indicate the specific reason(s) upon which the recommendation is based, to include the basis for their determination that the proposed amendment is or is not consistent with the comprehensive plan.

#### **8.9 Public Hearing by Village Council**

Upon receipt of the recommendation from the Planning Commission, Village Council shall schedule a public hearing. Said hearing shall be not more than forty (40) days from the receipt of the recommendation from the Planning Commission.

#### **8.10 Notice of Public Hearing in Newspaper**

Notice of the public hearing required in Section 8.11 shall be given by Village Council at least one (1) publication in one (1) or more newspapers of general circulation in the Village affected. Said notice shall be published at least thirty (30) days before the date of the required hearing. The published notice shall set forth the time and place of the public hearing and a summary of the proposed amendment. During such thirty days the text or copy of the text of such ordinance, measure, or regulation, together with maps or plans, or copies thereof, forming part of or referred to in such ordinance, measure or regulation and the maps, plans and reports submitted by the planning commission, board or officer shall be on file for public examination, in the Office of the Clerk of the legislative authority or in such other office as designated by the legislative authority.

#### **8.11 Notice to Property Owners by Village Council**

If the proposed amendment intends to rezone or redistrict ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by first class mail, at least twenty (20) days before the day of the public hearing to all owners of property within, contiguous to, and directly across the street from such area proposed to be rezoned or redistricted to the addresses of such owners appearing on the County Auditor's current tax list or the Treasurer's mailing list and to such other list or lists that may be specified by Village Council. The failure to deliver the notification



as provided in this section shall not invalidate any such amendment. The notice shall contain the same information as required of notices published in newspapers as specified in Section 8.7.

#### 8.12 Action by Village Council

Within thirty (30) days after the public hearing required by Section 8.5 the Village Council shall either adopt or deny the recommendation of the Planning Commission or adopt some modification thereof. In the event the Village Council denies or modifies the recommendation of the Planning Commission, it must do so by not less than three-fourths of the full membership of Village Council. No such ordinance shall be passed unless it has been fully and distinctly read on three different days except that such ordinance may become emergency legislation if three-fourths of the members of Village Council vote to dispense with this rule.

#### 8.13 Effective Date and Referendum

Such amendment adopted by the Village Council shall become effective thirty (30) days after the date of such adoption unless within thirty (30) days after the passage of the ordinance there is presented to the Village Clerk a petition, signed by a number of qualified voters residing in the Village equal to not less than ten (10) percent of the total vote cast in such area at the last preceding general election at which a Governor was elected, requesting the Village Council to submit the zoning amendment to the electors of the Village for approval or rejection at the next general election.

No amendment for which such referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the Board of Elections that the amendment has been approved by the voters, it shall take immediate effect.

#### 8.14 Annexation

All land annexed to the Village subsequent to the adoption of this ordinance shall remain subject to the previous Township zoning district regulations until such time as the Official Zoning Map is amended according to the provisions of this Article. All land annexed to the Village which, prior to annexation, is not subject to Township zoning shall remain unzoned until the Official Zoning Map is amended according to the provisions of this Article.