

**CHAPTER 1133**  
**Appeals and Variances**

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**1133.01 GENERAL.**

Appeals and variances shall conform to the procedures and requirements of Sections 1133.02 to 1133.12 inclusive. As specified in Section 1145.09, the Board of Zoning Appeals has appellate jurisdiction relative to appeals and variances.

**1133.02 APPEALS.**

Appeals to the Board of Zoning Appeals concerning interpretation or administration of this Ordinance may be taken by any person, firm or corporation, or by any officer, board or department of the Village of McClure aggrieved or adversely affected by any decision of the Zoning Inspector. Such appeal shall be taken within 20 calendar days after the date of any adverse decision by filing a written application of appeal with the Zoning Inspector and with the Board of Zoning Appeals, specifying the grounds upon which the appeal is being taken. The Zoning Inspector shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken. The appellant shall post security for the cost of all action required for the hearing of the appeal. This shall include a base fee of \$25.00, and in the event that the Board of Zoning Appeals will find it necessary to draw upon any planning, legal, engineering or any other expert testimony, such fee shall be raised in order to cover all expenses of such expert testimony.

**1133.03 STAY OF PROCEEDINGS.**

An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Inspector from whom the appeal is taken certifies to the Board of Zoning Appeals after the notice of appeal is filed with him, that by reason of facts stated in the application, a stay would, in his opinion, cause imminent peril to life and property. In such case; proceedings shall not be stayed other than by a restraining order which may be granted by the Board of Zoning Appeals or by a court of lawful jurisdiction.

**1133.04 VARIANCES.**

The Board of Zoning Appeals may authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship. Variances shall not be granted on the grounds of convenience or profit, but only where strict application of the provisions of this Ordinance would result in unnecessary hardship.

**1133.05 APPLICATION AND STANDARDS FOR VARIANCES.**

Except as otherwise permitted in this Ordinance, no variance in the strict application of the provisions of this Ordinance shall be granted by the Board of Zoning Appeals unless the Board shall find that the written application for the requested variance contains all of the following requirements:

- (a) Name, address, and phone number of applicant(s).
- (b) Legal description of property. *(Copy of deed)*
- (c) Description or nature of variance requested.
- (d) A base fee of \$50.00, and in the event that the Board of Zoning Appeals will find it necessary to draw upon any planning, legal, engineering or any other expert testimony, such fee shall be raised in order to cover all expenses of such expert testimony.
- (e) Narrative statements establishing and substantiating that the variance conforms to the following standards:
  - (1) The granting of the variance shall be in accord with the general purpose and intent of the regulations imposed by this Ordinance on the district in which it is located, and shall not be injurious to the area or otherwise detrimental to the public welfare
  - (2) The granting of the variance will not permit the establishment of any use which is not otherwise permitted in the district.
  - (3) There must exist special circumstances or conditions, fully described in the findings, applicable to the land or buildings for which the variance is sought, which are peculiar to such land or buildings and do not apply generally to land or buildings in the area, and which are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building. Mere loss in value shall not justify a variance; there must be deprivation of beneficial use of land.

- (4) There must be proof of hardship created by the strict application of this Ordinance. It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created; nor can it be established on this basis by one who purchases with or without knowledge of the restrictions; it must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of variances granted under similar circumstances need not be considered.
- (5) The granting of the variance is necessary for the reasonable use of the land or building, and the variance as granted is the minimum variance that will accomplish this purpose.
- (6) The proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values of the adjacent area.
- (7) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

#### **1133.06 ADDITIONAL CONDITIONS AND SAFEGUARDS.**

The Board may further prescribe any conditions and safeguards that it deems necessary to insure that the objectives of the regulations or provisions to which the variance applies will be met. Any violation of such conditions and safeguards, when they have been made a part of the terms under which the variance has been granted, shall be deemed a punishable violation under this Ordinance.

#### **1133.07 PUBLIC HEARING BY THE BOARD OF ZONING APPEALS.**

The Board of Zoning Appeals shall hold a public hearing within 30 days after the receipt of an application for an appeal or variance from the Zoning Inspector or applicant. The Board may recess said hearing as necessary, and if the time and place of the continued hearing is publicly announced at the time of adjournment, no further notice(s) as specified in Sections 1133.08 and 1133.09 shall be required.

#### **1133.08 NOTICE OF PUBLIC HEARING IN NEWSPAPER.**

Before conducting the public hearing required in Section 1133.07, notice of such hearing shall be given in one (1) or more newspapers of general circulation in the Village at least 10 days before the date of said hearing. The notice shall set forth the time and place of the public hearing, and the nature of the proposed appeal or variance.

#### **1133.09 NOTICE TO PARTIES IN INTEREST.**

Before conducting the public hearing required in Section 1133.07, written notice of such hearing shall be mailed first class, by the Clerk, at least 10 days before the day of the hearing to all parties in interest. The parties shall include the applicant(s) requesting the appeal or variance and any person(s), firm or corporation owning premises located within 500 feet of the premises to which said appeal or application relates. All notices shall be sent to the addresses given in the last assessment poll. The notice shall contain the same information as required of notices published in newspapers as specified in Section 1133.08.

**1133.10 ACTION BY BOARD OF ZONING APPEALS.**

Within 30 days after the public hearing required in Section 1133.07, the Board of Zoning Appeals shall either approve, approve with supplementary conditions as specified in Section 1133.06, or disapprove the request for appeal or variance. This time limit may be extended by the mutual consent of the Board and the applicant(s) requesting the appeal or variance. Upon approval of a variance request the Board shall issue or direct the issuance of a zoning certificate. Every decision of the Board of Zoning Appeals shall be by Resolution, each of which shall contain a full record of the findings of the Board by case number under one (1) or more of the following headings: Interpretations, Exceptions, Variance; and together with all documents pertaining thereto. Appeals from Board decision shall be made in the manner specified in Section 1145.11.

**1133.11 TERM OF VARIANCE.**

No order of the Zoning Board of Appeals granting a variance shall be valid for a period longer than 12 months from the date of such order unless a zoning certificate is obtained within such period, and the erection or alteration of a building is started or the use is commenced within such period.

**1133.12 AUTHORIZED VARIANCES.**

Variances from the regulations of this Ordinance shall not be granted unless The Board makes specific findings of fact, based directly on the particular evidence presented to it, which support conclusions that the standards and conditions imposed in Section 1133.05, and Section 1133.06 if applicable, have been met by the applicant. Variances may be granted as guided by the following:

- (a) To permit any yard or setback less than the yard or setback required by the applicable regulations.
- (b) To permit the use of a lot or lots for a use otherwise prohibited solely because of the insufficient area or width of the lot or lots, but generally the respective area and width of the lot or lots should not be less than 80 percent of the required area and width.
- (c) To permit the same off-street parking facility to qualify as required facilities for two or more uses, provided that substantial use of such facility by each user does not take place at approximately the same hours of the same days of the week.
- (d) To reduce the applicable off-street parking or loading facilities required, but generally by not more than 30 percent of the required facilities.
- (e) To allow for the deferment of required parking facilities for a reasonable period of time, such period of time to be specified in the variance.
- (f) To increase the maximum distance that required parking spaces are permitted to be located from the use served, but generally not more than 40 percent.
- (g) To increase the maximum allowable size or area of signs on a lot, but generally by not more than 25 percent.
- (h) To increase the maximum gross floor area of any use so limited by the applicable regulations, but generally not more than 25 percent.