

Article VII. Zoning Board of Appeals

§ 98-36. Establishment and membership.

There shall be a Board of Appeals pursuant to the provisions of § 267 of the Town Law, comprised of seven members, five of whom shall be regular members and two alternate members. Alternate members of the Zoning Board of Appeals shall have all duties and responsibilities set forth in Town Law § 267, Subdivision 11(a), (b) and (c). The term of office of each alternate shall be four years commencing January 1, 2005. In the event an alternate position shall become vacant for any reason, a successor shall be appointed to fill the vacancy until the next January 1, at which time the alternate member shall commence his or her four-year term.

§ 98-37. Powers and duties.

The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board that is conferred by law:

- A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the Town, to decide any of the following questions:

- (1) Determination of the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter.
- (2) Determination of the exact location of any district boundary shown on the Zoning Map.

- B. Variances.

~~(1) On appeal from an order, requirement, decision or determination made by the Code Enforcement Officer or on referral of an applicant to the Board by an approving agency acting pursuant to this chapter, the Zoning Board of Appeals is authorized to reverse or affirm, wholly or partly, or vary or modify the strict letter of this chapter where its literal interpretation would cause practical difficulties or unnecessary hardships, as defined in this section, in such manner as to observe the spirit of the chapter, to secure public safety and welfare and to do substantial justice. To authorize, upon appeal in specific cases, such variance from the terms of this chapter as will not be contrary to the public interest where, owing to exceptional and extraordinary circumstances, there are unnecessary hardships in the way of carrying out the strict letter of this chapter, subject to terms and conditions to be fixed by~~

~~the Board of Appeals; provided, however, that no such variance shall be granted unless said Board finds:~~

a. Area variances.

- i. The ZBA may grant an area variance in the application of the provisions of this chapter. In making its determination, the Board 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 of such grant. In making its determination the Board shall consider whether:
 - (a) 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) The benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (c) The requested area variance is substantial;
 - (d) The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - (e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.
- ii. The ZBA, in granting area variances, shall grant the minimum variance that it deems 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.

b. Use variances.

- i. The ZBA may grant a use variance relating to the land for a use not allowed in the zoning district in which the land is located as provided in this chapter. In making its determination, the ZBA shall take into consideration that no use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under this chapter for the district in which the applicant's 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) The requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) The alleged hardship has not been self-created. The ZBA, in granting use variances, shall grant the minimum variance that it deems 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.

~~That there are physical conditions, such as in the case of an exceptionally irregular, narrow, shallow or steep lot, fully described in the findings of said Board, applying to the land or building for which the variance is sought, which conditions are peculiar to such land or buildings and have not resulted from any act of the applicant or any prior owner.~~

- ~~a. That, for reasons fully set forth in the findings of said Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by said Board is the minimum variance that will accomplish this purpose.~~
- ~~b. That the granting of the variance under such conditions as said Board may deem necessary or desirable to apply will be in harmony with the general purpose and intent of this chapter, will not represent a radical departure therefrom, will not be injurious to the neighborhood, will not change the character thereof and will not be otherwise detrimental to the public welfare.~~
- ~~(2) The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto.~~
- ~~(3) Where said Board finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or buildings and where said Board finds the same condition to apply generally to other land or buildings in the same neighborhood or zoning district, said Board shall call this condition to the attention of the Planning Board.~~

~~(4)(2) 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 this Chapter, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community. In all cases where the Board of Appeals grants a variance from the strict application of the requirements of this chapter, it shall be the duty of such Board to attach such conditions and safeguards as may be required in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this chapter.~~

§ 98-38. Procedure.

The powers and duties of the Board of Appeals shall be exercised in accordance with the following procedure:

A. The Board of Appeals shall not decide upon any appeal for a variance or interpretation of this chapter without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the Town at least five days before the date of such hearing. In addition to such published notice, the Board of Appeals shall cause such notice to be mailed at least five days before the hearing to all owners of property which lie adjacent to that owned by the applicant in the immediate area and to all other owners as the Board of Appeals may deem advisable.

