

**ARTICLE IV
Board of Appeals and Planning Board**

Section 400—Creation, Appointment and Organization of the Board of Appeals

- A.—~~A Board of Appeals is hereby created. Said Board shall consist of five (5) members appointed by the Town Board, who shall also designate a Chairman. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board, first appointed one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, and one for the term of five years from and after his appointment. Their successors shall be appointed for the term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.~~
- B.—~~The Board of Appeals shall establish such rules and regulations as are required by state and local laws for the transaction of their business, and may amend, modify and repeal the same from time to time.~~
- C.—~~Whenever the Board of Appeals, after hearing all the evidence presented upon an application for appeals under the provisions of this Ordinance, denies or rejects the same, said Board shall refuse to hold further hearings on the same or substantially similar application for appeal by the same applicant, their successors or assigns, for a period of one (1) year, except and unless the Board shall find and determine from the information supplied in the request for a rehearing that changed conditions have occurred relating to the promotion of public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing may be granted only upon the favorable vote of a majority of the Board plus one (1). [1998]~~

~~The Board of Appeals shall have all the powers and duties prescribed by Chapter 62, Section 267, of the Town Law of the State of New York and by this Ordinance which are more particularly specified as follows:~~

~~A.—Administrative Review~~

- ~~1.—The Board of Appeals shall hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative officer or body in the enforcement of this Ordinance.~~
- ~~2.—The Board of Appeals may reverse or affirm wholly, partly or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made and to that end shall have all the powers of the officer~~

from whom the appeal is taken.

- ~~3. The Board of Appeals shall hear and decide on interpretive matters where the provisions of this Ordinance, including the determination of exact district boundaries, are not clear.~~

~~B. Variances~~

- ~~1. The Board of Appeals is empowered to authorize upon appeal in specific cases such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to conditions peculiar to the property, and not the result of the action of the applicant, a literal enforcement of the provisions herein would result in unnecessary hardship (use variance) or practical difficulties (area variance).~~
- ~~2. As used herein, a variance may be authorized for height, area, size of structure, size of yards and open spaces or establishment or expansion of a use otherwise prohibited.~~
- ~~3. A variance shall not be granted solely because of the presence of non-conformities in the zoning district or uses in other zoning districts.~~
- ~~4. In granting any variance, the Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable.~~
- ~~5. Variances granted shall be the minimum which would accomplish the purpose of providing for reasonable use of land or buildings.~~
- ~~6. Variances granted shall be in harmony with the general purpose and intent of this Law and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~

~~Section 402 Variance and Appeals Procedure~~

~~A. Variance Procedure~~

- ~~1. The applicant may arrange an informal discussion with the Board of Appeals to determine any and all of the data to be included in the application.~~
- ~~2. All applications for variances shall be made in triplicate to the Town Clerk on forms provided by the Town Clerk and shall be accompanied by plans and supporting documents to sufficiently describe the proposal. The Board of Appeals may request additional information it deems necessary in~~

~~order to act on the application.~~

- ~~3. The Town Clerk, after determining that an application is in proper form, shall transmit copies of the application and all supporting documents to the Board of Appeals for action thereon.~~
- ~~4. Any request for a use variance or variances to parking provisions shall be referred to the Town Planning Board for their recommendations concurrent with the submission to the Zoning Board of Appeals. The Planning Board shall have sixty two (62) days from the receipt of said variance application to provide the Board of Appeals with an advisory opinion on the application. The Zoning Board of Appeals shall not act on the application for a period of sixty two (62) days. Absence of a reply within said sixty two (62) day period shall constitute an approval by the Planning Board.~~
- ~~5. A copy of the complete variance application and supporting documents shall also be transmitted to the County Planning Board for review when required under Article 12 B, 239 m of the General Municipal Law.~~
- ~~6. The Board shall fix a reasonable time for the hearing of appeals and shall give due notice of the time set for the hearing to the applicant. Public notice shall be by the publication of a notice in the official newspaper of the Town and shall briefly describe the nature of the appeal and the time and place of the hearing. The Board or designee shall, at least seven (7) days prior to the date of the hearing, give notice in writing by certified mail, return receipt requested or by service in person, with adequate proof of contact thereof, to all property owners within five hundred (500) feet of the property to be affected by said appeal or to all property owners of contiguous land or properties adjoining said property.~~
- ~~7. In its review, the Board of Appeals may consult with any other town, county and state officials or boards.~~
- ~~8. The Board shall approve, with or without conditions, or disapprove the application within the time limit specified in 267 of the Town Law and shall communicate its action, in writing, to the applicant, the Town Clerk, the Zoning Officer and other appropriate boards within one (1) week of the time of the meeting at which it decided the application. When applicable, compliance shall be required in accordance with the provisions of 239 m of the General Municipal Law.~~
- ~~9. The Town Clerk shall provide the Town Board with a monthly report of the actions taken by the Board of Appeals.~~

