

ORDINANCE NO. 258

AN ORDINANCE TO REPEAL AND RECREATE SECTION 17.61(4)(b) ENTITLED "POWERS" OF THE VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE

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 had previously prohibited the grant of use variances within the Village; and

WHEREAS, in the case of *James C. Rule v. Iowa Board of Adjustment* 324 Wis. 2d 594, 2010, the Court acknowledged that the Zoning Board of Appeals could be denied the power to grant use variances; 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, based on the ruling of the *James c. rule vs. Iowa Board of Adjustment*, the Village Board for the Village of Oconomowoc Lake pursuant to Section 17.62(2) of the Village of Oconomowoc Lake Village Zoning Code has initiated this amendment to the Village of Oconomowoc Lake Village Zoning Code to reinstate the prohibition against the grant of use variances within the Village, and has forwarded the same to the Village of Oconomowoc Lake Plan Commission for review and recommendation; and

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

WHEREAS, upon receipt of the Village Plan Commission's recommendation the Village Board held a public hearing on October 17, 2011, after providing all required notices required by Section 17.62(5)(a) of the Village of Oconomowoc Lake Village Zoning 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(4) entitled "Powers," subsection (b) entitled "Variances", is hereby repealed and re-created as follows:

1. Use variances

Zoning Board of Appeals does not have the power and/or authority to grant use variances. As to use variances also see Section 17.16(5) of this code.

2. Dimensional variances.

The Zoning Board of Appeals does have the power and/or authority to grant dimensional variances upon the finding that:

- The proposed variances is not contrary to the public interest; and
- The property has a special or unique condition; and
- The special condition of the property creates an unnecessary hardship.

a. Setback variance.

Setback variances shall not be granted without a public hearing, and shall be conditioned upon the approval of the Plan Commission, upon its consideration of the issues noted in Section 17.02 and Section 17.03, and the approval of the Architectural Control Board, upon its consideration of the issues noted in Section 17.60, herein. The Architectural Control. Board, Plan Commission and/or Board of Zoning Appeals may each place reasonable conditions or restrictions on their approvals when granting any setback variance.

b. Lot variance.

Lot area variances shall not be granted if the purpose of the variance is to allow the lot be divided into more parcels than would be allowed absent the variance.

SECTION 2: 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 3: EFFECTIVE DATE.

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

Dated this 19TH day of SEPTEMBER, 2011.

VILLAGE OF OCONOMOWOC LAKE


Joseph Birbaum, Village President

ATTEST:


Cindy J. Schlieve, Village Clerk

Published and/or posted this 27TH day of September, 2011.

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

AFFIDAVIT OF POSTING

Ordinance No. 258 adopted on
September 19, 2011

The undersigned, being first duly sworn, on oath deposes and states that on Sept. 27, 2011, 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 Signature

Subscribed and sworn to before me

This 27th day of September, 2011



Notary Public, Waukesha County, Wisconsin
My Commission expires: June 7, 2015