

# **ZONING BOARD OF APPEALS APPLICATION INSTRUCTIONS VILLAGE OF BRIARCLIFF MANOR**

Regularly scheduled meetings are held at 7:30 p.m. in the William J. Vescio Community Center located at 1 Library Road. See calendar for meeting dates and required submission dates.

**The following information shall be submitted to the Village Clerk by the required submission date by no later than noon:**

1. Eight (8) **collated** paper sets and One (1) electronic set emailed to the Village Clerk at [cdennett@briarcliffmanor.gov](mailto:cdennett@briarcliffmanor.gov) of the following:
  - a. Full architectural plan, folded, including plot plan
  - b. Survey which is to be no more than 5 years old
  - c. Application to the Zoning Board
  - d. Code of Ethics Certification in accordance with Chapter 27 of the Village Code
  - e. Denial Notice from the Building Department
  - f. GFA Worksheet
  - g. Copy of Tax Map identifying subject property and surrounding area.
  - h. Copy of Property Card
2. A check made payable to : *Village of Briarcliff Manor* in the amount of \$500.00

**Prior to the meeting you will receive a package from the Village Clerk which will include:**

1. A letter to you with instructions
2. Your Public Notice which will be posted and sent to the Gazette
3. A list of property owners within a 250-foot radius of your property
  - You are to send the Public Notice to those on the list by Certified Mail, Return Receipt

**The following shall be submitted to the Village Clerk no later than the Friday before the Public Hearing:**

1. Receipt of Certified Mailing of Public Notice



Village of Briarcliff Manor  
 1111 Pleasantville Road  
 Briarcliff Manor, New York 10510  
 (914) 941-4800  
[www.briarcliffmanor.org](http://www.briarcliffmanor.org)

## ZONING BOARD APPLICATION

**APPLICANTS ARE REQUIRED TO ADDRESS IN WRITING EACH ELEMENT OF THE STANDARDS THOROUGHLY AND IN DETAIL. FOR EXAMPLE, IN AN APPLICATION FOR AN AREA VARIANCE, ALL FIVE STANDARDS MUST BE INDIVIDUALLY DISCUSSED. INCOMPLETE APPLICATIONS WILL BE REJECTED.**

I (we) \_\_\_\_\_ of \_\_\_\_\_  
 Name of Applicant Current Address

HEREBY APPEAL TO THE ZONING BOARD OF APPEALS FROM THE DECISION OF THE BUILDING INSPECTOR WITH RESPECT TO:

BOARD ACTION REQUESTED: ☐ A variance of the regulations of the Zoning Ordinance  
☐ An interpretation of the Zoning Ordinance or Zoning Map  
☐ A Special Permit  
☐ Other

Location of Property (Address): \_\_\_\_\_

Section \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_ Zoning District \_\_\_\_\_

Name & Address of Applicant: \_\_\_\_\_  
 Phone # \_\_\_\_\_  
 Fax # \_\_\_\_\_  
 Email: \_\_\_\_\_

Name & Address of Representative: \_\_\_\_\_  
 Phone # \_\_\_\_\_  
 Fax # \_\_\_\_\_  
 Email: \_\_\_\_\_

STATE OF NEW YORK)  
 COUNTY OF WESTCHESTER) SS:

\_\_\_\_\_, being duly sworn, deposes and says that he/she is the applicant named. He/She is the  
 (Name of individual signing application)

\_\_\_\_\_ of said owner or owners, and is duly authorized to make and file this application; That all  
 statements contained in this application are true to the best of my knowledge and belief.

Signature of Applicant: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

## **Use Variance Standards**

The state statutes provide the Zoning Board of Appeals with the standards for granting the **use variance**. 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 for each and every permitted use under the zoning regulations 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. That the alleged hardship relating to the property in question is unique, and does not apply to substantial portion of the district or neighborhood;
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.

*Village Law, Section 7-712-b (2)*

## **Area Variance Standards**

The state statutes provide the Zoning Board of Appeals with the standards for granting the **area variance**. 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;
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 condition in the neighborhood or district; and
5. 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.

*Village Law, Section 7-712-b (3)*

The Zoning Board of Appeals, in the granting of use and area 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.

