

ARTICLE SEVEN - VARIATIONS

701 INTENT

In order to accomplish the general purpose of this ordinance, consideration must be given to certain practical difficulties or hardships in carrying out the strict letter of regulations of this ordinance. The purpose of the variation is to provide relief from such difficulties and hardships resulting from the bulk, setback, parking and loading requirements of this ordinance. The term "variation," as used in this ordinance, does not include a map or text amendment to this ordinance nor does it include a conditional use.

702 AUTHORIZED VARIATIONS

Variations from the regulations of this ordinance shall be reviewed and heard by the Hearing Officer. The Zoning Board of Appeals shall hear cases where a variation is accompanied with another request. All requests for variations will be decided by the County Board and may be granted in the following instances:

1. To permit a yard or setback less than the yard or setback required by the regulations of the applicable zoning district.
2. To increase the height of any structure or the lot coverage of any lot or parcel.
3. To permit the same off-street parking facility to qualify as the required parking facility for two (2) or more uses provided that the use of such parking facility by each user does not take place during the same hours of the same day of the week.
4. To permit required off-street parking facilities to be located off the lot of the use for which the space is provided.
5. To increase by not more than twenty-five (25) percent the maximum distance that required parking spaces are permitted to be located from the use served.
6. To reduce the applicable off-street parking or loading facilities required by not more than one (1) parking space or loading space or twenty (20) percent of the applicable regulations, whichever number is greater.
7. To vary the regulations of this ordinance to allow innovative energy systems to be optimally placed within a site. The Department of Planning and Development and Health Department review and advisory recommendations are necessary in this instance.
8. To permit the exception from yard requirements for a zoning district when a lot of record or a zoning lot which, either as a conforming or nonconforming lot or zoning lot, is reduced in size by the acquisition of a portion of said lot, by negotiation or by condemnation, for highway purposes by the McHenry County Highway Department or the Illinois Department of Transportation.

9. To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width frontage of the lot or parcel.

703 STANDARDS FOR VARIATIONS

The regulations of this ordinance shall not be varied by the McHenry County Board unless evidence presented to the Hearing Officer or Zoning Board of Appeals in each specific case, demonstrates that:

1. The particular surroundings, shape or topographical condition of the specific property involved would result in a particular hardship upon the owner, as distinguished from a mere inconvenience, if the strict letter of the regulations was carried out.
2. The conditions upon which the petition for a variation are based are unique to the property for which the variation is sought and are not applicable, generally to other property within the same zoning district.
3. The purpose of the variation is not based exclusively upon a desire to increase the monetary gain realized from the property.
4. The alleged difficulty or hardship is caused by the ordinance and has not been created by any person presently having an interest in the property.
5. That the granting of the variation will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhoods in which the property is located.
6. That the proposed variation will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion in the public streets or increase the danger of fire, or endanger the public safety or substantially diminish or impair property values within the adjacent neighborhood.
7. That the granting of the variation requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings of the same zoning district.

In addition, the Hearing Officer or Zoning Board of Appeals may recommend that conditions or restrictions regarding the structure, its size, location or duration may be imposed upon the premises benefited by a variation as may be necessary to comply with the standards established in this subsection to reduce or minimize the effect of such variation on other property in the area and better carry out the general intent of this ordinance.

ARTICLE SIX - NONCONFORMING USES, LOTS AND STRUCTURES

601 INTENT

Within the zoning districts established by this ordinance, and/or general amendments thereto, there exist:

- lots and parcels,
- buildings and structures,
- uses or characteristics of use,

which lawfully existed prior to the adoption of this ordinance or amendment thereto, but which do not presently conform to the regulations and restrictions of this ordinance or zoning district in which they exist. It is the intent of this article to provide for the regulation of these non-conformities and to specify the circumstances and conditions under which such non-conformities shall be permitted to continue.

602 GENERAL PROVISIONS

602.1 Nonconforming lots, parcels, buildings, structures and uses as defined in Article Two may be continued subject to the provisions of this article. Such non-conformities shall be encouraged to convert to a conforming condition, where possible.

