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**SECTION 9.01 PURPOSE**

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In order that the objectives of this Ordinance may be fully and equitably achieved, that a means shall be provided for competent interpretation of this Ordinance, that the health, safety and welfare of the public be secured, and that justice be done, there is hereby established a Village Zoning Board of Appeals.

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**SECTION 9.02 MEMBERSHIP**

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- A. The Bellaire Village Council shall appoint a Zoning Board of Appeals (ZBA) consisting of five (5) members. Each member of the Zoning Board of Appeals shall serve for a term of three (3) years, except that for the first appointments two (2) members shall serve for a term of two (2) years and one (1) member shall serve for a term of one (1) year. Members of the zoning Board of Appeals shall be residents of the Village.
- B. The Bellaire Village Council shall appoint two (2) alternate members of the Zoning Board of Appeals for three (3) year terms, except that for the first appointments one (1) alternate member shall serve for a two (2) year term. The alternate members shall be called on a rotating basis, by the chairperson of the Zoning Board of Appeals, to sit as regular members in the absence of a regular member or when a regular member has abstained from participating in a case for reasons of conflict of interest. An alternate member called to sit, as a regular member shall serve in the case until a final decision has been made and shall have the same voting rights as regular members of the Zoning Board of Appeals.
- C. The Bellaire Village Council may remove a regular or alternate member of the Zoning Board of Appeals for neglect of duty or misconduct in office following written charges and a public hearing before the Village Council.

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**SECTION 9.03 RULES OF PROCEDURE**

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- A. The Board shall adopt rules and regulations to ensure proper conduct of its meetings. Copies of such regulations shall be made available to the public at the office of the Village Clerk.
- B. Meetings of the Board shall be open to the public and shall be held at the call of the Chairman and at such times as the Board may determine necessary. The Board shall not conduct business unless a majority of the regular members of the ZBA are present.
- C. The Board shall act by resolution or motion. The concurring vote of a majority of the members of the entire Board shall be necessary to reverse an order, requirement, decision, or determination of the Zoning Administrator or the Planning & Zoning Commission to decide in favor of an applicant on any matter upon which the Board is required to pass under this Ordinance, or to grant a dimensional variance under the Ordinance; provided, however, that concurring vote of 2/3 of the members of the Board shall be necessary to grant a variance from uses of land permitted in this Ordinance.
- D. Records - Minutes shall be recorded of all proceedings that shall contain evidence and data relevant to every case considered together with the votes of the members and the final disposition of each case. The grounds of every determination shall be stated. Such minutes shall accompany and be attached to the standard forms required of persons appealing as part of the Zoning Board of Appeals' permanent records. Such minutes shall

become a public record and as such be filed in the office of the Village Clerk. A copy of the decision shall be sent promptly to the applicant and the Zoning Administrator.

- E. Secretary and Counsel – Except when the Zoning Board of Appeals is deciding an appeal from a decision of the Zoning Administrator, the Zoning Administrator shall be responsible for acting as secretary of the Zoning Board of Appeals and providing administrative services for the Zoning Board of Appeals. In cases involving an appeal from a decision of the Zoning Administrator, the Village Clerk or Deputy Clerk shall act as secretary and provide administrative services for the Zoning Board of Appeals. The Village attorney may be requested to attend any meeting of the Zoning Board of Appeals.

### SECTION 9.04 DUTIES AND POWERS OF THE ZONING BOARD OF APPEALS

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- A. **Review** - Shall hear and decide appeals from any review, any order, requirement, interpretation, decision or determination made by the Zoning Administrator in the administration of this Ordinance. Provided, however, the Zoning Board of Appeals shall not have jurisdiction to hear appeals made by the Zoning Administrator concerning administrative decisions whether to take enforcement action for alleged violations of this Ordinance.
- B. **Interpretation** - Shall have the power to:
1. Hear and decide upon appeals for the interpretation of the provisions of this Ordinance;
  2. Determine the precise location of the boundary lines between zoning districts when there is dissatisfaction with a decision on such subject made by the Zoning Administrator.
- C. **Variances** - The Zoning Board of Appeals shall have the power to authorize specific variances from the requirements of this Ordinance if it finds based upon competent, material, and substantial evidence following a public hearing that all of the applicable standards provided in this section have been met.
1. **Dimensional Variances:** To obtain a variance from the dimensional requirements of this Ordinance (area, setback, frontage, height, bulk, density or other dimensional requirements) the applicant must demonstrate that a practical difficulty exists by showing all of the following:
    - a. The need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and not due to applicant's personal or economic hardship.
    - b. That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).
    - c. That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome
    - d. Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to

