

**SECTION 14
ADMINISTRATION**

- 14.1 Enforcing Officer
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14.1 ENFORCING OFFICER:

The Building and Code Officer is designated as the Zoning Administrator and shall be responsible for enforcing the provisions of this Zoning Code.

14.2 BUILDING PERMITS, CERTIFICATES OF COMPLIANCE AND USE PERMITS:

14.2-1 Building Permit: No building or structure shall hereafter be erected or structurally altered until a building permit is issued by the Building Inspector stating the building or structure and use of land, comply with the regulations of this Zoning Code and all ordinances of the Village. The Building Inspector shall not issue a building permit if it is found that a building or structure does not comply with all the regulations contained in the ordinances of the Village or the lot does not afford proper drainage according to reasonable engineering standards.

All applications for building permits shall be in accordance with the Johnsborg Building Code.

A careful record of such applications and plats shall be kept in the office of the Building Inspector.

All applications for building permits shall be accompanied by a plat in duplicate drawn to scale showing the following:

- 1) actual dimensions of the lot or lots to be built upon;
- 2) the size of the building or structure to be erected or structurally altered;
- 3) it's location on the lot or lots;
- 4) elevations at the following points:
 - a) First floor of dwelling and floor of garage, carport or other accessory buildings;
 - b) Finish curb or crown of street at points or extension of lot lines;

- c) Finish and existing grade of extension of lot lines;
- d) Existing grade at each principal corner of dwelling;
- e) Finish grade at both sides of abrupt changes of grade, such as retaining walls, slopes, etc.;
- f) Lot grading type at approximate location of drainage swales;
- g) Any other elevations that may be necessary to show existing and proposed drainage and such other information as may be deemed necessary to provide for the enforcement of these regulations.

A careful record of such applications and plats shall be kept in the office of the Building Inspector.

14.2-2 Certificate of Compliance: No building or structure hereafter erected or structurally altered shall be occupied and used until a certificate of compliance has been issued by the Building Inspector. The certificate of compliance shall be used only after the Building Inspector makes a finding that the building or structure has been erected or structurally altered in conformance with the provisions of this Zoning Code and other health and building laws and in accordance with a building permit.

Certificates of compliance shall be applied for coincident with the application for the building permit and shall be issued within 10 days after the erection and alterations of such building shall have been satisfactorily completed. A record of all certificates of compliance shall be kept on file in the office of the Building Inspector and copies shall be furnished, on request, to any persons having a proprietary or tenancy interest in the building affected.

Certificates for the continued occupancy of non-conforming uses existing at the time of the passage of this ordinance shall be issued by the Building Inspector and the certificate shall state that the use is a non-conforming one and does not conform with the provisions of this ordinance. The Building Inspector shall notify the owners of property being used as non-conforming use and shall furnish said owner with a certificate of occupancy for such non-conforming use.

14.2-3 Use Permit: No change shall be made in the use of a building or part thereof now or hereafter erected or structurally altered, or in the use of land now or hereafter occupied, without a use permit having first been issued by the Building Inspector. No such permit shall be issued to make such change unless it is in conformity with the provisions of this Zoning Code and subsequent amendments.

14.2-4 Continuance of Existing Uses: Nothing in this section shall prevent the continuance of the present occupancy of lawful use of any existing building or zoning lot, ex-

cept as may be necessary for the safety of life and property, and except as provided in Section 6.

14.3 ZONING BOARD OF APPEALS:

14.3-1 Creation of Membership: There is hereby established a Zoning Board of Appeals ("ZBA"). The ZBA members shall serve four year, staggered terms, or until their respective successors have been appointed and qualified.

The successor of each member so appointed shall serve for a term of four years. Vacancies shall be filled by the President, subject to the confirmation of the Board of Trustees, for the unexpired term. Members may be removed by the President for cause after written charges have been filed and after a public hearing has been held, if demanded by the member so charged.

