

ARTICLE 9
ZONING BOARD OF APPEALS

§ 9.1 Establishment and Membership

1. There is hereby established a Zoning Board of Appeals having the powers authorized under the New York State Town Law. Said Board shall consist of five (5) members of staggered 5-year terms, including a chairperson, appointed by the Town Board. Appointments shall be in accordance with the New York State Town Law and an appointment to a vacancy occurring prior to the expiration of a term shall be for the remainder of the unexpired term. In the absence of a Town Board appointment of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson. The Town Board may also provide for compensation to be paid to experts, clerks, and a secretary and provide for such other expenses as may be necessary and proper. In making such appointments, the Town Board may further require Board of Appeals members to complete training and continuing education courses.
2. The Town Board shall also supersede the New York State Town Law pursuant to the Municipal Home Rule Law and may, during the annual reorganization meeting of the Town Board, appoint an alternate member of the Zoning Board of Appeals to serve for a term of one (1) year or until a successor is appointed. Such alternate member shall attend meetings and act in the capacity of a full member whenever regular members cannot attend or must reclude themselves due to conflicts of interest. Alternate members shall not participate in the Board's deliberation of any matter in which they are not called upon to act in replacement of a full member.

§ 9.2 Power and Duties

1. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official(s) charged with the enforcement of this law and to that end shall have all powers of the administrative official(s) from whose order, requirement, decision, interpretation, or determination the appeal is taken.
2. Use Variances:
 - a. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
 - b. No such use variance shall be granted by a Zoning Board of Appeals without showing by the applicant that applicable regulations and restrictions of this law have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that:
 1. He or she cannot realize a reasonable return, provided lack of return is substantial as demonstrated by competent financial evidence.
 2. 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. The requested use variance, if granted, will not alter the essential character of the neighborhood.
 4. The alleged hardship has not been self-created.

- c. The Zoning 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 officials charged with the enforcement of this 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 of Appeals 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.
 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 6. The Zoning 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. The Zoning 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, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

§ 9.3 Procedures

1. All meetings of the Zoning 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 Chairperson, may administer oaths and compel the attendance of witnesses.
2. Meeting of the Zoning Board of Appeals shall be open to the public to the extent provided in Article Seven of the Public Officers Law. The Board 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.

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3. 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 (5) business days and shall be a public record. Every decision of the Zoning Board of Appeals shall be made by resolution and include findings establishing the basis of the decision.
4. The Zoning Board of Appeals shall have the authority to call upon any department, agency, or employee of the Town of such assistance as shall be deemed necessary and as shall be authorized by the Town Board. It shall also have authority to refer matters to the Town Planning Board for review and recommendation prior to making a decision.
5. Except as otherwise provided herein, the jurisdiction of the Zoning 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 officials charged with the enforcement of this law. The concurring vote of three (3) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board, or bureau of the Town.
6. Such appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation, or determination of the administrative officials charged with the enforcement of this law by filing with such administrative official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official(s) from whom the appeal is taken shall forthwith transmit to the Board of Appeals all papers constituting the record for the application appealed.
7. 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 Zoning Board of Appeals, after the notice of appeal shall have been filed with the administrative office, that by reason of facts stated in the certificate of 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 Zoning 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.
8. The Zoning Board of Appeals shall fix a reasonable time, no more than sixty-two (62) days following application, 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 (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal 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. The hearing shall be conducted in accordance with rules of the Zoning Board of Appeals. Such rules shall permit cross-examination by parties, provide for evidentiary procedures, and allow for re-hearings on the unanimous vote of the members present.
9. The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days after the close of said hearing. The time within which the Board of Appeals must render its decision may, however, be extended by mutual consent of the applicant and the Board.
10. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
11. At least five (5) days before such hearing, the Zoning 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 (500) feet of the property affected by such appeal; and to the Orange County Planning Department, as required by Section 239-m of the General Municipal Law. No Zoning Board of Appeals decision shall be made except in conformance with such 239-m

procedures including requirements for an affirmative vote of no less than four (4) members of the Board if it shall determine to approve an application which the County has recommended it disapprove or modify.