



## North Bay Village

Administrative Offices

1666 Kennedy Causeway, Suite 300 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: [www.nbvillage.com](http://www.nbvillage.com)

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### **APPLICATION FOR VARIANCE, INCLUDING EXTENSION OF AN UNEXPIRED VARIANCE AND/OR SPECIAL EXCEPTION APPROVAL**

Instructions: Submit this application, along with 15 sets of sealed plans (1 set 36"x24" and 14 11"x17" sets) and the required information and fee, to the Village Clerk's Office at 1666 Kennedy Causeway, Suite 300. Applications are due by 12:00 noon on the deadline date and must be complete to be accepted and place on the agenda. A sign will be posted on the property, and public hearings will be conducted by the Planning & Zoning Board and the Village Commission.

Site Address \_\_\_\_\_

Owner Name \_\_\_\_\_ Owner Phone # \_\_\_\_\_

Owner Mailing Address \_\_\_\_\_

Applicant Name \_\_\_\_\_ Applicant Phone # \_\_\_\_\_

(if different from Owner)

Applicant Mailing Address \_\_\_\_\_

Contact Person \_\_\_\_\_ Contact Phone # \_\_\_\_\_

Contact Email Address \_\_\_\_\_

Legal Description of Property \_\_\_\_\_

Existing Zoning \_\_\_\_\_ Lot Size \_\_\_\_\_ Folio Number \_\_\_\_\_

Project Description \_\_\_\_\_

Section of North Bay Village Code from which the Applicant is Seeking Relief \_\_\_\_\_

Variance Requested \_\_\_\_\_

Reason for Request \_\_\_\_\_

Mayor  
**Connie Leon-Kreps**

Vice Mayor  
**Jorge Gonzalez**

Commissioner  
**Dr. Richard Chervony**

Commissioner  
**Wendy Duvall**

Commissioner  
**Eddie Lim**

**APPLICATION FOR VARIANCE, INCLUDING EXTENSION OF AN UNEXPIRED  
VARIANCE AND/OR SPECIAL EXCEPTION APPROVAL**

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Mandatory Submittals (check that each item is included with this application):

- \_\_\_\_\_ Plans depicting work to be completed (including property survey)
- \_\_\_\_\_ Application fees

Optional Submittals:

- \_\_\_\_\_ Response to required findings
- \_\_\_\_\_ Signed consent letters from neighboring property owners
- \_\_\_\_\_ Optional plan versions for consideration by Village Commission

Applications are incomplete until all mandatory submittals have been received by the Village Clerk.

All requests for variances from the North Bay Village Code shall be considered at Public Hearings before the Village Commission. Notice of Hearing shall be given by publishing and posting on the property (which is the subject of the request), the time, the place and the nature of the hearing at least 10 days before the hearing. The Village Clerk shall certify that the petition is complete before the hearing is legally advertised. All applications shall be submitted to the Village Clerk on or before the deadline implemented by the Village.

All persons, firms, or corporations requesting a variance from the Village Commission necessitating the publication of notices in the newspaper, and all relative thereto, the payment of such money in advance to the Village Clerk shall be deemed a condition precedent to the consideration of such a variance request.

All new and substantial improvements must comply with the Florida Building Code, Department of Environmental Resource Management (DERM), and FEMA regulations.

I (We) the undersigned, am (are) the (owner, tenant, agent, attorney) (designate one) of the subject property herein described. I (We) acknowledge and agree that during the consideration of the application before the Planning & Zoning Board and staff of North Bay Village, no rights shall vest on behalf of the applicant, which would be enforceable against the Village until after a Public Meeting is held by the Village Commission and the Village Commission has voted favorable on the proposed request.

I (We) further acknowledge that I (We) have read and understand the conditions for appearance before the Planning and Zoning Board and the Village Commission pursuant to the Village Code Section 152.096. Any person submitting false information or misrepresenting in their presentation shall have all privileges granted to them by the Planning & Zoning Board and the Village Commission revoked.

Authorized Signature \_\_\_\_\_

Print Name \_\_\_\_\_

(In case of corporate ownership, the authorized signature shall be accompanied by a notation of the signer's position in the corporation and embossed with the corporate seal.)

Mayor <b>Connie Leon-Kreps</b>	Vice Mayor <b>Jorge Gonzalez</b>	Commissioner <b>Dr. Richard Chervony</b>	Commissioner <b>Wendy Duvall</b>	Commissioner <b>Eddie Lim</b>
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STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

by \_\_\_\_\_,

who is personally known to me or who has produced \_\_\_\_\_ as identification.

