

VILLAGE OF NEW BADEN, ILLINOIS
ORDINANCE NO. 849

**AN ORDINANCE ESTABLISHING THE OFFICE OF ZONING HEARING
OFFICER AND DELEGATING AUTHORITY TO SUCH OFFICE**

WHEREAS, the Village of New Baden (“Village”), Clinton and St. Clair Counties, Illinois is a duly created, organized and validly existing municipality of the State of Illinois under the 1970 Illinois Constitution and the laws of the State of Illinois, including particularly the Illinois Municipal Code, and all laws amendatory thereof and supplementary thereto; and

WHEREAS, the Village has the authority to create the position of Zoning Hearing Officer pursuant to 65 ILCS 5/11-13-14.1 and to delegate to the Zoning Hearing Officer the authority to conduct any public hearing required to be held in connection with applications for special use, variation, amendment or other change to the Village Zoning Code and to hear and decide appeals from and review any order, requirement, decision or determination made by an administration official charged with the enforcement of the Village Zoning Code; and

WHEREAS, the Village finds that it is necessary to create the position of Zoning Hearing Officer in order to improve the efficiency and uniformity of variances to the Village Zoning Code and of appeals from administrative orders.

NOW THEREFORE BE IT ORDAINED, by the Mayor and Board of Trustees of the Village of New Baden, as follows:

1. That the preceding recitations in the upper part of this Ordinance are realleged, restated and adopted as paragraph one (“1”) of this Ordinance.
2. That Chapter 40, Article VIII of the Village’s Revised Code of Ordinances (“Village Code”) shall be deleted in its entirety, and the following inserted in its place:

“

ARTICLE VIII

ZONING PROCEDURES

DIVISION I – ZONING HEARING OFFICER, VARIANCES

40-8-1 ESTABLISHMENT OF OFFICE OF ZONING HEARING OFFICER. The position of Village of New Baden Zoning Hearing Officer is hereby created in accordance with 65 ILCS 5/11-13-14.1 and other applicable authority. The Zoning Hearing Officer (“Hearing Officer”) shall be appointed by

the Village President with the approval of the Board of Trustees. Alternate hearing officers may serve when the Hearing Officer is not available and may be appointed in the same manner as the Hearing Officer. Hearing Officers shall be appointed on the basis of training and experience which qualifies them to conduct hearings, make recommendations or findings of fact and conclusions on the matters heard and otherwise exercise and perform the powers, duties and functions delegated in accordance with 65 ILCS 5/11-13-14.1.

40-8-2 POWERS AND DUTIES. The Hearing Officer shall have all the powers and duties prescribed by law and by this Ordinance, including the following:

1) Appeals. Upon an appeal from a decision by any administrative official, including but not limited to the Chief Building and Zoning Official, to decide any question involving the interpretation of any provision or term of the Village of New Baden Zoning Code (“Code”), including the determination of the exact location of any district boundary if there is uncertainty with respect thereto, or other claimed error in the decision or determination made by an administrative official in the enforcement of the Code; provided that such decision shall be bound by and consistent with the language of the ordinance or regulation at issue;

2) Variances. The Hearing Officer may vary the application of the requirements of the Code, except for use variances, as provided in this Article. The Corporate Authorities may reserve, by ordinance, any class of variance for approval only by the Corporate Authorities. In such cases where the Board of Trustees has reserved decision making authority, the Hearing Officer shall still conduct a hearing and provide notice in compliance with 65 ILCS 5/11-13-6. Any variance granted by the Hearing Officer, not exercised within 12 months from the date of approval, shall be deemed expired and may be revoked by the Hearing Officer.

3) Use Variances. To hold public hearings for applications for use variances and to forward a written report containing findings of fact and a separate conclusion recommendation thereon to the Board of Trustees, consistent with 65 ILCS 5/11-13-14.1.C(1), which Board may by ordinance without further public hearing adopt any proposed use variance, or the Board may refer it back to the Hearing Officer for further consideration or deny the use variance request as a final action. For purposes of this Section, “use variances” shall be any variation that authorizes any use or classification of use to continue or commence in a zoning district in which that use is not a permitted use by right. Any proposed use variance which fails to receive the approval of the Hearing Officer shall not be approved except by the favorable vote of 2/3 of all Board members. No variance shall be granted that shall authorize a use that may be granted by special use or planned use procedures. Use variances are not favored and shall be granted only when failure to authorize the use denies all economically viable use of the property or similar extreme hardship is demonstrated by the evidence presented.

