

# Village of Lake Isabella - Codified Ordinances

## Article XII – Planning & Zoning

### **Chapter 1302 – Zoning Board of Appeals (ZBA)**

Adopted August 4, 1998 – Ordinance 1998-01

Last amended August 17, 2010 – Ordinance 2010-03

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#### **1302.01 INTENT**

The purpose of this chapter is to provide guidelines, standards, and procedures to be followed by the Lake Isabella Zoning Board of Appeals and by aggrieved persons or parties seeking relief from the application of the zoning code. The following procedures provide an appeal mechanism for circumstances that prohibit compliance with the zoning requirements, as well as procedures for the interpretation of the language of the zoning code and map.

#### **1302.03 ESTABLISHMENT**

There is hereby established a Zoning Board of Appeals for the Village of Lake Isabella (ZBA) which shall perform its duties and exercise the powers granted to it herein as provided by Public Act 110 of 2006, as amended.

#### **1302.05 ORGANIZATION & MEMBERSHIP**

1. The ZBA shall be comprised of five (5) regular members and up to two (2) alternate members. However, no more than five (5) members shall act on a particular case or appeal.
2. One of the five (5) regular members shall be a member of the Planning Commission for the Village of Lake Isabella, and one (1) regular member may be a member of the Village Council.

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3. Terms for members of the ZBA shall be for three (3) years, except for a member of the Planning Commission or Village Council whose term on the ZBA shall coincide with his/her term on the Planning Commission or Village Council or the election of officers for the Planning Commission or Village Council, whichever is shorter.
4. Members of the ZBA shall be appointed by the Village President, subject to approval by a majority vote of the members of the Village Council.
5. All members of the ZBA shall be electors in the Village of Lake Isabella.
6. The members shall annually select one of their members to serve as the Chair, and one member to serve as Vice-Chair, provided that a member of the Planning Commission or Village Council shall not serve as the Chair or Vice-Chair. The Zoning Administrator shall serve as the Secretary of the ZBA, but shall not be a member of the ZBA.
7. In the absence of the Chair, the Vice-Chair shall preside at all meetings and hearings of the ZBA. In the absence of the Chair and Vice-Chair, the member with the longest continual term of service shall preside at any meeting or hearing.
8. A member of the ZBA shall publicly disclose any conflict of interest with respect to any matter before the ZBA, and shall refrain from participating in any hearing, any discussion, or any decision on such matter. Failure to do so constitutes misconduct of office.
9. If a member is uncertain as to whether or not a conflict of interest exists, the remaining seated members of the ZBA shall determine by vote if a conflict does or does not exist.
10. An employee or contractor of the Village shall not serve as a member of the ZBA.
11. Members of the ZBA may be removed by the Village Council for non-performance of duty or misconduct of office upon written charges. Any such member so charged is entitled to a public hearing before the Village Council prior to being removed from the ZBA.

### **1302.07 POWERS & AUTHORITY**

After conducting a public hearing, the ZBA has jurisdiction and authority to decide the following:

1. Zoning map interpretations.
2. Zoning regulations or text interpretations.
3. General appeals under law or pursuant to the zoning regulations in the Code (including appeals relating to the zoning action of any Village provided for in this Code or by statute).

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4. Dimensional (non-use) variances.
5. Determination of lots of record and nonconforming lots.
6. Determination of lawful nonconforming uses, structures, and situations.

Under no circumstances shall the ZBA have the power or authority to grant a use variance or to hold a public hearing regarding a use variance.

