

Department of State
Local Government

ZONING BOARD OF APPEALS OVERVIEW

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Introduction


- Zoning
 - Zoning Board of Appeals (ZBA)
 - Zoning Enforcement Officer (ZEO)
 - Appellant
- Interpretations
- Use variances
 - Proof of unnecessary hardship

- Area variances
 - Individual benefit vs. community detriment considerations
- Procedures
 - SEQRA
 - Meetings & hearings
 - County referral
 - Rehearing
- Decisions, filing & findings

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Zoning



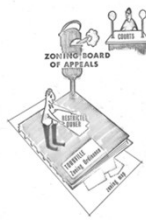
- Goal: avoid incompatible land uses
- Regulates:
 - Land use
 - Density
 - Placement of structures on site
- Divides municipality into districts
- Optional

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Zoning requires a safety valve

- Municipalities with zoning must have zoning board of appeals
- ZBA is a “buffer” for aggrieved applicants between decisions of zoning enforcement officer & State supreme court



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Zoning enforcement officer

- Administrative official charged with enforcement of zoning code
 - Renders initial decision regarding conformity with zoning
 - Cites violations of zoning code
- Municipal official solely designated as ZEO, or official with dual responsibilities
 - Municipal planner
 - Code enforcement officer
 - Other

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Statutory authority

	Town Law	Village Law	General City Law
Membership	§ 267	§ 7-712	§ 81
Procedure	§ 267-a	§ 7-712-a	§ 81-a
Variances	§ 267-b	§ 7-712-b	§ 81-b

- Statutes online at:
<http://public.leginfo.state.ny.us/navigate.cgi>
- Or in the DOS Publication: Guide to Planning and Zoning Laws of New York State
<https://dos.ny.gov/guide-planning-and-zoning-laws-new-york-state>

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ZBA members are public officers



- Appointing authority
 - Town board
 - City mayor
 - Village mayor with approval of trustees
- Number of members
 - Three or five (unless still have seven)
 - Terms equal to number of members
 - Staggered expiration
- Oath of office must be filed

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Qualifications for membership

- At least 18 years old
- United States citizen
- Resident of local municipality
 - Village members can be on town or village boards
- Governing board members may not serve on the ZBA



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State training requirements

- Annual 4 hours minimum
 - Excess hours may carry over
 - Failure to comply
 - Does not void decisions
 - Ineligibility for reappointment
- Governing board approves and tracks training (or designates municipal clerk, for example)
 - Variety of sources & formats
 - Requirements may be waived or modified by resolution, if in best interest of municipality

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Alternate member appointment

- Local Governing board sets appointments:
 - Can set number of alternates
 - Can set terms of office for any time length
- NY statute allows for alternates to serve for conflicts of interest only
- For any other reason (i.e. quorum), local law or ordinance needed to supersede state law

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Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the board should select an acting chair
- Possible duties:
 - Presides at meetings & hearings
 - Supervise agenda preparation
 - Liaison with governing board
 - Sign official documents
 - Supervise filing of documents



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Conduct and ethics

- Members may be removed from office for “cause”
- Municipality may specify reasons for removal in local law
 - Poor attendance
 - Continued inappropriate behavior
 - Failure to receive training
- Governing board must hold public hearing before removing member for cause

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Powers & Duties	
Appellate Jurisdiction	Original Jurisdiction
<ul style="list-style-type: none"> • All ZBAs <ul style="list-style-type: none"> ◦ Interpret zoning regulations ◦ Issue or deny appeals for variances 	<ul style="list-style-type: none"> • Some ZBAs <ul style="list-style-type: none"> ◦ When delegated by governing board <ul style="list-style-type: none"> ▪ Special use permits
NYS statute specifies Planning Board perform subdivision review	
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Appeals	
<ul style="list-style-type: none"> • ZEO must first act based on zoning regulations to: <ul style="list-style-type: none"> ◦ Grant permit ◦ Deny permit ◦ Issue citation for violation or take another enforcement action 	<div> Exception: <ul style="list-style-type: none"> • Direct appeal for area variance within applications: <ul style="list-style-type: none"> ◦ Site plan review ◦ Subdivision review ◦ Special use permit </div>
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Direct appeal	
<ul style="list-style-type: none"> • Direct appeal to ZBA for lots/projects that do not meet dimensional requirements of zoning • For subdivisions, ZBA <u>shall</u> request written recommendation from Planning Board 	<div>  <p><i>Example: Relief from minimum frontage on a curved street</i></p> <div> General City Law § 33(6) Town Law § 277(6) Village Law § 7-730(6) </div> </div>
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Appellant must have standing



