

**CHAPTER 9**  
**VARIATIONS AND SPECIAL USES**

**Section**

- 10-9-1 Variations
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- 10-9-3 Notice to Property Owners in the Vicinity

**§10-9-1: VARIATIONS:**

(A) Procedures Generally:

Where in a specified case, after written denial of a permit by the enforcing officer, an application for a variation is made in writing to the Zoning Board of Appeals explaining that because of certain exceptional conditions peculiar to applicant's property or its environment the strict application of the regulations hereof would result in practical difficulties and particular hardship upon the owner, the Zoning Board of Appeals shall consider the case at a public hearing, fifteen (15) days' published notice of which shall have been given as prescribed by statute, and shall determine whether or not the facts are such as to warrant the recommendation of a variation from the Village's Zoning Regulations. If the Zoning Board of Appeals determines, by a concurring vote of not less than four (4) members, that the proposed variation or some modification of it, or with specific conditions, will not meet the standards set forth in subsection (C) of this Section, it shall adopt a motion embodying such findings, and shall recommend to the Corporate Authorities that the variation be granted; otherwise the Zoning Board of Appeals may recommend denial of the application.

(B) Corporate Authorities to Make Final Decision:

The Corporate Authorities shall consider the recommendations and shall make the final decision on any application for a variation. No variation shall be granted except by ordinance, which shall include the required findings of fact set forth in subsection (C) of this Section, and the grant of a zoning variation shall be and constitute a legislative action of said Corporate Authorities.

(C) Findings of Fact For Variation; Hardship Shall Be Shown:

A variation from the terms of this Zoning Ordinance shall not be granted unless the Corporate Authorities make specific written findings of fact relating to the subject property directly based on the standards for hardship and conditions imposed by this subsection:

1. Practical Difficulties and Particular Hardship:

A particular hardship to the owner would result because of the physical surroundings, shape or topographical conditions of the specific property if the strict letter of the regulations were carried out. Mere inconvenience is not sufficient grounds for granting a variation or exception. Economic or financial hardship does not justify a variation; the difficulty or hardship must result from the application of ordinance requirement(s) to the property, and it must be suffered directly by the owner of the property.

2. Unique Physical Condition(s):

The subject property shall be unique as compared to other properties subject to the same provision by reason of one or more particular or unusual physical condition(s), including, but not limited to, the presence of an existing use or structure, whether conforming or nonconforming, an irregular or substandard shape or size, unusual topographical features, or other extraordinary or unusual physical conditions peculiar to, and inherent in, the subject property that amount to more than a mere inconvenience to the owner(s) and that relate to or arise out of the subject property rather than the personal situation of the current owner(s) of the subject property.

3. Not Self-Imposed:

An applicant may not claim hardship because of conditions which are self-created or created by a prior owner, for example excavating a pond on a vacant lot and then claiming there is no suitable location for a house. The aforesaid unique physical condition(s) of the subject property shall not be the result of any action or inaction of the owner(s) and shall have existed at the time of the enactment of the provision from which a variance is sought or was or were created by natural forces or was or were the result of governmental action, other than the adoption of this Zoning Ordinance.

4. Zoning Ordinance and Comprehensive Plan Purposes:

The variation would not result in a use or development of the subject property that would be inconsistent with the general and specific purposes for which this Zoning Ordinance, the provision from which a variation is sought, was enacted or the general purpose and intent of the Comprehensive Plan.

5. Specific Standards:

The proposed variation or some modification of it, or with specific conditions, shall not: a) impair an adequate supply of light and air to adjacent property, b) increase the congestion in public streets unreasonably, c) increase the hazard of fire, d) endanger the public safety, e) diminish or impair the values of property within the surrounding area, f) alter the essential character of the locality, or g) in any other respect impair the public health, safety, comfort, morals, and welfare of the people.

6. No Other Remedy:

There shall be no means other than the requested variation by which the alleged practical difficulties and particular hardship can be avoided or remedied to a degree sufficient to permit a reasonable use of the subject property.

7. Minimum Required:

The variation is the minimum adjustment necessary for the reasonable use of the land.

(D) Time Frame; Extension:

An ordinance hereafter enacted granting a variation in zoning shall be valid for a period not longer than six (6) months from the date of such ordinance unless a building permit is obtained to utilize

the variation or the variation is exercised within such period, unless such variation is extended by the Corporate Authorities, upon written application. No additional hearing before the Zoning Board of Appeals shall be required for any such extension.