Pursuant to Section 27-4, the Village Manager shall cause a copy of the Code of Ethics to be distributed to each applicant for a change of zoning, variance, special permit, site plan approval, subdivision or other permission, pursuant to the zoning and planning regulations of the Village, shall disclose with the application the name, nature, and extent of the interest of any Village employee, official or consultant in the application, or in the applicant.

Signature: \_\_\_\_\_

**See Chapter 27 of the Village Code (attached)**

## **Chapter 27**

### **ETHICS, CODE OF**

#### **§ 27-1. Legislative intent.**

It is the policy of the Village of Briarcliff Manor and the purpose of this chapter to establish standards and guidelines for the ethical conduct of its officials, employees, and consultants. Though assurance of such conduct will continue to rest primarily on personal integrity and community vigilance, these standards are another step toward ensuring:

- A. The highest caliber of public administration for the Village;
- B. Government decisions are arrived at impartially and free of any conflict of interest between any private interest and a Village official, employee, or consultant's proper discharge of his or her official duties;
- C. Public confidence in Village government; and
- D. Protection of Village officials, employees, and consultants from unwarranted assaults on their integrity by separating real conflict from the inconsequential.

#### **§ 27-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**ACT IN AN OFFICIAL CAPACITY:** Any legislative, administrative, quasi-judicial, appointive, or discretionary act of an official, employee, or consultant of the Village.

**CONSULTANT:** Any person or entity, other than a Village official or employee, who is compensated by the Village for providing advisory services to the Village, its boards, courts, commissions, districts, departments, committees, or other agencies.

**FAMILY MEMBER:** Any spouse, child, parent, or sibling of a Village employee, official, or consultant; person who is financially dependent on a Village employee, official, or consultant; or person on whom a Village employee, official, or consultant is financially dependent.

**PERSON or ENTITY:** Any individual, business proprietorship, corporation, partnership, association, venture, individual in representative or fiduciary capacity, estate, trust, or other entity.

**PRIVATE INTEREST:** A participation, connection, or involvement of any sort which may result in a direct pecuniary or material benefit. For the purposes of this chapter, the private interests of a Village official, employee, or consultant shall be deemed to include the private interests of:

- A. A family member.
- B. Any person or entity, other than a bank, trust company, or other lending institution, with whom he or she has a substantial debtor-creditor or other financial relationship.
- C. Any person or entity by whom he or she is employed or of which he or she is an officer, director, or member.
- D. Any person or entity of which the stock or other legal or beneficial ownership is owned by the official, employee, or consultant; provided, however, that if the business dealings of such person or entity with the Village form an insubstantial part of such person's or entity's total business dealings, then this definition shall only apply to such person or entity if the Village official, employee or consultant owns more than 5% of the stock or other legal or

beneficial ownership of such person or entity. Regardless of the percentage of ownership, however, any such interest shall be disclosed by the official, employee or consultant in accordance with § 27-4 of this chapter.

**TRANSACTION:** Any activity, application, or proceeding which requires or may require an act by an official, employee, or consultant of the Village in his or her official capacity.

**VILLAGE:** The Village of Briarcliff Manor and all of its boards, courts, commissions, districts, departments, committees, and other agencies.

**VILLAGE OFFICIAL OR EMPLOYEE:** Any officer or employee of the Village and any member of any of its boards, courts, commissions, districts, departments, committees, or other agencies, whether full- or part-time, whether compensated or not. No person shall be deemed to be a Village official or employee solely by reason of being a volunteer fire fighter or civil defense volunteer, except a Fire Chief or Assistant Fire Chief.