### **1302.09 MEETINGS**

1. At least three (3) regular members shall constitute a quorum. A decision by the ZBA shall require the concurrence of at least three (3) sitting members.
2. Applications shall be presented to the ZBA in the order in which they were received in complete form by the Village.
3. The ZBA shall conduct a public hearing prior to making any determination or granting any application. Notice of any public hearing shall be provided as required by statute.
4. Unless other rules of procedure are adopted by the ZBA, Robert's Rules of Order shall be the presiding parliamentary rules.
5. When presenting an application, fifteen (15) minutes shall be afforded to the applicant. This may be extended by a majority vote of the ZBA.
6. Public comment rules shall be the same as provided for in the Village Council's organizational rules, unless other rules are adopted by the ZBA.
7. Alternate members shall be seated as needed. Alternate members will be seated in a rotating manner so that, if possible, the same alternate member is not seated for consecutive cases.
8. When an alternate member is seated, he or she shall act as a member of the ZBA for the duration of the case under consideration, and shall have the same participatory and voting rights as a regular member of the ZBA.
9. In the event that a regular or alternate member is unable to attend a meeting or hearing, they shall notify the Zoning Administrator in advance of such absence to be excused. Failure to do so shall result in the absence being unexcused. Any member of the ZBA who shall have unexcused absences for three (3) or more consecutive meetings or more than thirty percent (30%) of the ZBA meetings in a calendar year shall be deemed to have resigned from the ZBA.
10. The ZBA shall set its normal meeting dates and time. Additional meetings may be called at the order of the Chair.

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11. Before providing factual testimony before the ZBA, the applicant, any witnesses, experts or members of the public shall take an oath affirming the information that they are about to provide will be factual and accurate. If it is later determined that such information provided under oath was intentionally inaccurate, the ZBA shall have sufficient grounds to void and vacate any such ZBA decision or variance granted after a revocation hearing.

### **1302.11 APPLICATION PROCEDURES**

1. An appeal to the ZBA may be taken by any property owner, tenant, governmental agency, department, bureau or board, or any other person aggrieved by the administration of the zoning code. An appeal may be taken from any order, requirement, decision, grant, or refusal made by any Village official charged with enforcement of the provisions of the zoning code.
2. Filing Procedure. In filing an appeal, the following procedures shall be followed:
  - A. The application shall be in writing and must state the grounds for appeal.
  - B. Except where the applicant is a public agency, a fee shall be set by the Village Council. Said fee shall accompany the filing of the application. If the applicant is requesting a special meeting of the ZBA, the established fee shall be double what is normally charged, and shall occur on the same day of the week and time as a regular meeting of the ZBA.
  - C. All applications shall be in writing on forms provided by the Village of Lake Isabella, and completed in full and signed by the applicant/appellant before a the request will be presented to the ZBA. If the applicant is not the owner of the land involved, the owner must also sign the application.
  - D. Every appeal/application must be filed with the Village within thirty (30) days of the decision or determination being appealed from.
3. An appeal shall stay all proceedings, in furtherance of the action appealed from; unless the Zoning Administrator certifies to the ZBA that a stay would cause imminent peril to life or property. In such case, the proceedings may only be stayed by a restraining order granted by a court of competent jurisdiction.

### **1302.13 REVIEW STANDARDS**

1. It is not intended that variances be granted merely to remove inconveniences in complying with the zoning regulations, or to alleviate financial burdens. The possibility that compliance with the zoning regulations may prove to be more costly, time consuming, or result in development which does not meet the desires of the applicant shall not be part of the consideration of the ZBA. Any variance granted shall be consistent with, and not materially impair, the purpose and intent of the Village's Master Plan and the zoning code.

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2. The following standards and conditions shall apply to the review of completed applications for dimensional (non-use) variances. No dimensional (non-use) variance shall be granted or approved by the ZBA unless all of the following standards are met.
  - A. Strict application of the zoning requirements would prohibit the use and/or development of land in a manner otherwise allowed in the zoning district involved.
  - B. That the request is not related to a financial or economic hardship of the applicant.
  - C. That the parcel or structure cannot reasonably be developed or utilized in a manner allowed by the zoning district where the land is located.
  - D. That the situation is not “self created,” in that the immediate practical difficulty causing the need for a variance was not created by the applicant or the applicant’s predecessors in title.
  - E. Granting the variance would not impair the public health, safety, or well being.
  - F. That granting the variance is based on a practical difficulty or extraordinary circumstances or conditions such as, but not limited to, exceptional topographical or physical features of the land, exceptional narrowness or shallowness of a specific piece of property which was legally existing on the effective date of the zoning code, or an extraordinary situation on the land or structure.
  - G. A variance shall not bestow upon the applicant a privilege not enjoyed by other properties in the same zoning district.
  - H. The variance request, if granted, will be the minimum variance necessary (*i.e.*, the least variation or change from the particular requirement of the zoning regulation involved) that will make possible the reasonable use of the land, structure, or building involved.
  - I. The granting of the variance will not be injurious or detrimental to any properties adjoining the property that is the subject of the variance or the residents thereof.
  - J. The condition or situation involved is not of so general or recurrent a nature that it would be more reasonable or practical for the Village to amend the provisions of the zoning regulation involved rather than to grant a variance for the condition or situation.

