

ARTICLE XI

ZONING BOARD OF APPEALS

Section 11.1 Organization

(A) Appointment

- (1) Pursuant to the provisions of Village Law of the State of New York, the mayor of the Village of Allegany, subject to the approval of the Board of Trustees, shall appoint a Zoning Board of Appeals consisting of five members. The Zoning Board of Appeals existing as of the date of the adoption of this local law shall continue and shall be deemed appointed in accordance with the provisions of law and in accordance with the terms heretofore made.
- (2) The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. The terms of office shall expire at the end of the village's official year. No member of the Zoning Board of Appeals shall simultaneously hold other elective office in the village government.
- (3) The Mayor shall designate the chairperson of the Zoning Board of Appeals, subject to the approval of the Board of Trustees. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson.

(B) Vacancies

If a vacancy shall occur otherwise than by expiration of term, the new member shall be appointed for the unexpired term.

(C) Training and Attendance Requirements

The Village Board of Trustees may establish requirements for members of the Zoning Board of Appeals to complete training and/or continuing education classes on zoning and planning issues. In addition, the Village Board may establish minimum requirements for attendance at Zoning Board of Appeals meetings.

(D) Removal from Office

The Mayor shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Village Board of Trustees by local law.

(E) Expenses

The Village Board may provide for compensation to be paid to experts, clerks and a secretary, and may provide for such other expenses as may be necessary and proper, not to exceed the appropriations made by the Village Board of Trustees.

Section 11.2 Powers and Duties**(A) Powers**

With due consideration for the purpose and intent of this Zoning Law, the Zoning Board of Appeals shall have the power and authority to:

- (1) Hear and determine appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer charged with the enforcement of this local law.
- (2) Hear and decide all matters referred to it, or upon which it is required to pass under this local law.
- (3) Decide any question involving the interpretation of any provision of this local law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (4) Hold public hearings and approve or disapprove each application for a use or area variance, as defined in this local law.
- (5) Revoke any decision to grant a variance, after a public hearing, if the owner/applicant fails to comply with any conditions of approval of the original approval. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article X of this local law.

(B) Duties of the Chairperson

All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson, and at such other times as the Zoning Board of Appeals may determine. The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

(A) Minutes and Records

The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. The minutes shall include the reasons for all decisions, and any conditions of approval.

(B) Assistance to Board of Appeals

- (1) The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Village for such assistance as shall be deemed necessary and as shall be authorized by the Village Board.
- (2) For unique or large-scale projects, the Zoning Board of Appeals, upon approval from the Village Board of Trustees, may retain qualified expert consultants to assist the Board of Appeals in its review of the application; the cost of such consultant(s) shall be paid by the applicant.

Section 11.3 Variances

The Zoning Board of Appeals may issue a variance for any use of structures or lots (use variance) or for any dimensional or physical regulations (area variance) in the Village of Allegany, provided such variance complies with the general standards set forth in this section and with the special requirements enumerated elsewhere herein. Each case must be determined on its own merits.

(A) Use Variances

- (1) In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the 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 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 lack of return is substantial, as demonstrated by competent financial evidence; and
 - b. 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.
- (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, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(B) Area Variances

- (1) In making its determination on an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were 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.
 - e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, 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 and the health, safety and welfare of the community.

(C) Imposition of Conditions

- (1) 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. Such conditions shall be consistent with the spirit and intent of this zoning law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- (2) The applicant shall comply with all conditions of approval prior to the issuance of a Certificate of Zoning Compliance. However, the Zoning Board of Appeals may authorize the Code Enforcement Officer to issue a temporary Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Board of Appeals shall establish a maximum period of time during which the temporary Certificate of Zoning Compliance is valid. The issuance of a temporary Certificate of Zoning Compliance may be warranted, for example, in cases where the timing of the completion of construction

does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved special use permit. The sufficiency of such performance bond shall be determined by the Village Board, after consultation with the Board of Appeals, Village Engineer, Village Attorney, Code Enforcement Officer, and/or other appropriate parties.

(D) Expiration of Grant of Variance

A variance shall expire within six months of the date of approval, if the applicant has not commenced construction on the project within that time or if use of the property in accordance with the grant of variance has not been commenced, in cases where construction is not needed. The Zoning Board of Appeals may grant extensions of up to one additional year, upon written application prior to the expiration of the original variance approval. Applicant shall provide a rational basis as to why he/she was not able to begin the project.