4) Other authority. To hear and decide all other matters referred to it by the Board of Trustees or upon which it is required to pass under applicable ordinance.

40-8-3 APPEALS. An appeal may be taken to the Hearing Officer by any person, firm or corporation aggrieved by a determination or decision of any administrative official charged with the enforcement of any provision of or regulation adopted pursuant to the Code, or by any officer, department, board, or bureau of the Village relating to such decision. The appeal shall be taken within 45 days of the action complained of by filing, with the Village Clerk, a notice of appeal, specifying the grounds thereof. The Village Clerk shall thereupon transmit to the Hearing Officer and the official from whom the appeal is taken all papers constituting the record upon which the action appealed from was taken. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the official appealed from certifies to the Hearing Officer after the notice of appeal has been filed with him that by reason of facts stated in the certificate, the stay would, in his opinion, cause eminent peril to life or property, in which case the proceedings shall not be stayed except by a restraining order, which may be granted by the Hearing Officer or by a Court of Record on application, or notice to the official appealed from and on due cause shown. The Hearing Officer may reverse or affirm wholly or partly, or may modify or amend the order, requirement, decision or determination appealed from to the extent and in the manner that the Hearing Officer may decide to be fitting and proper to the premises. No challenge to any decision subject to this Section shall be filed in any court until or unless a timely appeal has been filed and prosecuted to completion by the applicant as provided for in this Article so as to establish a final appealable decision.

40-8-4 VARIANCES. A variance may be sought by filing a written application and payment of applicable fee to the Village Clerk specifying the specific provision to be varied, the extent of the variation, and the basis therefore and including such requirements as are set forth in the Code. The Hearing Officer may grant a variance only if it is in harmony with the general purpose and intent of the Code and in accordance with general or specific rules adopted hereto and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any regulation of the Code relating to the use, construction, alteration of buildings, or structures or the use of land, but in no other case. No variance may be granted to any condition or term of a special use permit or planned zoning procedure. The Hearing Officer may impose such conditions, safeguards and restrictions upon the premises, benefited by the variance as may be necessary to reduce or minimize any potentially injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of these regulations. A request for a variance, other than a use variance, may be granted, upon a finding and determination on the record of the Hearing Officer that the requirements of this Section are met and

that all three of the following conditions are satisfied or upon such conditions as may the Hearing Officer establishes as will meet such conditions:

- a) The property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the applicable zoning regulations;
- b) The plight of the owner is due to unique circumstances; and
- c) The variance, if granted, will not alter the essential character of the locality.

40-8-5 PROCEDURE.

1) General. The Hearing Officer shall act in accordance with the procedure specified by law and by the Code. All appeals and applications to the Hearing Officer shall be in writing. Every appeal or application shall refer to the specific provision of the Code involved, and shall exactly set forth the interpretation that is claimed, the use for which the variance or special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The Village may appear by any designated official of the Board of Trustees and be heard as a party in interest in any hearing before the Hearing Officer, and the Village may appeal any decision of the Hearing Officer to a court of competent jurisdiction.

2) Notice of hearing. No action of the Hearing Officer shall be taken on any petition for variance until after notice has been given of the hearing. Notice of the time, date, and location of such hearing and a brief summary or explanation of the subject matter of the hearing shall be given by publishing at least **one (1) notice** thereof in a newspaper of general circulation in the Village, such publication to be made at **least fifteen (15) days** before the public hearings but not more than **thirty (30) days** before the hearing. Notice of the hearing concerning the variance shall also be sent by first class mail, by the applicant, to property owners or persons residing on land adjacent to the property in question, and the owners of the property in question at the time the public notice is published. The Hearing Officer shall fix a reasonable time for the hearing of the appeal or application and shall give due notice thereof to the parties and decide the matter within a reasonable time.

3) Hearings Procedure. All hearings conducted by the Hearing Officer shall be open to the public, held at the call of the Hearing Officer and at such times as he or she may determine. At hearings conducted by the Hearing Officer, the Chief Building and Zoning Official, or his designee, shall provide the Hearing Officer with the factual background of the application, the request sought by the applicant, and the relevant sections of the Code. At hearings conducted by the Hearing Officer, any interested person may appear in person or by duly authorized agent or attorney. All testimony before the Hearing Officer shall be given under oath. The Hearing Officer shall administer oaths and may compel attendance of witnesses. The Hearing Officer shall keep minutes of his or her proceedings and other official actions. The Hearing Officer shall adopt his or her own rules and procedures, not in conflict with this Ordinance or applicable Illinois statutes.

