

# Article XI. Zoning Board of Appeals

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## A. Creation, Appointment and Organization.

A Zoning Board of Appeals shall be maintained and shall operate in accordance with Sections 267 and 267-a, Article 16 of the New York State Town Law. Said board shall consist of five (5) members appointed by the Town Board for staggered terms of five (5) years. The Town Board shall annually designate the Chairman of the Board of Appeals, who shall serve at the pleasure of the Town Board. The Board of Appeals shall annually designate its Secretary. Said Board may prescribe reasonable rules, in addition to those provided herein, for the conduct of its affairs, subject to the approval of the Town Board. In the absence of a Chairman, the Board of Appeals may designate a member to serve as acting chairman. No person who is a member of the Town Board or Planning Board shall be eligible for membership on such Board of Appeals. In accordance with New York State Town Law, all Board of Appeals members shall complete a minimum of four hours of training per year, as a condition to reappointment to said Board, in a manner prescribed by the Town Board and shall also complete such other training and continuing education courses as may be prescribed by State laws, rules and regulations. The provisions set forth in Section 267 of the Town Law with regard to vacancies in office, removal of members, and alternate members are incorporated herein and shall apply to the Board of Appeals. [\[Back\]](#)

## B. Powers and Duties.

The Zoning Board of Appeals shall have all the powers and duties prescribed by Section 267, Article 16 of the Town Law and by this Zoning Law, which are more particularly specified as follows:

1. **Orders, Requirements, Decisions, Interpretations and Determinations.** The Zoning Board of Appeals may reverse or affirm, wholly or partially, or may modify the order, requirement, decision, interpretation or decision appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made by the administrative official, i.e. the Zoning Enforcement Officer or Code Enforcement Officer, charged with the administration and enforcement of this Zoning Law, and to that end shall have all the power of the administrative official from whose order, requirement or decision the appeal is taken.
2. **Use Variances.** The Zoning Board of Appeals, upon appeal from the decision or determination of the Administrative Official, shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this Zoning Law.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable regulations and restrictions imposed by the Zoning Law have

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caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the Zoning Law for the particular district where the property is located:

- a. That the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;
- b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- c. That the requested use variance, if granted, will not alter the essential character of the district or neighborhood; and
- d. That the alleged hardship has not been self-created.

The Zoning Board of Appeals, in the granting of a use variance, shall grant the minimum variance that is deemed necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3. **Area Variances.** The Zoning Board of Appeals, upon appeal from the decision or determination of the Code Enforcement Officer or Zoning Enforcement Officer shall have the power to grant area variances.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board of Appeals shall also consider each of the following factors:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
- b. Whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance.
- c. Whether the requested area variance is substantial.
- d. Whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
- e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in the granting of an area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. **Non-conforming Uses.** To review any request for change of a non-conforming use, as required by Article XIII this Zoning Law, and to determine whether the intended use is a similar or more restrictive use. [\[Back\]](#)

### C. Procedure.

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In its quasi-judicial role, the Zoning Board of Appeals shall act in strict accordance with the procedure specified by Section 267-a of the Town Law and this Zoning Law.

1. **Meetings.** Meetings shall be held at the call of the Chairman or at such other times as the Zoning Board of Appeals may determine. A quorum shall consist of a simple majority, i.e. three (3) of the members, but in order to reverse a decision of the Zoning enforcement Officer or authorize a variance, an affirmative vote of at least three (3) members shall be required. An affirmative vote of a majority plus one, i.e. at least four (4) members, shall also be required if the action taken by the Zoning Board of Appeals is contrary to an advisory recommendation received from the Dutchess County Department of Planning and Development under the provisions of Section 239 of the General Municipal Law. The Board shall keep accurate minutes of its proceedings documenting fully all findings and showing the vote of each member upon each question and shall keep records of its examination and other official actions. All meetings of the Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law.
2. **Application and Fee.** All appeals and applications made to the Zoning Board of Appeals shall be in writing, on forms prescribed by the Board, within sixty (60) days of the filing of the decision, determination or order of the official appealed from, as set forth in Article XIV of this Zoning Law, and shall be accompanied by the applicable fee in accordance with the fee schedule annually reviewed and established by the Town Board. Every appeal or application shall refer to the specific provision of the Zoning Law or Uniform Code that is involved and shall precisely set forth either the interpretation that is claimed or the details of the variance or other relief that is applied for and the ground on which it is claimed that such variance or other relief should be granted. Each application shall also be accompanied by a short or full Environmental Assessment Form as required by the Board of Appeals pursuant to SEQR, Article 8 ECL and Title 6 Part 617 NYCRR.
3. **Stays.** An appeal shall stay all proceedings, in accordance with the provisions of Article XIV of this Zoning Law.
4. **Public Notice and Hearing.** The Board of Appeals shall fix a reasonable time and place for a public hearing on any such appeal or application. The appellant shall be given notice of the hearing date and of the fact that at such hearing he or she shall appear in person or be represented by attorney or other agent. Any other interested party may appear at such public hearing in person or be represented by attorney or other agent, or submit comments in writing for receipt prior to, or at the time of, the public hearing. The Board of Appeals shall additionally provide notice as follows:
  - a. By publishing at least five (5) calendar days prior to the date thereof a legal notice in the official newspaper, or paper of general circulation in, the Town.
  - b. In any application or appeal for a variance, by requiring that the Secretary of the Board of Appeals provide notice at least five (5) calendar days prior to the date thereof of the substance of every appeal for a variance together with a notice of the hearing thereon by certified mail to the owners of all property abutting, or directly opposite, that of the applicant and to all other owners within five hundred (500) feet or such additional distances as the Board of Appeals may deem advisable, of the application. Compliance with this notification procedure shall be certified to by the Secretary and the Town shall