Notary Public Signature \_\_\_\_\_

Commission Number/Expiration \_\_\_\_\_

Mayor  
**Connie Leon-Kreps**

Vice Mayor  
**Jorge Gonzalez**

Commissioner  
**Dr. Richard Chervony**

Commissioner  
**Wendy Duvall**

Commissioner  
**Eddie Lim**

**APPLICATION FOR VARIANCE, INCLUDING EXTENSION OF AN UNEXPIRED  
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**Office Use Only:**

Date Submitted: \_\_\_\_\_

Fee Paid: \$ \_\_\_\_\_

Tentative Meeting Date: \_\_\_\_\_

Cash or Check  # \_\_\_\_\_

Date Paid: \_\_\_\_\_

Mayor  
**Connie Leon-Kreps**

Vice Mayor  
**Jorge Gonzalez**

Commissioner  
**Dr. Richard Chervony**

Commissioner  
**Wendy Duvall**

Commissioner  
**Eddie Lim**

### **Required Findings for Hardship Variance**

For variance requests made according to Section 152.097 of the North Bay Village Code, Staff will be reviewing the request according to the following required findings and will provide written responses to each finding in their report to the Village Planning & Zoning Board and the Village Commission. The Applicant also has the right to submit written responses to the required findings, which Staff will include in their report to the Village Planning & Zoning Board and the Village Commission.

- 1) Are there special circumstances and conditions which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings in the same zoning district? If so, what are they?
- 2) Were the special circumstances and conditions self-created by any person having an interest in the property?
- 3) How would the strict application of the provisions of this chapter deprive the applicant of the reasonable use of the land, structure, or building for which the variance is sought?
- 4) Would the strict application of this chapter be an unnecessary hardship for the Applicant?

Hardship shall be defined as follows:

Hardship, unnecessary. Arduous restrictions upon the uses of a particular property, which are unique and distinct from that of adjoining property owners. Granting of relief from an unnecessary hardship should not violate sound zoning principles, including considerations that: adjacent properties will not be substantially reduced in value, it is not granting a special privilege not to be enjoyed by others in similar circumstances, and the public interest is maintained, including following the spirit of this chapter and the comprehensive master plan. Invalid and nonjustifiable bases for pleading unnecessary hardship include but are not limited to:

- a) Loss of the "best" use of the land, and business competition.
  - b) Self-created hardships by the applicant's own acts.
  - c) Neighboring violations and nonconformities.
  - d) Claims of inability to sell the property.
  - e) General restrictions of this chapter.
- 5) Will the granting of this variance request confer on the Applicant any special privilege that is denied by this chapter to other land, structures, or buildings in the same zoning district?
  - 6) Is the requested variance the minimum variance that will make possible the reasonable use of the land, structure, or building?
  - 7) Would the granting of this variance be in harmony with the general intent and purpose of this chapter?
  - 8) Would the granting of this variance be injurious to the neighborhood or otherwise detrimental to public welfare?
  - 9) Is this variance request based exclusively upon a desire to reduce the cost of development?

### **Required Findings for Non-Hardship Variance**

For variance requests made according to Section 152.0971 of the North Bay Village Code, Staff will be reviewing the request according to the following required findings and will provide written responses to each finding in their report to the Village Commission. The Applicant also has the right to submit written responses to the required findings, which Staff will include in their report to the Village Commission.

- 1) Is the variance in harmony with the general appearance and character of the community?
- 2) Will the variance be injurious to the area involved or otherwise detrimental to the public welfare?
- 3) Is the improvement designed and arranged on the site in a manner that minimizes aerial and visual impact on the adjacent residences?

### **Required Findings for a Sign Variance**

For variance requests made according to Section 152.084 of the North Bay Village Code, Staff will be reviewing the request according to the following required findings and will provide written responses to each finding in their report to the Village Commission. The Applicant also has the right to submit written responses to the required findings, which Staff will include in their report to the Village Commission.

- 1) Does the sign variance request relate to a particular piece of the land?
- 2) Can the sign variance be granted without substantial detriment to the public good?
- 3) Do the benefits of the deviation outweigh any detriment?
- 4) Would the granting of the variance substantially impair the intent or purpose of the Village's Comprehensive Plan and/or Zoning Ordinance?

year, measured from the date of final Commission action, if no substantial construction or change of use has taken place in accordance with the plans for which the special use exception or variance was granted.

(Ord., passed 4-1-83)

§ 152.104 Exhaustion of remedies; court review.