- One denied permit or cited for violation
- Third party to be harmed by ZEO's decision
- A municipal "officer, department, board or bureau"

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When to file appeal

- Within 60 days of ZEO filing action
 - Exception: Third parties must file within 60 days from date they should have known or could have knowledge of ZEO's action
 - File notice of appeal by letter if no ZBA form exists
 - File copies with ZEO & ZBA

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Appeal "stays" enforcement proceedings



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INTERPRETATIONS

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Appeal for interpretation

Appellant believes ZEO incorrectly applied the law

Common areas of interpretation:

- Definitions
- Method of taking measurements

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Basis for interpretation decisions

Without concise definitions, board must come to consensus on what they think term or regulation means

- Past decisions on same regulations or similar facts
- Minutes, hearing comments & other records which reveal governing board's intention when zoning was adopted or amendment made
- Ordinary meaning of terms, if term is undefined

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Cited, but no definition

- “Rave” style music events new to armory
- “Auditoria” permitted use in district although not defined in Albany’s zoning
- BZA relied on its limited interpretation of auditorium definition that used “fixed seating” (use akin to “nightclub” in zoning)
- Appellate Division ruled City must define “auditoria” in petitioner’s favor

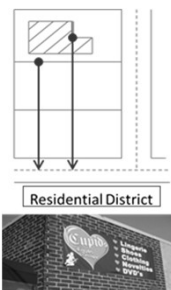


Washington Avenue Armory v. City of Albany

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Measurement for adult use permit



- Minimum “500’ radius from residential area” for adult uses
- Begin measurement from property line or building entrance
 - Appellate Division ruled
 - No statutory requirement
 - ZBA entitled to deference

Cupid's Video Boutique v. Town of Babylon ZBA

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USE VARIANCE

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To use land for a purpose not allowed by zoning

Alternative:
Rezone
property



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Use variance test

The
“burden of
proof” is
on the
applicant

- No reasonable return
- Unique circumstances
- No self-created hardship
- No alteration to essential neighborhood character

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1. No reasonable return

- Applicant must demonstrate the land is not capable of making a reasonable return with:
 - Any permitted use
 - A current lawful nonconforming use
 - Any use currently allowed by previous use variance

ZBA must consider property as a whole, not just the portion which is the subject of the application

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Reasonable rate of return

- No hard & fast numbers
 - Depends on particular facts of application
- ZBA determines
 - They do not have to agree with expert's opinion
 - *Petruzzelli v. Zoning Bd of Appeals of the Village of Dobbs Ferry*, 181 A.D.2d 825 (2d Dept. 1992)



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2. Unique circumstances

- Parcel is only, or one of very few, affected to the extent zoning would create a hardship
- “Uniqueness of land” causing plight, not “uniqueness of the plight of the owner”



Other circumstances:

- Physical features
- Historic or architectural features
- Adjacent uses

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3. Self-created hardship

Examples:

- Request relief from restrictions which existed at time of sale;
- Owner bound by zoning restrictions, even without knowledge of them;
- Spending money on project not allowed by zoning



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4. Neighborhood character



- Is proposed use consistent with existing development?
- Is there significant adverse impact on neighborhood or community?

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Pre-existing nonconforming uses



- Legally existed prior to current zoning
- Use variance not needed to continue, but needed for expansion
 - Must prove no reasonable return on allowed uses and nonconforming uses
- Not necessarily permanent (abandonment, amortization)

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AREA VARIANCE

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Area variance

To vary from dimensional requirements of zoning regulations

Example:

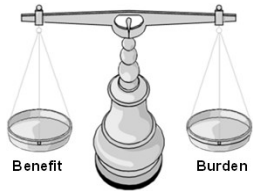
- Property needed area variance for relief from setback requirements to construct driveway too close to lot line



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Area variance test



- Change to neighborhood character
- Substantiality of the request
- Effect on physical or environmental conditions
- Alternatives not requiring a variance
- Is the situation self-created?

