

ORDINANCE NO. 242

**AN ORDINANCE TO REPEAL AND RECREATE SECTION 17.16(3)(d) OF THE
VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE REGARDING CONCURRING VOTES
REQUIRED FOR ACTIONS BY THE BOARD OF APPEALS AND TO
REPEAL AND RE-CREATE SECTION 17.61(4)(b) OF THE
VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE AND
CREATE SECTION 17.16(5) OF THE VILLAGE CODE REGARDING
USE VARIANCES WITHIN THE VILLAGE OF OCONOMOWOC LAKE**

WHEREAS, in the case of *Ziervogel vs. Washington County Board of Adjustment* (263 Wis. 2d 321 (2004)), the Supreme Court of the State of Wisconsin concluded that Zoning Boards of Appeals in the State of Wisconsin have the authority to grant use variances under certain circumstances; and

WHEREAS, the Village of Oconomowoc Lake Village Code has heretofore prohibited the grant of use variances within the Village; and

WHEREAS, in order to grant a use variance, the Wisconsin Supreme Court has held that the Zoning Board of Appeals must find that there is no reasonable use of the property without a variance; and

WHEREAS, the Plan Commission for the Village of Oconomowoc Lake has carefully considered every parcel of land in the Village of Oconomowoc Lake to determine independently whether the lots have a reasonable use, and has found that every lot that is zoned for a residential use within the Village of Oconomowoc Lake has a reasonable use, in that it either currently has a single-family residence constructed on the lot, or the lot is such that a single-family residence would be allowed on the lot; and every lot zoned for business or industrial use, similarly, either currently has an existing principle structure, or the lot is such that a compliant structure would be allowed on the lot; and the Plan Commission's research in this regard is fully documented and is on file in the Office of the Village Clerk for the Village of Oconomowoc Lake; and

WHEREAS, Section 62.23(7)(e)(3m) of the Wisconsin Statutes now permits the Zoning Board of Appeals to take action by a majority vote of the members present when a quorum of its members are present; and

WHEREAS, the Village Plan Commission has therefore initiated this amendment to the Village of Oconomowoc Lake Village Code, and has recommended to the Village Board that the amendment be granted at a meeting subsequent to the meeting at which the matter was first submitted, as required by §17.62(4)(a) of the Village of Oconomowoc Lake Village Code; and

WHEREAS, upon receipt of the Village Plan Commission's recommendation, the Village Board of Trustees held a public hearing on December 15, 2008, after providing all required notice, as required by §17.62(5)(a) of the Village of Oconomowoc Lake Village Code; and

WHEREAS, the Village Board for the Village of Oconomowoc Lake finds that the public necessity, convenience, general welfare and good zoning practice requires the Village Board to amend,

change or supplement the regulations established by the Village of Oconomowoc Lake Zoning Code as described herein.

NOW, THEREFORE, the Village Board of the Village of Oconomowoc Lake, Waukesha County, Wisconsin, **DOES HEREBY ORDAIN AS FOLLOWS**:

SECTION 1: Chapter 17 of the Village of Oconomowoc Lake Village Code entitled "Zoning Code," Section 17.61 entitled "Board of Zoning Appeals," subsection 17.61(3) entitled "Organization," subsection (d), is hereby repealed and re-created as follows:

- (d) If a quorum is present, the Board may act to correct an error; grant a variance; grant a special exception; make an interpretation; and permit a temporary use by a majority vote of the members present.

SECTION 2: Chapter 17 of the Village of Oconomowoc Lake Village Code entitled "Zoning Code," Section 17.61 entitled "Board of Zoning Appeals," subsection 17.61(4) entitled "Powers," subsection (b) entitled "Variance," is hereby repealed and re-created as follows:

- (b) Variance. To hear and grant appeals for variances that will not be contrary to the public interest, where, owing to special conditions, a literal enforcement will result in practical difficulty or unnecessary hardship, so that the spirit and purposes of this chapter shall be observed and the public safety, welfare and justice secured. Setback variances shall not be granted without public hearing, approval of the Plan Commission pursuant to Section 17.02 and Section 17.03, and approval of the Architectural Control Board pursuant to Section 17.60, herein. Lot area variances shall not be granted if the purpose of the variance is to allow the lot to be divided into more parcels than would be allowed absent the variance. As to use variances, see Section 17.16(5) of this Code.

SECTION 3: Chapter 17 of the Village of Oconomowoc Lake Village Code entitled "Zoning Code," Section 17.16 entitled "Compliance," subsection (5) is hereby created as follows:

- (5) The Village Plan Commission and the Village Board have taken great care to ensure that every lot in the Village of Oconomowoc Lake is permitted to have a reasonable use of the property, in compliance with the requirements of this Zoning Code. The Village Plan Commission and Village Board of Trustees have studied this issue in great detail. The results of this investigation are on file in the Office of the Village Clerk. This study demonstrates that each and every improved lot in the Village of Oconomowoc Lake currently has a reasonable permitted use in compliance with the requirements of this Code and each and every vacant lot is such that a reasonable use can be conducted in compliance with the Village Code. To the fullest extent of its authority to do so, the Village Board of the Village of Oconomowoc Lake hereby declares its intent that uses of property within the Village of Oconomowoc Lake shall be limited and restricted to the uses that are described within the District Regulations of this Code.

SECTION 4: SEVERABILITY.

The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

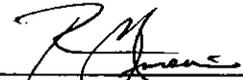
SECTION 5: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 15TH day of DECEMBER, 2008.

VILLAGE OF OCONOMOWOC LAKE

ATTEST:



Richard J. Knieser, Village President



Cindy J. Schlieve, Village Clerk

Published and/or posted this 17TH day of FEBRUARY, 2009

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

AFFIDAVIT OF POSTING

Ordinance #242 regarding BZA Votes
And use variances

The undersigned, being first duly sworn, on oath deposes and states that on February 17, 2009, at the direction of the Clerk of the Village of Oconomowoc Lake, he posted copies of the foregoing proceedings of the Village Board in the following public places in said Village:

to-wit:

- (1) Opposite the entrance to the Oconomowoc Lake Club on the northern side of the road in front of the Club;
- (2) At the entrance to the Village Hall on West Pabst Road;
- (3) At the Village Boat Launch located at 35622 E. Wisconsin Avenue.



Posting Officer

Subscribed and sworn to before me

This 17th day of February, 2009

Cindy J. Schlieve

Notary Public, Waukesha County, Wisconsin
My Commission expires: 07/03/2011

