

**BUILDING CODE BOARD OF APPEALS**

**RULES OF PRACTICE AND PROCEDURE**

**VILLAGE OF METTAWA**

These Rules of Practice and Procedure are adopted pursuant to the authority granted in Chapter 9 (herein the “**Building Code**”) of the Municipal Code of the Village of Mettawa of 2001, as amended.

**ARTICLE I GENERAL PROVISIONS**

**SECTION 1.1.** These rules are supplementary to the provisions of the Ordinances of the Village of Mettawa, a home rule unit, as they relate to procedures of the Building Code Board of Appeals of the Village of Mettawa (herein “**Board of Appeals**“). The rules of parliamentary practice set forth in the latest published addition of Robert’s “Rules of Order Revised” shall govern the Board of Appeals in all cases to which they are applicable and in which they are not inconsistent with these Rules of Practice and Procedure. In instances wherein Robert’s “Rules of Order Revised” conflict or are inconsistent with these Rules of Practice and Procedure, these Rules of Practice and Procedure shall control and govern.

**SECTION 1.2.** Nothing herein shall be construed to imply that the Board of Appeals has the power or authority to alter or change the Building Code, which authority is reserved to the President and Board of Appeals of Trustees of the Village of Mettawa. However, in accordance with the Building Code, the Board of Appeals, after a public hearing upon an appeal from the decision of the Building Official (herein “**Building Administrator**”), may modify the application of any provision of the Building Code to any particular situation when, in its opinion: (a) the disallowance of the use of construction materials that meet or exceed structural design criteria but do not conform to the specifications of the Building Code would do manifest injustice and would be contrary to public interest or the spirit and purpose of the regulations contained in the Building Code; or (b) permitting the construction of a building that does not strictly comply with the provisions of the Building code, provided the basic intent of the Building Code provision is being met and the Applicant agrees to enter into an agreement (satisfactory to the Village Attorney) to make any and all Building code compliance adjustments to the building when directed to do so by the Board of Appeals; or (c) an interpretation of a regulation or regulations of the Building Code by the Building Administrator should be modified or reversed.

**SECTION 1.3.** The Village Attorney shall be consulted in cases, if any, where the powers of the Board of Appeals are not clearly defined.

**SECTION 1.4.** The official office of the Board of Appeals shall be located in the same office as that of the Building Administrator.

## ARTICLE II ORGANIZATION: OFFICERS AND DUTIES

**SECTION 2.1.** The officers of the Board of Appeals shall be a Chairman and a Vice Chairman.

**SECTION 2.2.** In accord with the ordinances of the Village of Mettawa, the Village President designates the members of the Board of Appeals as well as the Chairman with the advice and consent of the Village Board. In addition the Village Clerk, as “**Secretary**”, and the Building Administrator shall be ex-officio non-voting members of the Board of Appeals. In the event of death, removal for cause or resignation of the Chairman, his successor shall be appointed by the Village President with the advice and consent of the Village Board of Appeals. The Vice Chairman shall be chosen by the voting members of the Board of Appeals.

**SECTION 2.3.** The Chairman shall supervise the affairs of the Board of Appeals. He shall preside at all meetings of the Board of Appeals.

**SECTION 2.4.** The Vice Chairman, in the absence or the disability of the Chairman, shall perform all the duties and exercise all the powers of the Chairman.

**SECTION 2.5.** The Secretary shall oversee and shall be responsible for keeping the records and files of the Board of Appeals, including the record of proceedings and the minutes of the meetings of the Board of Appeals. All documents pertinent to the business of the Board of Appeals shall be maintained in the files of the Board of Appeals.

- A. Upon receipt of a properly completed application by a person, firm, corporation or representative (herein “**Applicant**”) appealing from a decision of the Building Administrator, the Secretary shall assign a case number to the application. All such case numbers shall commence with a two digit number corresponding to the last two digits of the calendar year within which the application was filed with the Village Clerk, followed by a hyphen, followed by the upper case (capital) letter “A”, followed by a hyphen, followed finally by a number representing the order within which the application was received during such calendar year. *e.g.* “09-A-1”, “09-A-2”, etc. Thereafter such appeal shall be referred to as a “**Case**” and identified by its case number.
- B. The Secretary shall be responsible for filing the most current rules of procedure of the Board of Appeals, the minutes of meetings, the record of hearings, and other documents and recommendations with the Village Clerk and copies thereof with the Building Administrator. The minutes shall show the vote of each member upon every question, or if absent or failing to vote, indicating that fact.
- C. The Secretary shall perform such other duties as are requested from time to time by the Board of Appeals, including but not limited to:
1. **Giving public notices of each meeting of the Board of Appeals as required by law;**
  2. **Taking minutes of each meeting of the Board of Appeals, showing the vote of each member upon every question, or if absent or failing to vote, indicating such facts;**
  3. Recording the names and addresses of all persons appearing before the Board of Appeals;
  4. Undertaking the correspondence of the Board of Appeals.

