

RESOLUTION NO. 2018-08

VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN

RESOLUTION AUTHORIZING PUBLIC HEARING TO BE HELD ON PROPOSED
ORDINANCE NO. 2018-04 RELATING TO ZONING AND THE CREATION
OF A BOARD OF APPEALS, AND SEEKING RECOMMENDATION OF THE
PLAN COMMISISON AS TO SAID ORDINANCE

THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,
WISCONSIN, RESOLVES AS FOLLOWS:

WHEREAS, Ordinance No. 2018-04 entitled "An Ordinance to Create Chapter 55 of the Code of Ordinances for the Village of Yorkville, Racine County, Wisconsin, relating to Zoning and the Village Board of Appeals" has been introduced.

NOW, THEREFORE, BE IT RESOLVED that pursuant to Wis. Stat. Sections 61.35 and 62.23, a public hearing upon Class II Notice be scheduled on the proposed ordinance, and that the ordinance be submitted to the Plan Commission for its recommendation.

This Resolution was adopted by the Yorkville Village Board on May 14, 2018.

Ayes: 3

Nays: Ø

Abstentions: Ø

TOWN OF YORKVILLE

By:



Peter L. Hansen, Chairperson

Attest:



Michael McKinney, Clerk-Treasurer

**NOTICE OF PUBLIC HEARING
VILLAGE OF YORKVILLE**

PLEASE TAKE NOTICE that pursuant to Wis. Stat. Sections 61.35 and 62.23, a Public Hearing will be held by the Village Board of the Village of Yorkville, Racine County, Wisconsin, at 6:00 p.m. on June 11, 2018 at the Union Grove Municipal Center, 925 15th Avenue, Union Grove, Wisconsin, with respect to Ordinance No. 2018-04 entitled "An Ordinance to Create Chapter 55 of the Code of Ordinances for the Village of Yorkville, Racine County, Wisconsin, relating to Zoning and the Village Board of Appeals."

A copy of the proposed ordinance will be on file and open for public inspection in the office of the Clerk/Treasurer beginning the first date of publication of this notice.

Dated this 18th day of May, 2018.

Michael McKinney
Clerk-Treasurer

ORDINANCE NO. 2018-04

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

**AN ORDINANCE TO CREATE CHAPTER 55 OF THE CODE OF ORDINANCES FOR
THE VILLAGE OF YORKVILLE, RACINE COUNTY, WISCONSIN, RELATING TO
ZONING AND THE VILLAGE BOARD OF APPEALS**

**THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE
COUNTY, WISCONSIN, DO ORDAIN AS FOLLOWS:**

1. That Chapter 55 entitled “Zoning Code” of the Code of Ordinances for the Village of Yorkville relating to Zoning and the Village Board of Appeals be, and hereby is, created to read as follows:

**“Chapter 55
ZONING CODE**

Sec. 55-1 Adoption of Racine County Zoning.

- (a) Pursuant to Sections 66.0203(10) and 66.0213(2) of the Wisconsin Statutes, the Zoning Code of Racine County, as such was in effect at the time of the Village’s incorporation, shall continue in force in the Village, to the extent not inconsistent with Wis. Stat. Ch. 61 and except as otherwise altered by the Village Code of Ordinances from time-to-time (“Racine County Zoning Code”). Attached as Exhibit A, and incorporated herein by reference, is a copy of the current Racine County Zoning Code which the Village Board hereby adopts as the Zoning Code for the Village of Yorkville. Any amendments to the Racine County Zoning Code by Racine County shall not apply to the Village unless such changes are specifically adopted by the Village as required by Wisconsin Statutes. To the extent any provision of this Chapter or any other ordinance of the Village conflicts with a provision of the Racine County Zoning Code the more restrictive provision shall apply.
- (b) The Racine County Public Works and Development Services Director, or her designee, shall act as Zoning Administrator for the Village, in accordance with the terms and conditions of a separate agreement between the County and Village.

Sec. 55-2 Village Board of Appeals.

- (a) **Creation and membership.** There is hereby created for the Village a Board of Appeals. Notwithstanding the incorporation of the Racine County Zoning Code, the Board of Appeals shall operate in lieu of the Racine County Board of Adjustment. The Board of

Appeals shall consist of five members appointed by the President and subject to confirmation by the Village Board. The terms of the members shall be three (3) years, except that of those initially appointed, one shall serve for one year, two for two years, and two for three years. The Village President shall appoint, for staggered terms of three years, two alternate members of such board. The Village President shall designate one of the alternate members as 1st alternate and the other as 2nd alternate. The 1st alternate shall act, with full power, only when a member of the board refuses to vote because of interest or when a member is absent. The 2nd alternate shall act only when the 1st alternate so refuses or is absent or when more than one member of the board so refuses or is absent. There shall be no compensation received by the members for their service on the Board.