4) Decision and Findings of Fact. Every variation decision shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the Hearing Officer. The findings of facts shall specify the reason or reasons for making the variation. The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact. Property for which relief has been granted shall not be used in violation of the specific terms of the findings of fact, as the case may be, unless its authorized use is changed by subsequent variance or ordinance. Every rule, regulation, decision or determination of the Hearing Officer shall immediately be filed with the Village Clerk and shall be public record.

5) Expiration of variance approval. Any construction or use authorized by a variance approval shall substantially commence not later than six months after the date of the decision granting the variance, or such other time as may be specified in the variance approval.

6) Cost. For any application to the Hearing Officer, a fee shall be charged by the Village for processing, plus the cost of advertising of public notice in an amount as established by the Board of Trustees.

40-8-6 BOARD OF TRUSTEE POWER OF ADMINISTRATIVE REVIEW.

Immediately following the filing of the written decision of the Hearing Officer on any appeal or variance request under this Section, the Village Clerk shall file a report with the Village Board of Trustees (“Board”) concerning such action. Within 21 days after the Hearing Officer’s decision, the Board, upon majority vote, may exercise the power of administrative review of any Hearing Officer decision on an application for an appeal or variance.

Upon adoption of the motion to exercise the power of review, the Board may act on the matter directly or first refer the matter to committee. Before acting on the variance or appeal, the Board may set the matter for hearing before the committee or the Village Board. The Board will give written notice of any such hearing to the applicant and all other persons who appeared and spoke at the public hearing before the Hearing Officer. In addition, the Board may, in its discretion, notify and allow to be heard at the hearing any other person who the Board believes may be aggrieved by any decision or action concerning the application.

Following its review, the Board may affirm, reverse, or modify, in whole or in part, any determination of the Hearing Officer. An affirmative majority vote of the Board shall be required to overturn or modify a decision by the Hearing Officer. The decision of the Board shall be made within 45 days of the Board’s vote to review the decision of the Hearing Officer, unless extended for specified cause by a majority vote of the Board, or the Hearing Officer decision shall become final. In making any decision, the Board may adopt and rely on the record of the hearing officer or may hold a new hearing to establish a record for final decision.

Unless the Board exercises its power of review of administrative review, the decision of the Hearing Officer shall become effective after 21 days following its decision.

40-8-7 JUDICIAL REVIEW OF FINAL DECISION. Any officer, department, board or bureau of the Village or any person whose legal rights, duties, or privileges have been affected by any final decision of the Hearing Officer, or any party affected by the decision of the Board where such decision has been reserved or appealed to the Board, may present to the Circuit Court having jurisdiction in the county, a complaint, duly verified, stating that such decision is illegal in whole or in part, specifying the grounds of the illegality and otherwise proceeding pursuant to the Administrative Review Law, Section 735 ILCS 5/3-101, et seq. which shall govern such appeals including as authorized in 65 ILCS 5/11-13-14.1. Such complaint shall be presented to the court within 35 days after the filing of the final decision. The costs of preparing and certifying the record of proceedings for filing with the Circuit Court in an administrative review proceeding shall be paid to the Village by the appellant prior to the filing of such records with the Court. To the full extent permitted by law, unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision.

DIVISION II – SPECIAL USE PERMIT, AMENDMENTS

40-8-8 SPECIAL USE PERMIT AND AMENDMENT. The Plan Commission shall conduct all public hearings concerning special use permits and amendments to this Code and shall issue an advisory report to the Village Board concerning each application.

- (A) All advisory reports shall consider at least the following:
- (1) The effect the proposal would have on the Village's **Comprehensive or Land Use Plan;**
 - (2) The effect the proposal would have on the health, welfare, safety, morals and comfort of the surrounding area;
 - (3) The effect the development would have on schools, traffic, streets, shopping, public utilities and adjacent properties;
 - (4) Is the application necessary for the public convenience at that location or, in the case of existing nonconforming uses, that a special use permit will make the use more compatible with its surroundings;
 - (5) Is the application so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
 - (6) Will the application cause injury to the value of other property in the neighborhood in which it is located;
 - (7) Will the special use be detrimental to the essential character of the district in which it is located.

(B) **Public Hearing Notice.** Before giving an advisory report or an initial recommendation on any proposed amendment or special use permit, the Plan Commission shall first conduct a public hearing thereon, the date and place of which shall be fixed in advance by the Plan Commission at any regular or special meeting. Notice of the time, date, and location of such hearing and a brief summary or explanation of the subject matter of the hearing shall be given by publishing at least **one (1) notice** thereof in a newspaper of general circulation in the Village, such publication to be made at **least fifteen (15) days** before the public hearings but not more than **thirty (30) days** before the hearing.