602.2 Nothing in this ordinance shall be deemed to require any change in the plans, construction or designated use of any building or structure if a building permit for such building or other structure was lawfully issued prior to the effective date of this ordinance and:

1. Actual construction pursuant to such permit was begun prior to the effective date of this ordinance and has been diligently carried on.
2. All well and septic requirements in effect at the time the permit was issued shall be met.

603 NONCONFORMING LOTS OR PARCELS OF RECORD

A recorded nonconforming lot or parcel shall be subject to the following provisions:

1. In all zoning districts, the following activities shall be permitted subject to compliance with the requirements of this ordinance, with the exception of those bulk regulations which cause the lot or parcel to be nonconforming:
 - A. Construction of new buildings;
 - B. Repair of existing buildings; and
 - C. Reconstruction of existing buildings that have been destroyed.

2. Required yards and setbacks for single-family dwellings and accessory uses shall be measured from the overhang and shall meet the minimum requirements from TABLE TWO in addition to Article Three, Sections 305 and 306 with the following exceptions:

- A. On interior lots or parcels, one (1) side yard must be a minimum of ten (10) feet and the other must be ten (10) percent of the width of the lot, but need not exceed ten (10) feet.
- B. On a corner lot, the side yard abutting a street shall have a setback of twenty (20) feet, or the modified yard requirements found in TABLE TWO of this ordinance, whichever is greater. 10% ↗

604 NONCONFORMING BUILDINGS AND STRUCTURES

A nonconforming building or structure shall be subject to the following regulations:

1. If any nonconforming building or structure is destroyed by any means to an extent of more than fifty (50) percent of the replacement cost of that portion of the principal or accessory buildings which are above the average ground elevation, such building or structure shall not be rebuilt or reoccupied for any use except in accordance with the zoning regulations of the zoning district in which it is located.

However, the following modification will be made for hooped animals providing for the rebuilding of structures (barns, shelters, etc.) after a calamity such as a fire, tornado, etc. to allow for the nonconforming use of the land to continue. The rebuilding for its original use shall be allowed only to the extent of its original development.

2. Damage to an extent less than that of the above paragraph shall be repaired in a manner as nearly conforming as possible.
3. Normal maintenance and repairs shall be permitted to the extent allowed in the *McHenry County Building Ordinance*.
4. Nothing in this section shall prohibit an addition to a residential building, provided that it meets the codes and does not encroach upon any required yard as listed in TABLE TWO.
5. Maintenance of septic systems in flood hazard areas shall be permitted to the extent of repair or replacement of tanks, fields and appurtenant parts essential for the functioning of the existing system and shall not include enlargement or upsizing of the septic system or field.

605 NONCONFORMING USES

Any land, building or structure containing or being used for a nonconforming use, shall be subject to the following regulations:

1. If any building or structure being used for a nonconforming use is destroyed by any means to an extent of more than fifty (50) percent of the replacement cost of that portion of the principal or accessory buildings which are above the average ground elevation, such building or structure shall not be rebuilt or reoccupied for any use except in accordance with the zoning regulations of the zoning district in which it is located.

However, the following modification will be made for hooped animals providing for the rebuilding of structures (barn, shelters, etc.) after a calamity such as fire, tornado, etc. to allow for the nonconforming use of the land to continue. The rebuilding for its original use shall be allowed only to the extent of its original development.