### § 27-3. Conflict of private interest standards.

- A. No Village official, employee, or consultant shall represent or advocate any private interests (other than himself or herself) before the Village or in any transaction with the Village.
- B. No Village employee, official, or consultant shall participate in the consideration of, vote on, administer or act in an official capacity in connection with a transaction in which he or she has a private interest.
- C. No Village employee, official, or consultant shall participate in the consideration of, vote on, administer or act in an official capacity in connection with a transaction in which he or she or any family member is or has been an employee, consultant, agent, representative, official, or fiduciary of the applicant before the Village within the prior 12 months.
- D. Except as otherwise permitted by General Municipal Law Article 18, no Village official or employee shall, directly or through a person or entity of which he or she or his or her family member has any direct or indirect private interest, sell goods or services (other than through employment) to or engage in any business transaction with the Village.
- E. No Village official, employee or consultant shall engage in any business or profession or accept private employment or render any service for private interests which creates a conflict with that official, employee, or consultant's official duties. For a period of 12 months after the termination of his or her service, employment, or engagement with the Village, a former Village official, employee, or consultant shall not render services for private interests before the Village in relation to any matter with respect to which such former official, employee, or consultant personally participated in during his or her service, employment, or engagement with the Village, but this prohibition shall be personal to such former official, employee, or consultant and shall not affect the ability of his or her employer or any other person or entity with which he or she is affiliated from rendering services for private interests before the Village in relation to any such matter.
- F. No Village official, employee or consultant shall directly or indirectly:
  - (1) Solicit any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form; or
  - (2) Accept any gift worth \$75 or more.
- G. No Village official, employee, or consultant shall permit the use of any Village property for personal convenience or profit or secure privileges or exemptions for himself or herself, or any family member, unless such activity is available to Village citizens generally or is provided as a matter of Village policy.
- H. No Village official, employee, or consultant shall either:

- (1) Use any information which he or she received in the course of his or her duties as a Village official, employee, or consultant to further the private interests of himself or herself or any other person or entity other than the Village unless that information is available to the public; or
- (2) Disclose any information which he or she received in the course of his or her duties as a Village official, employee, or consultant unless either:

- (a) That information is available to the public; or

- (b) His or her disclosure of that information is in the course of his or her duties as a Village official, employee, or consultant.

I. No official or employee shall have a private interest, directly or indirectly, in any transaction, that will:

- (1) Impair or reasonably may impair the proper discharge of his or her official duties; or

- (2) Conflict with the proper discharge of his or her official duties.

J. No Village official, employee, or consultant shall knowingly acquire, solicit, negotiate, or accept any private interest, employment, or other thing of value which would result in a violation of this chapter.

#### § 27-4. Distribution of Code of Ethics; disclosure of interest.

- A. Pursuant to New York General Municipal Law § 806, the Village Manager shall cause a copy of this Code of Ethics to be distributed to each official, employee, and consultant of the Village upon the adoption of this chapter and at the time of commencement of each person's service in each new capacity. Each official, employee, and consultant shall acknowledge, in writing, that he or she has received, read, and understood this Code of Ethics. Failure to distribute or receive such copy shall have no effect on the duty of compliance with such Code or on its enforcement.
- B. Any Village official, employee, or consultant who has a direct or indirect private interest in any transaction under consideration by a board, court, commission, district, department, committee or agency of the Village or in any property which may be affected by such transaction, or whose family member has such a private interest, shall publicly disclose the nature and extent of that private interest on the record of the board, court, commission, district, department, committee, or agency before which such transaction is pending and shall file a copy of such disclosure with the Village Clerk. The Village Board shall review such disclosures in a timely manner.
- C. Any applicant for a change of zoning, variance, special permit, site plan approval, subdivision, or other permission pursuant to the zoning and planning regulations of the Village shall disclose with the application the name, nature and extent of the private interest of any Village employee, official, or consultant in the application or in the applicant pursuant to New York General Municipal Law § 809.

#### § 27-5. Board of Ethics.

- A. There is hereby created a Board of Ethics which shall consist of five voting members appointed by the Village Board, all of whom shall be residents of the Village and shall serve without compensation for service on the Board. One member of the Board shall be an officer or employee of the Village, but no Village Justice, Village Attorney, or member of the Village Board shall be eligible to serve on the Board. The remaining voting members shall not be Village officials or employees. The Village Manager shall serve the Board in an ex officio, nonvoting capacity. The Village Manager also may serve as the Village official or employee voting member of the Board if he or she is appointed to that position by the Board of Trustees.
- B. Each member of the Board of Ethics shall be appointed for a term of five years, except that of the members first appointed one shall be appointed for a term of one year; one for a term of two years; one for a term of three years; one for a term of four years; and one for a term of five years. The Village Board shall designate one member as Chairman of the Board of Ethics. A member appointed to fill a vacancy shall be appointed for the unexpired term of the member whom he or she is to succeed.
- C. The Village Attorney shall serve as counsel to the Board of Ethics except when he or she shall recuse himself or herself in any matter in which it is determined that he or she has or may appear to have a conflict of interest. In the event that the Village Attorney has withdrawn from participation in any matter pursuant to this section, the

- D. Village Board shall provide the Board of Ethics with the services of substitute counsel at the request of the Board of Ethics or at the pleasure of the Village Board.
- E. The Board of Ethics shall render advisory opinions to Village employees, officials, and consultants with respect to New York General Municipal Law Article 18 and this Code of Ethics.