A use variance shall expire if the use of the property in accordance with the grant of variance shall cease continuously for six months.

Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a grant of variance be renewed periodically.

Section 11.4 Procedures

(A) Filing of Appeals

- (1) Any party aggrieved by a decision of the Code Enforcement Officer shall file a notice of appeal within sixty (60) days from the date of the filing of any order, requirement, decision, interpretation or determination by the Code Enforcement Officer in the office of the Village Clerk.
- (2) All appeals shall be in writing, on forms prescribed by the Zoning Board of Appeals, and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of the local law that is 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.
- (3) All appeals shall be filed with the Village Clerk. Upon receipt of the notice of appeal, together with all required application material, the Clerk shall transmit the notice of appeal and application materials to the Zoning Board of Appeals and to the Code Enforcement Officer. The C.E.O. shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record upon which the action appealed from was taken.

(B) Required Application Materials

Any appeal or application for a use or area variance shall contain the information specified below for the corresponding type of application. The Zoning Board of Appeals may require additional information, if a particular application so warrants. The Zoning Board of Appeals may waive any particular application requirement that it deems is not relevant to an individual application.

The applicant shall submit a sufficient number of copies of all required materials to facilitate review by the Zoning Board of Appeals and staff, in addition to one required public review set of materials. The Code Enforcement Officer shall determine the required number of copies.

(1) Appeal from interpretation or determination

Any appeal of the Code Enforcement Office's interpretation of the Zoning Law or other determination shall include the following information:

- (a) The name and address of the applicant.
- (b) The tax map number and the street address of the lot that is the subject of the application, if applicable. The name and address of the owner of the lot in question, if the applicant is not the property owner.
- (c) A description of the interpretation or determination that is being appealed, and a statement explaining why the applicant feels this interpretation or determination is not correct.
- (d) All required fees.

(2) Application for a Use Variance

- (a) The name and address of the applicant.
- (b) The name and address of the owner of the lot that is the subject of the application, if the applicant is not the property owner. If an applicant is applying for a variance on a lot that he/she does not own, the property owner shall also sign the application.
- (c) The tax map number and the street address of the lot that is the subject of the application.
- (d) The zoning classification of the lot and its present use. A description of the proposed use, if different from the current use.
- (e) If construction is proposed, a reasonably accurate description of the present buildings and any other improvements, and the additions or changes intended to be

made under this application, indicating the size of such proposed improvements, material and general construction thereof.

- (f) A statement explaining the reasons why the applicant believes the variance should be granted. The applicant should address the four tests itemized in Section 11.3(A) of this local law.
- (g) All required fees.

(3) Application for an Area Variance

- (a) The name and address of the applicant.
- (b) The name and address of the owner of the lot that is the subject of the application, if the applicant is not the property owner. If an applicant is applying for a variance on a lot that he/she does not own, the property owner shall also sign the application.
- (c) The tax map number and the street address of the lot that is the subject of the application.
- (d) The zoning classification of the lot and its present use. A description of the proposed use, if different from the current use.
- (e) A plot plan of the lot, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon. The plot plan shall be drawn to scale, and the dimensions of the lot, buildings and setbacks shall be accurately shown on the plot plan. The plot plan shall generally indicate the types of materials to be used.
- (f) A statement explaining the reasons why the applicant believes the variance should be granted. The applicant should address the five tests itemized in Section 11.3(B) of this local law.
- (g) All required fees.

(C) Request for Interpretation

Any Village board, agency, or official, or any individual, may request an interpretation of any portion of this zoning law. Such request shall be made in writing and shall detail the specific section of the zoning law for which clarification or interpretation is requested. The Zoning Board of Appeals shall consider the request for clarification at its next meeting, or the earliest meeting which allows full compliance with all the notification and other public hearing requirements of this law. The determination of the Board of Appeals shall be filed according to the requirements of this law.