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- charge the applicant either a flat rate or a statement amount per notice for satisfying this requirement.
- c. The cost of any such notification shall be borne by the appealing party and paid to the Board prior to the hearing of such appeal.
  - d. The names and addresses of owners notified shall be taken as such appeal on the last completed tax roll of the Town.
  - e. Provided that there has been substantial compliance with this provision, failure to give notice in exact conformance herewith shall not be deemed to invalidate an action taken by the Board of Appeals in either granting or denying a variance from a specific provision of this Zoning Law.
  - f. If the land involved in the appeal lies within five hundred 500 feet of the boundary of any other municipality, the Secretary of the Board of Appeals shall also submit at least five (5) calendar days prior to the public hearing to the municipal clerk of such other municipality or municipalities a copy of the notice of the substance of every appeal, together with a copy of the official notice of such public hearing.
5. **Required Referrals.** A full statement of any appeal that meets the specific referral requirements of Sections 239(l) and 239(m) of the General Municipal Law shall also be referred prior to the public hearing to the Regional State Park Commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal and to the Dutchess County Department of Planning and Development for its review. No action shall be taken by the Board of Appeals until an advisory recommendation has been received from said County Planning and Development Department or thirty (30) calendar days have elapsed since the Planning and Development Department received such full statement. In the event that the County Planning Board recommends disapproval of the requested variance or the attachments of conditions thereto within such time period or at a later date prior to final action by the Zoning Board of Appeals, the Board of Appeals shall not act contrary to such recommendation except by a vote of a majority plus one (1) of all the members after the adoption of a resolution fully setting forth the reasons for such contrary action. Within thirty (30) days after such final action, the Board of Appeals shall file a report of the final action it has taken with the County Planning Board. The application or appeal for a variance shall be referred prior to the public hearing to the Planning Board for its review and recommendations. No action shall be taken by the Board of Appeals until an advisory recommendation has been received from said Planning Board or thirty (30) calendar days have elapsed since the Planning Board received such application or appeal for a variance.
6. **Decisions.** Every decision of the Zoning Board of Appeals on an appeal or request shall be made within sixty-two (62) calendar days of the close of the hearing by the Board, shall be recorded in accordance with standard forms adopted by the Board and shall fully set forth the circumstances of the case and contain a full record of the findings on which the decision is based including record of compliance with the applicable provisions of SEQR, Article 8 ECL and Title 6 Part 617 NYCRR. Every decision shall be by resolution of the Board, with such decision being filed in the Office of the Town Clerk within five (5) business days thereof and a copy mailed to the applicant. The board shall also notify the Code Enforcement Officer and Zoning Enforcement Officer within five (5) business days of the decision, and shall additionally

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notify the Secretary of the Planning Board, and any affected municipality given notice of hearing of its decision in each case. If applicable, a report on the action taken shall also be filed within seven (7) calendar days thereof with the Dutchess County Department of Planning and Development. A copy of each decision should also be forwarded by the Town Clerk to the Town Assessor's Office to be included in the file for the subject property, but failure to forward the decision to the Assessor shall not, in any event, affect the validity of the Zoning Board of Appeals' decision.

7. **Attachment of Conditions.** The Zoning Board of Appeals shall, in the granting of both use and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of such time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Zoning Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
8. **Expiration of Approval.** Unless construction or use is diligently commenced within one (1) calendar year from the date of the granting of a variance, such variance shall become null and void without further hearing or action by the Zoning Board of Appeals.
9. **Strict Construction.** All provisions of this Zoning Law pertaining to the Zoning Board of Appeals shall be strictly construed. The Board of Appeals shall act in full conformity with all provisions of law and of this Zoning Law and in strict compliance with all limitations contained therein, provided, however, that if the procedural requirements set forth in this Zoning Law have been substantially observed, no applicant or appellant shall be deemed deprived of the right of application or appeal. [\[Back\]](#)

### D. Relief from Decisions.

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Laws and Regulations of the State of New York. Such proceeding shall be governed by the specific provisions of Article 78, except that the action must be initiated as therein provided within thirty (30) calendar days after the filing of the Board's decision in the Office of the Town Clerk. [\[Back\]](#)

### E. Rehearing.

A motion for the Board of Appeals to hold a hearing to review any order, decision or determination of the Board not previously reviewed may be made by any member of the Board. A unanimous vote of all members of the Board is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing, the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote, provided that the Board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby. [\[Back\]](#)

### F. Other Provisions of Town Law Section 267-a.

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All other provisions of Section 267-a of the Town Law with regard to Zoning Board of Appeals procedure, not set forth herein, are incorporated herein by reference and shall apply to the Zoning Board of Appeals. [\[Back\]](#)