(1) Such an advisory opinion shall be rendered upon:

- (a) The written request of any two or more members of the Village Board;
- (b) The written request of a Village official, employee, or consultant whose conduct is in question; or
- (c) The written request of any member of the public which is signed and sworn and alleges facts which, if true, constitute a violation of any provision of New York General Municipal Law Article 18 or of this Code of Ethics. The Board shall summarily dismiss any request by a member of the public which is not signed and sworn, or which does not allege facts which, if true, constitute a violation of any provision of New York General Municipal Law Article 18 or of this Code of Ethics.

(2) Upon receipt of any such request, the Board of Ethics shall notify the Village official, employee, or consultant whose conduct is in question and provide him or her with a copy of the request in the case of a request of anyone other than himself or herself, shall seek clarification of any fact asserted or alleged, if necessary, shall prepare such an advisory opinion, and shall issue that advisory opinion to the Village official, employee, or consultant whose conduct is in question, the Village Board, and the Village Attorney. The Board shall issue its advisory opinion within 60 days of the date of its request, but the Board of Trustees may allow the Board additional time to issue its advisory opinion upon written request from the Board.

(3) Such advisory opinions of the Board of Ethics shall be for the guidance of the Village official, employee, or consultant whose conduct is in question, the Village Board, and the Village Attorney, and the Board of Ethics shall keep them confidential in accordance with § 27-8 and shall not disclose any portion of any such opinion to any person or entity other than the Village official, employee, or consultant whose conduct is in question, the Village Board, and the Village Attorney, but the Board of Ethics may disclose to the public that such an opinion has been issued, and the Board of Ethics shall disclose to any member of the public who has made a written request for an advisory opinion when that opinion has been issued. The Board of Ethics shall keep a record of its proceedings and opinions.

- F. The Board of Ethics may prescribe rules and regulations governing its own internal organization and procedures in a manner consistent with this chapter and with the New York General Municipal Law
- G. The Board of Ethics shall have such other powers and duties as shall be conferred by the Village Board or pursuant to New York General Municipal Law Article 18.

#### § 27-6. Appropriation of funds.

The Village Board may appropriate moneys from the general Village funds for the maintenance of and for personnel services to the Board of Ethics, but such Board of Ethics may not commit the expenditure of Village moneys except within the appropriations provided, in its discretion, by the Village Board.

#### § 27-7. Remedies; effect on other provisions.

- A. No existing right or remedy shall be lost, impaired, or affected by reason of this chapter; nor shall the validity of any action taken by any Village official, employee, or consultant under the law in force immediately prior to the effective date of this chapter be affected by the enactment hereof.
- B. All Village officials, employees and consultants who, as a result of these revisions, are in violation of the duly adopted revised Code of Ethics are directed to comply with all of its stipulations and requirements within 60 days of the effective date of this chapter.



- C. In the event of any conflict between any provision of this chapter and any provision of New York General Municipal Law Article 18, the more restrictive provision shall apply.
- D. The invalidity of any word, section, clause, paragraph, sentence, part, or provision of this chapter shall not affect the validity of any part of this chapter which can be given effect without such invalid part or parts.

#### § 27-8. Confidentiality.

- A. Subject to the requirements of Public Officers Law Article 6 regarding freedom of information and Article 7 regarding open meetings, all of the Board of Ethics's proceedings, deliberations, investigations, conclusions, and opinions shall be private and confidential and shall not be disclosed to any person or entity other than the Village official, employee, or consultant whose conduct is in question, the Village Board, and the Village Attorney, except that the Board of Ethics may disclose to the public the fact that it has issued an opinion on a particular matter and shall disclose to any member of the public who has made a written request for an opinion when that opinion has been issued.
- B. Each member of the Board of Ethics shall maintain the confidentiality of the Board's proceedings, deliberations, investigations, conclusions, and opinions.
- C. Subject to any limitation found in the Public Officers Law or any other law, either the Village official, employee, or consultant whose conduct is in question or the Village Board may release any Board of Ethics opinion to the public, and nothing contained in this Code of Ethics shall be construed to preclude any such disclosure by that Village official, employee, or consultant whose conduct is in question or by the Village Board.

