

CHAPTER 230-ZONING
ARTICLE XIV: ZONING BOARD OF APPEALS

§ 230-160. Definitions.

As used in this article, the following terms shall be defined as indicated:

AREA VARIANCE: the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

USE VARIANCE: the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

§230-161. Creation and composition. [Amended 5-7-1990 by L.L. No. 2-1990]

There shall be a Zoning Board of Appeals of five (5) members pursuant to the provisions of the Village Law.²¹ The members of the Zoning Board of Appeals as constituted immediately prior to the adoption of this chapter shall continue in office for their unexpired terms and shall be reelected or replaced in accordance with the provisions of the Village Law.

§ 230-162. Powers and duties.

The Zoning Board of Appeals shall have all the powers and duties prescribed by law and by this chapter, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of said Board that is conferred by law:

- A. Interpretation. On appeal from an order, requirement, decision or determination made by an administrative official or on request by any official, board or agency of the village, the Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination made by the administrative official charged with the enforcement of such local law and may decide any of the following questions:
- 1) Determination of the meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter.
 - 2) Determination of the exact location of any district boundary shown on the Zoning Map.
- B. Special Permits. The Zoning Board of Appeals shall have the power to grant special permits for commercial district signage, as set out in §230-44P (5)[4]. On application and after public notice and hearing, the Zoning Board of Appeals shall authorize the issuance by the Village Engineer of special permits for any of the uses for which this chapter requires, in the district in which such use is proposed to be located, the granting of such permits by the Board of Appeals. In authorizing the issuance of a special permit, the Board shall take into consideration the public health, safety and welfare and shall prescribe appropriate conditions and safeguards to ensure the accomplishment of the following objectives:
- 1) All proposed structures, equipment or material shall be readily accessible for fire and police protection.
 - 2) The proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.
 - 3) In addition to the above, in the case of any use located in or directly adjacent to a residential district:
 - a. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to

²¹ Editor's Note: See § 7-712 of the Village Law.

or incongruous with said residential districts or conflict with the normal traffic of the neighborhood.

- b. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
- 4) In authorizing the issuance of a special permit, it shall be the duty of the Board to attach such conditions and safeguards as may be required in order that the result of its action may, to the maximum extent possible, further the general objectives of this chapter. The Board may require that special permits be periodically renewed. Such renewal shall be granted following due public notice and hearing and may be withheld only upon a determination by the Village Engineer to the effect that such conditions as may have been prescribed by the Board in conjunction with the issuance of the original permit have not been or are being no longer complied with. In such cases a period of sixty (60) days shall be granted the applicant for full compliance prior to the revocation of said permit. Any use for which a special permit may be granted shall be deemed to be a conforming use in the district in which such use is located, provided that:
- a. The provision in this chapter under which such permit was issued is still in effect.
 - b. Such permit was issued in conformity with the provisions of this chapter.
 - c. Such permit shall be deemed to affect only the lot or portion thereof for which such permit shall have been granted.

C. Use Variances.

- 1) Use Variances. The Zoning Board of Appeals is empowered to grant use variances as defined in § 230-160 of this article.
- 2) No 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 for each and every permitted use under the zoning regulations for the particular district where the property is located, the following four (4) criteria are satisfied:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated 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.
- 3) 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.

D. Area Variances

- 1) Area Variances. The Zoning Board of Appeals is empowered to grant *area* variances as defined in § 230-160 of this article.
- 2) 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 a grant. The Zoning Board of Appeals shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties 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.

E. Additional Conditions for Use and Area Variances.

- 1) The needs or desires of a particular owner or tenant or of a particular prospective owner or tenant shall not, either alone or in conjunction with other factors, afford any basis for the granting of a variance. The fact that the improvements already existing at the time of the application are old, obsolete, outmoded or in disrepair or the fact that the property is then unimproved shall not be deemed to make the plight of the property unique or to contribute thereto.
- 2) Where the Zoning Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or building by the owner thereof and where the Zoning Board of Appeals deems the same condition to apply generally to other land or buildings in the same neighborhood or district, said Board may call this condition to the attention of the Board of Trustees.
- 3) In all cases where the Zoning Board of Appeals grants a variance from the strict application of the requirements of this chapter, it shall be the duty of such Board to attach conditions and safeguards as may be required in order that the result of its action may be as nearly as possible in accordance with the spirit and intent of this chapter.

§ 230-163. Filing and Appeal of Administrative Decisions.

- A. Filing of administrative decisions. Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the local zoning law shall be filed in the office of such administrative official within five (5) business days from the day it is rendered and made a public record.
- B. Appeal of administrative decisions. Appeals shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative official by filing with the administrative official and with the Zoning Board of Appeals a notice of appeal specifying the grounds of appeal and relief sought. The administrative official shall transmit to the Zoning Board of Appeals all papers constituting the record upon which the appealed action was taken.
- C. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official certifies to the Zoning Board of Appeals after notice of appeal has been filed with said official that a stay would cause imminent peril to life or property, in which case proceedings shall not be appealed other than by a restraining order which may be granted by the Zoning Board of Appeals or by a court of record on application.

§230-164. Zoning Board of Appeals procedure.