(b) **Jurisdiction.** The Board of Appeals shall have the powers granted in Wis. Stat. §62.23(7)(e), including the following:

- (1) Hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator.
- (2) Hear and decide special exceptions to the terms of this chapter upon which the board of appeals is required to pass.
- (3) Authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulty or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.
 - a. In this subsection, “area variance” means a modification to a dimensional, physical, or locational requirement such as a setback, frontage, height, bulk, or density restriction for a structure that is granted by the board of appeals under this paragraph. In this subsection, “use variance” means an authorization by the board of appeals under this paragraph for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning ordinance.
 - b. A property owner bears the burden of proving “unnecessary hardship,” as that term is used in this subdivision, for an area variance, by demonstrating that strict compliance with a zoning ordinance would unreasonably prevent the property owner from using the property owner's property for a permitted purpose or would render conformity with the zoning ordinance unnecessarily burdensome or, for a use variance, by demonstrating that strict compliance with a zoning ordinance would leave the property owner with no reasonable use of the property in the absence of a variance. In all circumstances, a property owner bears the burden of proving that the unnecessary hardship is based on conditions unique to the

property, rather than considerations personal to the property owner, and that the unnecessary hardship was not created by the property owner.

- (4) To hear and grant applications for substitution of the same or more restrictive nonconforming uses for existing nonconforming uses.
 - (5) To hear and decide application for interpretation of the zoning regulations and the boundaries of the zoning districts after the Plan Commission has made a review and recommendation.
 - (6) Reverse, affirm wholly or partly, modify the order, decision, determination or requirement appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end, shall have all the powers of the offices from whom the appeal is taken, and may issue or direct the issue of a permit.
 - (7) The board of appeals may request assistance from other village officers, departments, commissions and boards.
 - (8) Have the powers provided by Wis. Stat. §62.23(7)(e) or by any ordinance of the village.
- (c) **Officers.** The Board of Appeals shall choose its own chairperson, vice chairperson, and secretary.
- (d) **Meetings and rules.** The Board of Appeals shall adopt rules and regulations for its government and procedure. Meetings of the Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine. Such chairperson, or in his/her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. However, the Board may convene in closed session in accordance with Wis. Stat. §19.85.
- (e) **Minutes.** The secretary shall keep minutes of its proceedings, showing the action of the Board and vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. The presence of a majority of Board members, or of Board members and alternates, shall constitute a quorum.
- (f) **Determinations.** If a quorum is present, the Board may take action by a majority vote of the members present.
- (g) **Hearings.**
- (1) The board of appeals shall fix a reasonable time and place for the hearing of the appeal or application; and shall give public notice thereof by publication at least

once during two consecutive weeks, the last publication being no later than one week before the hearing. In addition, the board shall give due notice to the parties in interest, including the officer from whom the appeal is taken.

- (2) At the hearing, the appellant or applicant may appear in person, by agent, or by attorney.
- (3) A copy of all notices of appeals or variances to the floodland provisions of this chapter shall be transmitted to the state department of natural resources (DNR) for review and comment. Final action on floodland appeals and variance requests shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first.

(h) **Decisions.**

(1) *Time limits.*

- a. The board of appeals shall decide all appeals and applications, except appeals and variance requests to the floodland provisions of this chapter, within 30 days after the final hearing and shall transmit a signed copy of the board's decision to the appellant or applicant, and the officer from whom the appeal is taken. Decisions on appeals to the floodland provisions of this chapter shall be made as soon as is practicable, but not more than 60 days after the required public hearing.
- b. Decisions on appeals and variance requests to the floodland provisions of this chapter shall not be made for 30 days or until the DNR has made its recommendation, whichever comes first. A copy of all decisions on floodland appeals or variance requests shall be transmitted to the DNR within ten days of their effective date.

(2) *Expiration of variances.* Variances and substitutions granted by the board of appeals shall expire within six months, unless substantial work has commenced pursuant to such grant. An extension, the duration to be determined by the zoning administrator on a case-by-case basis, may be granted by the zoning administrator prior to its expiration. The zoning administrator or applicant may request that the board of appeals review and approve the request for extension.

(3) *Establishment of conditions.* In exercising any of its powers, the board of appeals may, in any finding or decision, establish appropriate conditions and safeguards in harmony with the general purpose and intent of this chapter.

(i) **Finality of decision.** All decisions and findings of the Board of Appeals on any application for a variance, after a public hearing, shall, in all instances, be the final administrative decision and shall be subject to judicial review. No application for a variance which has been denied by the Board may be resubmitted for a period of one year

from the date of the order of denial, except under extraordinary circumstances or on the grounds of new evidence discoverable after the hearing or proof of substantially changed conditions found to be valid by the Board.

- (j) **Review of decisions by court.** Any person aggrieved by any decision of the board of appeals or any taxpayer or any officer, department, board or bureau of the village may, within 30 days after the filing of the decision in the office of the board of appeals, but not thereafter, commence an action seeking the remedy available by certiorari.”

2. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Yorkville, Racine County, Wisconsin, this _____ day of _____, 2018.

VILLAGE OF YORKVILLE

Ayes: _____

By: _____
Peter L. Hansen, President

Nays: _____

Attest: _____
Michael McKinney, Clerk-Treasurer

Abstentions: _____