#### § 27-9. Repealer.

Ordinance No. 173 of the Village of Briarcliff Manor, enacted November 5, 1970, is hereby repealed in its entirety.

Dear Neighbor:

Most property owners do not appear regularly before the Zoning Board of Appeals, and for many it is something that may well happen only once in their lives. Thus, I thought it might be helpful to provide some background to what happens at our meetings so you're prepared for them.

Some disclaimers: This note is not intended to provide legal advice, it does not replace or supersede the relevant laws under which the ZBA operates, and it is not an official statement by the Village. It is simply intended to be a helpful addition to those things, from one neighbor to another.

The first and most important thing to understand is that the ZBA is a legal body carrying out a set of functions regulated and prescribed by New York state law. It is like a court in many respects and the ZBA is required to operate within those legal confines.

The reason this point is so important is that you may not fully appreciate the legal posture of your application. What has happened is that you have asked to do something on your property that the Village building inspector has concluded is not permitted by the zoning law. Neither the building inspector nor the ZBA makes law – if you disagree with the zoning law, your avenue for that discussion is with the Board of Trustees, not the ZBA.

The ZBA has a limited set of powers to override the building inspector and grant you a “variance” – a property-specific waiver of the zoning law. But do note:

- You have the legal burden, just as you would if you were appealing a criminal conviction to an appeals court. In other words, the building inspector is presumed to be correct and it is up to you to demonstrate – applying the five criteria set out in § 220-17(2) of the zoning law (<http://ecode360.com/7691454>) – that a variance should be granted. If you don't meet that burden, your application will be denied, and it is important for you to discuss all five of those criteria in your written application and at the hearing. It's not that we're trying to be mean or deprive you of the enjoyment of your property, but this is just how the system works – and this is a state law issue, not something unique to Briarcliff Manor.
- Variances are not personal to you, but instead relate to your property and continue to exist long after you have moved on. Thus, your personal needs and desires aren't relevant to the process – the zoning law doesn't recognize things like a need for an extra bedroom to house a sick aunt, and instead looks at the property, the neighborhood and the impact of the requested variance.
- Similarly, while opposition from your neighbors is a matter for serious concern, consent or agreement from your neighbors only goes so far, because we're concerned with what a future neighbor will experience, not just what your friendly neighbors are willing to go along with now.
- When it is appropriate to grant a variance, we are required by law to grant the smallest variance possible, even if you would prefer aesthetically a different result. And if you can achieve what you're trying to do without a variance at all, there is a strong presumption that you should do that instead of seeking a variance. You can expect us to ask in detail about alternatives to what you're proposing and you will need to be able to demonstrate why the alternatives aren't viable.

- As a general proposition, the more substantial the variance, the more difficult it is to have a variance granted. Whether a variance is substantial isn't measured in absolute terms but relative to the rule being varied: A two foot variance in a ten foot setback (20%) is a more substantial variance than a fifteen foot variance in a one hundred foot setback (15%).
- No one is entitled to a variance. And sometimes, properties simply can't accommodate what their owners want to do. That is particularly true in communities like Briarcliff with winding roads and irregular lots, many of which would not be permitted to exist under today's zoning standards.

Our hearings are reasonably formal and are conducted under a variety of New York state rules. They are held in the Village court room and are recorded and televised. The Village Clerk and the building inspector attend, as do up to five members of the ZBA (and note that you need three votes to get a variance, regardless of how many members attend – so if only three ZBA members are present, you need all three to vote in favor). You will have a full opportunity to present your case; any member of the public may speak; and you may respond to the public comments. However, as in court, you must only address the board; you may not engage in a back and forth with other speakers. You also are not permitted to speak once the public hearing has been closed and the board is deliberating on the application.

ZBA members will probably come by your property before the hearing to view for themselves what you're proposing. Any communication you may have with a ZBA member at that time is not part of the proceeding and cannot be considered by the ZBA in making its decision. In other words, please don't engage in heartfelt lobbying while we're walking around as we aren't allowed to take account of what you say outside the courtroom, and if you try, you may end up disqualifying the ZBA member from participating in the hearing.

And finally, please remember that ZBA members are unpaid volunteers trying to do their best to apply the law and balance community interests.