(1) The names of said owners shall be taken as they appear on the last completed tax roll of the Town.

(2) Even though due notice shall have been published as above provided and there shall have been complete compliance with the remaining provisions of this section, the failure to give notice in exact conformance herewith shall be deemed to invalidate action taken by the Board of Appeals in connection with the granting of any appeal or variance.

B. All appeals and applications made to the Board of Appeals shall be in writing, on forms prescribed by said Board, and shall be accompanied by a fee of not less than the actual and necessary costs of advertising and holding a public hearing. The Board of Appeals may, at its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal under § 98-37A is partially or wholly successful. The fee filed in connection with applications under § 98-37B shall not be returnable regardless of disposition of the ~~ec~~ase by the Board. A review fee ~~of \$100 shall be paid for an interpretation or a dimensional variance, and a fee of \$300 shall be paid for a use variance~~ shall be paid in accordance with the Schedule of Fees

adopted by the Town Board from time to time. The costs of publication and certified mail shall be paid for by the applicant.

- C. Each appeal or application shall fully set forth the circumstances of the case. Every appeal or application shall refer to the specific provision of the chapter involved and shall exactly set forth, as the case may be, 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 same should be granted.
- D. Notice of hearing to state, county or other officials.
 - (1) Should any appeal involve either of the two following conditions, the Secretary of the Board of Appeals shall transmit to the designated office or official a copy of the official notice of the public hearing not later than 10 days prior to the date of the hearing.
 - (a) Any change in the boundaries of any district, which change would occur within a distance of 500 feet of any village, town or county or any boundary of a state park or parkway.
 - (b) Any change in the regulations prescribed for any district, any portion of which is located within 500 feet of the boundaries listed in Subsection D(1)(a) above.
 - (2) The designated official for counties shall be the Clerk of the County Legislature. In villages and Towns, the designated official shall be the Clerk of the municipality. In the case of state parks or parkways, the designated office shall be the Palisades Interstate Park Commission.
- E. Prior to the date of any public hearing, the Secretary of the Board of Appeals shall transmit to the Chairman of the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing. The Planning Board may submit to the Board of Appeals an advisory opinion on said appeal or application at any time prior to the rendering of a decision by the Board of Appeals.
- F. Should any action by the Board of Appeals involve any of the areas specified in Article VIII, § 98-39E(1)(a) through (f), then the matter shall be referred, prior to final action by the Board of Appeals, to the Orange County Planning Department in accordance with §§ 239-1 and 239-m of Article 12-B of the General Municipal Law.
- G. Every decision of the Board of Appeals shall be recorded in accordance with standard forms adopted by the Board and shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is

based. Every decision of said Board shall be by resolution, and each such resolution, together with all documents pertaining thereto, shall be filed in the office of the Town Clerk by case number under one of the following headings: "interpretation" or "variances." Regarding its decision in each case, the Board of Appeals shall notify the Building Inspector, Town Board, Town Planning Board and the Municipal Clerk of any affected municipality given notice of hearing as set forth in Subsection D of this section.

H. All the provisions of this chapter relating to the Board of Appeals shall be strictly construed. Said Board, as a body of jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein.

I. ~~Unless construction is commenced and diligently pursued within six months of the date of the granting of a variance, such variance shall become null and void~~Unless otherwise specified, any order or decision of the Zoning Board of Appeals shall expire if a building or occupancy permit for the use is not obtained by the applicant within 6 months from the date the decision is filed in the Town Clerk's office. Should the application be subject to approval from the Town of Chester Planning Board and/or the Town Board, such expiration window shall run from the date of final Planning Board and/or Town Board approval. In all cases the Zoning Board of Appeals may extend this time for one additional period of 90 days if such extension is warranted by the particular circumstances. _-