

ARTICLE XV

Board of Appeals

1. Creation, appointment and organization.

Notwithstanding the provisions of Section 7-712 of the Village Law of the State of New York, a Board of Appeals of seven (7) members is hereby continued. The terms of office of all existing members shall expire at the end of the terms for which they were appointed. Their successors shall be appointed for terms of five (5) years. Each term shall expire on the first day of the Village fiscal year. The Village Board shall designate the Chairperson and Deputy Chairperson from the Board of Appeals' membership. The terms of the Chairperson and Deputy Chairperson shall be for one official year. (Amended August 20, 1992)

2. Power and duties.

The Board of Appeals shall have all the powers and duties prescribed by statute and by this local law, 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. Appeals. The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination of the Building Inspector or such other official charged with the enforcement of this local law. The Board of Appeals shall not hear any appeal from nor review any order, determination, requirement, decision or revocation of the Building Inspector where such order, determination, requirement, decision or revocation has been directed by the Village Board. In addition, the Board of Appeals may not waive the requirement for site development plan application as required in any part of this local law.

B. Interpretation. On an appeal from any order, requirement, decision or determination made by an administrative official or by the Building Inspector to decide any of the following questions:

(1) Determination of the meaning of any portion of the text of this local law or of any condition or requirement specified or made under the provisions of this local law.

(2) Determination of the exact location of any

district boundary shown on the Zoning Map.

C. Variances. On appeal from an order, requirement, decision or determination made by the Building Inspector, or on referral of an applicant to the Board by an approving agency acting pursuant to this local law, the Board of Appeals is authorized to vary or modify the strict letter of this local law 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 local law, secure public safety and welfare and do substantial justice. Where required, variance applications shall be referred to the Rockland County Department of Planning (see Article XVII, Sec. 4).

(1) Bulk variances. Where, because of practical difficulty, an applicant requests a variance of the bulk requirements of this local law, the Board may grant a variance in the application of the provisions of this local law in the specific case provided that the Board shall make a specific finding that the application of the requirements of this local law to the land in question creates

practical difficulty. In making this 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 other properties 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 variance; and
- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance; and
- (c) Whether the requested variance is substantial; and
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or

environmental conditions in the neighborhood or 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 variance.

[Paragraphs (1) a-e amended August 20, 1992]

- (2) Use variances. The Board shall have the power to grant a use variance authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this local law. No such use variance shall be granted 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 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 such lack of return is

substantial as demonstrated by competent financial evidence, and

(b) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood, and

(c) That the requested use variance, if granted, will not alter the essential character of the neighborhood, and

(d) That the alleged hardship has not been self-created.

[Paragraphs (2) a-d Amended March 20, 2003]

(e) The Board, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved 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. (Amended August 20, 1992)

- (3) The Board shall, in the granting of both use and bulk variances, have the authority to impose such reasonable conditions and restrictions as are directly related and incidental to the proposed use of the property, or the period of time such variance shall be in effect. (Amended August 20, 1992)
- (4) The 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 proved 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. (Amended March 20, 2003)
- (5) Any variance granted pursuant to this Article shall expire three years after the date of the resolution granting such variance unless a building permit has been issued for the building or structure for which the variance has been granted and construction commenced on said building or structure. (Amended March 20, 2003)

- D. Extensions across district boundaries. In appropriate cases where a lot lies within two (2) districts, the Board of Appeals may permit the extension of existing or proposed permitted accessory off-street parking space across a district boundary, under such conditions as will safeguard the character of the district into which such use is extended. However, no such extension shall exceed seventy-five (75) feet, measured at right angles to such district boundary. The power under this subsection shall not permit the moving of the zoning district line but only the extension of the accessory off-street parking space.

 - E. The Board of Appeals, after a public hearing, shall have the power to direct the Building Inspector to issue a building permit, certificate of occupancy or certificate of use, as the case may be, subject to other applicable laws, codes, rules and regulations.
3. Rules of procedure.
- A. The Board of Appeals may adopt rules and regulations with respect to procedure before it and with respect to any subject matter over which it has jurisdiction,

subject to approval of the Village Board. Such regulations shall include provisions for conduct of meetings, notification of parties, form of applications and filing of decisions.

B. Every decision of the Board of Appeals shall be recorded in accordance with a standard format adopted by the Board, shall fully set forth the circumstances of the case and shall contain a record of the findings on which the decision is based. Every decision of said Board shall be by resolution, and each such resolution shall be filed in the Office of the Village Clerk and Building Inspector by case number within a reasonable period of time after its adoption. (Amended August 20, 1992)

C. All appeals and applications made to the Board of Appeals shall be in writing and shall be accompanied by a fee as determined in the Standard Schedule of Fees, as may be adopted from time to time by resolution of the Village Board.

4. Appeals from Board of Appeals determinations.

Any person aggrieved by any decision of the Board of Appeals

hereunder may, within thirty (30) days of the filing of the decision with the office of the Village Clerk, appeal pursuant to Article 78 of the Civil Practice Laws and Rules.