

CHAPTER 3
Board of Appeals

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(Adopted Ordinance 2022-23; 10/03/22)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
16-3-1	Board of Appeals		

SEC. 16-3-1 BOARD OF APPEALS

- (a) **Establishment.** There is hereby established a Zoning Board of Appeals in the Village of Caledonia in accordance with Section §62.23(7)(e) of Wisconsin State Statutes for hearing appeals and applications, and granting variations and exceptions to the provisions of this Title in harmony with the purpose and intent of this Title.
- (b) **Jurisdiction; Powers of the Board.** The Board of Appeals shall have the following powers granted in Wis. Stat. § 62.23(7)(e)7:
 - (1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the Zoning Administrator under this Title except for requirements for municipal sewer and water pursuant to Section 16-5-6.
 - (2) To hear and decide applications for special exceptions from the terms of this Title except for requirements for municipal sewer and water pursuant to Section 16-5-6.
 - (3) To hear and decide all matters referred to it or upon which it is required to pass under this Title except for requirements for municipal sewer and water service pursuant to Section 16-5-6.
 - (4) To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this ordinance will result in practical difficulty or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.
 - (5) To hear and decide applications for interpretation of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation (this power does not include an application or decisions on the rezoning of real property).
 - (6) To permit, in appropriate cases, and subject to appropriate conditions and safeguards in harmony with the general purpose and intent of the ordinance, a building or premises to be erected or used for such public utility purposes in any location which is reasonably necessary for the public convenience and welfare.
 - (7) The Board of Appeals may reverse, affirm wholly or partly, modify the requirements appealed from, and may issue or direct the issue of a permit, except that the Board of Appeals shall not have authority over rezonings, conditional use permits or building, site plan or operations review.

- (c) **Membership.**
- (1) **Composition.** The Zoning Board of Appeals shall consist of five (5) members appointed by the Village President and subject to confirmation by the Village Board per Sections §62.23(7)(e)2. Wisconsin Statutes.
 - (2) **Terms; Compensation.** Terms of the members shall be staggered three (3) year periods except that of those appointed initially, one shall serve for one year, two for two years, and two for three years. There shall be no compensation received by the members for their service on the board.
 - (3) **Officers.** The Board of Appeals shall choose its own chairperson, vice chairperson, and secretary. The Chair shall preside at all meetings of the Board, except that in the event of their absence or disability, the Vice-Chair shall preside. In the absence of both the Chair and the Vice-Chair, the longest standing Board Member shall preside.
 - (4) **Alternate Members.** The President may appoint subject to confirmation by the Village Board, for staggered terms of 3 years, 2 alternate members of such board, in addition to the 5 members above provided for. Annually, the President shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board recuses them self or when a member is absent. The 2nd alternate shall so act only when the 1st alternate recuses them self or is absent or when more than one member of the board recuses themselves or is absent.
 - (5) **Village Administration.** The Zoning Administrator, or their designee, shall attend all meetings of the Board of Appeals for providing information on the appeal and may present a position on the appeal as Zoning Administrator or on behalf of a body of the Village if so directed.
 - (6) **Assistance from other Village Departments.** The Board of Appeals may call on other Village departments for assistance in the performance of its duties and it shall be the duty of such other departments to render such assistance to the Board as may be reasonably required.
 - (7) **Official Oaths.** Official Oaths shall be taken by all members of the Board of Appeals according to Section 19.01 of the Wisconsin Statutes within ten (10) days of receiving notice of their appointment.
 - (8) **Vacancies.** Vacancies of the Board of Appeals shall be filled for the remaining term in the same manner as appointments for a full term.
- (d) **Organization; Procedure.** The Board of Appeals conduct meetings as follows and adopt rules of procedure for its own government according to the provisions of this Section:
- (1) **Meetings.** Meetings of the Board shall be held at the call of the chairperson and at such other times as the Board may determine. All meetings of the Board shall be open to the public.
 - (2) **Minutes.** Minutes of the proceedings of the Board of Appeals and a record of all actions shall be kept by the Recording Secretary, showing the vote of each member upon every question, the reasons for the Board of Appeals' determination, and its findings of facts. These records shall be immediately filed in the office of the Board of Appeals and shall be a public record.