(A) No person aggrieved by any zoning resolution order, requirement, decision, or determination of an administrative official or by any decision of the Planning and Zoning a Board may apply to the court for relief unless he has first exhausted the remedies provided for herein and taken all available steps provided in this subchapter. It is the intention of the Village Commission that all steps provided by this subchapter shall be taken before any application is made to the court for relief; and no application shall be made to the court for relief except from resolution adopted by the Village Commission pursuant to this subchapter.

(B) Zoning resolutions of the Village Commission shall be reviewed by the filing of a petition for writ of certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in accordance with the procedure and within the time provided by the Florida Appellate Rules for the review of the rulings of any commission or board. Such time shall commence to run from the date the zoning resolution sought to be reviewed is transmitted to the Village Clerk. For the purposes of a certiorari the Village Clerk shall make available for public inspection and copying, the record upon which each final decision of the Village Commission is based; however, the Village Clerk shall make a reasonable charge commensurate with the cost in the event the Village is able to and does furnish copies of all or any portion of the record. Prior to certifying a copy of any record or portion thereof, the Village Clerk or her designee shall make all necessary corrections in order that the copy is a true and correct copy of the record, or those portions requested, and shall make a charge as provided.

(Ord., passed 4-1-83)

§ 152.105 Permits, plans, models and specifications fees.

(A) *Permits.*

(1) No building shall be erected, constructed, altered, moved, converted, extended, or enlarged except in conformity with the provisions of the building and zoning regulations of the Village and the Florida Building Code, and where governed by Miami-Dade County or state laws, shall have the prior approval of the appropriate county or state official. The Building Official and Plan Examiner shall certify that the plans and specifications (submitted in accordance with division (B) of this section) meet all of the requirements of the above-mentioned regulations prior to issuance of a building permit.

(a) No temporary building permits are to be issued for the structure, based on incomplete plans, which leave open to question whether or not all regulations are being met.

(b) If the plans and specifications require variances or special use exceptions, such variances or special use exceptions shall have prior approval of the Village Commission at a public hearing. No permit shall be valid unless the Building Official has first received and reviewed the decisions of the Village Commission and determined that the complete plans are in conformance therewith.

(2) If charges are to be made after issuance of a building permit which affect the size, location, or type of use of the building, structure, or property, such changes shall be shown and submitted in corrected copies of the plans and specifications. The changes shall not be made in the building, structure, or property until the corrected plans and specifications have been certified by the Building Official as also having met all requirements of the regulations.

(3) No building permit lawfully issued by the Building Official prior to the effective date of these regulations or of any amend-

ments hereto, and which permit by its own terms and provisions is in full force and effect at said date, shall be invalidated by the passage of these regulations or any such amendment, but shall remain a valid permit, subject only to its own terms, provisions, ordinances, rules, and regulations appertaining thereto and in effect at the time of the issuance of the permit. However, all such permits shall expire not later than 60 days from the effective date of these regulations unless actual construction has begun and continued pursuant to the terms of the permit.

(B) *Plans and specifications.* All applications for a permit to erect, construct, alter, move, convert, extend, or enlarge a building or structure shall be accompanied by three sets of plan specifications, detailed and prepared in accordance with the requirements of the Florida Building Code, or as may be required by the Building Official and Plan Examiner. The drawings shall include a survey prepared by a registered land surveyor showing, at a scale of not less than  $\frac{1}{16}$ -inch to the foot, the lot lines, building or buildings and their location on the lot, and such other information as may be necessary to provide for the enforcement of these regulations. The drawings shall contain suitable notations indicating the proposed use of all land and buildings. A careful record of the original copy of such applications and the approved plans and specifications shall be kept in the office of the Village Clerk and a duplicate copy shall be kept in Village Hall at all times.

(C) *Site plan and model required.* For any proposed development or redevelopment within the Village other than a single-family residence, a site plan and an architectural model built to scale shall be required and furnish to the Village Manager, or his/her designee. Within 10 days prior to the Planning and Zoning Board public hearing, the applicant shall make available for viewing an architectural model and photographs depicting same. Said model shall be retrieved by the developer within 30 days following the final public hearing before the Village Commission, and the photographs depicting the model shall become a part of the public records. Said model shall dem-

onstrate the proposed structure as well as existing structures on either side. The applicant shall affirmatively demonstrate that all setbacks for the new structure shall not conflict with the existing or approved structure on either side of the proposed structure.

