

D. Assistance to Board of Appeals

- (1) The Zoning Board of Appeals 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.
- (2) For unique or large-scale projects, the Zoning Board of Appeals, upon approval from the Town Board may retain qualified expert consultants to assist the Board of Appeals in its review of the application; the cost of such consultant(s) shall be paid by the applicant.

Section 7.3 Variances

The Zoning Board of Appeals may issue a variance for any use of structures or lots (use variance) or for any dimensional or physical regulations (area variance) in the Town, provided such variance complies with the standards set forth in NYS Town Law and in this section and with the special requirements enumerated elsewhere herein. Each case must be determined on its own merits.

A. Use Variances

- (1) In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence;
 - (b) 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 neighborhood;
 - (d) That the alleged hardship has not been self-created.
- (2) 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.

B. Area Variances

- (1) In making its determination on an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were 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:
 - (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 method, feasible for the applicant to pursue, other than an area variance.
 - (c) Whether the requested area variance is substantial.
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
- (2) 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.

C. Imposition of Conditions

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. 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.

D. Expiration of Grant of Variance

- (1) A variance shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the grant of variance has not commenced, in cases where a building permit is not needed. The Zoning Board of Appeals may grant an extension of the variance for up to one additional year when the applicant is able to demonstrate a legitimate need

to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors.

- (2) A variance shall expire if the use of the property in accordance with the grant of a variance shall cease continuously for one (1) year.
- (3) Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a variance be renewed periodically.

Section 7.4 Application Procedures

A. Application and Filing of Appeals

- (1) Any party aggrieved by a decision of the Zoning Officer shall have sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Officer to file an appeal with the Zoning Board of Appeals.
- (2) Such appeal shall be in writing, on forms prescribed by the Zoning Board of Appeals and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of this Law that is involved and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The appeal shall also contain the following information:
 - (a) The name and address of the appellant /applicant, and property owner, if different from the applicant. If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted.
 - (b) A brief description and the location of the lot to be affected by such proposed change or appeal.
 - (c) A statement of the present zoning classification of the lot in question, the improvements thereon, and the present use.
 - (d) An accurate description of the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof.
 - (e) A plot plan of the site, drawn to scale, with a north arrow, indicating the location and size of the lot and location and size of the improvements thereon and proposed to be erected thereon. Distance from the existing and

proposed structure to all lot lines shall be indicated. If the Zoning Board of Appeals determines that it is necessary, the Board may require a survey prepared by a licensed surveyor that shows building locations and lot lines.

- (f) An Environmental Assessment Form, with Part I completed and signed by the applicant, if required.
 - (g) All required fees.
- (3) The appeal shall be filed with the Zoning Officer, who shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action.

B. Public Hearing

- (1) Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the complete application/ appeal is received. The Zoning Board of Appeals shall determine when the application/appeal is complete.
- (2) The Zoning Board of Appeals shall provide notice of the public hearing in the following ways:
 - (a) By publication in the official newspaper of the Town at least five days prior to the date of the public hearing.
 - (b) By mailing a notice to the owner of record of all abutting properties. For purposes of this section, parcel(s) that are immediately across the street shall be construed to be abutting. The notice shall be mailed at least ten (10) days prior to the hearing.
 - (c) By mailing a notice to the applicant at least ten (10) days prior to the hearing.
 - (d) For all appeals that meet the requirements contained in Section 239m of NYS General Municipal law, the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least five (5) days prior to the public hearing, and shall be accompanied by a full statement of the proposed action.
 - (e) If the site that is the subject of the appeal is located within 500 feet of a regional state park, the Zoning Board of Appeals shall mail notice of the public hearing to the regional state park commission a minimum of five (5) days prior to the public hearing.

(f) If a parcel, that is the site of a requested use variance, is within 500 feet of a municipal boundary, the Zoning Board of Appeals shall mail notice of the public hearing to the clerk of the municipality at least 10 days before the date of the public hearing.

(3) At the public hearing any person may appear in person, or by agent or by attorney.

C. Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Officer certifies to the Zoning Board of Appeals, after the notice of appeal has been filed, that by reason of facts stated in the certificate, they 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 the Supreme Court on application, on notice to the Zoning Officer and on due cause shown.

D. Decision

- (1) The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Officer or to grant a use variance or area variance.
- (2) The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days of the public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.

E. Filing Of Decisions and Notice To The Applicant

- (1) The decision of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record. A copy of the decision shall be provided to the Zoning Officer and the Building Inspector.
- (2) A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant/appellant within five (5) business days of the decision.
- (3) The decision shall contain the reasons for the decision and shall list all conditions of approval, if any.

F. 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 reliance upon the reheard order, decision or determination will not be prejudiced thereby.

G. Abandoned Application

An application will be deemed abandoned and will be denied if there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Zoning Board of Appeals, whichever is later. "No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Law or by the requirements of the State Environmental Quality Review Act.

H. Compliance with Conditions of Approval

The applicant shall comply with all conditions of approval prior to the issuance of a Certificate of Compliance. However, the Zoning Board of Appeals may authorize the Zoning Officer to issue a temporary Certificate of Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Board of Appeals shall establish a maximum period of time during which the temporary Certificate of Compliance is valid. The issuance of a temporary Certificate of Compliance may be warranted, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved special use permit. The sufficiency of such performance bond shall be determined by the Town Board, after consultation with the Zoning Board of Appeals, Town Engineer, Town Attorney, Zoning Officer, and/or other appropriate parties.

I. Revocation of Grant of Variance

The Zoning Board of Appeals shall have the authority to revoke the approval of a use or area variance, after a public hearing, if the property owner or project sponsor fails to comply with any condition(s) of approval of the variance. Prior to a public hearing on this issue, the Zoning Officer shall pursue abatement of the failure to comply as a violation in accordance with Article 6 of this Zoning Law.