(D) Public Hearing

- (1) Before acting on any matter, the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the complete notice of appeal and application are filed with the Clerk. The Zoning Board of Appeals shall determine when the application is complete.
- (2) Notice of the public hearing for a **use variance** shall be published in the following ways:
 - (a) The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The applicant shall provide notice of the public hearing to the owner(s) of every parcel located wholly or partially within two hundred fifty (250) feet of the perimeter of the property that is the subject of the application. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Zoning Board of Appeals may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Board of Appeals. The applicant shall submit to the Zoning Board of Appeals a list of persons who are required to receive a notice of the public hearing and an affidavit that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.
 - (c) For all appeals that meet the requirements contained in Article XIV of this Law (and in Section 239m of NYS General Municipal law), the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application.
 - (d) Content of Notice: The notice of the public hearing shall contain the date, time, and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours.)
- (3) Notice of the public hearing for an **area variance** shall be published in the following ways:
 - a. The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.

- b. The applicant shall provide a notice of the public hearing to all owners of property that adjoins the lot that is the subject of the appeal. "Adjoin" shall include property that is across the street, alley or any other public way from the property for which the variance is sought. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Zoning Board of Appeals may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Board of Appeals. The applicant shall submit to the Zoning Board of Appeals a list of persons who received the notice and an affidavit that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.
 - c. For all appeals that meet the requirements contained in Article XIV of this Law (and in Section 239m of NYS General Municipal law), the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application.
 - d. Content of Notice: The notice of the public hearing shall contain the date, time, and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours.)
- (4) Notice of the public hearing for an interpretation of the zoning law, appeal of any determination of the Code Enforcement Officer, or any other matter referred to or considered by the Board of Appeals (other than a use or area variance), shall be published in the following ways:
- (a) The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The Chairperson of the Zoning Board of Appeals may direct that a notice be mailed or provided individually to interested persons. In such case, the notice shall be mailed at least 10 days prior to the date of the public hearing and shall contain the information described in Section 11.4(B)(3)(d) of this local law.
- (5) At the public hearing any person may appear in person, or by agent or by attorney.

(E) Stay upon Appeal

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, they 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 a court of record on application, on notice to the Code Enforcement Officer and on due cause shown.

(F) Decision

- (1) The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to grant a use variance or area variance. However, if an application is referred to the Cattaraugus County Planning Board pursuant to Section 239m of New York State General Municipal Law and Article XIV of this local law, and if the County Planning Board recommends modification or disapproval of an application, the Zoning Board of Appeals shall not act contrary to such recommendation except by a vote of a majority plus one of all the members.
- (2) All deliberations and decisions of the Zoning Board of Appeals shall occur in a open public meeting, to the extent required by the New York State Open Meetings Law.
- (3) The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days of the public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.
- (4) The Code Enforcement Officer may recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he believes substantial justice requires the same but where he himself did not have sufficient authority to grant the relief sought.

(G) Filing Of Decisions and Notice To The Applicant

- (1) The Zoning Board of Appeals shall file every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals in the office of the Village Clerk within five (5) business days. Such decisions and determinations shall be a public record.
- (2) A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within ten (10) business days of the decision. If the application is denied, the notice to the applicant shall state the reasons therefore. If the application is approved with conditions or modifications, the notice to the applicant shall specify all such conditions and modifications.
- (3) The Zoning Board of Appeals shall file a copy of all its decisions and determinations, with all conditions and modifications, in the office of the Code Enforcement Officer within five (5) business days of the decision/determination.

(H) Rehearing

Whenever the Board of Appeals, after hearing all the evidence presented upon an application or appeal, under the provisions of this local law, denies the same, the Board shall refuse to hold further hearings on the said or substantially similar application or appeal by the same applicant, his successor, or assign for a period of one (1) year, except and unless the Zoning Board of Appeals shall find and determine from the information supplied by the applicant 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.

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard 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. A quorum of the membership of the Board of Appeals must be present when such vote is taken. Such rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination 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 determination will not be prejudiced thereby.

(I) Abandoned Application

An application will be deemed abandoned and will be denied if there is no activity by the applicant on the application within six (6) months of the date of the initial notice of appeal or from the date that additional material or information is requested by the Zoning Board of Appeals, whichever is later. "No activity" means that the applicant is not diligently providing the Village with information necessary to proceed with review of the application, including materials and/or information that are required by this local law or by the requirements of the State Environmental Quality Review Act.

Section 11.5 Compliance with State Environmental Quality Review Act

The Zoning Board of Appeals shall fully comply with the provisions of the State Environmental Quality Review Act (SEQRA) prior to acting upon an application for variance, an appeal, or other action.