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1. Change to neighborhood character

Would undesirable changes be eliminated with conditions imposed?



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2. Alternatives not requiring variance



Consider
placing addition
in rear instead
of side



Applicants should present reasons for choosing one alternative over another:

- ✓ Better view
- ✓ Better internal pattern
- ✓ Cheaper constructions
- ✓ Better overall aesthetics

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3. Substantiality of request

- Amount of variance requested
- Magnitude of variance requested



5' vs. 50' ?

5' of a 10' setback
or
50' of a 300' frontage?

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4. Physical or environmental impacts



Examples:

- Blocked views
- Drainage problems
- Impacted wetlands
- Parking shortages

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5. Is situation self-created?



If so, the owner is not necessarily precluded from being granted an area variance.

Examples:

- Shed needs setback relief because of substandard sized lot
- Addition begun in violation of height restrictions

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Conditions



- Clearly specify conditions imposed
- Must be reasonably related to the impact of proposal being considered
- Nexus

"Such conditions might properly relate 'to fences, safety devices, landscaping, screening, and access roads related to period of use, screening outdoor lighting and noises... incidental to comfort, peace, enjoyment, health, or safety of the surrounding area.'"

St. Onge v. Donovan, 71NY2d 507, 516 (1988)

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Grant minimum variance necessary

Board need not grant or deny variance request as submitted:

"The Board of appeals, in the granting of... variances, 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."

General City Law § 81-b
Town Law § 267-b
Village Law § 7-712-b

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PROCEDURES

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Board rules of procedures

To be binding, board rules of procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:



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State Environmental Quality Review Act

- Board determines environmental impacts if variance were granted
- Evaluate potential environmental impacts prior to decision

Type II classification ends SEQR process

Examples:

- Interpretations
- Setback relief

SEQR homepage: <https://www.dec.ny.gov/permits/357.html>

SEQR EAF Mapper: <https://gisservices.dec.ny.gov/eafmapper/>

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Open meetings

- Notice to media
 - Post in conspicuous place & on municipal website
 - If scheduled 1 week or more ahead, 72 hours notice
 - If scheduled 1 week or less ahead, to the extent practicable
- Access for public
- Executive sessions
 - No meeting behind closed doors to discuss applications or board business
 - Only held for reasons defined in OML
 - Open Meetings Law Article 7 Public Officer's Law §105

A "work session" or "site visit" is a meeting subject to OML if quorum gathers to discuss public business

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Open meetings

- Records scheduled for discussion at open meeting must be available for public review on agency's website **at least 24 hours prior** to the meeting
- Records include:
 - Proposed resolution; law, rule or regulation; policy or amendment to a policy
- More info: <https://www.governor.ny.gov/news/governor-hochul-signs-two-pieces-legislation-boosting-transparency-state-and-local-government>

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State hearing notice requirements

- Public meeting requirements
- Legal notice in official newspaper 5 days prior to hearing date
- Mail notice to parties to the appeal
 - Regional state park commission, if 500' from state park or parkway
 - Other agencies, if applicable
 - GML §239-m & GML §239-nn

Notice content:

- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

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Local hearing notice requirements



- Municipalities may adopt additional local noticing requirements:
 - Signs on application property (best practice)
 - Mailings to neighbors
 - Municipal ListServ

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Hearing notice

LEGAL NOTICE (Excerpt) NOTICE IS HEREBY GIVEN

.....
The Applicant requests an interpretation whether the Applicant's proposed single-family dwelling complies with the sixty(60) foot setback from Pearl River Road. The Applicant also requests a variance from the sixty (60) foot setback from Pearl River Road in the event the Zoning Board of Appeals determines that the proposed dwelling's location does not comply with the sixty (60) foot setback.