2. Damage to an extent less than that of the above paragraph shall be repaired in a manner as nearly conforming as possible.
3. The footprint of a structure housing a nonconforming use shall not be enlarged; however, nothing in this section shall be construed as prohibiting additions to any residential dwelling nor shall anything in this section be construed as prohibiting the construction of a private garage as an accessory use to any dwelling unit.
4. Nonconforming uses shall not be changed to any other use not allowed by right in the applicable zoning district.
5. Industrial uses which are nonconforming by virtue of being located in a non-industrial zone shall be subject to the standards established by the Illinois Environmental Protection Agency.
6. Nonconforming uses may continue to exist until such time as the use is discontinued for a period of more than twelve (12) consecutive months. This shall constitute abandonment of the nonconforming use, except, in the following cases:
 - A. Where government action impedes access to the premises;
 - B. Where the property owner files notice of the suspension of such nonconforming use with the Code Enforcement Officer not more than thirty (30) days after suspension of the nonconforming use. Failure to file such notice shall be deemed as intent to abandon such nonconforming use.

Article Six, Section 604.1

805 CONDITIONAL USE PERMIT

1. APPLICATION: The application for a conditional use permit shall meet both the GENERAL REQUIREMENTS and the specific requirements as set forth in Article Five.
2. CERTIFICATION or DENIAL: After hearings by the Zoning Board of Appeals, the County Board shall either approve or deny the application, and where approved, shall establish the specific conditions under which the application is approved.
3. VOTE by McHENRY COUNTY BOARD: No conditional use permit shall be granted except by a favorable vote of the members of the County Board present when such use is voted upon.

806 VARIATIONS

Variations may be granted only when in conformity with AUTHORIZED VARIATIONS and the STANDARDS FOR VARIATIONS established in Article Seven. Upon receiving the recommendation of the McHenry County Hearing Officer or ZBA, the County Board shall either approve or deny the application, notifying the petitioner to that effect by mail. Any proposed variation which fails to receive the approval of the McHenry County Hearing Officer or five (5) votes recommending approval from the ZBA, shall not be passed except by the favorable vote of three-fourths (3/4) of all the members of the County Board.

In addition, if a township has a plan commission, and the plan commission objects to a zoning variation which affects unincorporated areas of the township, the township board of trustees, within fifteen (15) days after the public hearing before the MCHO or ZBA, may submit written objections to the County Board. In such case, the County Board shall not approve the zoning variation, except by a favorable vote of three quarters (3/4) of all members.

No variation that has been granted shall be valid for a period longer than twelve (12) months from the date of granting unless a building permit is obtained within that period and the erection or alteration of a building is started or the use is commenced.

807 AMENDMENTS

This ordinance may be amended from time to time as conditions warrant, subject to the STANDARDS FOR AMENDMENTS listed in this section. Map amendments for reclassification of any property shall be instituted by the owner of the property, except that an appropriate governmental agency may institute any amendment to the ordinance.

807.1 OFFICIAL REVIEWS AND REPORTS

The Zoning Board of Appeals shall consider and make recommendations on proposed zoning amendments. The following factors shall be considered as a minimum by the

Zoning Board of Appeals when a zoning amendment is proposed:

1. Testimony at the hearing;
2. Soil and Water Conservation District report;
3. *McHenry County Land Use Plan*;
4. Existing zoning of the parcel in question and the area within a one (1) mile radius of the parcel in question;
5. Location of the parcel in question;
6. Size of the parcel in question;
7. Natural amenities and resources of the parcel in question;
8. All other resources deemed relevant, and presented at the hearing for the proposed zoning amendment, by the Zoning Board of Appeals, including but not limited to: traffic impact study, school capacity and school transportation capacity study and availability of police, fire and other related protection services;
9. STANDARDS FOR AMENDMENT listed in Article Eight;
10. Traffic capacity information in accordance with the *Transportation Plan* for McHenry County; and
11. Soil suitability for the proposed use. (This is to determine feasibility of the proposed use only. Actual development will require site specific testing.)

807.2 STANDARDS FOR AMENDMENT

A proposed amendment shall be considered on its own merits. The applicant shall present clear and convincing evidence to establish the following criteria:

1. Text or Map Amendments - The following conditions shall be met for all amendments:
 - A. The proposed amendment shall not be detrimental to the orderly development of McHenry County.
 - B. The proposed amendment shall not be detrimental to or endanger the public health, safety, morals or general welfare of the community of McHenry County.
2. Map Amendments - In addition to the above criteria, the Zoning Board of Appeals shall also make findings on map amendments with respect to the following:
 - A. Whether the request is consistent with existing uses of property within the general area of the property in question.

