

## **8.0 VARIANCE AND INTERPRETATION APPEALS**

### **8.1 INTENT**

The intent of this Article is to provide for appeals from decisions made by an administrative official charged with the enforcement of the Zoning Ordinance.

### **8.2 DELEGATION TO ZONING BOARD OF APPEALS**

The Zoning Board of Appeals (ZBA) is hereby charged with the responsibilities of administering and carrying out the intent established in Section 8.1 above.

### **8.3 APPELLATE AUTHORITY**

The jurisdiction of the ZBA shall be appellate only and shall be limited to hearing and deciding appeals from any person aggrieved by any decision made by the administrative official charged with the enforcement of the Zoning Ordinance.

#### **8.3.1 AREA VARIANCE**

An area variance provides relief from the dimensional or physical requirements imposed by the applicable zoning regulations. An area variance does not authorize any change in the type of use of the property.

##### **A. Evaluation Criteria**

In making its determination whether to grant an area variance, the ZBA 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 ZBA 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;
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;
3. Whether the requested area variance is substantial;
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
5. Whether 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 an area variance.

#### **8.3.2 USE VARIANCE**

A use variance provides relief to allow the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations.

##### **A. Evaluation Criteria**

The ZBA shall not grant a use variance unless the applicant has demonstrated that applicable zoning regulations and restrictions have caused unnecessary

hardship. In order to prove unnecessary hardship, the applicant must demonstrate that for each and every permitted use for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood;
4. The alleged hardship has not been self-created.

### **8.3.3 MINIMUM VARIANCE**

The ZBA, in granting a use or area variance, shall grant the minimum variance that it shall deem necessary and adequate while, at the same time, preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.

### **8.3.4 CONDITIONS OF APPROVAL**

The ZBA, in granting a use or area variance, shall have the authority to impose such reasonable conditions and restrictions as are directly related, 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.

### **8.3.5 INTERPRETATION APPEALS**

An interpretation is an appeal by an aggrieved party seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance.

### **8.3.6 COMPLIANCE**

The granting of any appeal from a specific requirement of this ordinance shall not obviate the necessity of complying with all other applicable provisions of this ordinance in every other respect.

## **8.4 VARIANCE AND INTERPRETATION APPEALS PROCEDURE**

### **8.4.1 ADMINISTRATIVE DECISION**

A. Each decision of the administrative official charged with the enforcement of this Zoning Ordinance shall be filed in the office of such official within five (5) business days from the day it is rendered and shall be a public record.

B. An application for appeal shall be submitted by an aggrieved person within sixty (60) days of the filing of any such decision.

### **8.4.2 APPLICATION FOR APPEAL**

A. The ZBA shall not accept any application for appeal that includes a parcel for which there is an outstanding, unresolved written violation from the Zoning

Officer that is not the subject of the appeal.

B. Applications for appeals shall be on forms prescribed by the ZBA and shall be accompanied by a fee as established by the City Council. Every appeal shall specify the grounds for appeal and the requested relief or interpretation sought.

C. An appeal shall stay all enforcement proceedings relating to any violation under appeal unless the administrative official charged with the enforcement of the Zoning Ordinance finds that such stay would cause imminent peril to life or property.

#### **8.4.3 MEETINGS**

Meetings shall be held at the call of the Chairman or as the ZBA may determine. A quorum shall consist of 4 members. The ZBA shall keep minutes of its proceedings showing the vote of each member upon every action and shall keep records of its deliberations and decisions.

#### **8.4.4 PUBLIC HEARING NOTICE**

A. The ZBA shall schedule a public hearing on an application for an appeal and shall provide notice as follows.

B. The ZBA shall advertise the hearing in a Saratoga Springs newspaper of general circulation at least five days prior to the date thereof. The applicant shall be responsible for payment for this notice. Prior to the hearing, the applicant shall be responsible for filing with the ZBA an affidavit from the newspaper confirming such publication and payment.

#### **8.4.5 PROPERTY OWNER NOTIFICATION**

The applicant shall provide notice of an appeal to neighboring property owners in the following manner.

A. The applicant shall obtain from the City the names and addresses of property owners within a geographic radius from the applicant's subject property boundary as indicated below:

1. Use Variance: 250 feet
2. Area Variance: 100 feet
3. Interpretation: 100 feet

B. The applicant shall receive from the ZBA a property owner notification notice and shall send only this notice to the identified property owners by first class mail. This notice shall be postmarked no less than 7 days but no more than 20 calendar days prior to the scheduled hearing.