- the property owner and be more consistent with justice to other property owners.
- e. That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.
2. Use Variances: The ZBA may grant use variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in unnecessary hardship. To establish unnecessary hardship, the applicant must establish all of the following:
- a. The building, structure or land cannot be reasonably used for any of the uses permitted by right or by special approval in the zoning district in which it is located.
  - b. The need for the requested variance is due to unique circumstances peculiar to the applicant's property and not due to general neighborhood conditions.
  - c. The proposed use of applicant's property will not alter the essential character of the neighborhood.
  - d. The need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).
- D. In addition to the foregoing conditions, the following rules shall be applied in the granting of variances:
1. In granting a variance the Zoning Board of Appeals may specify, in writing, to the applicant such conditions in connection with the granting that will, in its judgment, secure substantially the objectives of the regulations or provisions to which such variance applies, per **Section 10.06**. The breach of any such condition shall automatically invalidate the variance granted.
  2. No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of one (1) year from the date of the last denial, except on grounds of newly discovered evidence or proof of changed conditions found upon inspection by the Board of Appeals to be valid, per **Section 10.07**.
  3. After a variance has been granted, the applicant is still required to obtain Planning Commission approval, if required for the given use, and a zoning permit for the project from the Zoning Administrator.
  4. An approved variance shall expire unless substantial construction of the development or structure authorized by the variance has begun within one (1) year from the date of approval of the variance. Thirty (30) days prior to expiration of an approved variance, an applicant may make application to the Zoning Board of Appeals for a one (1) year extension of the variance at no fee. The Zoning Board of Appeals shall grant the requested extension for an additional one (1) year, if it finds good cause for the extension and that the zoning regulations governing the variance have not changed since the approval.

**SECTION 9.05 PROCEDURES**

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- A. An officer or board of the Village or any person aggrieved may file appeals to the Zoning Board of Appeals.
- B. Finance Guarantee – Any party or entity bringing an appeal to the Zoning Board of Appeals may be required to provide money in an escrow account to cover the costs to the Village as designated in **Section 10.04.B** of the Village of Bellaire Zoning Ordinance.
- C. Time Limit - Any appeal from a ruling of the Zoning Administrator shall be made within thirty (30) days after the decision is made. The person making the appeal must file with the Zoning Administrator a signed notice of appeal specifying the grounds for the appeal. The Zoning Administrator shall immediately transmit to the Zoning Board of Appeals all the papers concerning the case being appealed.
- D. Public Notice Requirements – Following receipt of a written request concerning an appeal of an administrative decision, a request for an interpretation of the Zoning Ordinance, or a request for a variance, the Zoning Board of Appeals shall hold a public hearing, after giving the following applicable notice:
  1. A notice of the public hearing shall be prepared, which shall include all of the following applicable information:
    - a. A description of the nature of the appeal, interpretation or variance request.
    - b. If the appeal or interpretation request involves a specific parcel, and in all variance requests, the notice shall describe the property involved. The notice shall also include a listing of all existing street addresses within the property. Street addresses, however, do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used, such as using tax parcel identification numbers or including a map showing the location of the property.
    - c. The time, date, and place the appeal, interpretation or variance request will be considered.
    - d. The address where and the deadline when written comments will be received concerning the appeal, interpretation or variance request.
  2. The notice shall be published in a newspaper of general circulation within the Village not less than 15 days before the scheduled public hearing.
  3. The notice shall be sent by first class mail or personal delivery to the person filing the appeal or requesting the interpretation and, if the appeal or interpretation request involves a specific parcel and in all variance requests, to the owners of the property involved, not less than 15 days before the scheduled public hearing.
  4. If the appeal or interpretation request involves a specific parcel, and in all variance requests, the notice shall also be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property involved and to the occupants of all structures within 300 feet of the property involved not less than 15 days before the scheduled public hearing, regardless of whether the property or occupant is located in the Village. If the name of the occupant or tenant is not known, the term “occupant” may be used in making

notification under this subsection.

5. After providing the notice required under this section and without further notice, except as required under the Open Meetings Act, the Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.
- E. Decisions - The Zoning Board of Appeals shall return a decision upon each case within a reasonable time after a request or appeal has been filed with the Board unless additional time is agreed upon with the parties concerned. Decisions made by the Zoning Board of Appeals will be forwarded, in writing, to the appealing party and the Zoning Administrator.
- F. Representation - Any party may appear in person or by agent or by attorney at a hearing considering his request or appeal.

### **SECTION 9.06 STAY OF PROCEEDINGS**

An administrative appeal to the Zoning Board of Appeals and an appeal of a decision by the Zoning Board of Appeals to circuit court stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued, unless the Zoning Administrator certifies to the Zoning Board of Appeals after such appeal has been filed that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed, unless ordered stayed by the Zoning Board of Appeals or the circuit court. However, this section shall not apply to an administrative decision to take enforcement action for alleged violations of this Ordinance.