Approval of the site plan shall meet the requirements of § 152.095. The site plan shall include but not be necessarily limited to the following material, including conformance with all Dade County and state laws:

- (1) The title of the proposed project and the name of the site planner, engineer, architect, landscape architect, developer, and owner.
- (2) The north point, scale ( $\frac{1}{16}$  inch to the foot, or larger), and date of preparation of the site plan.
- (3) Existing and proposed zoning district boundaries.
- (4) Existing easements (with the owner ships thereof noted on the plan), property lines, streets, buildings, and other physical features in or adjoining the project.
- (5) Proposed streets, alleys, driveways, walkways, curb cuts, off-street parking spaces, loading areas, outdoor lighting systems, storm drainage, and sanitary sewer facilities.
- (6) Preliminary floor plans of typical floors and elevations of any proposed building according to a  $\frac{1}{16}$  inch scale.
- (7) Location, height, and type of all proposed buildings, structures, uses, signs, fences, walls, landscaping, and open space.
- (8) Tabular project summary, indicating the total acreage, plot area density, lot coverage, open space, and off-street parking spaces. If variances are being sought, the extent of those variances from the requirements of this chapter shall be included within the tabular summary.
- (9) Site plans for a building or buildings which contain more than two dwelling units, or more than 299 square feet of commercial or office space shall be re-

viewed by the Planning and Zoning Board and the Village Commission. In reviewing site plans for development, the Planning and Zoning Board and the Village Commission must consider and abide by the provisions of chapter 155 of the North Bay Village Code of Ordinances currently in effect. The review by the Planning and Zoning Board and Village Commission shall attempt to establish that the proposed development or redevelopment conforms to all applicable provisions of the building and zoning regulations of the Village and the Florida Building Code; and that the proposed development or redevelopment has a design and arrangement which:

- (a) Protects against and minimizes any undesirable effects upon contiguous and nearby property.
- (b) Provides sufficient off-street parking and loading facilities so that it will not be necessary to use the streets in the vicinity for this purpose.
- (c) Provides a sufficient setbacks, open space, and landscaping in order to protect and enhance the appearance and character of the neighborhood.
- (d) Can be accommodated by existing community roads, services, and utilities, or the necessary additions are provided by the developer.

The review of a site plan does not indicate or imply approval of the working drawings (plans) and specifications required for the building permit. Requests for variances shall require a separate public hearing.

(10) Administrative site plan modification.

- (a) An amendment to a site plan that has been approved by the Planning and Zoning Board and the Village Commission pursuant to Sections 152.095 and 152.105(C) may be approved by the Village Manager upon

recommendation of the Village Planner without further review or approval by any such body, as follows:

- (1) Any modification to the overall combination of unit types within the building(s) shown on the approved site plan or any increase in the total number of units, provided that the additional total number of units does not exceed five percent of the total number of dwelling units of the approved site plan and the resulting total number of units does not exceed the allowable density under North Bay Village's Code of Ordinances.
- (2) Any modification to increase the size of any units shown on the approved site plan provided that the modification is consistent and is not in violation of North Bay Village's Code of Ordinances. Further, the total floor area for the site plan modification shall not exceed ten percent of the approved site plan after deducting any increase in total floor area directly attributed to bringing unit sizes into compliance with the current minimum unit size set forth in North Bay Village's Code of Ordinances. Any increase in the number or in the size of units will be subject to review in order to determine if concurrency requirements are met.
- (3) Any modification to increase or decrease the floor-to-ceiling dimensions of any individual floor within the approved site plan, provided that the modification complies with North Bay Village's Code of Ordinances and does not result in a modification of the number of floors for the approved site plan.

- (4) Any modification to increase or decrease the number of parking spaces within the approved site plan made in order to conform off-street parking of the approved site plan to any modification of a nature described in subparagraphs (a)(1) or (a)(2), provided that the modification shall be substantially consistent with the approved site plan and not in violation of North Bay Village's Code of Ordinances or any applicable state or federal law.
- (5) Any modification to the footprint of any building shown on the approved site plan provided that the modification does not change the generalized location of the building(s) shown on the approved site plan nor conflict with buffering requirements and is not in violation of North Bay Village's Code of Ordinances.
- (b) Any modifications approved by the Village Manager upon recommendation of the Village Planner pursuant to this Section 152.105(C)(10) shall be subject to the following limitations:
- (1) Any modification to an approved site plan not expressly authorized in this subsection 152.105(C)(10) shall require review and approval in accordance with the requirements and procedures for review and approval of a new site plan, as set forth in Sections 152.095 and 152.105(C).
  - (2) Modifications to an approved site plan approved pursuant to this subsection 152.105(C)(10) shall take effect upon approval by the Village Manager, upon recommendation of the Village Planner.
  - (c) Courtesy notification of approved site plan modification review will be given to property owners subject to the requirements of subsection 152.096(A)(2), hearing and notices, of North Bay Village's Code of Ordinances.
- (11) Site plans approved in accordance with these regulations shall expire two years following final approval by the Village Commission. Such Site Plans may be granted no more than two one-year renewals subject to approval by the Village Commission. Site Plans already approved shall expire four years following final adoption of this ordinance. To avoid expiration of the Site Plans the applicant must apply for a full Building Permit within the time frames set forth above.
- (D) *Filing fees.*
- (1) All persons, firms, or corporations petitioning the Planning and Zoning Board, the Village Commission, and the Village Administration to process special requests shall be required to pay in advance all fees and expenses necessitating the public notification in the newspaper, and notices to property owners as provided in this Chapter.
  - (2) All persons, firms, or corporations applying for permits under the provisions of these regulations or amendments thereto, variances from these regulations, special use exceptions as required by these regulations in certain instances, or a change in the classification of a district or a portion thereof shall be required to pay in advance for all expenses relative thereto, in accordance with fee schedules adopted by the Village Commission. Permits for signs and other fees shall be in accordance with fee schedules established by the Village Manager.
  - (3) The payment of such money in advance to the Village Clerk shall be a condition precedent to the consideration of such petition, permit, or amendment.

