

AN ORDINANCE TO REPEAL SECTION 46-21(cc) AND CREATE SECTION 46-30 OF THE CODE OF ORDINANCES FOR THE VILLAGE OF UNION GROVE PERTAINING TO THE FIRE AND RESCUE PROTECTION OF THE VILLAGE OF UNION GROVE

The Village Board of the Village of Union Grove, Racine County, Wisconsin, ordains as follows:

1. That Section 46-21(cc) of the Code of Ordinances for the Village of Union Grove pertaining to appeals be, and hereby is, repealed.

2. That Section 46-30 of the Code of Ordinances for the Village of Union Grove be, and hereby is, created to read as follows:

Sec. 46-30 (a) Appeals.

- (1) The owner of a building or structure, or any other person who is aggrieved and directly affected (“Person Aggrieved”), may appeal from decisions or orders of the building inspector, Fire Chief or his designate relative to the application and interpretation of (“Fire and Rescue Protection Ordinance”), to the building board.
- (2) All applications for appeal shall be in writing and must be received by the village clerk no later than thirty (30) days after notice of the building inspector’s, Fire Chief’s or his designate decision or order (“Determination”). The request for review shall state the grounds upon which the Person Aggrieved contends that the Determination should be modified or reversed.
- (3) A determination or action subject to administrative or judicial review procedures set forth under the Wisconsin Administrative Code or state statutes or other provisions of this code is not reviewable under this chapter.
- (4) An application for an appeal shall be accompanied by a fee of fifty dollars (\$50.00) made payable to the Village of Union Grove.
- (5) The building board shall provide the Person Aggrieved with a hearing on an appeal within thirty (30) days of receipt of the notice of appeal, providing the appellant with notice of the hearing at least ten (10) days before such hearing, unless such notice is waived in writing by the appellant. At the hearing, the appellant and the Village may be represented by counsel and may present

evidence, call and examine witnesses and cross-examine witnesses of the other party.

(b) **Decision on Appeals.**

- (1) The board shall affirm, modify or reverse the decision of the building inspector, Fire Chief or his designate. Appeal of the action of the board shall be to circuit court.
- (2) The board shall affirm the decision of the building inspector, Fire Chief or his designate unless it determines that:
 - a. The building inspector, Fire Chief or his designate has misinterpreted or misapplied the applicable ordinance, rule or code provision; or
 - b. The compliance time established by the building inspector, Fire Chief or his designate is unreasonable; or
 - c. An equally good or better form of construction can be used.
- (3) The board shall send the applicant a written decision, including reasons for the decision. The building inspector, Fire Chief or his designate shall act immediately to carry out the board's decision.

(c) **Modification or Waiver.**

- (1) **Authority.** Where, in the judgment of the building board, it would be inappropriate to apply literally the provisions of an ordinance because an exceptional circumstance exists, the building board may waive or modify any requirements to the extent deemed just and proper. However, the building board does not have the authority to interpret or waive the requirements of the Wisconsin Administrative Code, as the Department of Commerce exercises jurisdiction with respect to such matters.
- (2) **Application.** Application for any such modification or waiver shall be made by the Person Aggrieved in writing as part of the request for clarification or review of Determination, stating fully all facts relied upon in requesting the modification or waiver, and shall be supplemented with any additional data that may aid the building board in the analysis of the proposed modification or waiver. This application may be supplemented at any time during the review process.
- (3) **Considerations.** The building board may consider the following factors, in addition to any other factors deemed relevant by the

building board:

- a. Whether the request for a waiver or modification, if granted, would be consistent with the general intent of the ordinance.
- b. Whether the request for a waiver or modification, if granted, would adversely affect any property owners in the village.
- c. Whether the request for waiver or modification, if granted, would benefit the Person Aggrieved in a way that is not consistent with the village's interests.
- d. Whether, instead of granting the request for a waiver or modification, the ordinance itself should be changed to accommodate the kind of situation presented by the Person Aggrieved.
- e. Whether, the conditions upon which the request for a modification or waiver is based are unique to the situation or property for which the modification or waiver is sought and are not applicable generally to other situations or property.

(4) **Conditions for Granting.** The building board shall not grant a modification or waiver to an ordinance unless it makes findings based upon the evidence presented to it in each specific case and based upon the consideration of the above factors that the granting of the modification or waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the village. Any decision to grant a modification or waiver shall not be arbitrary, capricious, or prejudicial in nature.

(5) **Granting by Building Board.**

- a. The building board, if it approves of the modification or waiver of an ordinance or any portion of it, shall do so only after a hearing.
- b. Such relief shall be granted without detriment to the public good and without impairing the intent and purpose of the ordinance.
- c. The reasons why such modification or waiver was granted shall be entered as part of the record of hearing.
- d. If the building board grants a modification or waiver, the building board may also recommend to the village board that the ordinance itself be changed to accommodate the kind of

situation presented by the Person Aggrieved.

- (6) **Past Non-compliance Not Waived.** A waiver or modification that is granted pursuant to a written request as described in this Section shall not waive any fines, forfeitures or other penalties that may have accrued due to violations of the ordinance that took place prior to the date of the Appeal, unless specifically stated otherwise in the decision of the building board.

(d) **Chapter 68 of the Wisconsin Statutes.**

Pursuant to Wis. Stat. Section 68.16, the Village of Union Grove elects not to be governed by those provisions of Chapter 68 which are in conflict with this ordinance. In the event of any conflict between this ordinance and Chapter 68, the provisions of this ordinance shall govern.”

That this ordinance shall take effect upon adoption and publication as provided by law.

Adopted this 24th day of January, 2011.

VILLAGE OF UNION GROVE

BY: _____/s/
 Michael Aimone
 Village President

Attest:

_____/s/
 Janice K. Winget, WCPC, CMTW
 Village Clerk-Treasurer

Introduced: 01/10/2011
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