One of the ZBA members shall be designated by the President, with the consent of the Board of Trustees, as Chairman until a successor is appointed. Such Chairman, or in his absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

The Chairman may appoint a clerk for the Board and the clerk shall make and keep a record of all its meetings and official acts.

14.3-2 Meetings: All meetings of the ZBA shall be held at the call of the Chairman and at such other times as the ZBA may determine. The presence of four members shall be necessary for a quorum. All meetings shall be open to the public. The Chairman, or Acting Chairman, may administer oaths and compel the attendance of witnesses. The ZBA shall keep minutes of its proceedings, keep record of its examinations and other official actions, prepare findings of fact and record the individual votes upon every question. Every rule, order, requirement, decision or determination shall be filed immediately in the Office of the Village Clerk and shall be a public record. The ZBA shall adopt rules for its procedure consistent with the provisions of the Zoning Code and the Illinois Municipal Code. Expenses incurred by the ZBA in the performance of official duties are to be itemized and shall be borne by the Village.

14.3-3 Appeals and Stay of Proceedings: An appeal may be taken from any order, requirement, decision or determination of the Building Inspector relating to zoning matters set forth in this Zoning Code by any person, firm or corporation aggrieved thereby, or by any officer, department, board or commission of the Village. The appeal shall be taken within 45 days of the action complained of by filing a notice of appeal in duplicate, specifying the grounds thereof, in the Office of the Village Clerk, who shall transmit one copy to the Building Inspector and one copy to the ZBA Chairman. The Building Inspector shall transmit to the ZBA Chairman all papers constituting the record upon which the action appealed was taken.

An appeal stays all proceedings in furtherance of the action appealed from unless the Building Inspector certifies to the ZBA that, by reason of facts stated in the certification, a stay would cause imminent peril to life or property. In such case the proceedings shall not be stayed except by a restraining order issued by the ZBA or a court of record after notice to the Building Inspector and on due cause shown.

The ZBA shall select a reasonable time and place for the hearing of the appeal. The Petitioner shall give due notice to all interested parties and render a written decision on the appeal without unreasonable delay. Any person may appear at the hearing and present testimony in person or by a duly authorized agent or attorney.

14.3-4 Jurisdiction: The ZBA is hereby vested with the following powers and duties:

14.3-4.1 To hear and decide appeals alleging error in any order, requirement, decision or determination of the Building Inspector relating to zoning matters set forth in this Zoning Code. The ZBA may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Building Inspector.

14.3-4.2 To recommend to the Village Board, after holding a public hearing, on applications for variations from the strict enforcement of any provisions of this Zoning Code in accordance with the rules and standards hereinafter set forth.

14.3-4.3 To recommend to the Village Board, after holding a public hearing, on applications for conditional use from the strict enforcement of any provisions of this Zoning Code in accordance with the rules and standards hereinafter set forth.

14.3-4.4 To recommend to the Village Board, after holding a public hearing, on applications for Planned Developments referred to it by the Village Board, and to hear and decide other matters referred to it or upon which it is required to pass under the provisions of this Zoning Code.

14.3-4.5 To recommend to the Village Board, after holding a public hearing, on petitions for amendment of the provisions of this Zoning Code and the boundary lines of zoning districts hereby established. Nothing contained herein shall be construed to authorize the ZBA to change any of the provisions of this Zoning Code or to district boundary lines hereby established. The concurring vote of four members shall be necessary to reverse any order, requirement, decision or determination of the Building Inspector or to decide in favor of the applicant any matter upon which the ZBA is authorized to act.

14.3-4.6 To transmit to the Village Board, with every recommendation, findings of fact and to refer to any exhibits containing plans and specifications relating to its recommendation, which plans and specifications shall remain a part of the permanent records of the ZBA. The findings of facts shall specify the reason or reasons for its rec-

ommendation. The terms of the relief recommended shall be specifically set forth in a conclusion or statement separate from the findings of fact of the ZBA.