- When decision on interpretation dictates if variance will be required...
- ...include language in notice for variance request in the event interpretation isn't in applicant's favor

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Notice to adjacent municipality

GML § 239-nn

- Special Use Permits or Use Variances within 500' of adjacent municipality require notifying neighboring clerk:
 - By mail or electronic transmission
 - At least 10 days prior to any hearing

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County referral

GML §239-m applies to applications within 500' of:

- Municipal boundaries
- State or county parks, highways, streams, or institutions
- Land on which a state or county building is located
- Farm operations in State Agricultural Districts
 - Area variances exempted



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Waiting to act



- ZBA cannot take final action until:
 - ZBA receives the county planning agency's report
- OR
- 30-days after county receives full statement

Time period may be extended by mutual agreement

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Effect of county referral

- If county recommends disapproval, or approval with conditions, local board may act contrary to that recommendation by a supermajority vote (majority vote plus one)
- Send "Report of Final Action" within 30 days of local decision



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Taking action

- Motion/resolution only passes with a majority of ENTIRE board
- If motion fails:
 - Variance request or zoning interpretation request is denied*
 - “No action” on matters of original jurisdiction, such as special use permit
 - Additional votes taken within statutory time frame won’t trigger rehearing process

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Rehearing

ZBA can vote to reconsider a matter it previously acted on if:

- Matter has not been previously reheard
- Motion to rehear matter receives unanimous vote of all present
- Change of original decision receives unanimous vote of all present

Note: Rehearing must comply with notice provisions

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**DECISIONS,
FINDINGS AND
FILING**

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Decisions

- Must be made within 62 days after hearings close
- Minutes must contain record of each vote
- Should include language of motion and any conditions passed
- Send copy with findings to applicant, and county if applicable

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Findings

Should be able to support decision if challenged in court

- Analysis applying law to facts, leading to conclusions
- Describe denial or approval reasons
- May also support why conditions were imposed
- Should be approved by board, not simply drafted by attorney and filed

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Filing

- Begins when records are placed “under municipal clerk’s control”
- File decisions within 5 business days after decision is rendered (or sooner)
- Start of 30-day appeals period for Article 78 proceeding is established

RECEIVED


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Town Law § 267

Zoning Board of Appeals

1. Definitions. As used in this section:
 - (a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.
 - (b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.
2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.
3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.
4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.
7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

7-A. Training and attendance requirements.

- (a) Each member of the board of appeals shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
- (b) to be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.
- (c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.
- (d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chair person, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

- (a) A town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.
- (b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.
- (c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy

in office, removal, and service on other boards, shall also apply to alternate members.

§ 267-a. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.
3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.
4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.
5. Filing of administrative decision and time of appeal.
 - (a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk's office.
 - (b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.
6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of

sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.
9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.
11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.
12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present 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 of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.
13. Voting requirements.
 - a. Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.
 - b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

§ 267-b. Permitted action by board of appeals.

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
2. Use variances.
 - a. The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.
 - b. No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have 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 regulations for the particular district where the property is located,
 - (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - (2) 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;
 - (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (4) that the alleged hardship has not been self-created.
 - c. The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven 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.
 - a. The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
 - b. In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the 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 shall also consider:
 - (1) 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;

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(3) whether the requested area variance is substantial;

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) 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.

- c. The board of appeals, in the granting of area variances, 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. Imposition of conditions. The board of appeals shall, in the granting of both use variances 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. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Chapter 210. Zoning

Part 3. Application and Review Procedures

Article 31. Public Hearings

§ 210-31.1. Conducting public hearings.

- A. The reviewing board shall schedule, notice, and conduct a public hearing for applications as required by this chapter and New York State Village Law.
- B. The reviewing board may review multiple applications (e.g., subdivision and site plan review) for a single property or use concurrently and may conduct concurrent or joint public hearings, if desired.
- C. Within 62 days from the receipt of a complete application, the reviewing board must convene a public hearing on the application in question where required by this chapter and New York State Village Law.

§ 210-31.2. Public notice required.

- A. All public notices shall be made at least five days prior to the date of the scheduled public hearing.
[Amended 1-26-2023 by L.L. No. 1-2023]
- B. Public notice shall include mailed notices, media notices, and posted notices in accordance with New York State Village Law.

§ 210-31.3. Mailed notices.