(C) Notice of the hearing concerning special use permit and individual rezoning requests shall be sent by first class mail, by the applicant, to property owners or persons residing on land adjacent to the property in question, and the owners of the property in question at the time the public notice is published. In the event that the applicant is not the owner of the property that is the subject of the special use or proposed amendment, the applicant must also send the notice to the owner of the subject property.

(D) **Hearing on Application.** The Plan Commission shall hear the application (or any modified application) in accordance with its usual procedure. The may:

- (1) recommend the application with or without conditions;
- (2) recommend denial of the application; or
- (3) refer the application back to the applicant for modification.

If the application is recommended, the application in final form shall clearly note all stipulated conditions.

(E) A record of the proceedings shall be preserved in such manner as the Plan Commission shall rule. Within **fifteen (15) working days** following the hearing, the Plan Commission shall file a report of the hearing and its advisory report with the Village Board.

(F) If the application is referred back for modification by the Village Board, the applicant may resubmit the application in accordance with the directions of the Plan Commission, if any, otherwise in time for the next regular meeting of the Plan Commission.

40-8-9 WRITTEN PROTEST. In case of a written protest against any proposed amendments of the zoning regulations or districts, signed and acknowledged by the owners of **twenty percent (20%)** of the frontage proposed to be altered, or by owners of **twenty percent (20%)** of the frontage immediately adjoining or across an alley therefrom, or by the owners of **twenty percent (20%)** of the frontage directly opposite the frontage proposed to be altered, if filed with the Village Clerk, the amendment shall not be passed except by a favorable vote of at least **two-thirds (2/3)** of the Village Board.

40-8-10 VILLAGE BOARD PROCEDURE. Upon receipt of the Plan Commission's advisory report, the Village Board shall act according to its legislative procedure. Every special use permit or amendment granted by the Village Board

shall be accompanied by a finding of fact specifying the reason for making such special use permit.

40-8-11 MINOR PLAN CHANGES. The site plan shall be a permanent site plan and shall not be modified, nor shall any additions be made thereto except minor changes in a developmental plan may be made upon application to the Village Clerk. Major changes shall not take effect until the Commissioner of Public Works and/or Village Engineer concurs with the changes, and they are approved by the Chief Building and Zoning Official. Major changes in the developmental plan require total review and reapplication.

40-8-12 SPECIAL USE EXPANSION. Any expansion of a special use involving the enlargement of the buildings, structures, and land area devoted to such use shall be subject to the procedures set forth in this Article.

40-8-13 REVOCATION - EXPIRATION. The Village Board may revoke a permit issued under this Article if:

- (A) The proposal for which a permit has been issued is not carried out pursuant to the approved final site plan; or
- (B) If any condition or requirement included in the permit is not complied with; or
- (C) Any permit shall expire at the time established for the individual permit or shall expire at the end of the development schedule submitted with the application or within **one (1) year** if the first **two (2)** conditions do not apply.”

3. That Paragraph (D) of Section 40-7-7 of the Village’s Revised Code of Ordinances (“Village Code”) shall be amended to read as follows:

“(D) Miscellaneous Petition and Review Fees

1.	Variance	\$150.00 + cost of newspaper publication
2.	Special Use Permit	\$50.00 + cost of newspaper publication
3.	Zoning Decision Appeal	\$150.00
4.	Zoning Amendment	\$75.00 + \$5.00 per acre above one acre
5.	Occupancy Permit	\$35.00

Applicants shall receive one re-inspection at a rate of \$15.00. The fee for any subsequent inspections shall be equal to the original permit fee.

6. Street Construction Inspection \$25.00 + \$5.00
per 100 lineal
feet of street”

4. That Section 1-2-112 of the Village’s Revised Code of Ordinances (“Village Code”), enumerating the duties of the Chief Building and Zoning Official, shall be amended to read as follows:

“ **1-2-112 DUTIES.** The enforcement of the Zoning Code (inclusive of the Building Code, Electrical Code, and Plumbing Code), Subdivision Code, and Property Maintenance Code is hereby vested in the Chief Building and Zoning Official of the Village of New Baden, Illinois. The Chief Building and Zoning Official shall administer and enforce these Codes, and in addition thereto, and in furtherance of said authority, he shall:

(A) Issue all Building Permits, Electrical Permits, Plumbing Permits, and Zoning Certificates, and make and maintain records thereof.