- B. Whether the request is consistent with the zoning classifications of property within the general area of the property in question.
- C. The suitability of the property in question for the uses permitted under the existing zoning classification.
- D. The trend of development, if any, in the general area of the property in question, including changes, if any, which may have taken place since the property in question was placed in its present zoning classification.
- E. The length of time the property has been vacant as zoned, considered in the context of the land development in the area surrounding the subject property.
- F. The extent to which the values of the property in question as well as adjacent property are diminished or enhanced by particular zoning restrictions.

807.3 APPROVAL OR DENIAL

After hearing the proposed amendment(s), the Zoning Board of Appeals shall make a report to the County Board. No amendment shall be approved except by a majority vote of all the members of the County Board. In the following cases, no amendment shall be passed except by the favorable vote of three-fourth (3/4) of all the members of the County Board.

1. If a written protest against the proposed map amendment is filed with the County Clerk, on said proposed amendment, signed and acknowledged by:
 - A. The owner or owners of at least twenty (20) percent of the land to be rezoned.
 - B. The owner or owners of land immediately touching or immediately across a street, alley or public right-of-way, from at least twenty (20) percent of the perimeter of the land to be rezoned.
2. If the land affected by a proposed amendment lies within one and one-half (1.5) miles of the limits of a zoned municipality and an objection to the amendment is passed by the governing body of the zoned municipality and filed in writing with the County Clerk, prior to the County Board meeting when the County Board votes on said proposed amendment.
3. If written protests against the proposed text amendment are signed by five (5) percent of the landowners of the County.
4. If a township plan commission objects to a text or map amendment affecting an unincorporated area of the township and the township board of trustees submits its written objection to the County Board within thirty (30) days after the Zoning Board of Appeals hearing. See also Article Eight, Section 806.

807.4 WRITTEN PROTESTS

All written protests shall be served by the protester or protesters on the applicant for the proposed amendment and a copy upon the applicant's attorney, if any, by certified mail

at the address of such applicant and attorney shown in the application for the proposed amendment. Copies of all protests and returns from service by certified mail shall be filed with the County Clerk no less than twenty-four (24) hours before the County Board meeting at which the County Board will vote on the proposed amendment. Failure to meet all of the requirements for filing and service of a protest shall render such protest invalid. For variations refer to Article Eight, Section 806.

807.5 TIME LIMIT AND NOTIFICATION

All proposed amendments shall be decided by the County Board within nine (9) months of the vote of the Zoning Board of Appeals, unless an extension of time has been authorized by the County Board prior to the expiration of the nine (9) month time frame. The applicant shall be notified in writing whether the amendment has been granted or denied.

808 APPEALS

808.1 SCOPE OF APPEALS

Any person aggrieved by any decision made with respect to this zoning ordinance by the Code Enforcement Officer may appeal to the Zoning Board of Appeals. Such appeal shall be taken within thirty (30) days of the decision being appealed, by filing with the Code Enforcement Officer a notice of appeal, specifying the grounds thereof. The Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals the Petition for Appeal and all other papers constituting the record upon which the action appealed from was taken.

808.2 PETITION FOR AN APPEAL

A petition for an appeal shall contain the following information:

1. Name and address of the petitioner;
2. Location of property in question;
3. A copy of the Code Enforcement Officer's letter outlining the decision being appealed;
4. Identification of the ordinance provision(s) in dispute;
5. A description of the proposed use, including plot plan, if applicable; and
6. A statement of the grounds for the appeal.

808.3 NOTICE OF HEARING

The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal. The appeal hearing shall be subject to the notice provisions contained in Article Eight, Sections 804.2, paragraphs 2, 3, and 4. At the hearing, any party may appear in person, by agent or by attorney. The Zoning Board of Appeals may reverse or affirm, wholly or