10. ~~The Zoning Officer shall, upon receipt of the notice of approval and upon application by the applicant, issue a zoning permit or such other approval permitting the variance, subject to all conditions imposed by such approval.~~

~~B. Appeals Procedure~~

1. ~~An appeal, specifying the grounds for the appeal, shall be filed with the officer from whom the appeal is taken and with the Board of Appeals.~~
2. ~~Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.~~
3. ~~The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official.~~
4. ~~The officer from whom the appeal is taken shall, within thirty (30) days of the filing of the appeal, transmit all papers constituting the record upon which the appeal is taken to the Board of Appeals.~~
5. ~~An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would in his 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 officer from whom the appeal is taken and on due cause shown.~~
6. ~~If the Board of Appeals determines that a public hearing is necessary, the Board of Appeals shall fix a time for the hearing of the appeal and give due notice thereof to the parties, and decide the same within a reasonable length of time thereafter. At the time of the hearing, any party may appear in person, by agent or by attorney.~~
7. ~~Any action by the Board of Appeals shall be stated in writing and communicated to the person bringing the appeal within seven (7) days after the decision has been made. [1998]~~

~~Section 403 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 regulation.~~
[1998]

2. Section 400 Creation of Board of Appeals; appointments and removals; meetings; rules and regulations. [1998]

- A. A Board of Appeals is hereby created. Said Board shall consist of five (5) members appointed by the Town Board, who shall also designate a Chairman. The existing Board of Appeals shall be continued. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals. Of the members of the Board of Appeals first appointed, one (1) shall hold office for the term of one (1) year, one (1) for the term of two (2) years, one (1) for the term of three (3) years, one (1) for the term of four (4) years and one (1) for the term of five (5) years. All terms shall run concurrent with the governmental year. Their successors shall be appointed for a term of five (5) years from and after the expiration of the terms of their predecessors in office. In making such appointments, the Town Board may require Board of Appeals members to complete training and continuing education courses in accordance with any local requirements for the training of such members. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by the ~~Village~~ **Town** [1998] Board by appointment for the unexpired term.
- B. The Supervisor shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause and may provide by local law for removal, after public hearing, of any Board of Appeals member for noncompliance with minimum requirements relating to meeting attendance and training as established by the Town Board by local law.
- C. 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 may administer oaths and compel the attendance of witnesses.
- D. The Board of Appeals shall establish such rules and regulations as are required by state and local laws for the transaction of its business and may amend, modify and repeal the same from time to time.
- E. Whenever the Board of Appeals, after hearing all the evidence presented upon an application for appeals under the provisions of this chapter, denies or rejects the

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same, said Board of Appeals shall refuse to hold further hearings on the same or substantially similar application for appeal by the same applicant, their successors or assigns for a period of one (1) year, except and unless the Board of Appeals shall find and determine from the information supplied in the request for a rehearing that a change in conditions has occurred which relates to the promotion of public health, safety, convenience, comfort, prosperity and general welfare and that a reconsideration is justified. Such rehearing may be granted only upon the favorable vote of not less than four (4) members of the Board of Appeals.

3. Section 401 Powers and duties of Board of Appeals [1998]

The Board of Appeals shall have all the powers and duties prescribed by Chapter 62, Section 267 of the Town Law of the State of New York and by this Ordinance.

4. Section 402 Procedures of the Board of Appeals

- A. Meetings, minutes and records. Meetings of such Board of Appeals shall be open to the public to the extent provided in Article 7 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.
- B. Filing requirements. Every rule and regulation, every amendment or repeal thereof and every order, requirement, decision of 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.
- C. Assistance to the 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.
- D. Hearing appeals. The Board of Appeals shall hear and decide appeals from and review any order, requirement decision, interpretation or determination made by an administrative official charged with the enforcement of this chapter. 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 shall be reimbursed for any expenses incurred as a result of such assistance. The concurring vote of not less than three (3) members of the Board of Appeals shall be necessary to reverse any order, 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 or board of the town.

E. Time of appeal. Such appeal shall be taken within ~~sixty (60) days~~ the time
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prescribed by law [1998] after the filing of any order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of this chapter 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. 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 of Appeals prior to the hearing of such appeal.