Christopher Bogart  
ZBA Chairman

August 2015

(This note is written in relation to area variances, which represent the bulk of the ZBA's business in Briarcliff. Some portions of it are inapplicable to other types of applications to the ZBA.)



**Division of Local  
Government Services**

# **Guidelines for Applicants to the Zoning Board of Appeals**

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**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

**A Division of the New York Department of State**

**Andrew M. Cuomo, Governor**

**Cesar A. Perales, Secretary of State**

## Guidelines for Applicants To the Zoning Board of Appeals

This publication has been written to aid potential applicants in understanding and appreciating the appeals process, and to provide an explanation of the rules and standards under which appeals and variance decisions must be made. Applicants and their representatives should be guided in advance by the standards in deciding whether an appeal would be appropriate. These standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals.

### Why might you consider an appeal to the Zoning Board of Appeals?

A person may want to appeal to the Zoning Board of Appeals (ZBA) for two basic reasons. First, he or she may disagree with a decision the enforcement officer has made or an action he or she has taken. Second, the appealing party may believe that an exception (variance) to the zoning laws should be made for his or her property.

### How is the appeals process initiated?

Either the applicant or the applicant's representative must file a Notice of Appeal with the ZBA within 60 days after the enforcement officer has filed his or her decision or action. The enforcement officer's decision is filed in his or her office, unless the municipal governing board has authorized it to be filed instead in the municipal clerk's office. A copy of the Notice of Appeal must also be filed with the enforcement officer.

### Under what circumstances may an appeal be made to the Zoning Board of Appeals?

Except in certain instances, an applicant must be "aggrieved" by an actual decision or action taken by the enforcement officer. The exceptions occur where an applicant has already submitted an application for subdivision, site plan, or special use permit approval which requires an area variance in connection with that approval. In those instances, no decision of the enforcement officer is necessary. The applicant may simply file a Notice of Appeal directly with the ZBA.

### Who may apply to the ZBA for relief?

Anyone who could be "aggrieved" by the decision or action of the enforcement officer, has standing to take an appeal before the ZBA. A person is "aggrieved" if his or her property value is affected negatively by the enforcement officer's action. Commonly, a property owner who either has been refused a permit or has been served with an enforcement action, is the "aggrieved party." Also note, as stated above, that a landowner who has submitted an application for subdivision, site plan, or special use permit approval, may apply to the ZBA for an area variance without a decision of the enforcement officer. A neighboring landowner may also be an "aggrieved party", if he or she believes the enforcement officer's decision in issuing a permit was improper, and will negatively affect their property

value. In addition, any officer, board or commission of the municipality may appeal a decision of the enforcement officer, whether or not that officer, board or commission is aggrieved.

What decisions or actions are appealable?

Any decision or action issued in writing by the enforcement officer, which affects anyone's rights, is appealable. These decisions include: the grant or denial of a permit, the issuance of an appearance ticket or summons, or any order which mandates certain action, such as a cease-and-desist or stop-work order.

I'm a resident who lives near the proposed project. What happens if I find out about the project more than 60 days after the permit is filed?

If you are a "third party", such as a nearby resident, you may still bring an appeal more than 60 days after the permit is filed, *if* you file within 60 days after you've had a reasonable opportunity to find out about the planned project. For example, you would have 60 days from the time a sign is posted on the property announcing the future construction of a new business (whether or not you actually see the sign), if the sign is posted after the permit has been issued.

What types of relief can the ZBA grant?

The ZBA can grant (or deny) two types of relief: interpretive and variance. In either case, the ZBA will either affirm, reverse, or modify the enforcement officer's decision. In so doing, it will either grant or deny the requested relief. If the appeal is for an interpretation, the ZBA's decision will be based on the municipal zoning regulations. On the other hand, if the appeal is for a variance, the ZBA's decision will be based on the standards of proof contained in the following state statutes: §267-b of the New York State Town Law, §7-712-b of the Village Law, or §81-b of the General City Law.

Because of the range of powers the ZBA has, it is essential that the applicant (or the applicant's representative) know what type of relief to request when making application to the ZBA. If the applicant believes the enforcement officer's decision is incorrect, the appropriate request is for an *interpretation* reversing the officer's decision. If the applicant (in this case, the landowner) believes that the officer's decision may be correct, but that he or she can show proof under the statutes that a variance is warranted, then the appropriate request is for a decision granting a *variance*. It is also possible for an applicant to make a request for an interpretation, and, in the same application, ask for a variance if a favorable interpretation is not granted.

