

ARTICLE 18
ZONING BOARD OF APPEALS

SECTION 18.01 ESTABLISHMENT AND MEMBERSHIP

There is hereby created a Zoning Board of Appeals having the powers authorized under Chapter 62, Article 16, Section 267, of the Town Law of the State of New York. The Zoning Board of Appeals shall consist of five (5) members who shall be appointed by the Town Board. The Town Board shall appoint a secretary to the Zoning Board of Appeals and the Zoning Board of Appeals shall elect a chairperson and a vice-chairperson. In the absence of the chairperson, the vice-chairperson shall serve as chairperson. No member of the Zoning Board of Appeals shall be the Town Supervisor, a member of the Town Board or a member of the Planning Board. Each member shall be appointed for a term of five (5) years.

SECTION 18.02 PROCEDURES OF THE BOARD

The Zoning Board of Appeals shall adopt rules and regulations to govern its procedures. The presence of three (3) members shall constitute a quorum. The concurring vote of three (3) members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or interpretation of the Zoning Enforcement Officer, or to decide in favor of an applicant any matter upon which they are required to pass under this Ordinance.

Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Board in its rules of procedure may specify. Minutes shall be kept of each meeting and the Board shall record into the minutes all findings, conditions, facts, and other relevant factors, including the vote of each member upon each question, or if absent or failing to vote indicating such fact, and all of its official actions. All meetings and records shall be open to the public. All minutes shall be filed in the office of the Town Clerk and any decision on a variance request forwarded to the Town Board for its information and to the Herkimer County Planning Board pursuant to Section 239 of the General Municipal Law of the State of New York.

The secretary of the Zoning Board of Appeals shall transmit to the Planning Board a copy of said application or appeal, together with a copy of the notice of public hearing. The Planning Board shall then render an advisory opinion to the Zoning Board of Appeals on the application prior to the date of the public hearing.

SECTION 18.03 HEARINGS

The Zoning Board of Appeals shall fix a reasonable time and date for a public hearing required for every appeal or application and shall give public notice including:

1. Publication in the official paper of a notice of such public hearing at least ten (10) days prior to the date of the hearing.
2. At least ten (10) days prior to the public hearing, mail notices to the parties involved, including adjoining property owners; to the regional state park commission having jurisdiction over any state park or parkways; and to any property affected by such application.

SECTION 18.04 DUTIES AND POWERS

The Zoning Board of Appeals shall perform its duties and exercise its powers so that the objectives of this Ordinance shall be attained, the public health, safety, and welfare secured, and substantial justice done.

The Zoning Board of Appeals shall hear and decide on only those matters which it is specifically authorized to hear and decide as provided therein; administrative review, interpretation, variance, and expansion of nonconforming buildings and structures.

All questions concerning application of the provisions of this Ordinance shall first be presented to the Zoning Enforcement Officer. Such questions shall be presented to the Zoning Board of Appeals only on appeal from the decisions of the Zoning Enforcement Officer. Recourse from decisions of the Zoning Board of Appeals shall be to the courts as provided by law.

The Zoning Board of Appeals shall not have the power to alter or change the Zoning district classification of any property, nor make any change in the terms or intent of this Ordinance, but does have power to act on those matters for which this Ordinance provides, including:

A. Review

The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirements, decisions or determination of the Zoning Enforcement Officer.

B. Interpretation

The Zoning Board of Appeals shall have the power to:

1. Interpret, upon request, the provisions of this Ordinance in such a way as to carry out the intent and purpose of this Ordinance. Where the Ordinance is clearly silent and the intent is not known, the issue shall not be acted upon but shall instead be referred to the Town Board for consideration of an Ordinance Amendment.
2. Determine the precise location of the boundary lines between Zoning districts when there is dissatisfaction with a decision made by the Zoning Enforcement Officer.
3. Classify a use which is not specifically mentioned as a part of the use regulations of any zoning district so that it conforms to a comparable permitted or prohibited use, in accordance with the purpose and intent of each district. If the use is clearly different from any of the uses indicated in this Ordinance, then the issue shall be referred to the Town Board for consideration of an Ordinance Amendment.

C. Variances

The Zoning Board of Appeals shall have authority in specific cases to authorize variances from the strict letter and terms of this Ordinance by varying or modifying any of its rules or provisions so that the spirit of this Ordinance is observed, public safety secured, and substantial justice done. Such authority shall be exercised in accordance with the following standards.

1. Use Variance

The ZBA may grant a "use" variance only upon a finding that an unnecessary hardship exists. A "use" variance is a variance that permits a use that is otherwise prohibited in a zoning district. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:

- a. The property cannot be reasonably used for any purpose permitted in the zoning district without the variance.
- b. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
- c. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessors.

- d. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.

2. Area Variance

The ZBA may grant an area variance only upon a finding that practical difficulty exists. An area variance is a variance from any standard or requirement of the Ordinance, such as, but not limited to, a deviation from density, height, bulk, setback, or parking, landscaping and sign standards and requirements. A finding of practical difficulty shall require demonstration by the applicant of all of the following:

- a. Refer to Section 267.b of Town Law.
- b. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other "non-use" matters will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome.
- c. The variance will do substantial justice to the applicant, as well as to other property owners.
- d. A lesser variance than requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
- e. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.
- f. The problem and resulting need for the variance has not been self-created by the applicant and/or the applicant's predecessor may or may not be considered depending upon whether the practical difficulty would have existed regardless of the action.
- g. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural

characteristics of the site and surrounding area will be considered.

SECTION 18.05 VOIDING OF A VARIANCE

Each variance granted under the provisions of this Ordinance shall become null and void unless:

- A. The construction authorized by such variance or permit has proceeded to at least 10% of completion within one hundred and eighty (180) days after the granting of such variance and pursued diligently to completion; or
- B. The occupancy of land or buildings authorized by such variance has taken place within one hundred and eighty (180) days after the granting of such variance.

SECTION 18.06 REHEARING FOR REVIEW OF A VARIANCE DECISION, ORDER OR DETERMINATION

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed 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 interpretation 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 reviewed order, decision or interpretation will not be prejudiced thereby.

SECTION 18.07 REAPPLICATION FOR A VARIANCE

No application for a variance which has been denied wholly or in part by the Zoning Board of Appeals shall be resubmitted for a period of three hundred and sixty-five (365) days from the date of such denial, except on grounds of new evidence of proof of changed conditions found by the Zoning Board of Appeals to be valid.

SECTION 18.08 APPEALS, HOW TAKEN

- A. Appeals to the Zoning Board of Appeals concerning interpretation and administration of this Ordinance may be taken by any person aggrieved or by any Officer of the Town affected by any decision of the Zoning

Enforcement Officer. Appeals shall be taken within a reasonable time, not to exceed thirty (30) days following action by the Zoning Enforcement Officer, by filing with the Zoning Enforcement Officer and with the Zoning Board of Appeals a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Appeals copies of all papers constituting the record upon which the action appealed from was taken.

- B. A fee shall be paid to the Town Clerk, at the time of filing the notice of appeal and shall be deposited in the Town's general fund. The appeal fee shall be established by the Town Board.
- C. Any party or parties may appear at the hearing in person or by agent or attorney.
- D. The Zoning Board of Appeals shall decide upon all matters within a reasonable time. The decision of the Zoning Board of Appeals shall be in the form of a resolution containing a full record of its findings and determinations in each case.