

**ARTICLE XIV
ZONING BOARD OF APPEALS**

A. Purpose and Intent

The purpose of this Article is to provide for the creation of a Zoning Board of Appeals with the power to issue variances from this Ordinance in cases where the strict application thereof would result in practical difficulty or unnecessary hardships inconsistent with the general purpose and objectives of this Ordinance. It is further the purpose of this Article to provide a mechanism for appeal of any decision of the Zoning Administrator and to provide a mechanism for interpretation of any provision of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

B. Creation, Appointment and Organization

The Town Board shall appoint a Zoning Board of Appeals pursuant to Section 267 of Town Law. Said Board shall consist of seven (7) members and two (2) alternate members, to serve for staggered seven (7) year terms. The Chairperson of the Board shall be one of the seven (7) members and shall be designated as such annually by the Town Board. Vacancies shall be filled for such unexpired term only. The Board shall elect a Vice Chairman from its membership, and shall establish rules for the conduct of the officers. The Town Board shall appoint a secretary. All members are subject to removal by the Town Board for cause and after public hearing. The Board of Appeals may employ such clerical or other staff assistance as may be necessary and prescribe their duties, provided it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.

C. Powers and Duties

1. Rules of Procedure, Bylaws, Forms: The Zoning Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, by-laws, and forms as may be provided for in Section 267 of Town Law for the proper execution of its duties and to secure the intent of this Ordinance. Such rules, by-laws, and forms shall not be in conflict with, or have the effect of waiving, any provisions of this Ordinance or any other Ordinance or Ordinances of the Town of Northumberland. Such rules, by-laws, forms, and any subsequent amendments or supplements thereto, shall be submitted to the Town Board by the Zoning Board of Appeals for approval and filing for public view. The Town Board shall move to approve, reject, or modify such rules, by-laws and forms within seventy (70) days after submission.
2. Appeals Seeking Interpretations: The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator. This shall not be construed

so as to permit an appeal to the Zoning Board of Appeals of a decision or determination made by the Zoning Administrator which is based upon a determination of the Planning Board. Such appeals shall be made pursuant to Article XI.D.8 of this Ordinance.

3. Appeals Seeking Variances:

a. Area Variances. Except as otherwise provided herein, where there are practical difficulties in the way of carrying out the strict letter of this Ordinance pertaining to area regulations, the Zoning Board of Appeals shall have the power in passing upon appeals to vary or modify yard requirements, setback lines, lot coverage, frontage requirements, height requirements, and density regulations.

- (1) 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 district; and
 - (e) Whether the alleged difficulty was self-created, 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.
- (2) The Zoning 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.

- b. Use Variances. Except as otherwise provided herein, when the literal application of this Ordinance pertaining to use of land will result in unnecessary hardship, the Zoning Board of Appeals shall have the power in passing upon appeals to vary the use requirements of this Ordinance.
- (1) 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 to the Zoning Board of Appeals that
 - (a) Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence;
 - (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;
 - (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.
 - (2). 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, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community.
- c. Variances to Flood Damage Prevention Law. See Local Law Number 1 of 1995 for specifics.
- d. Imposition of Conditions. The Zoning 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, or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this Ordinance, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

D. Procedures

1. Meetings and Voting Requirements: Meetings shall be held at the call of the Chairman or at such other times as the Board of Appeals may determine. A quorum shall consist of four (4) members. In order to reverse a decision of the Zoning Administrator or to authorize a variance, an affirmative vote of at least four (4) members shall be required. A favorable vote of a majority plus one of all members shall be required if the action taken by the Zoning Board of Appeals is contrary to an advisory recommendation received from the Saratoga County Planning Board under the provisions of Section 239 of the General Municipal Law. The Board shall keep accurate minutes of its proceedings documenting fully all findings and showing the vote of each member upon each question. All meetings of the Board of Appeals shall be open to the public.

2. Appeals:
 - a. An appeal to the Board of Appeals may be taken by any person aggrieved, or by an officer, board or bureau of the Town affected thereby.

 - b. All applications and appeals made to the Zoning Board of Appeals shall be submitted in writing on forms furnished by the Zoning Administrator and must be received at least seven (7) business days prior to their monthly meeting date. Every application of appeal shall refer to the specific provision of this Ordinance being appealed and shall exactly set forth the interpretation that is claimed, in addition to the information requested on the form.

 - c. The application of appeal shall contain a reasonably accurate description of the present improvement and the additions or changes intended to be made under this application indicating the size of such proposed improvements, material and general construction thereof.

 - d. The application of appeal shall contain a plot plan of the real property to be affected indicating the location and size of the lot and size of improvements thereon and proposed to be erected thereon, and all yard dimensions and adjacent property owners.

 - e. Each application for an area or use variance shall be accompanied by a proposed site plan at an appropriate scale showing the size and placement of the lot, including County tax map reference numbers (Section, Block, Lot) surrounding land use, design and location of proposed buildings, driveways, parking areas, landscaping and screening, proposed drainage and utility systems, existing and proposed contours of the land, and any other information deemed necessary by the Zoning Board of Appeals.

