

ARTICLE 14
ZONING BOARD OF APPEALS

Sec. 14.0. Establishment and duties. [L.L. 3-00, § 1, 3-28-2000]

Pursuant to city laws and in accordance with the General City Law of the State of New York, as amended, the city shall establish a zoning board of appeals. The zoning board of appeals shall consist of seven members appointed by the mayor with the approval of a majority of the common council. Members shall be electors residing in the city. The mayor and common council may provide for compensation to be paid to members, experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the mayor and common council for this purpose. The zoning board of appeals shall designate a chairperson, vice-chairperson and secretary with the approval of the mayor and common council. In the absence of a chairperson, vice-chairperson or secretary, the zoning board of appeals may designate members to serve in acting capacities in these positions. A member of the zoning board of appeals shall not at the same time be a member of the common council of the city. The mayor and common council shall have the power to remove any member of the zoning board of appeals for cause, after public hearing.

14.0.1 Term of appointment. The terms of office of the members of the zoning board of appeals shall be seven years. Of the members of the zoning board of appeals 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, one for the term of five years, one for the term of six years and one for the term of seven years, from and after his or her appointment. The appointment of the chairperson shall be for a term of one year.

Their successors shall be appointed for the term of seven 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 mayor and common council of the city by appointment for the duration of the unexpired term.

14.0.2 Staff. The zoning board of appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the mayor and common council of the city and then available for that purpose.

14.0.3 Powers and duties. The zoning board of appeals shall have all the powers and duties prescribed by law and this law, which are more particularly specified as follows:

1. Interpretation. It shall be the responsibility of the zoning board of appeals to hear and decide appeals from, and review, any order, requirement, decision, or interpretation made by the code enforcement officer.
2. Use variances.
 - a. The zoning board of appeals, on appeal from the decision or determination of the code enforcement officer, 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 law.

b. No such use variance shall be granted by the zoning 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 and the zoning board of appeals shall find that:

(1) Under the applicable regulations of this law the applicant is deprived of all reasonable economic use or benefit from the property in question, which deprivation must be established by competent financial evidence; and

(2) 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

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

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

c. 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.

3. Area variances.

a. The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the code enforcement officer, to grant area variances from the lot area, lot width, yard, height, lot coverage or other dimensional requirements of this law.

b. 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 zoning board of appeals shall also consider:

(1) 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; and/or

(2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; and/or

(3) Whether the requested area variance is substantial; and/or

(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and/or

(5) Whether the alleged difficulty was selfcreated, which consideration shall be relevant to the decision of the zoning board of appeals, but shall not necessarily preclude the granting of the area variance.

c. If the zoning board of appeals, in its discretion, shall grant an area variance, it 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.

4. Imposition of conditions. The zoning board of appeals shall, in the granting of use variances, area variances and special use permits, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

All work which is authorized by the grant of a variance or special use permit shall be commenced within six months or such greater period not to exceed one year, as may be specified in the approval by the zoning board of appeals. Unless otherwise authorized by the zoning board of appeals, all work shall be completed within one year of the date of the grant of such variance or special use permit. Such approval may be extended as determined by the zoning board of appeals upon receipt of written application submitted prior to the expiration of the approval period.

14.0.4 Mandatory referral.

1. The zoning board of appeals shall, at least five days before a public hearing, mail notices thereof to the parties, and to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal.

2. The zoning board of appeals, before taking final action on any use variance affecting real property lying within a distance of 500 feet from the boundary of any city, village or town, or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, shall refer such matter to the Cattaraugus County Planning Board for report and recommendation. If the county planning board fails to make such report within 30 days after receipt of referred matter the zoning board of appeals may act without such report. If the county planning board disapproves the proposal, or recommends modification thereof, the zoning board of appeals may act contrary to such disapproval or recommendation only by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The zoning board of appeals shall file a report of its action with the county planning board within seven days after such action is taken.

14.0.5 Procedure.

1. All appeals and applications made to the zoning board of appeals shall be in writing, on forms prescribed by said board. Every appeal or application shall refer to the specific provision of the law 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.
2. The zoning board of appeals shall hold a public hearing on appeals within 60 days after receipt and give due notice of such public hearing by advertising in the official newspaper at least 10 days prior to the date scheduled for the public hearing.
3. Applicants for use variances are required to mail notices of such public hearings to the owners or occupants of all lands within a radius of 250 feet from any part of the property for which the use variance is being requested. Such notices shall be postmarked at least 10 days prior to the date scheduled for the public hearing.
4. Applicants for area variances are required to mail notices of such public hearings to the owners or occupants of all lands abutting any part of the property for which the area variance is being requested. Such notices shall be postmarked at least 10 days prior to the date scheduled for the public hearing. Abutting owners in every direction shall be notified by the mailing of notices and, in the event the property for which the area variance is requested fronts on a street, alley or any other public way, notices shall also be sent to the owners and/or occupants of properties located on the opposite side of the street, alley or public way.
5. Applicants for special use permits referred to the zoning board of appeals shall apply the standards governing special use permits as provided in subsection 9.0.4 of this law and comply with the notice requirements provided in subsection 9.0.3(c).
6. Copies of the appeal or application document shall be mailed to the members of the board of appeals. The board of appeals shall meet within 15 days of the date of filing the appeal or application, review the matter and schedule the required public hearing.
7. The zoning board of appeals shall decide on appeals and on other matters referred to it within 60 days after final public hearing.
8. Every decision of the zoning board of appeals shall be by resolution, each of which shall contain a full record of said board in the particular case.
9. Where there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of this chapter, the zoning board of appeals shall have the power to vary or modify the application of any of the regulations or provisions of this law relating to the use, construction, structural changes in, equipment or alteration of buildings or structures, or the use of land, so that the spirit of the law shall be observed, public safety and welfare secured and substantial justice done. The zoning board of appeals shall have no power to vary or modify the application of the provisions and requirements of the Uniform Fire Prevention and Building Code of the State of New York.

14.0.6 Rules of procedure, by-laws, forms.

1. Meetings open to the public. All meetings of the zoning board of appeals shall be open to the public.
2. Minutes of meetings. Such board shall keep minutes of each of its meetings which are certified as accurate by the secretary of the board which describe the factors considered by the board in reaching its decision and which show the vote of each member on every application to the board. Each member present at any meeting of the board shall have a vote on every question brought before the board for its consideration and no member shall be excused from voting on any question except by a concurring vote of two-thirds of all present. If a member is absent or abstains from voting the minutes shall indicate such fact.
3. Quorum and majority vote. Four votes of the board shall constitute a quorum and four votes shall be necessary to decide in favor of any applicant or any matter upon which said board is required to pass under the provisions of this law.

Additional procedures and by-laws. The zoning board of appeals shall have the power to make, adopt, and promulgate such additional written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this law.