- (3) **Recording Secretary.** A Recording Secretary is provided by Village Administration to record minutes for the Board of Appeals. This position is not a Board appointed employee pursuant to Section §62.23(7)e.2. Wisconsin Statutes.
 - (4) **Quorum.** The presence of a majority of the board members or of board members and alternates shall constitute a quorum.
 - (5) **Assistance.** The Board of Appeals may request assistance from other Village officers, departments, commissions, the Village Attorney and other bodies of the Village.
 - (6) **Stay of Legal Proceedings.** An appeal shall stay all legal proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with the officer, that by reason of facts stated in the certificate a stay would, in the officer's opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Appeals or by a Court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown.
 - (7) **Oaths.** The Chair, or Vice-Chair in their absence, of the Board of Appeals may administer oaths and compel the attendance of witnesses.
 - (8) **Rules of Procedure.** The Board may adopt such rules of procedure as it deems necessary for the conduct of its proceedings.
- (e) **Administrative Appeals; Application.**
- (1) **General Application Requirements.** Appeals from the decision of the Zoning Administrator and/or designee concerning the literal enforcement of this Title may be made by any person aggrieved, or by any officer, department, board, commission or committee of the Village. Such appeals shall be filed in the Village Hall within thirty (30) days after the date of written notice of the decision or order of the Zoning Administrator or Designee. Applications may be made by the owner or lessee of the structure, land, or water to be affected anytime and shall be filed with the Village Hall.
 - (2) **Application and Notice of Hearing.** An application for an appeals or variance shall be filed in writing at the Village Hall on forms provided by the Zoning Administrator. Before decisions on such petitions, the Board of Appeals shall hold a public hearing thereon pursuant to the requirements set forth in this Section. The application shall include the following:
 - a. Plat of survey prepared by a registered land surveyor showing all of the information required under Section [to be added] for a building permit, if applicable;
 - b. Additional information required by the Zoning Administrator;
 - c. Fee receipt from the Zoning Administrator for the fee required by the schedule of fees adopted by the Village Board and on file with the zoning administrator.
 - d. The Zoning Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

(f) **Variances; Area and Use.**

- (1) **Purpose.** The Board of Appeals, after a public hearing, may determine and vary the regulations of this Title in harmony with their general purpose and intent, only in the specific instances hereinafter set forth, where the Board of Appeals makes findings of fact according to the standards hereinafter prescribed, and further finds that there are practical difficulties or particular hardships in the way of carrying out the strict letter of the regulations of this Title.
- (2) **Definitions.**
 - a. “Area Variance” shall mean 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 Section.
 - b. “Use Variance” shall mean an authorization by the Board of Appeals under this Section for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
- (3) **Burden of Proof.**
 - a. A property owner bears the burden of proving “unnecessary hardship,” as that term is used in this subdivision, for an Area Variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome.
 - b. A property owner bears the burden of proving that for a Use Variance, demonstrating that strict compliance with the Title would leave the property owner with no reasonable use of the property in the absence of a variance.
 - c. In all circumstances, a 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.
- (4) **Requirements.**
 - a. No variance to the provisions of this Title (except as otherwise provided) shall be granted by the Board of Appeals unless it finds that if the variance is granted it would not be contrary to the public interest; a literal enforcement of this Title provisions would result in practical difficulties or unnecessary hardship due to special conditions; the spirit of this Title is preserved; public safety and welfare are secured and substantial justice done; and a determination if the property owners has met the burden of proof in this Section. In reviewing the application and evidence relating to a variance the Board of Appeals shall consider the findings statements set forth in this Title.
 - b. Variances and appeals related to any property in a Floodland District shall comply with Chapter 13 of Title 16.
- (5) **Authorized Variances.** Variances from the zoning regulations of this Title shall be the authority of the Board of Appeals only according to the standards established in this Section. This section shall not apply to decisions of the Plan Commission (“Plan Commission”) relating to the following: Building (“Building”), Site and

Operational Plans; Signs of a temporary or permanent nature; Residential Outbuildings; rezonings or Conditional Use requests.