## **ARTICLE III MEETINGS**

**SECTION 3.1.** Given the sole jurisdiction of the Board of Appeals, to hear appeals, all meetings of the Board of Appeals shall be special meetings and shall be held at the call of the chairman and at such other times as the Board of Appeals may determine.

**SECTION 3.2.** All hearings before the Board of Appeals shall be conducted during a meeting of the Board of Appeals.

**SECTION 3.3.** All meetings and hearings conducted by the Board of Appeals shall be open to the public.

**SECTION 3.4.** At all meetings of the Board of Appeals the order of business shall proceed as follows:

- A. Call to Order.
- B. Roll call.
- C. Approval of Minutes.
- D. Call of Cases on the agenda, hearing of requests for continuance, and conduct of hearings of Cases on agenda.
- E. Deliberation of Cases in which the hearing has been held.
- F. Communications.
- G. Adjournment.

**SECTION 3.5.** Any two (2) members of the Board of Appeals shall constitute a quorum to conduct business and hold hearings.

**SECTION 3.6.** In modifying any provision of the Building Code or in modifying or reversing an interpretation of the Building Administrator, affirmative votes of two (2) members shall be required.

**SECTION 3.7.** No member of the Board of Appeals shall pass upon any question in which he has a financial interest, directly or indirectly.

## **ARTICLE IV APPEALS**

**SECTION 4.1.** Appeals to the Board of Appeals shall be made by filing with the Secretary a written application in the form thereof (herein “**Application**”) found in **Schedule A** of these Rules. Such forms shall be made available upon request from the Building Administrator or the Secretary.

**SECTION 4.2.** Any Applicant who shall file an Application shall pay the fee approved from time to time by resolution duly adopted by the President and Board of Appeals of Trustees and shall file the Application with the Secretary.

**SECTION 4.3.** Pursuant to Chapter 9 of Municipal Code of the Village of Mettawa of 2001, as amended, appeals may be made from decisions of the Building Administrator regarding:

- A. The interpretation of the Building Administrator of one or more Building Code regulations;**
- B. Use of construction materials that do not conform to the specification of the Building Code; and/or
- C. Construction of a Building that does not strictly comply with a provision, or provisions of the Building Code.

**SECTION 4.4.** The Application shall contain the following information, as well as such attachments containing additional information as may be deemed necessary by the Applicant and as may be reasonably necessary for a proper determination of the question presented for review:

- A. A statement of the particular requirements of the Building Code which are in contention;
- B. A statement specifying the grounds for the appeal;
- C. The legal description of the real property (herein “**Subject Property**”) upon which the structure which is the subject of the Appeal is located;
- D. The commonly known location (address) of the Subject Property;
- E. The zoning classification of the Subject Property;
- F. Proof of ownership, proof of authority to act on behalf of the owner, or current contract to purchase or lease the Subject Property;
- G. A plat of survey of the Subject Property; and
- H. Drawings, material samples and/or technical bulletins, as appropriate.

**SECTION 4.5.** At the time of filing an Application, Applicants shall also file proof of payment of filing fees in the amount established by the President and Board of Appeals of Trustees.

**SECTION 4.6.** **Within 48 hours of receipt of an Application, the Secretary shall forward a copy thereof to each member of the Board of Appeals, retaining the original thereof for the official records of the Board of Appeals.**

**SECTION 4.7.** Within 48 hours of receipt of the copy of an Application, the Chairman shall call a meeting of the Board of Appeals to be held within seven (7) working days of the call and shall schedule the public hearing to be conducted by the Board of Appeals on the appeal during that meeting.

**SECTION 4.8.** Following the filing of an Application, no testimony shall be taken and no witnesses heard regarding the Case, except at a properly convened hearing of the Board of Appeals.

**SECTION 4.9.** At hearings and meetings of the Board of Appeals any interested person, firm, or corporation may appear or may be represented by duly authorized agents or attorneys.

**SECTION 4.10.** All documents, or copies thereof, presented during the course of any hearing, including plans and specifications, shall remain part of the permanent records of the Board of Appeals.

## **ARTICLE V PROCEDURE DURING HEARINGS**

**SECTION 5.1.** The order of business at public hearings shall be as follows:

- A. Calling of hearing to order.
- B. Roll call by the Secretary to make a record that at least two (herein 2) voting members are present.
- C. Incorporation in the record of the Application and documents accompanying its filing.
- D. Taking of appearances of any interested persons present who wish to be heard.
- E. The Applicant or his representative may make an initial statement outlining the nature of his request.
- F. Applicant presents proof of ownership or authority to act on behalf of the Applicant.
- G. Applicant presents its Case in an orderly fashion.
- H. Members of the Board of Appeals and all other persons interested in the subject matter of the hearing question the Applicant.
- I. The Building Administrator presents his response to the appeal.
- J. Members of the Board of Appeals and all other persons interested in the subject matter of the hearing question the objector(s).
- K. Objector (s) present objections.
- L. Members of the Board of Appeals and all other persons interested in the subject matter of the hearing question the Objector(s).
- M. Closing statement, if any, by applicant.