(E) *Fees for copies of records.* The Village Clerk shall charge and collect fees for furnishing copies of plans, permits, and other records to the public, in accordance with a fee schedule established by the Village Manager.

(F) *Errors and violations.*

- (1) The issuance or granting of a permit or approval of plans or specifications shall not be deemed or construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter. No permit presuming to give the authority to violate or cancel the provisions of this chapter shall be valid except insofar as the work or use which it authorizes is lawful.
- (2) The issuance of a permit upon plans and specifications shall not prevent the Building Official from thereafter requiring the correction of errors in the plans and specifications or from preventing building operations being carried on there under when in violation of this chapter, or any ordinance of the Village.

(Ord., passed 4-1-83; Am. Ord. 84-17, passed 12-11-84; Ord. No. 02-13, § 1, 5-28-02; Ord. No. 2006-18, § 1, 11-8-06; Ord. No. 07-11, § 1, 9-11-07; Ord. No. 2008-07, § 1, 6-10-08; Ord. No. 2012-02, § 2, 4-10-12)

§ 152.106 Certificate of occupancy.

(A) No premises shall be used and no building hereafter erected or structurally altered shall be used, occupied, or changed in use until a certificate of occupancy and compliance has been issued by the Building Official stating that the building or premises complies with the South Florida Building Code and the provisions of these regulations. In the event there is a question as to the nature or legality of a use, the Building Official shall require affidavits and such other information as he may deem appropriate or necessary to establish the nature and legality of the use before issuance of a certificate of occupancy.

(B) No permanent electrical service will be permitted until a final certificate of occupancy has been issued.

(C) Whenever a request has been made to the Building Official for the issuance of a certificate of occupancy, it shall be accompanied by a certificate of compliance consisting of affidavits from the building contractor (or owner-builder) responsible for the building and the architect or engineer whose seal appeared on the original and all supplementary plans filed in support of the application. The affidavits by the architect or engineer and the building contractor (or owner-builder), respectively, shall state affirmatively that the plans and specifications and all changes thereto are in compliance with, and that the buildings or structures have been substantially completed in accordance with, the South Florida Building Code and this chapter or any variance thereto lawfully granted by the Village Commission.

(D) Temporary certificates of occupancy may be issued for commercial or multi-family structures for purposes of testing. No temporary certificate of occupancy may be issued for a single-family residence. No occupancy shall be permitted until a final certificate of occupancy has been issued.

(E) The Building Official shall not issue any certificate of occupancy for any new or remodeled or otherwise structurally altered building without first receiving the certificate of compliance as set forth in division (C) above. Upon the receipt of the certificate of compliance, it shall be examined by the Building Official.

(F) Following a physical examination by the Building Official, determination of compliance with all applicable codes and ordinances, and conditioned upon his written certification of the accuracy of the information contained in the affidavit supporting the certificate of compliance, the Building Official shall issue a certificate of occupancy.

(G) Any person submitting false information by affidavit in support of a certificate of compliance may receive the maximum punishment as provided by the Village Charter. Any certificate of occupancy issued upon information supplied therein shall be subject to revocation.

(H) No final inspection shall be made nor shall any certificate of occupancy be issued until all fees and charges due to the Village pertaining to the property are fully paid.

(Ord., passed 4-1-83)

§ 152.107 Interpretation and conflict.

(A) *Interpretation.* In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of the health, safety, morals, order, convenience, and general welfare of the Village.