- F. 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 this chapter 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.
- G. Meeting 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 thereof by the publication in a paper of general circulation in the town of a notice of such hearing at least seven (7) days prior to the date thereof. Further, the applicant shall, at least seven (7) days prior to the date of the hearing, give notice, in writing, by registered or certified mail or by service in person with the adequate proof of contact thereof, to all property owners within two hundred (200) feet of the property to be affected by said appeal or to all property owners of contiguous land or property adjoining said property to be affected and other interested property owners as may be designated by the Board of Appeals.
- H. Notice to Park Commission and County Planning Board. At least five (5) days before such hearing, the Board of Appeals shall mail notices thereof to the parties and to the Regional State Parks Commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal and to the County Planning Board as required by Section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration as defined in Subdivision 1 of Section 239-m of the General Municipal Law.
- I. Time of decision. The Board of Appeals shall decide upon the appeal within sixty-two (62) 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.

- J. Filing of decision and notice. The decision of the Board of Appeals on the appeal shall be filed in the office the Town Clerk within five (5) business days after the day such decision is rendered and a copy thereof mailed to the applicant.

5.Section 403 Permitted actions by Board of Appeals.

- A. Interpretation, requirements, decisions and 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 chapter and to that end shall have all the powers of the administrative official from whose order, requirement, decision or determination the appeal is taken.
- B. Use variances.
 - 1. The Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of this chapter, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of this chapter.
 - 2. No such use variance shall be granted by the 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:
 - a. Under the regulations of this chapter, the applicant is deprived of all economic use or benefit from the property in question, which deprivation shall be established 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 zone 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.
 - 3. The Board of Appeals, in the granting of use variance, 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.

C. Area variance

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of this chapter, to grant area variances from the area or dimensional requirements of this chapter.
2. 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.
 - 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 zone district; and
 - 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.
3. 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.

- D. 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 and/or the period of time such variance shall be in effect. Such

conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purposes of minimizing any adverse impact that such variance may have on the neighborhood or community.

6.Section 404 Appeals to Supreme Court [1998]

- A. Application to Supreme Court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals, or any officer, department or board of the village may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Board in the office of the Town Clerk or in the office designated by resolution of the Town Board. The Court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his or her findings of fact and conclusions of law if it shall appear that testimony is necessary for the proper disposition of the matter. The Court, at special term, shall itself dispose of the cause on the merits, determining all questions which may be presented for determination.
- B. Costs of appeal. Costs shall not be allowed against the Board of Appeals unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.
- C. Preference of appeal to Court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.
- D. Power of Court. If, upon the hearing at a special term of the Supreme Court, it shall appear to the Court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the Court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the Court shall be made. The Court may reverse or affirm, wholly or partly, or may specify the decision brought up for review.[1998]

~~Section 402—Reserved~~

Section 403 5 Board of Appeals Office

The Office of the Town Clerk shall be the office of the Board of Appeals. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by Section 267 of the Town Law of the State of New York. The Board of Appeals shall keep minutes of its proceedings, showing the vote, indicating such fact, and shall keep records of its examinations and other official action.

Section 404 6 Lapse of Authorization

Any variance or modification of regulations authorized by the Board of Appeals shall be automatically revoked unless a zoning or building permit, conforming to all the conditions and requirements established by the Board of Appeals, is obtained within six (6) months of the date of approval by the Board of Appeals and construction commenced within one (1) year of such date of approval.

Section 405 7 Violation of Conditions or Restrictions

Failure to comply with any condition or restriction prescribed by the Board of Appeals in approving any appeal for a variance, or a modification of regulations shall constitute a violation. Such violation may constitute the basis for revocation of a variance or modification or for imposing penalties and other applicable remedies.

Section 406 450 Creation, Appointment and Organization of Planning Board

A. Pursuant to the provisions of the Town Law applicable thereto, the Town Board shall appoint a Planning Board consisting of five (5) ~~the number~~ [1998] of members and for the term of years set forth in 271 of the Town Law. Said members are hereby vested with the powers and duties and made subject to the limitations set forth in 272, 274, 274-a, 275, 276, 277, 278, 280-a, and 281 of the Town Law, as the same may be amended, modified, or changed from time to time, or any sections subsequently adopted pertaining to Planning Board.[1998]

B. The Planning Board shall establish such rules and regulations as are required by law and the provisions herein for the transaction of their business, and may amend, modify and repeal the same from time to time.

Section 407 451 Powers and Duties of the Planning Board [1998]

The Planning Board shall have the following powers and duties:

- A. To prepare and from time to time **recommend** changes in the master or comprehensive plan for the development of the town **to the Town Board.** [1998]
- B. To review proposals to approve or disapprove the laying out, closing off, abandonment or changes in lines of streets, highways and public areas and to make recommendations to the Town Board.
- C. To make investigations and reports relating to the planning and development of the town, including changes in boundaries of districts, recommended changes in the provisions of this ordinance, and to act on any matter lawfully referred to it by the Town Board.

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- D. To review, act on or provide advisory reports as specified by this Ordinance.
- E. All such powers as are conferred upon Town Planning Boards by the provisions of the Town Law as not or hereafter in effect.