Where required by this chapter, New York State General Municipal Law, or New York State Village Law, the Village Clerk shall provide public notice to the following by mail:

- A. Owners and tenants of all real property as shown on the current tax map, located within 300 feet of the property that is the subject of the hearing.
- B. The Clerks of adjoining municipalities whose boundaries are located within 500 feet of the property that is the subject of the hearing.
- C. The Monroe County Clerk where the hearing concerns property adjacent to an existing county road or proposed road shown on the official county map, adjoining other county land, or situated within 500 feet of a municipal boundary.

§ 210-31.4. Media notices.

The Village Clerk shall cause for public notice to be posted to the following media sources:

- A. The official newspaper of the Village; and
- B. The official website of the Village.

§ 210-31.5. Posted notices.

- A. The Village Clerk shall post a public notice in a location plainly visible within the Village Office.
- B. The applicant shall obtain a sign of public notice from the Village and ensure its placement on the property in question in a manner that is plainly visible to passersby. Upon close of the public hearing, the applicant shall return the sign to the Village Office.

§ 210-31.6. Public notice expenses.

An applicant shall be required to reimburse the Village for the publication, mailing and posting of a public notice upon written request. If said fee is not received within 62 days of the request, the application shall be considered withdrawn and any decision rendered shall be null and void.

§ 210-31.7. Public notice content.

The content of all public notices, except notices posted on the property by a Village commissioned sign, shall:

- A. Indicate the date, time, and place of the public hearing or date of action that is the subject of the notice;
- B. Describe any property involved in the application by street address or general description;
- C. Describe the general nature, scope, and purpose of the application or proposal; and
- D. Indicate where additional information on the matter can be obtained.

**ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS & DECISION**

Applicant: _____

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot _____

Zoning District Classification: _____

Requirement for which Variance is Requested: _____

Applicable Section(s) of Zoning Code: _____

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes ___ No ___

Reasons: _____

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes ___ No ___

Reasons: _____

3. Whether the requested variance is substantial: Yes ___ No ___

Reasons: _____

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes ___ No ___

Reasons: _____

5. Whether the alleged difficulty was self-created: Yes ___ No ___

Reasons: _____

OFFICE USE ONLY

Application No. AV- _____

Date of Application: _____

(Postmarked or Hand Delivered)

Date of Public Hearing: _____

Date Notice Published: _____

Date of County Referral: _____

Date of Final Action: _____

Date of Filing of Decision with the

Municipal Clerk: _____

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, finds that:

- ☐ the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.
- ☐ the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

Reasons: _____

The ZBA further finds that a variance of _____ from Section _____ of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____

Adverse impact to be minimized: _____

Condition No. 2: _____

Adverse impact to be minimized: _____

Chairman, Zoning Board of Appeals

Date

RECORD OF VOTE

MEMBER NAME

AYE NAY

Chair _____
Member _____
Member _____
Member _____
Member _____

USE VARIANCE FINDINGS & DECISION

(Dept. of State Example)

Applicant: _____

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot _____

Zoning District Classification: _____

Use for which Variance is Requested: _____

Applicable Section of Zoning Code: _____

Permitted Uses of Property: _____

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes___No___

Proof: _____

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes___No___

Proofs: _____

OFFICE USE ONLY

Application No. UV- _____

Date of Application: _____

(Postmarked or Hand Delivered)

Date of Public Hearing: _____

Date Notice Published: _____

Date of County Referral: _____

Date of Final Action: _____

Date of Filing of Decision with the

Municipal Clerk: _____

ILLUSTRATIONS OF FINANCIAL EVIDENCE

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

ILLUSTRATIONS OF UNIQUENESS

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes___No___

Proof:_____

**ILLUSTRATIVE
NEIGHBORHOOD
CHARACTER FACTORS**

- Board members' observations of neighborhood.
- Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes___No___

Proof:_____

SELF-CREATED

- What were the permitted uses at the time the property was purchased by the applicant?
- Were substantial sums spent on remodeling for a use not permitted by zoning?
- Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing the above four proofs, finds:

☐ That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.

☐ That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE)_____

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____

Adverse impact to be minimized: _____

Condition No. 2: _____

Adverse impact to be minimized: _____

Condition No. 3: _____

Adverse impact to be minimized: _____

Condition No. 4: _____

Adverse impact to be minimized: _____

Chairman, Zoning Board of Appeals Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____