(B) *Conflict.* It is not intended by these regulations to interfere with, abrogate, or annul any easements, covenants, or other agreement between parties; however, where these regulations impose a greater restriction upon the use of buildings or premises or upon the height of buildings, or require larger open spaces, yards, lot areas than are imposed or required by other ordinances, rules, regulations, easements, covenants, or agreements, the provisions of these regulations shall govern.

(Ord., passed 4-1-83)

§ 152.108 Validity.

If any section, paragraph, subdivision, clause, phrase, or provision of these regulations are adjudged invalid or held unconstitutional, this shall not affect the validity of these regulations as a whole, or any part or provisions thereof, other than the part so decided to be invalid or unconstitutional.

(Ord., passed 4-1-83)

§ 152.109 Repeal clause.

All county ordinances, resolutions, or special laws applying only to the Village; any general laws which the Village Commission is authorized by the Charter to supersede, nullify, modify, or amend; or any part of any such ordinance, resolution, or law in conflict with any provision of this chapter, is hereby repealed.

(Ord., passed 4-1-83)

§ 152.110 Filing fees and cost recovery.

A. *Consultants.*

1. The Village Manager and/or his/her designee as part of the review of any development application presented to the Village, may refer any such application to such engineering, planning, legal, technical, environmental, or other professional(s) consultants employed or retained by the Village ("consultant(s)") as the manager shall deem reasonably necessary to enable him/her to review such application as required by law.
2. Charges made by such consultants shall be made in accordance with the charges customarily made for such services in Miami-Dade County, and pursuant to an existing contractual agreement by and between the Village and the consultant.
3. The consultant's services shall be charged at the hourly rates specified in the particular consultant's agreement with the Village. The Village shall provide the applicant with a copy of the consultant's invoice for any services charged against the applicant's cost recovery deposit.

B. *Cost recovery established.*

1. The applicant shall reimburse the Village for the actual cost of Consultant or employed professional review services pursuant to the cost recovery procedures and requirements of subsection C below.
2. Payment in full by the applicant to the Village of the Village's actual expenditures for review of the application shall be a written condition of any development order. These cost recovery deposits fees shall be in addition to any and all other fees required by law, rule, or regulation of the Village Code.

C. *Cost recovery procedures.*

1. At the time of submission of any application for development approval, the applicant shall pay the minimum cost recovery deposit fee outlined in the development approval fee and cost recovery deposit

schedule set forth in this section, which funds shall be deposited into a cost recovery escrow account established for this purpose. Withdrawals shall be made to reimburse the Village for the cost of consultant services.

2. The Village shall provide the applicant with a copy of the consultant's invoice for any services charged against the applicant's cost recovery escrow account.
3. When the balance in the Village's cost recovery escrow account is reduced to one-half (1/2) of its initial amount, the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such amount is not replenished within 30 calendar days after the applicant is notified, in writing, of the requirement of such additional deposit, the Village may shall suspend its review of the application and the application shall be deemed withdrawn.
4. If an application is suspended due to nonpayment of the additional escrow deposit specified in subsection 3, a resubmission fee shall be paid and the cost recovery deposit shall be replenished to a

minimum of one-half of the original deposit amount before the application will be reviewed.

5. Prior to the scheduling or noticing of any board or commission hearing, the Village Manager's review of the application shall be complete and the cost recovery escrow account balance shall be replenished to equal at least one-half of the initial deposit amount.

*D. Review of consultant's charges.* Upon a determination by the Village Manager or his/her designee that there has been a miscalculation concerning a consultant's fees, the Village Manager or his/her designee is authorized to review the charges and issue a credit or refund a portion of the cost recovery deposit.

*E. Schedule of fees and cost recovery deposits.* No new development application shall be accepted and no building permit or certificate of occupancy shall be issued for any property until all application fees, cost recovery deposits and outstanding fees and fines related to the property (including fees related to any previous development proposal applications on the property), have been paid in full. All fees and cost recovery deposits shall be paid according to the development approval fee and cost recovery deposit schedule below:

**Development Approval Fee and Cost Recovery Deposit Schedule**

Type of Request	Filing Fee	Cost Recovery Deposit*
Land use plan map/comprehensive plan text amendments	\$2,000.00	\$10,000.00
Rezoning or code text amendment	\$2,000.00	\$10,000.00
Site plan review		
Residential - 1 unit, existing commercial	\$1,000.00	\$2,000.00
Residential over 1 unit, new commercial	\$1,000.00 BASE	\$6,000.00
(BASE + SIZE/UNIT FEES)		
SIZE/UNIT FEES		
Size of building (non-residential, square feet) Fee		
399 and under	\$700.00	
400-19,999	\$1,100.00	
20,000-99,999	\$2,500.00	
100,000 and over	\$3,500.00	
Number of units (residential) Fee		
2-19	\$900.00	
20-100	\$1,500.00	

