

**BOARD OF ZONING APPEALS RESOLUTION NO. 11-17-20-1**


**WHEREAS**, it is the intent of the Board of Zoning Appeals for the Village of Fontana-on-Geneva Lake to further 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 Zoning 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 further amended to read as the same are attached hereto as Exhibit "A" and incorporated herein by reference.

**BE IT FURTHER RESOLVED**, that the Board of Zoning Appeals does hereby appoint as Secretary the Deputy Village Clerk or such other Village staff person as may be delegated for that purpose by the Village Administrator.

Dated this 17 day of Nov., 2020.

BOARD OF ZONING APPEALS  
VILLAGE OF FONTANA-ON-GENEVA LAKE

By:   
Chairperson

**Vote on this Resolution**

4 in favor

0 against

**AMENDED RULES OF PROCEDURE  
BOARD OF ZONING APPEALS  
VILLAGE OF FONTANA-ON-GENEVA LAKE**

**SECTION 1. Establishment.**

The Board of Zoning Appeals ("Board" herein) 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 Chairperson 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 Chairperson, 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 Chairperson shall direct. The minutes of each meeting and hearing shall be signed by the

Secretary, approved by the Board and signed by the Chairperson. 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.
- (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 decided by the Board once in session 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.
- (f) **Quorum.** If a quorum is present, the Board 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 testify thereto.

- (i) Oath. The Board may, at its discretion, decide that witnesses be given an oath prior to testifying.

#### 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. 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 by the Board, it shall be supplied by the appellant upon written request of the Chairperson or Secretary of the Board, or upon request made by the Chairperson 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 Chairperson 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 of the property affected or by any person identified in Section 62.23(7)(e)4. Wis. Stats., as amended. 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 other appeal.
- (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. In addition, the appellant shall be

responsible for the payment of Village costs per Section 18-236 of the Fontana Municipal Code.

- (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 Zoning Appeals.

The Board of Zoning 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 by Wisconsin Statute and Wisconsin case law.
- (d) Such other duties or powers authorized by Wisconsin Statutes.

#### SECTION 6. Hearings.

- (a) Time of Hearing: All cases shall be set for hearing at the first available regular meeting of the Board 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 to a date and time certain; 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 all or a portion of 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 the return of the filing fee.

#### SECTION 7. Variances.

- (a) Subject to and in compliance with the paramount requirements of Wisconsin Statute as to variances and the relevant Wisconsin and Federal case law as to variances, no variance to the provisions of the Zoning Code shall be granted by the Board unless it finds 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 that 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 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 self-created. 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.
- (b) Variances, substitutions, or use permits granted by the Board shall expire within six (6) months unless substantial work has commenced to such grant.
- (c) Notwithstanding the foregoing, the Board shall at all times follow and comply with the standards for variance set forth in Wisconsin Statute and in the case

law interpreting said statute and as that standard may be amended from time to time.

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 Chairperson 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. Said resolution shall be deemed sent upon mailing, regardless of when said mail is received.

SECTION 9. Amendments.

These Rules of Procedure may be amended or revoked by a majority vote of the Board at any time, provided all members are notified, so long as the amendment or notification of these Rules of Procedure does not constitute a violation of or is inconsistent with the provisions of §62.23(7) Wis. Stats.