

ORDINANCE NO. 244

AN ORDINANCE TO REPEAL AND RECREATE SECTION 17.385(5) OF THE VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE REGARDING SETBACK AND OFFSET MODIFICATIONS; SECTION 17.61(4)(b) OF THE VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE REGARDING GRANTING OF VARIANCES; AND SECTION 17.61(4)(h) OF THE VILLAGE OF OCONOMOWOC LAKE VILLAGE CODE REGARDING GRANTING OF SPECIAL EXCEPTIONS BY THE ZONING BOARD OF APPEALS

WHEREAS, Sections 17.385(5) and 17.61(4)(h) of the Village of Oconomowoc Lake Code provide for the granting of special exceptions with regard to setback and offset requirements in the R-4 Low Density Residential District within the Village of Oconomowoc Lake; and

WHEREAS, Section 17.61(4)(b) of the Village of Oconomowoc Lake Village Code further provides for the granting of variances including, but not limited to, setback variances; and

WHEREAS, the Village Plan Commission has recommended amendment of Section 17.385(5) and Sections 17.61(4)(b) and (h) to remove specific timing requirements for the required approvals of the Plan Commission and the Architectural Control Board of such special exceptions and variances, and to clarify that special exceptions for the R-4 Low Density Residential District may be granted without need for a public hearing before the Zoning Board of Appeals notwithstanding the provisions for granting of setback variances under Section 17.61(4)(b) of the Village Code; and

WHEREAS, the Village Plan Commission has 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 February 17, 2009, 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 17.385, entitled "Board of Zoning Appeals," subsection 17.61(5) ^{385 (c)(2)} entitled "Setback and Offset Modifications" is hereby repealed and re-created as follows:

(5) SETBACK AND OFFSET MODIFICATIONS.

The setback and offset regulations described in Sections 17.385(3) and (4) shall not be modified except upon the approval of the Architectural Control Board upon consideration of the issues noted in Section 17.60(8), and the approval of the Plan Commission upon consideration of the issues noted in Section 17.02 and 17.03, and a special exception may be granted by the Board of Zoning Appeals but only as to the limited issues described in this Section 17.385(5). No public hearings shall be required for the Board of Zoning Appeals to consider the special exception or for the Architectural Control Board to consider the matter, and compliance with Sections 17.61 (6), 17.60(7), and other provisions of this Ordinance which otherwise might require a public hearing shall not apply with regard to special exceptions considered under this subsection. A public hearing shall, however, be required by the Plan Commission to consider the matter. Said public hearing notice and procedural requirements shall be as set forth in Section 17.61(6). The Architectural Control Board, Plan Commission and/or Board of Zoning Appeals may each place conditions or restrictions on their approvals, including but not limited to conditions related to shoreland protection, when granting setback and offset modifications.

The following setback and offset modifications only apply if approved by the Architectural Control Board, Plan Commission and Board of Zoning Appeals as described above:

(a) Setbacks.

1. No building shall be hereafter erected, altered, horizontally added to, relocated or placed within the setback distance specified by the regulations described in Sections 17.385(3) and (4) except as specified here-in-after:
 - (a) If there is a building which is non-conforming with respect to street right-of-way setback, with a similar use as the proposed building, located on an adjacent parcel on one side of the proposed building or within two hundred (200) feet of the proposed building, the average of the street right-of-way setback of that building of

similar usage and the required minimum street right-of-way setback may be allowed.

- (b) If there are two (2) buildings which are non-conforming with respect to street right-of-way setback, with similar uses as the proposed building, located on adjacent parcels on each side of said building or within two hundred (200) feet of the proposed building, the average of the street right-of-way setback of those buildings of similar usage may be allowed.
 - (c) In the case of a proposed addition to an existing building which has less than the required street right-of-way setback, the street right-of-way setback of such existing building may be used to determine the required street right-of-way setback for the proposed addition, as set forth above.
2. Additions to and replacements of existing buildings may be made within the established street right-of-way provided the owner will file, with the Waukesha County Register of Deeds, an agreement in writing, in a form subject to the approval of the Village Board, to the effect that the owner will remove all new construction, additions and replacements erected after the adoption of this Ordinance at his expense, when said right-of-way is necessary for the improvement of the highway.
 3. On corner lots of record, as of the date of adoption of this Ordinance, the effect of the setback regulations shall not reduce the buildable width of such corner lot to less than thirty (30) feet. Where such reduction would result in an area narrower than thirty (30) feet after applying the offset reduction, the setback or offset provision may be modified to the extent necessary to minimize the encroachment on both the offset and setback standard while maintaining the thirty (30) feet area required herein.
 4. Every building shall be setback seventy-five (75) feet from the ordinary high water mark of navigable waters, the one hundred-year flood or the conservancy/wetland district except as it relates to a principal building in an area where an existing pattern of development exists which is less than the seventy-five foot requirement in which case the average of the existing principal building shore setback on either side of the principal building may be used to compute the setback for the principal building only. The method of computation shall be similar to the setback averaging feature for street right-of-way setbacks contained in section

17.385(5)(a)(1) as it would apply to the principal building only. Notwithstanding the application of the setback averaging feature, no modification may be allowed for closer than twenty-five (25) feet from the ordinary high water mark, the floodplain or the conservancy/wetland district unless specifically excepted by another provision of this ordinance.