Type of Request	Filing Fee	Cost Recovery Deposit*
101-199	\$2,500.00	
200 and over	\$3,500.00	
<b>Site plan modification (no commission review)</b>		
Residential - 1 unit, existing commercial	\$600.00	\$1,000.00
Residential over 1 unit, new commercial	\$600.00	\$4,000.00
<b>Site plan modification (commission review)</b>		
Residential - 1 unit, existing commercial	\$1,000.00	\$2,000.00
Residential over 1 unit, new commercial	\$1,000.00	\$6,000.00
<b>Site plan renewal</b>		
Residential - 1 unit, existing commercial	50% of original filing fee	\$1,000.00
Residential over 1 unit, New Commercial	50% of original filing fee	\$2,000.00
Dock waiver	\$300.00	
Alcohol variance	\$600.00	
<b>Variances (per variance)</b>		
Residential - 1 unit non-use variances	\$100.00	
Residential - 1 unit, existing commercial	\$200.00	\$1,000.00
Residential over 1 unit, new commercial	\$600.00	\$2,000.00
Sign Variance	\$600.00	
<b>Special Use Exception</b>		
Residential - 1 unit, existing commercial	\$600.00	\$2,000.00
Residential over 1 unit, new commercial	\$600.00	\$4,000.00
<b>Conditional Use</b>		
Residential - 1 unit, existing commercial	\$600.00	\$2,000.00
Residential over 1 unit, new commercial	\$600.00	\$4,000.00
Unusual and new uses	\$600.00	\$4,000.00
Plat	\$1,000.00	\$10,000.00
Waiver of Plat	\$1,000.00	\$4,000.00
Appeals of Administrative Decision	\$600.00	\$2,000.00

\*The applicant is responsible for the actual cost of professional review services including but not limited to: engineering, planning, legal, technical, environmental, etc. These review costs shall be deducted from the cost recovery deposit. Depending on the level of expenses, the applicant shall be required to replenish the cost recovery deposit (section 155.110 C.3.) or if the cost recovery deposit is not entirely expended, the remaining balance will be refunded to the applicant (section 155.110 I.).

Note: In addition to application fees and cost recovery deposits, advertising and mailing costs shall be paid by the applicant separately.

F. *Additional review fees.* The following fees are required as part of the review process in addition to required filing fees and cost recovery deposits:

- (1) Advertising; and
- (2) Mailing costs.

G. *Subsequent review and resubmission fees.*

- (1) A resubmission fee shall be required to be submitted by the applicant as specified in this section.

- (2) If an application is deemed incomplete, is withdrawn prior to the hearing by the board or commission, is deemed withdrawn for failure to respond to a request for information necessary for review, or suspended for nonpayment of required additional cost recovery fees within the required timeframe, any subsequent sub-

mission shall be accompanied by a resubmission fee of 50 percent of the original application filing fee.

- (3) Should the project be substantially changed or modified so that, in the opinion of the Village Manager or his/her designee it represents a new project on the same property, the resubmission fee shall be equal to the original filing fee appropriate to the particular project.
- (4) If the applicant is required to resubmit plans or supplement the application after the Village's initial review, in addition to any required additional cost recovery deposits, any resubmittal shall be accompanied by a minimum review fee of \$100.00.

H. *Minimum review fee.* The minimum fee for application and plan review shall be no less than \$100.00.

I. *Refund.*

- (1) *Fees.* All fees shall be deemed nonrefundable unless the refund request has been received prior to administrative review or public advertisement.
- (2) *Cost recovery escrow account.* Upon final approval or denial of an application, expiration of any applicable appeal period, and payment of all consultant charges, the Village shall refund to the applicant any funds remaining in the cost recovery escrow account.

(Ord. No. 2009-01, § 1, 1-13-09; Ord. No. 2012-02, § 2, 4-10-12)

§ 152.110.01 Reserved.

*Editor's note*—Ord. No. 2012-02, § 2, adopted April 10, 2012, amended the Code by repealing former § 152.110.01. Former § 152.110.01 pertained to escrow account, and derived from Ord. No. 2009-01, adopted January 13, 2009.

**SECTION 152.111 ADULT ENTERTAINMENT**

§ 152.111.01 Purpose; findings and authority.