**SECTION 5.2.** The Board of Appeals shall not be bound by the strict rules of evidence during the hearing of the Case, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence.

**SECTION 5.3.** An Applicant or objector, or his agent or attorney, may submit a list of the persons favoring or opposing the Application. Such list will be accepted if it contains nothing more than a brief statement of the position of the persons favoring or opposing the Appeal, together with the signatures of the persons subscribing to such statement.

**SECTION 5.4.** The member chairing the hearing shall rule on all questions relating to the admissibility of evidence, which may be overruled by a majority of the Board of Appeals present.

**SECTION 5.5.** Continuance of a hearing may be granted at the discretion of the Board of Appeals in any Case for good cause shown and to any interested party who has appeared at the hearing as follows:

- A. First time Case is on the agenda to be heard: A continuance may be granted upon request to a date and time established by the Board of Appeals.
- B. Continued Cases, which have previously appeared on the agenda of this Board of Appeals, shall be granted a further continuance at the time the case is called to be heard, upon showing that the party requesting the additional continuance:
  - 1. Has given reasonable notice in writing to all persons who have appeared at the earlier date upon which the Case had been scheduled; and
  - 2. Will be unable to proceed with his evidence at this time.

**SECTION 5.6.** In the event of failure of an Applicant to Appear.

- A. The Chairman may entertain a motion from the Board of Appeals to dismiss the Case for want of prosecution. In the absence of a motion by the Board of Appeals, the Chairman shall rule.
- B. When a Case has been dismissed for want of prosecution, the Secretary of the Board of Appeals will forward a written notice of dismissal to the Applicant.
- C. The Applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the Case.
  - 1. In such instance, the applicant must file a written request with the Secretary for reinstatement.
  - 2. In all Cases reinstated in the above described manner, the case will be docketed to be heard at the next meeting of the Board of Appeals called by the Chairman.

**SECTION 5.7.** At the close of each hearing, the Board of Appeals shall take the subject matter of the hearing under advisement and make its decision thereon at a duly constituted meeting, provided a majority of the Board of Appeals vote to grant or to deny any given request.

- A. In any event, all deliberations of the Board of Appeals shall be conducted, and all of its decisions shall be made, at a meeting that is open to the public.
- B. No new evidence may be accepted and no argument of the petitioners or objectors may be heard by the Board of Appeals after the hearing has been closed.
- C. The Secretary shall give a copy of the notice of the decision of the Board of Appeals to the Applicant, the Building Administrator, and other interested parties as soon as possible after the decision has been reached.

**ARTICLE VI DECISIONS**

**SECTION 6.1.** Following the conclusion of the hearing on an appeal, by majority vote the Board of Appeals may modify the application of any provision of the Building Code to any particular situation when, in its opinion: (a) the disallowance of the use of construction materials that meet or exceed structural design criteria but do not conform to the specifications of the Building Code would do manifest injustice and would be contrary to public interest or the spirit and purpose of the regulations contained in the Building Code; or (b) permitting the construction of a building that does not strictly comply with the provisions of the Building code, provided the basic intent of the Building Code provision is being met and the Applicant agrees to enter into an agreement (satisfactory to the Village Attorney) to make any and all Building code compliance adjustments to the building when directed to do so by the Board of Appeals; or (c) an interpretation of a regulation or regulations of the Building Code by the Building Administrator should be modified or reversed.

**SECTION 6.2.** Within the perimeter of its jurisdiction, the Board of Appeals shall make its decision on all matters presented to it within thirty (30) days after the close of the hearing thereon. If, at the expiration of such thirty (30) days, the Board of Appeals does not make its decision, it shall be concluded that the Board of Appeals denied the request on appeal and affirmed the decision of the Building Administrator. If a decision of the Building Code Board of Appeals reverses or modifies a refusal, order or disallowance of the Building Administrator or modifies the application of any provision of the Building Code, the Building Administrator shall take action immediately in accordance with such decision.

**SECTION 6.3.** Every decision of the Board of Appeals shall be in writing and shall indicate the vote of the members of the Board of Appeals upon the decision. The Secretary shall promptly file every decision in the office of the Building Administrator, where it shall be kept publicly posted for two (2) weeks and shall be available for public inspection. The Secretary shall send by first class United States mail or otherwise deliver a certified copy of the decision to the Applicant and other interested persons who appeared at the hearing.

**SECTION 6.4.** No approval of the Board of Appeals granted on an appeal, shall be valid for a period longer than two (2) years from the date of such approval, unless within such period a Building Permit is obtained and all fees are paid.

**SECTION 6.5.** Within fifteen (15) days after the Secretary has filed the decision in the office of the Building Administrator, anyone aggrieved by a decision of the Board of Appeals, whether previously a party to the proceeding or not, may apply to the appropriate court to correct errors of law in such decisions.

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These rules are approved by the Building Code Board of Appeals of the Village of Mettawa at its regular meeting held on the day of , 2009, and shall be published by the Secretary in pamphlet form and made available to the public upon request.

Attest: (SEAL)