5. In the case of an extension or addition to a building which lies closer than the minimum required street right-of-way or shore setback requirements, and where such extension would not extend closer to the established setback line or shoreline than the existing building to which it is attached using the averaging formula, such extension or addition may be allowed as long as said extension or addition does not encroach closer to the required setback or shoreline than the existing structure to which it is attached.

(b) Offsets:

1. No principal building or its accessory building shall be erected or altered so that any roofed or enclosed portion thereof is closer to any lot line than the offset distance specified by the regulations described in Sections 17.385(3) and (4) except as specified here-in-after:
 - (a) In the case of a lot record, which has a minimum average width of less than one hundred and twenty (120) feet, the offset for the principal building from a side lot line may be reduced proportionately to the ratio between the actual average width and one hundred and twenty (120) feet, but not less than ten (10) feet.
 - (b) Offsets for detached accessory buildings exceeding two hundred (200) square feet in area on lots of one hundred and twenty (120) feet in width or less may be reduced to an amount equal to the proportionate amount between the actual width and one hundred and twenty (120) feet, but not less than five (5) feet. However, no detached accessory building shall be located closer than ten (10) feet to any building used for human habitation.
 - (c) When a detached accessory building on an adjacent lot lies closer than five (5) feet of the common lot line, a new detached accessory building may be allowed to be located the same distance from the common boundary as the existing detached building on the adjacent lot. If they lie closer than ten (10) feet of each other, the new detached accessory building shall contain a fire wall sufficient

to meet the one hour fire rating contained in the building code, however detached accessory building side walls may be no closer than three (3) feet. In order to accomplish proper maintenance, a deed restriction shall be recorded prior to issuance of the building permit prohibiting the construction of fences between said buildings and permitting maintenance of said buildings from adjacent properties where deemed necessary by the Plan Commission, Architectural Control Board or Board of Zoning Appeals.

- (d) One (1) detached accessory building which is less than two hundred (200) square feet in area may be allowed to be offset five (5) feet, unless otherwise excepted under any other provision.
- (e) In the case of an extension or addition to a building into the minimum offset distance, and where such extension would not extend closer to the side lot line than the existing building to which it is attached, such extension or addition may be allowed as long as said extension or addition does not encroach closer to the side lot line than an existing structure to which it is attached.

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 (h) entitled "Special Exceptions," 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 a public hearing, and shall be conditioned upon the approval of the Plan Commission, upon its consideration of the issues noted 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(8), 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. 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 17.61 entitled "Board of Zoning Appeals," subsection 17.61(4) entitled "Powers," subsection (h) entitled "Special Exceptions," is hereby repealed and re-created as follows:

- (h) Special exceptions. Notwithstanding the provisions of Section 17.61(4)(b) regarding the granting of setback variances, the Board may, without a public hearing, grant a special exception on a case by case basis regarding setbacks and offsets for property located in the R-4 Low Density Residential District in the limited circumstances described in Section 17.385(5) with the approval of the Plan Commission, upon its consideration of the issues noted in Section 17.02 and 17.03, and the approval of the Architectural Control Board, upon its consideration of the issues noted in Section 17.60(8), all as more fully described in Section 17.385(5).

SECTION 4: SEVERABILITY.

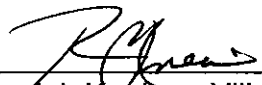
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, 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 16th day of February, 2009.

VILLAGE OF OCONOMOWOC LAKE



Richard J. Kneiser, Village President

ATTEST:

Cindy J. Schieve
Cindy J. Schieve, Village Clerk

Published and/or posted this 17th day of February, 2009.

D:\Users\Paul\Documents\My Documents\My Files\Oconomowoc Lake\Ordinances\Variances\Special Exceptions VOL 020609.doc

STATE OF WISCONSIN)
)
COUNTY OF WAUKESHA)

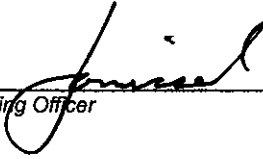
AFFIDAVIT OF POSTING

Ordinance #244 regarding setback
Variances and special exceptions
Granted by the BZA

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