(a) *Purpose.* In the development and enforcement of this section, it is recognized that there are adult entertainment uses, which because of their

very nature are recognized as having serious objectionable characteristics, particularly when several of them are concentrated in any given locations thereby having a deleterious effect upon the adjacent business and residential areas. It is desirable, therefore, to protect the well-being of the youth of the Village from objectionable operational characteristics of these adult entertainment uses by locating adult oriented activities away from residential areas and public facilities used frequently by minors such as schools, religious facilities, parks, libraries, playgrounds and day care centers. The Village finds that, just as advertising is designed to stimulate one's appetite for desired goods and services, an overabundance or preoccupation with sexual displays or materials arouses the appetites of those so preoccupied, and encourages criminal sexual behavior.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor the effect of this Section to:

- (a) Inhibit freedom of speech or the press; or
- (b) Impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials; or
- (c) Restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or
- (d) Deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

This section balances the legitimate governmental purposes of the Village against the above-described constitutional rights, by imposing incidental, content-neutral place, time, and manner regulations of adult entertainment establishments without limiting alternative avenues of communication. The special regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this Section.

(b) *Findings.* Based on the evidence and testimony presented before the Village Commission and on the findings incorporated in (i) "Survey of Texas Appraisers - Secondary Effects of Sexually-

Oriented Businesses on Market Values" study by Connie B. Cooper, FAICP and Eric Damian Kelly, FAICP in association with David C. Keuhl, Ph.D. and Shawn Wilson, MAI (2008)(Texas); (ii) "Crime-Related Secondary Effects - Secondary Effects of "Off-Site" Sexually Oriented Businesses" study by Richard McCleary, Ph.D. in association with Alexi Alexander, J.D., Larry Bush, M.A., and Mark Vasquez, B.A. (2008)(Texas); (iii) "Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report To The City Attorney" by Richard McCleary, Ph.D. (2007)(Los Angeles, California); (iv) "Survey of Findings and Recommendations of Sexually Oriented Businesses" by Eric Damian Kelly, Ph.D. FAICP and Connie B. Cooper, FAICP (August 2002)(Toledo, Ohio); (v) "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver," by the Zoning Administration, Office of Planning and Development, Department of Public Safety, Department of Excise and Licenses, Assessor's Office, and in consultation with the City Attorney's Office, Denver, Colorado (January 1998); (vi) "Sexually Oriented Business Ordinance Revision Committee Legislative Report, Houston, Texas (January 7, 1997); (vii) "Adult Use Study," by the Newport News Department of Planning and Development, Newport News, Virginia (March 1996); (viii) "Report to American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses," by Peter R. Hecht, Ph.D. of the Environmental Research Group (March 31, 1996); (ix) "Adult Entertainment Study" by Department of City Planning, City of New York (November 1994); (x) The "Adams County Nude Entertainment Study" by the Adam's County Sheriffs Department (1991)(Colorado); (xi) "Effects of Adult Entertainment Businesses on Residential Neighborhoods," by the Department of Planning, Research and Development, City of El Paso, TX (Sept. 26, 1986); (xii) "NLC Summaries of "SOB Land Use" Studies, Crime Impact Studies by Municipal and State Governments on Harmful Secondary Effects of Sexually-oriented Businesses," National Law Center for Children and Families, 1991, 1994, 1996, 1997, 1999, 2000, 2001, 2002, 2005; the Village Commission finds as follows:

- (1) Establishments exist or may exist within the Village where books, magazines, motion pictures, videos, prints, photographs,

periodicals, records, novelties, and devices that depict, illustrate, describe, or relate to specified sexual activities are possessed, displayed, exhibited, distributed, and sold.

- (2) Establishments exist or may exist within the Village where:
  - (a) The superficial tissues of one person are manipulated, rubbed, stroked, kneaded, or tapped by a second person, accompanied by the display or exposure of specified anatomical areas:
  - (b) Dancers, entertainers, performers, or other individuals, who, for forms of commercial gain, perform or are presented while displaying or exposing specified anatomical areas: or
  - (c) Lap dancing occurs.
- (3) The activities described in subsections (1) and (2) occur at establishments for the purpose of making a profit and, as such, are subject to regulation by the Village in the interest of the health, safety, and general welfare of Village residents.
- (4) The competitive commercial exploitation of such nudity and seminudity is adverse to the public's interest, quality of life, tone of commerce, and total community environment.
- (5) The commercial exploitation of nudity and seminudity consists of the use of nude and seminude entertainment in connection with or for the promotion of the sale of goods or services, and the receipt of money by the person engaging in nude or seminude entertainment in exchange for or as consideration for nude or seminude performance by such individuals.
- (6) The commercial exploitation of nude and seminude acts, exhibitions, and nude entertainment occurs frequently at commercial establishments either selling or allowing consumption of alcoholic beverages on the premises.