The powers and duties of the Zoning Board of Appeals shall be exercised in accordance with the following procedures:

- A. Meetings, minutes, records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent and failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
- B. Notice of Hearing, property owners. The Zoning Board of Appeals shall not grant any appeal for a variance or issue any special or temporary permit without first holding a public hearing, notice of which hearing and of the substance of the appeal or application shall be given by publication in the official newspaper of the village at least ten (10) days before that date of such hearing. In addition to such published notice, the Zoning Board of Appeals shall cause notice to be given of the substance of every appeal for a variance and of every application for a special permit, together with notice of the hearing thereon by causing notices thereof to be mailed by postal card or other means at least ten (10) days before the day of said hearing to the owners of all property abutting that held by the applicant in the immediate area, whether or not involved in such appeal or application, and all other owners within two hundred (200) feet, or such additional distances as the Zoning Board of Appeals may deem advisable, from the exterior boundaries of the land involved in such appeal or application, as the names of said owners appear on the last completed assessment roll of the village. Any or all of the notices required by this section shall be issued by the office of the Village Clerk on order of the Zoning Board of Appeals or upon order of the Chairman of said Board if the appeal or application is received when the Board is not in session and the Chairman deems it necessary or desirable to expedite the public hearing on such appeal or application. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of this subsection the failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Zoning Board of Appeals in connection with the granting of any appeal or variance or issuance of any special or temporary permit pursuant thereto.
- C. Notice of Hearing, Westchester County and regional councils. Ten (10) days' notice by mail shall be given in accordance with the provisions of §§277.61 and 277.62 of the Westchester County Administrative Code, as such sections may from time to time be amended or superseded, in all cases where notice is required thereby. If applicable, the Zoning Board of Appeals shall mail notices of the hearing at least five (5) days before the hearing to the state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by the appeal. The notice shall be accompanied by a full statement of the proposed action, as defined in §239-m of the General Municipal Law.
- D. Notice of Hearing, Planning Board. At least ten (10) days before the date of any public hearing, the Secretary of the Zoning Board of Appeals shall transmit to the Secretary of the Planning Board a copy of any appeal or application, together with a copy of the notice of such hearing. The Planning Board may submit to the Zoning Board of Appeals an advisory opinion on said appeal or application at any time prior to the public hearing.
- E. Unless work is commended and diligently prosecuted within one (1) year of the date of the granting of a variance or special permit, such variance or special permit shall become null and void.
- F. Application Requirements, Forms and Fees. All appeals and applications made to the Zoning Board of Appeals shall be in writing and on forms prescribed by the Board and approved by the Planning Board. Ten (10) copies of the application and supporting documentation shall be submitted by the applicant, accompanied by a fee in an amount set from time to time by resolution of the Board of Trustees.²² The Zoning Board of Appeals may, in its discretion, return to the applicant part or all the fee paid by him or her in the event that his or her appeal under § 230-162A, Interpretation, hereof is partially or wholly successful. The fees filed in connection with applications under § 230-162B, Special Permits, or—§ 230-162C and D, Use and Area

²² Editor's Note: The current fee resolution is on file in the office of the Village Clerk.

Variances, shall not be returnable regardless of disposition of the case by the Zoning Board of Appeals.²³

- G. Application Requirement, Content of Submission. Each appeal or application shall fully set forth the circumstances of the case. Each application for a special permit shall be accompanied by a proposed plan showing the size and location of the lot, a site plan showing the location of all buildings and proposed facilities, including access drives, parking areas, landscaping and all streets within two hundred (200) feet.—Every appeal or application shall refer to the specific provision of this chapter and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted or the use for which the special permit is sought.
- H. Timeframe of decision. The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days after the hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the board.
- I. Recording and filing of decisions.
 - 1) Every decision of the Zoning Board of Appeals shall be recorded in accordance with standard forms adopted by the Board and shall fully set forth the circumstances of the case and shall contain a full record of the findings on which the decision is based. Every decision of the resolution shall be filed in the office of the village clerk within five (5) business days. The decision shall be filed by case number, together with all documents, pertaining thereto, under one (1) of the following headings:
 - a. Interpretation,
 - b. Special permits.
 - c. Variances
 - 2) The Zoning Board of Appeals shall notify the Village Engineer and each member of the Board of Trustees, the Chairman of the Planning Board of Croton-on-Hudson and the Municipal Clerk of any affected municipality given notice of hearing as set forth in § 230-164B of its decision in each case.
- J. Compliance with SEQRA. The Zoning Board of Appeals shall comply with the provisions of the state environmental quality review act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.
- K. Rehearing. Any member of the Zoning Board of Appeals may make a motion to hold a rehearing on any order or determination of the Board not previously reheard. A unanimous vote of all members of the Board then present is required for such rehearing to occur. The 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 reheard order, decision or determination will not be prejudiced thereby.
- L. Voting Requirements.
 - 1) Decision of the Board. Except as otherwise provided in §230-164K of this article, every motion or resolution by the Zoning Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Zoning Board of Appeals, as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency, the voting provisions of §239-m of the General Municipal Law shall apply.
 - 2) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Zoning Board of Appeals is not attained on a motion or a resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by §230-164H of this article, the appeal is denied. The Zoning Board of Appeals may amend the failed motion

²³ Editor's Note: Amended at time of adoption of Code; see Ch. 1, General Provisions, Art. I.

or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in §230-164K of this article.

- M** All provisions of this chapter relating to the Zoning Board of Appeals shall be strictly construed; the Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitation contained therein; provided, however, that if the procedural requirements set forth in this chapter have been substantially observed, no applicant or appellant shall be deprived of the right of application or appeal.