(Ord. 2008-006, 8-18-2008; amd. 2014 Code)

**§10-9-2: SPECIAL USES:**

- (A) The development and execution of these Zoning Regulations is based upon the division of the Village into districts within any one of which the use of land and buildings and the bulk and location of buildings or structures, as related to the land, are essentially uniform. It is recognized, however, that there are special uses which, because of their unique character, cannot be properly classified in any particular district or districts without consideration, in each case, of the impact of those uses upon neighboring lands and upon the public need for the particular use of the particular location. The special use process is hereby created to address these unique circumstances and to regulate these uses to protect the public health, safety and welfare. The required public hearing(s) on all special use permits shall be held by the Zoning Board of Appeals, with the exception of special uses for planned residential developments which, notwithstanding anything in this Section to the contrary, shall be held in accordance with Chapter 5 of this Title.
- (B) The Board of Trustees may, following review at a public hearing and recommendation by the Zoning Board of Appeals, approve by ordinance, deny, or refer back to the Zoning Board of Appeals for reconsideration or clarification, development proposals for uses listed as special uses within each zoning district in accordance with the procedures and standards set forth in this Section and other regulations applicable to the district in which the subject property is located.
- (C) Parties entitled to apply for a special use permit shall be limited to the property owner, agent of the property owner, or a lessee, or contract purchaser of the subject property, but only with the consent of the property owner. All applications for a special use permit shall be filed on a form provided by the Village Clerk. Upon receipt of a properly completed application for a special use permit, the Zoning Board of Appeals shall hold a public hearing on the application, and notice of the public hearing shall be published in the same manner prescribed for variations as provided in Section 10-9-1 of this Chapter. Within a reasonable time after the close of the public hearing, the Zoning Board of Appeals shall forward its recommendation of either approval, approval with modifications, or disapproval in writing to the Board of Trustees.
- (D) The Board of Trustees shall act to approve, approve with modifications, or disapprove of the application within a reasonable time after receipt of the Zoning Board of Appeals recommendation. The application shall be approved, or approved with modifications, by the Board of Trustees only by legislative action through the adoption of a special use ordinance, listing any specific conditions specified by the Board of Trustees. If the application is disapproved, the Board of Trustees shall instruct the enforcing officer to provide the applicant with written notification of the Board's decision.
- (E) An application for a special use permit shall not be approved unless the application is determined to be in conformance with each of the following standards:
  - 1. The proposed special use is, in fact, a special use listed and authorized in the zoning district regulations within which the property is located.

2. The proposed special use is consistent with the objectives of the Village's Comprehensive Plan and these Zoning Regulations.
  3. The proposed special use is designed, constructed, operated, and maintained so as to be appropriate in appearance and harmonious with the existing or intended character of the general vicinity.
  4. The proposed special use will not significantly diminish the safety, use and enjoyment of surrounding property.
  5. The proposed special use is adequately served by essential public facilities and services such as streets, police and fire service, drainage, refuse disposal, water and septic service, and schools, or the persons or agencies responsible for the establishment of the proposed special use shall provide adequately any such services.
- (F) The Zoning Board of Appeals may recommend, and/or the Board of Trustees may provide such conditions and restrictions upon the construction, location and operation of a special use as may be deemed necessary to promote the general objective of these zoning regulations and to minimize any injury to the value of property in the neighborhood. Such conditions shall be expressly set forth in the ordinance granting the special use permit. Failure to maintain such conditions or restrictions as may have been imposed shall constitute grounds for revocation of such special use permit.
- (G) The listing of special uses within each zoning district does not constitute a legislative finding that such special use is appropriate on the subject property or within a given zoning district and is not intended to and does not create any assurance or presumption that such special uses will be approved. Rather, each proposed special use shall be evaluated on an individual basis, in relation to its compliance with the standards and conditions set forth in this Section, and with the standards for the district in which it is located, in order to determine whether approval of the special use is appropriate at the particular location and in the particular manner proposed.
- (H) A special use permit shall automatically become null and void unless a building permit is issued and construction is actually begun within one year of issuance and is thereafter diligently pursued to completion. However, the Board of Trustees may extend the one year period to a mutually agreed upon time. No additional hearing before the Zoning Board of Appeals shall be required for any such extension. A special use permit authorizes the conduct of the special use only on the property represented in the application and is not transferable to other properties.
- (I) The approval of a special use permit application by the Board of Trustees shall not authorize the development, construction, reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for such permits or approvals as may be required by the other applicable ordinances of the Village including, but not limited to, a building permit.

(Ord. 2004-011, 11-15-2004)

**§10-9-3: NOTICE TO PROPERTY OWNERS IN THE VICINITY:**

The petitioner for any variation, special use, special use for a planned development, or zoning map amendment shall give written notice, either by personal service or by certified mail, return receipt requested, not less than ten (10) days prior to the initial date of any public hearing before the Zoning Board of Appeals or Plan Commission thereon, to the owners of all property, whether belonging to a private party, to a public entity, or to a community association, whether under the jurisdiction of a municipality or within an unincorporated area, within two hundred fifty feet (250') in each direction from

all points on the perimeter of the property which is the subject of their petition; provided, however, that for the purpose of this Section ownership may be determined on the basis of the last available tax records of the county. An affidavit of compliance with such notice requirement shall be filed at the time of the public hearing. The Zoning Board of Appeals, the Plan Commission and/or the Corporate Authorities may inquire into the adequacy of such affidavit or the adequacy of notice itself. However, the Zoning Board of Appeals, the Plan Commission and the Corporate Authorities may rely on such affidavit which appears regular on its face and the failure to provide notice to each and every owner of neighboring property as herein provided shall not invalidate any action taken on any such petition by the Corporate Authorities. (Ord. 2008-007, 8-18-2008)