C. Prior to the public hearing, the applicant shall submit to the ZBA, confirmation of the property owner notification by obtaining a "certificate of mailing" provided by the U.S. Postal Service.

D. Failure to provide notice in exact conformance with these provisions shall not invalidate a ZBA determination provided the ZBA finds that substantial compliance has occurred and that the public has been fairly apprised of the fundamental character of the proposed request.

#### **8.4.6 PLANNING BOARD RECOMMENDATION**

Pursuant to General City Law Section 33.6, if a proposed subdivision plat contains one or more lots that do not comply with this Chapter and, therefore, require an area variance, the ZBA shall request that the Planning Board provide a written recommendation concerning the proposed variance.

#### **8.4.7 SARATOGA COUNTY PLANNING BOARD REFERRAL**

A. Any application for an appeal that meets the referral requirements of General Municipal Law Section 239-m shall be referred to the Saratoga County Planning Board for its review prior to the public hearing. No action shall be taken by the ZBA on such appeal until an advisory recommendation has been received from the County Planning Board or 30 calendar days have passed from when the County Planning Board received the full statement.

B. If the Saratoga County Planning Board recommends modification or disapproval of a proposed action, the Zoning Board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.

#### **8.4.8 INTERMUNICIPAL NOTIFICATION**

Pursuant to General Municipal Law Section 239-nn, if the land involved in an application for a use variance lies within 500 feet of the boundary of another municipality, the ZBA shall submit a copy of the official notice of the public hearing to the municipal clerk of the other municipality at least 10 day prior to the public hearing.

#### **8.4.9 ADVISORY OPINION**

The ZBA may request an advisory opinion of the Planning Board, the Design Review Commission, or any administrative department or agency in its evaluation of an appeal.

#### **8.5 DECISIONS**

A. In rendering its decision on any application, the ZBA shall comply with all applicable provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations.

B. The ZBA shall decide an appeal within sixty-two (62) days after the close of the required public hearing. This time frame may be extended by mutual consent of the applicant and the ZBA.

C. Four (4) affirmative votes are required to pass a motion regarding an appeal before the ZBA. The ZBA may amend a motion that fails to receive four

affirmative votes within this 62-day period. Ultimately, if four affirmative votes cannot be attained on a motion within this 62-day period, unless extended by mutual consent of the applicant and the ZBA, the appeal shall be denied by default.

D. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related, and incidental, to the proposed project. As a condition of approval, the ZBA may require a letter of credit or equivalent security approved by the City to guarantee satisfactory performance of all required improvements.

E. Every ZBA decision shall be signed and dated by the Chairperson and shall document the circumstances of the case and the findings on which the decision is based.

F. Every ZBA decision of an appeal shall be by Resolution and shall be filed in the Office of the City Clerk within five (5) business days thereof and a copy provided to the applicant and to the Building Department.

G. In order to rehear an appeal previously determined by the ZBA, the following must occur:

1. A ZBA member must move to formally rehear the appeal
2. A unanimous vote of all ZBA members present must approve the motion to rehear
3. The appeal shall be subject to the same notice provisions as an original hearing
4. The ZBA may reverse, modify or annul its original decision provided the ZBA finds that the rights vested in persons acting in good faith reliance upon the reheard order, decision or determination will not be prejudiced thereby
5. A unanimous vote of all ZBA members present is required to reverse, modify or annul its original decision

#### **8.5.1 EXPIRATION**

Unless otherwise specified or extended by the ZBA, a variance approval shall expire 18 months following the filing date of such decision if the applicant has not complied with any required conditions and started actual construction, or otherwise implemented this approval. Actual construction is defined as the fastening or placing of construction materials in a permanent manner, the excavation of a basement, or the demolition or removal of any existing structure if no new construction is approved.

#### **8.5.2 EXTENSIONS**

The ZBA may grant up to two 18 month extensions for an approved variance provided that the application for extension was properly submitted prior to the expiration date of either the original variance or the first extension. When

requesting an extension, it shall be the applicant's responsibility to prove that there have been no significant changes to the site or neighborhood and that the circumstances and findings of fact by which the original approval was granted have not significantly changed.

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