14.3-5 Variations, Standards: When evidence in a specified case shows conclusively that literal enforcement of any provision of this Zoning Code would result in a practical difficulty or particular hardship because of unusual surroundings or condition of the property involved, or by reason of exceptional narrowness, shallowness or shape of the zoning lot, or because of unique topography, underground conditions or other unusual circumstances, the ZBA may determine and vary the application of the provision and the Village Board may grant by ordinance a variation to permit relief from any provision relating to the use, construction or alteration of buildings or structures or the use of land.

Before recommending any variation, the ZBA shall first determine and record its findings that the evidence justifies conclusions that the proposed variation:

- a) will not impair an adequate supply of light and air to adjacent property;
- b) will not unreasonably increase congestion in the public streets or otherwise endanger public safety; and
- c) is in harmony with the general purpose and intent of this Zoning Code.

Where the evidence is not found to justify such conclusions, that fact shall be reported to the Village Board with a recommendation that the variation be denied.

14.3-6 Conditions: The ZBA may recommend, and the Village Board in granting any variations, may impose such conditions or restrictions as appear necessary to minimize possible detrimental effects of such variation upon other properties in the neighborhood.

14.3-7 Village Board Action: No variation in any specific case shall be made by the Village Board without a hearing before the ZBA as required herein nor without a report having been made by the ZBA to the Village Board, and every such report shall be accompanied by a findings of fact specifying the reasons for the report.

Upon receipt of the report from the ZBA, the Village Board, without further public hearing, may approve the variation by passage of an ordinance, or deny the proposed variation or may refer the report back to the ZBA for further consideration. Any proposed variation which fails to receive the approval of the ZBA shall not be passed except by the favorable vote of two-thirds of all trustees of the Village. *(Amended by Ord 06-07-63)*

14.3-8 Change of Zoning: Nothing herein contained shall be construed to give or grant to the ZBA the power or authority to alter or change the Zoning Code or any use district made a part of the zoning map; such power and authority being reserved to the Village Board. The ZBA shall not have any power or authority with respect to any alterations or

change of the Zoning Code except to make recommendations to the Village Board in such specific cases as may properly come before the ZBA.

14.3-9 Miscellaneous: A variation permitting the erection or alteration of a building shall not be valid for more than six months unless such use is established within such period, provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for said erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

14.3-10 Petition for Variation: Any person, firm or corporation having an interest in a parcel of property may apply for a variation of the literal enforcement of this Zoning Code. If said application for a variation is on a parcel of property on which a residence exists, which is located in any residential or estate zoning district and said variance request is for variation to the front yard, side yard, rear yard, lot coverage, obstruction and fences, height of buildings, driveways and other similar restrictions, it may be heard at a special quarterly meeting of the Zoning Board of Appeals held on the fourth Tuesday of February, May, August, and November.

Hearing for variations shall be held to the standards for recommending variations set out in Section 14.3-5 and shall be required to give notice of said hearing as set forth in Section 15.3 of this Zoning Code. Applications for variations shall contain a set of plans and other necessary documents for the work to be performed, for which the variation is sought.

Applicants will be required to pay a fee at the time a petition is filed; said fee shall be determined from time to time by the Board of Trustees.

14.4 RULES OF PROCEDURE:

The following procedures shall be used by the Zoning Board of Appeals ("ZBA") at any hearing.

14.4-1. HEARING PROCESS:

14.4-1.1. **Evidentiary Standards:** The ZBA shall not be bound by the strict rules of evidence as applied in Illinois courts pertaining to civil actions. The ZBA shall receive evidence which is material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs. When the admissibility of evidence depends upon an arguable interpretation of substantive law, the Chairman shall admit such evidence.