After a Notice of Appeal has been filed, what must happen?

After a Notice of Appeal has been filed, the ZBA will take up the matter at a future meeting. The ZBA is required to schedule a hearing on the applicant's appeal within a reasonable time, and give notice of the hearing to the applicant. If a variance is requested, the ZBA may be required to take some preliminary steps before it may hear the case.

First, the ZBA may have to make a determination of significance under the State's Environmental Quality Review Act (SEQRA). Based on this determination, an Environmental Impact Statement (EIS) may or may not be required. If an EIS is required, the case cannot be heard until the EIS has been completed and accepted by the ZBA. Environmental review is not necessary for interpretations of the zoning regulations or for area variances relating to setbacks and lot lines, or for area variances relating to one-, two-, or three-family residences.

Second, depending on the location of the property, the ZBA may be required by State law to refer requests for variances to the county planning agency for a preliminary recommendation. If such a referral is required, the ZBA must give the county 30 days to respond. It is also possible that the county's recommendation could result in an increase in the number of votes needed for the ZBA to approve the variance. Appeals for interpretations need not be referred to the county.

What is the responsibility of the applicant at the hearing?

At the hearing, the applicant may submit written evidence and/or argument to support his or her case. Obviously, the sooner that written testimony or material is received, the more time ZBA members will have to consider the case and reach a proper decision. Therefore, it is a good idea to submit written material with the application, or as soon thereafter as possible, so that it can be sent to ZBA members prior to the hearing. (Please note that the applicant can present written evidence at any time up to the close of the hearing, or even after the hearing if the ZBA allows the record to remain open.)

At the hearing, the ZBA will offer the applicant and/or the applicant's representative the opportunity to present a case for relief. The applicant may personally testify, call witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case (the side which supports the enforcement officer's decision). Each side will be given an opportunity to question the other, or the other's witnesses. In addition, ZBA members may ask questions.

After the applicant and the municipality have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed.

Will the ZBA make a decision the night of the hearing?

Once the hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the hearing may be reopened at any time. Once the hearing has been finally closed, the ZBA must make its decision within 62 days.

What is the basis for the ZBA's decision on an interpretation?

If requesting a reversal on an interpretative basis, the applicant must prove that the enforcement officer's decision was incorrect, according to a proper reading of the municipality's zoning regulations. If the ZBA has heard a case in the past which involved an interpretation of the same provision, the ZBA's decision will be consistent with its prior ruling. If the ZBA has never interpreted the particular provision at issue, it will use its best judgment as to the municipal governing board's original intent in enacting the provision. Secondly, the ZBA will try to arrive at the best practical solution for future application by the enforcement officer.

Careful and thorough reference will be given to all definitions and other provisions of the regulations. If necessary, the ZBA will refer to authoritative publications on planning and zoning law. The applicant may, of course, use those resources in presenting his own case as well.

What must be proven in order to be granted a use variance?

If requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State law requires the applicant to show *all* of the following:

- (1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
- (2) that the property is being affected by unique, or at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the hardship is not self-created.

If *any one or more* of the above factors is not proven, State law requires that the ZBA must deny the variance.

What must be proven in order to be granted an area variance?

If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

- (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 which will be feasible for the applicant to pursue but would not require a 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 an alleged difficulty is self-created.

Unlike the use variance test, the ZBA need not find in favor of the applicant on every one of the above questions. Rather, the ZBA must merely take each one of the factors into account. The ZBA may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance.

Must the variance, if granted, be exactly what was applied for by the applicant?

Whether the ZBA decides to grant a use or area variance, State law requires the ZBA to grant the minimum variance necessary to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

If there is no opposition to my variance request, must the ZBA grant the request?

The above rules and standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals. If they are not followed, the municipality would be subject to costly lawsuits. The public is entitled to speak in favor of, or against, a proposed project, but opinions in and of themselves are not enough.

Applicants and their representatives should be guided in advance by the appropriate legal standards in deciding whether an appeal would be appropriate. If an appeal is taken, the applicant should present clear, definite facts showing that the standards have been met. The ZBA cannot grant relief where proper legal proof is not adequately presented.

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