- f. The Zoning Board of Appeals has the right to waive any of the aforementioned application requirements which it feels are inapplicable.
- g. Within thirty-five (35) days of receipt by the Zoning Board of Appeals of a completed application of appeal, the Zoning Board of Appeals shall give notice by public ad in a newspaper of general circulation in the Town of a public hearing to be held on the application not less than five (5) days and not more than thirty-one (31) days after the notice.

In accordance with General Municipal Law Section 239(m), at least five days before said hearing on the application, if applicable, the Zoning Board of Appeals shall mail notice thereof to the County Planning Board.

- (1) In case of an appeal alleging error or misinterpretation in any order or other action by the Zoning Administrator, the following persons shall be notified: the Zoning Administrator, appellant and the person or persons, if any, who benefit from the order, requirement, regulation or determination and all owners of property within five hundred (500) feet of the nearest line of the property for which the appeal of the decision is sought.
- (2) In case of an appeal for a variance the following persons shall be notified: all owners of property within five hundred (500) feet of the nearest line of the property for which the variance is sought, and to such other property owners as the Chairperson of the Board of Appeals may direct.
- (3) Referral to County Planning Board: Prior to taking action on any matter which would cause any change in the regulations or use of land or building on real property as specified in Section 239(m) of the General Municipal Law, the Zoning Board of Appeals shall refer such matter to the County Planning Board.

Such actions shall include those which affect property located within five hundred (500) feet of the following:

- (a) Municipal boundary;
- (b) Boundary of any existing or proposed county or State Park or other recreation area;
- (c) Right-of-way of any existing or proposed County or State road or highway;

- (d) Existing or proposed right-of-way of any stream or drainage channel owned by the County, or for which the County has established channel lines; or
- (e) Existing or proposed boundary of any County or State-owned land on which a public building or institution is situated.
- (f) The boundary of a farm operation within an Agricultural District established pursuant to Article 25-AA of the NYS Agriculture and Markets Law, except this subparagraph shall not apply to the granting of area variances.
- (g) If within thirty (30) days after such referral the County Planning Board disapproves the proposal or recommends modification thereof, the Zoning Board of Appeals shall not act contrary to such disapproval or recommendation except by a majority vote plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.

If the County Planning Board fails to report within such thirty (30) day period or such longer time period as may have been agreed upon, the Zoning Board of Appeals may act without such report.

- (h) Within sixty-two (62) days of the final adjournment of a public hearing called and held under paragraph (g) of this Section, the Zoning Board of Appeals shall render its decision. The decision of the Board shall be in writing and shall contain findings and the factual basis for each finding from the record of the hearing, which shall support the decision of the Board.

3. Time of Appeal: Such appeals shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Administrator by filing with said Zoning Administrator and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The Zoning Administrator shall forthwith transmit to the Zoning 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 Zoning Board of Appeals prior to the hearing of such appeal.
4. Stay of Proceedings: An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies for the Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, 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 Zoning Board of Appeals or by the Supreme Court on application, on notice to the Zoning Administrator and on due cause shown.

5. Requests for Assistance: In hearing an appeal, the Zoning Board of Appeals 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.
6. Compliance with State Environmental Quality Review Act: The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act under Article Eight of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York State Codes, Rules and Regulations.
7. Decisions: Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case. Each such resolution together with all documents pertaining thereto shall be filed in the Office of the Town Clerk, by case number, under one of the following headings; Interpretations or Variances within five (5) business days after such decision is rendered. A copy thereof shall be mailed to the applicant. All approved use variances must be referred to the Town Planning Board for site plan review.
8. Expiration of Appeal Decision: Unless otherwise specified by the Board of Appeals, a decision on any appeal shall expire if the applicant fails to obtain any necessary building permit or comply with the conditions of said authorized permit within six (6) months from the date of authorization thereof. The Board of Appeals may increase this period from six (6) months to one (1) year at its discretion.
9. Appeal From Decision of Board of Appeals: All decisions of the Zoning Board of Appeals are subject to court review in accordance with applicable laws of the State of New York.

E. Fee Charge

Each original application to the Zoning Board of Appeals for an area or use variance shall be accompanied by a fee determined by the Town Board.

F. Required Interval for Hearings on Applications and Appeals after Denial

Whenever the Board, after hearing all the evidence presented upon an application of appeal under the provisions of this Ordinance denies the same, the Zoning Board of Appeals shall refuse to hold further hearings on the said or substantially similar application of appeal by the same applicant, his or her successor or assign for a period of one (1) year, except and unless the Board of Appeals shall find and determine from the information supplied by the request for a rehearing, that changed conditions have occurred relating to the promotion of the public health, safety, convenience, comfort, prosperity and general welfare, and that a reconsideration is justified. Such rehearing would be allowable only upon a motion initiated by a member of the Zoning Board of Appeals and adopted by the unanimous vote of the members present.

G. Relief from Decisions

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Law and regulations of the State of New York. Such proceeding shall be governed by the specific provisions of Article 78, except that the action must be initiated as therein provided within thirty (30) days after the filing of the Board's decision in the Office of the Town Clerk.