14.4-1.2 **Public Hearing Parameters:** All parameters for public hearings, including but not limited to notice requirements, shall comply with Johnsburg Zoning Ordinance unless altered by the provisions listed in this Section 14.4-1:

a) Within a reasonable time from the date that the complete petition is filed, the date, time and location of the hearing on the petition shall be determined by the Village in consultation with the Commission, but the hearing shall begin no later than 90 days following said filing.

b) The Village shall reserve the right to engage the services of one or more court reporters to provide transcripts of all sessions of the hearing, which transcripts shall be deemed to constitute the minutes of the hearing. Any and all costs associated with such engagements, including the necessary copying of transcripts required for internal use by the Village and the Commission, shall be at the petitioner's expense.

c) If, in the Village's opinion, Village facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the Village may arrange for the hearing to be conducted at another site. In such a circumstance, the Village is authorized to rent appropriate facilities and equipment, including but not limited to an adequately-sized meeting space such as an auditorium, as well as a sound system, chairs, tables and associated services such as custodians and set-up personnel as may be necessary to conduct a proper hearing. Any and all costs associated with such arrangements shall be at the petitioner's expense.

d) The Village Attorney or his designee shall serve as legal advisor to the Commission and the Village Clerk shall serve as staff advisor to the Commission.

e) All testimony at the hearing shall be under oath or affirmation. Any person appearing at the hearing shall have the right to give testimony and comment on the petition. Any person testifying shall be required to state their name and address and who they are representing.

f) The opportunity for any person appearing at the hearing to cross-examine any witness may be limited by the Commission. The Commission reserves the right to limit testimony, questions, comments and cross-examination to prevent argumentative comments; prohibit personal attacks on other parties; maintain order and decorum during the hearing process; and prevent irrelevant, incompetent and unnecessarily cumulative or repetitive materials in the record. The Commissioners reserve the right at all times to ask questions of or reply to any party testifying in order to clarify an issue, statement or fact. Depending upon the complexity of the matter before the Commission, public notice of the hearing may require that any person participating in the hearing, who wishes to submit testimony and other evidence, or to examine the petitioner's testimony and other evidence, must notify the Commission, in writing, not more than seven days before the public hearing.

g) Any person shall have the right to be represented by a licensed attorney-at-law at the hearing. Such attorneys shall have the right of reasonable cross-

examination. The scope of cross-examination shall be determined by the Commission.

h) The Village, at its sole discretion, shall have the right to determine whether the information provided can be evaluated by qualified professionals on its staff. If the Village cannot accomplish this evaluation because such qualified personnel are not available and the employment of such persons would impose a financial burden upon the Village, the Village shall have the authority to retain the services of one or more professional consultants to assist the Village staff and the Commission in the process of reviewing any aspect of the petition. Any and all expenses of such services shall be at the petitioner's expense. Such consultants shall have the same standing to testify and to be cross-examined as may be necessary as any other witnesses at the hearing.

i) After the Commission has passed a motion to close all testimony and close the public comment portion of the hearing, and a transcript has been made of the proceedings up to that point, the Commissioners will then begin their deliberations in order to prepare a recommendation. Before beginning their deliberations, the Commissioners shall be required to sign an affidavit attesting that they have received and read all the transcripts of the proceedings as a substitute for any sessions at which any Commissioner may not have attended. The deliberative and recommendation phase of the proceedings by the Commission shall require the normal quorum of four members to be in attendance.

j) Members of the public shall be allowed to obtain copies of any documents filed with the Village upon application and payment to the Village of the actual cost of reproduction in accordance with the Freedom of Information Act.

k) The Village, in consultation with the Commission, shall have the authority to establish reasonable rules and procedures for the conduct of hearings and the order of business to be followed during hearings.

14.4-1.3 Order of Business: The order of presentation of testimony and evidence at a public hearing shall generally be as follows, but may be modified as determined appropriate by the ZBA:

- a) Identification of petitioner.
- b) Submittal of proof of notice.
- c) Testimony and other evidence by petitioner.
- d) ZBA examination of petitioner's witnesses and other evidence.

e) Examination of petitioner's witnesses and other evidence by any person appearing at the hearing. Examination by persons appearing at the hearing shall be limited to the scope of the testimony presented on direct questioning by the petitioner and the ZBA.

f) Re-examination by the petitioner.