- (g) **Public Hearings.**
- (1) **General.** The Board of Appeals shall hold a public hearing upon each application within a reasonable time of the date of filing. Giving notice of the date, time, place of such hearing, and the matter to be presented at the hearing by publication in the Village of a Class 2 notice under Chapter 985 of the Wisconsin Statutes. Notice of the public hearing shall be given to the Zoning Administrator and mailed to all parties-in-interest at least ten (10) days before the hearing. Parties-in-interest shall be defined as the applicant, the clerk of any municipality within one hundred (100) feet of any lands included in the petition, the Wisconsin Department of Natural Resources, if applicable, and the owners of all lands included in the application and all lands lying within three hundred (300) feet of lands included in the petition. The Zoning Administrator shall set the date for the public hearing(s). At the hearing the applicant may appear in person, by agent, or by attorney.
 - (2) **Conduct of Public Hearing.** The Chair or Vice-Chair in their absence, of the Board of Appeals shall place all witnesses under oath. The Board of Appeals shall hear all relevant evidence presented for and against the application. The Chairman of the Board of Appeals may rule on exceptions to evidence and permit examination of witnesses.
- (h) **Findings.** The Board of Appeals shall grant no variance to the provisions of this Title unless it finds that the following facts and conditions exist when applicable and so indicates in the minutes of its proceedings.
- (1) **Preservation of Intent.** No variance shall be granted that is not consistent with the purpose and intent of the regulations for the district in which the development is located. No variance shall permit a use in any district that is not a stated 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 or parcel, structure, use, or intended use that do not apply generally to other properties or uses in the same district and the granting of the variance would not be of so general or recurrent nature as to suggest that this Zoning Code should be changed.
 - (3) **Economic Hardship and Self-Imposed Hardship Not Grounds for Variance.** No variance shall be granted solely based on economic gain or loss. Self-imposed hardships shall not be considered as grounds for the granting of the variance.
 - (4) **Preservation of Property Rights.** The variance must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same district and same vicinity.
 - (5) **Absence of Detriment.** No variance shall be granted that will create substantial detriment to adjacent property and will materially impair or be contrary to the purpose and spirit of this Title or the public interest.
- (i) **Decision.** The Board of Appeals shall render its decision in writing within thirty (30) days after the completion of the hearing thereon.
- (1) **Required Vote.** The concurring vote of the majority of a quorum (A quorum being 3 or more members) of the Board of Appeals shall be necessary to make a decision, grant a variance, exception, or substitution.

- (2) **Finding Of Fact.** Every Finding of Fact shall be signed by the Chair or Vice-Chair and attested to by the Board Secretary as evidence of the action of the Board. The original Finding of Fact letter shall be sent to the Applicant. Copies of each Finding of Fact letter shall be filed with the Board's record of the case at the Village Hall, the property file, and the Zoning Administrator, to the Wisconsin Department of Natural Resources, if applicable, by the Recording Secretary
- (3) **Conditions.** Conditions may be placed upon any variance granted by the Board of Appeals.
- (4) **Scope.** In exercising the above mentioned powers such Board may, in conformity with the provisions of such section, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken, and may issue or direct the issue of a permit.
- (5) **Expiration of a Variance.** All work associated with an approved variance request must be commenced within twelve (12) months from the date of the variance approval, unless otherwise approved by the Zoning Board of Appeals. For the purpose of this code section, "commenced" means that permits have been applied for and obtained and onsite construction has started. Thereafter, the required timelines are established by issued permits.
- (6) **WI DNR.** Final action on Floodland appeals and variance requests shall not be taken for thirty (30) days or until the Wisconsin Department of Natural Resources has made a recommendation, whichever comes first. All decisions shall be submitted to the local WI DNR office within ten (10) days after the decision.
- (j) **Finality of Decision; Resubmittal.** No appeal that has been dismissed or denied shall be considered again within one year except: on a motion to reconsider the vote made by a member voting with the majority within thirty (30) days of the date of the decision, or on a request for a re-hearing. All decisions and findings of the Board of Appeals on any application for a variance, after a public hearing, shall, in all instances be the final administrative decision and shall be subject to judicial review.
- (k) **Re-Hearing.** No request to grant a re-hearing shall be entertained unless substantial new evidence is submitted which could not reasonably have been presented at the previous hearing. In all cases, the request for a re-hearing shall be in writing listing the reasons for the request, and shall be duly verified and accompanied by the necessary data and diagrams. The party requesting the re-hearing shall be notified to appear before the Board on a date to be set by the Board, of which the requestor shall be notified. If a motion to grant a re-hearing receives the affirmative votes of three or more members of the Board, the case shall be put on the calendar for a re-hearing. Re-hearings shall be subject to the same requirements as the original hearing.
- (l) **Review By Court Of Record.** Any person or persons aggrieved by any decision of the Board of Appeals may commence an action seeking the remedy available by certiorari in the Circuit Court of record and specifying the grounds of the illegality pursuant to Sec. 62.23(7)(e)(10), Wis. Stat. Such petition shall be presented to the court within thirty (30) days after the filing of the decision of the Board of Appeals at the Village Hall.