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3. The following standards and conditions shall apply to the review of appeals relating to the action or decision of any official or board as permitted in this code and by statute.
  - A. In deciding the appeal, the ZBA shall be limited to determining whether or not the decision that was made was done using the proper requirements and standards of the zoning code.
  - B. The decision of the ZBA is limited to the information that was available to the official or board that made the decision being appealed, unless he or she otherwise consents. Additional information such as verbal statements, written information, plans, pictures, and audio/visual recordings shall not be considered.
4. The following standards and conditions shall apply to the interpretation of the application of the zoning code or the interpretation of the official zoning map of the Village of Lake Isabella.
  - A. Prior to submitting an application or appeal to the ZBA from a third party, the Zoning Administrator shall review the section of the code or map in question and issue a written opinion on how the code or map is to be administered.
  - B. Text interpretations of the ZBA shall be narrow and address only the situation being interpreted. The interpretation of the ZBA shall be based on a thorough reading of the zoning code, and shall not have the effect of amending the code.
  - C. Zoning map interpretations by the ZBA shall be limited to determining where the boundary line of a particular zoning district lies with respect to a specific parcel.
  - D. Where the intent of the zoning code or zoning map is unclear, or can be read to support equally more than one interpretation, the benefit of the doubt shall go to the property owner.

### **1302.15 CONDITIONS & PERFORMANCE BONDS**

1. In making any decision or granting an application or variance, the ZBA may attach conditions in furtherance of the intent and spirit of the zoning code as it may deem reasonable. The ZBA shall also have the authority to impose conditions to ensure that affected public services and facilities are capable of accommodating the increased service demands of the development. The ZBA shall further have the authority to impose conditions to protect the environment, conserve natural resources, and to ensure compatibility with adjacent uses of land. Conditions imposed shall relate to one or more of the following requirements:
  - A. Compliance with the intent and purpose of the zoning requirements.
  - B. Protection of natural resources and the environment.

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- C. Protection of the health, safety, and welfare, as well as the social and economic well being of those who shall use the land under consideration, adjacent properties, and the community as a whole.
  - D. Providing adequate support facilities such as, but not limited to, parking areas, driveways, walk-ways, pedestrian and vehicular circulation, screening, fences, and landscaping.
  - E. A valid exercise of the Village's police power which is affected by the proposed use or development.
2. The ZBA shall have the authority to require such monetary security, irrevocable letter of credit, or performance bond in the form, manner and amount as in its discretion, may be required to compel compliance with and performance of all conditions incident to appeals and requests granted; provided, however, that such requirement shall not be for amounts greater than the reasonable cost of performing or complying with the conditions attached to such decision.

### **1302.17 DECISIONS OF THE ZBA**

- 1. The ZBA shall make its decision upon an appeal or variance request in a timely manner after conducting a public hearing.
- 2. The decision shall include the reason(s) for the decision.
- 3. A copy of the minutes of each ZBA meeting shall be forwarded to the Planning Commission and Village Council at their next respective regular meetings.
- 4. A decision of the ZBA shall be final. A decision of the ZBA may be appealed to the circuit court.
- 5. Prior to reaching a decision regarding an appeal or application, the ZBA may request that the Planning Commission forward an opinion or recommendation to the ZBA on the application or appeal.