14.4-1.4 Decision: At the conclusion of the evidentiary portion of the public hearing, the ZBA may, among other actions, move to deliberate its decision on the evidence presented, or continue the hearing to a date, time and location certain. A written decision shall be prepared which shall include findings of fact, the ZBA's recommendation or decision based upon the record and pursuant to this Section 14.4-1. The written decision of the Village Board may adopt the Commission's findings. However, if the decision of the Village Board is based upon facts different from the Commission, such findings of fact must be made a part of the record.

14.4-1.5 Additional Evidence or Testimony: Evidence or testimony may only be presented at the public hearing. If the Village requires additional evidence, or if any person desires to present additional evidence after the close of the public hearing, the public hearing shall be re-opened and conducted in accordance with this Section 14.4-1.

14.4-2. HEARING OFFICER ALTERNATIVE PROCESS:

Pursuant to 65 ILCS 5/11-13-14.1, in the event the Village determines that a zoning petition filed with the Village to be heard by the ZBA is likely to require a hearing of such duration or complexity so as to cause difficulties or hardships upon the Board members to attend and adequately manage all of the sessions of the hearing, then the Village may, at its sole discretion by ordinance, establish the position of hearing officer and delegate to said officer the authority to conduct said hearing. The hearing officer alternative process shall be established and conducted in the following manner:

14.4-2.1 Appointment, Qualifications and Duties of Hearing Officer: The Village shall appoint a hearing officer to govern the proceedings under this Section 14. The hearing officer shall be an attorney licensed to practice in this State. The hearing officer, who will preside over the hearing, shall have the duty to conduct a fair hearing, to maintain order and to ensure development of a clear, complete and concise record of the proceedings. If requested by the ZBA, the hearing officer shall prepare recommended findings of fact and law for consideration by the ZBA.

14.4-2.2 Evidentiary Standards: The hearing officer shall not be bound by the strict rules of evidence as applied in the courts of Illinois pertaining to civil actions. The hearing office shall receive evidence which is material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs. When the admissibility of evidence depends upon an arguable interpretation of substantive law, the hearing officer shall admit such evidence.

14.4-2.3 Public Hearing Parameters: All parameters for public hearings, including but not limited to notice requirements, shall comply with this Section 14 unless altered by the provisions listed in this Section 14.4-2:

- a) Within a reasonable time from the date that the complete petition is filed, the date, time and location of the hearing on the petition shall be determined by the Village in consultation with the Commission, but the hearing shall begin no later than 90 days following said filing.
- b) The Village shall reserve the right to engage the services of one or more court reporters to provide transcripts of all sessions of the hearing, which transcripts shall be deemed to constitute the minutes of the hearing. Any and all costs associated with such engagements, including the necessary copying of transcripts required for internal use by the Village, the Commission and the hearing officer, shall be at the petitioner's expense.
- c) If, in the Village's opinion, Village facilities are not sufficient to accommodate the number of persons expected to attend the hearing, the Village may arrange for the hearing to be conducted at another site. In such a circumstance, the Village is authorized to rent appropriate facilities and equipment, including but not limited to an adequately-sized meeting space such as an auditorium, as well as a sound system, chairs, tables and associated services such as custodians and set-up personnel as may be necessary to conduct a proper hearing. Any and all costs associated with such arrangements shall be at the petitioner's expense.
- d) Any and all costs associated with the compensation and expenses of the hearing officer shall be at the petitioner's expense.
- e) The Village Attorney or his designee shall serve as legal advisor to the hearing officer and Commission and the Village Clerk or his designee shall serve as staff advisor to the hearing officer and Commission.
- f) All testimony at the hearing shall be under oath or affirmation. Any person appearing at the hearing shall have the right to give testimony and comment on the petition. Any person testifying shall be required to state their name and address and who they are representing.
- g) The opportunity for any person appearing at the hearing to cross-examine any witness may be limited by the hearing officer. The hearing officer reserves the right to limit testimony, questions, comments and cross-examination to prevent argumentative comments; prohibit personal attacks on other parties; maintain order and decorum during the hearing process; and prevent irrelevant, incompetent and unnecessarily cumulative or repetitive materials in the record. Depending upon the complexity of the matter before the Commission, public notice of the