(B) Issue all Certificates of Occupancy, and make and maintain records thereof.

(C) Issue Building and Zoning Occupancy Permits as authorized by the Zoning Code.

(D) Conduct inspections of buildings, structures, and land to determine compliance with the Zoning Code and to notify in writing the person responsible for any violation found, indicating the nature of the violation and ordering the action necessary to correct it.

(E) Order the discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations, or structural changes, discontinuances of any illegal work being done; or shall take any other action authorized by statute or by the Zoning Code to ensure compliance with or to prevent violation of the provisions.

(F) Prepare and cause to be published on or before March 31st of each year, a map showing the existing zoning uses, divisions, restrictions, regulations, and classifications in effect on the preceding December 31st.

(G) Maintain permanent and current records of the Zoning Code, including, but not limited to, all maps, plats, amendments, special-use permits, planned building developments, variances, appeals, and applications therefore.

(H) Provide and maintain a source of public information relative to all matters arising out of the Zoning Code.

(I) Receive, file, and forward to the Plan Commission, all applications for amendments and special use permits, and other matters

upon which the Plan Commission is required to act under the Zoning Code.

(J) Receive, file, and forward to the Zoning Hearing Officer all applications for variance, appeals, and other matters upon which the Zoning Board of Appeals is required to act under the Zoning Code. Each application for variance, appeal, and other matter submitted to the Zoning Hearing Officer shall be accompanied by a report containing the applicable code provision(s) and findings of fact.

(K) Attend all public hearings conducted by the Zoning Hearing Officer and provide the Zoning Hearing Officer with the factual background of the application, the request sought by the applicant, and the relevant sections of the Zoning Code.

(L) Keep the Mayor, Village Board and Village Administrator advised of zoning activities by written report once each month, including statements of permits and certificates issued and orders promulgated.

(M) Have the authority to enter any non-residential structure at any reasonable time for the purpose of making inspections and performing duties under the Village Code when there is sufficient exterior evidence of deterioration or neglect to warrant interior inspection.

(N) Have the authority to enter and conduct interior inspection of residential property or structures for the purpose of determining the question of condemnation only upon application to, and issuance of an order by a court of competent jurisdiction authorizing such entry.

(O) Review and coordinate further review of all preliminary plats with the Village Administrator, Commissioner of Public Works, Village Engineer, the Plan Commission, and as necessary, the Village Board.

(P) Transmit and/or coordinate all improvement plan changes in writing to the subdivider/developer from the Village Administrator, Commissioner of Public Works, Village Engineer, and Plan Commission.

(Q) Review and coordinate the review of all final plats, including changes, before Village Board review/approval.

(R) Issue stop orders as necessary, and manage those stop orders issued by the Village Administrator, Commissioner of Public Works and Village Engineer or other Village Officials when they have determined that approved improvements are being constructed in violation of the Village Code.

(S) Assist the Village Attorney in pursuing actions authorized in Section 34-4-16 when a subdivider/developer fails to complete required improvements.

(T) The Chief Building and Zoning Official may request and shall receive so far as may be necessary in the discharge of his duties, the assistance and cooperation of the Chief of Police in enforcing orders, of the Village Attorney in prosecuting violators, and of other Village officials and officers.”

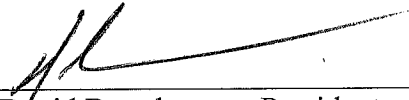
5. This Ordinance shall take full force and effect immediately upon passage by the Corporate Authorities

PASSED and APPROVED this 3rd day of January, 2011.

Yeas: Picard, Mastromatteo, Nielsen, Malina, Linthicum.

Nays: None.

Absent: Oster.



David Brandmeyer, President

ATTEST:



Teri Crane, Village Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF CLINTON/ST. CLAIR)

I, Teri Crane, Village Clerk of the Village of New Baden, in the Counties of Clinton and St. Clair and State of Illinois, do hereby certify that the attached and foregoing is a true and correct copy of that certain Ordinance now on file in my Office, entitled:

ORDINANCE NO. 849

**AN ORDINANCE ESTABLISHING THE OFFICE OF
ZONING HEARING OFFICER AND
DELEGATING AUTHORITY TO SUCH OFFICE**

which Ordinance was passed by the Board of Trustees of the Village of New Baden at a Regular Village Board Meeting on the 3rd day of January, 2011, at which meeting a quorum was present, and approved by the President of the Village of New Baden on the 3rd day of January, 2011.

I do further certify that the original Ordinance, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Village of New Baden, Illinois, this 3rd day of January, 2011.



Village Clerk