### **1302.19 PERIOD OF VALIDITY**

- 1. All variances shall be valid for twelve (12) months from the date of granting, during which time all authorized work must be completed.
- 2. If the authorized work has begun, the owner of the property may submit a written request to the Zoning Administrator for an extension of six (6) months from the original twelve (12) month deadline. Upon receipt of the request, the Zoning Administrator shall send written notice to the property owner of the new final date by which all authorized work must be complete.
- 3. Only one six (6) month extension as authorized in subsection 2 above, may be granted on any variance.

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4. Any project started but not completed within the required time limit shall be deemed to be in violation of the zoning code.

### **1302.21 REAPPLICATION**

No application for a variance or for a substantially similar variance which has been denied wholly, or in part, by the ZBA shall be resubmitted for a period of 365 days from such denial, except on grounds of new evidence (which could not have been produced earlier by the applicant) or proof of changed conditions found by a majority vote of the ZBA to be valid.

### **1302.23 CONFLICT OF INTEREST**

1. A member of the ZBA shall not participate or vote with respect to a matter in which the member has a conflict of interest. Failure of a member to refrain from participating or voting in a matter in which the member has a known conflict of interest shall constitute misconduct in office. A conflict of interest exists whenever a member of the ZBA owns land within the Village which is significantly affected by a matter presented to the ZBA, or a member has a direct financial interest in the matter presented to the ZBA. A conflict of interest may exist in other circumstances as well.
2. The ZBA should strive to avoid even the appearance of impropriety. Whenever a member of the ZBA has a conflict of interest or appears to have a conflict of interest with respect to a matter presented to the ZBA, the member shall state on the record the nature of the conflict of interest, or the circumstances which exist which could be perceived to be a conflict of interest. If the member has a conflict of interest, the member shall not participate in the ZBA's consideration of the matter. If circumstances exist which could be perceived to be a conflict of interest, the member, after disclosure of these circumstances, may continue to participate in the ZBA's consideration of the matter if the member can be fair, objective, and impartial, subject to the vote of the other members of the ZBA.
3. Nondisclosure of a known conflict of interest shall be misconduct in office, and nondisclosure of circumstances which exist which could be perceived to be a conflict of interest may also constitute misconduct in office.
4. If a member of the ZBA fails to disclose any circumstances which could be perceived to be a conflict of interest and the ZBA later becomes aware of such circumstances, or if a member of the ZBA participates in the consideration of a matter in which the member has a known conflict of interest, the ZBA may, upon the vote of a majority of the regular members of the ZBA (other than the member who has failed to make the disclosure or who participated in the consideration of a matter in which the member had a conflict of interest), make a recommendation to the Village Council that the member be removed from the ZBA for misconduct in office. If the ZBA makes such a recommendation to the Village Council, the Village Council shall hold a public hearing to consider the recommendation.



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### **1302.25 No ZBA JURISDICTION**

The ZBA is without jurisdiction to hear any appeals or matters involving any of the following:

1. A planned unit development (PUD).
2. A special land use.
3. Site plan decisions.

Notwithstanding the fact that the ZBA generally has no jurisdiction with regard to the above-mentioned matters, the ZBA shall have jurisdiction to entertain variance requests related to subsections (1), (2), and/or (3) above, if the Village body which makes the final decision regarding the matter (for example, the Village Council with regard to a PUD or the Planning Commission with regard to a special land use) expressly grants written permission to the applicant involved to apply to the ZBA for a variance of one or more of the underlying requirements of the zoning regulations. For example, but not by way of limitation, the Planning Commission could approve a particular special use request contingent upon the ZBA granting a variance for an otherwise applicable requirement within the Ordinance which would normally prohibit the applicant or landowner from taking advantage of a special use approval absent a variance.

### **1302.27 VARIANCE TERMINATION**

In the event that the ZBA grants a variance, the individual (or any successor in interest as to the property involved) shall not use the property in question such that it would exceed the rights given by the Code or the variance or fail to follow any conditions placed thereon by the ZBA. In the event that the use of the property exceeds those rights given by the Code or the variance, or the property owner fails to follow the conditions placed upon the variance, the variance shall immediately terminate. Alternately, in such case, the ZBA shall also have the authority to terminate a variance after reasonable notice and hearing.