hearing may require that any person participating in the hearing, who wishes to submit testimony and other evidence, or to examine the petitioner's testimony and other evidence, must notify the Commission, in writing, not more than seven days before the public hearing. The Commissioners reserve the right at all times to ask questions of or reply to any party testifying in order to clarify an issue, statement or fact.

h) Any person shall have the right to be represented by a licensed attorney-at-law at the hearing. Such attorneys shall have the right of reasonable cross-examination. The scope of cross-examination shall be determined by the hearing officer.

i) The Village, at its sole discretion, shall have the right to determine whether the information provided can be evaluated by qualified professionals on its staff. If the Village cannot accomplish this evaluation because such qualified personnel are not available and the employment of such persons would impose a financial burden upon the Village, the Village shall have the authority to retain the services of one or more professional consultants to assist the Village staff and Commission in the process of reviewing any aspect of the petition. Any and all expenses of such services shall be at the petitioner's expense. Such consultants shall have the same standing to testify and to be cross-examined as may be necessary as any other witnesses at the hearing.

j) After the hearing officer has closed all testimony and closed the public comment portion of the hearing, and a complete transcript has been made of the proceedings up to that point, Commissioners will then begin their deliberations in order to prepare a recommendation. Before beginning their deliberations, the Commissioners shall be required to sign an affidavit attesting that they have received and read all the transcripts of the proceedings as a substitute for any sessions at which any Commissioner may not have attended. The deliberative and recommendation phase of the proceedings by the Commission shall require the normal quorum of four members to be in attendance.

k) The hearing shall be treated as if it were equal in all respects to a hearing conducted in normal circumstances by the members of the Commission, except that the attendance of one Commissioner shall be deemed to constitute a quorum for the purposes of the hearing officer alternative process.

l) Members of the public shall be allowed to obtain copies of any documents filed with the Village upon application and payment to the Village of the actual cost of reproduction in accordance with the Freedom of Information Act.

m) The Village, in consultation with the hearing officer and the Commission, shall have the authority to establish reasonable rules and procedures for the conduct of hearings and the order of business to be followed during hearings.

14.4-2.4 Order of Business: The order of presentation of testimony and evidence at a public hearing shall generally be as follows, but may be modified as determined appropriate by the hearing officer:

- a) Identification of petitioner.
- b) Submittal of proof of notice.
- c) Testimony and other evidence by petitioner.
- d) Hearing officer examination of petitioner's witnesses and other evidence.
- e) Examination of petitioner's witnesses and other evidence by any person appearing at the hearing. Examination by persons appearing at the hearing shall be limited to the scope of the testimony presented on direct questioning by the petitioner and the hearing officer.
- f) Re-examination by the petitioner.

14.4-2.5 Decision: At the conclusion of the evidentiary portion of the public hearing, the ZBA may, among other actions, move to deliberate its decision on the evidence presented, or continue the hearing to a date, time and location certain. A written decision shall be prepared which shall include findings of fact, the ZBA's recommendation or decision based upon the record and pursuant to this Section 14.4-2. The written decision of the Village Board may adopt the Commission's findings. However, if the decision of the Village Board is based upon facts different from the Commission, such findings of fact must be made a part of the record.

14.4-2.6 Additional Evidence or Testimony: Evidence or testimony may only be presented at the public hearing. If the Village requires additional evidence, or if any person desires to present additional evidence after the close of the public hearing, the public hearing shall be re-opened and conducted in accordance with these rules.