

15.905 Zoning Board of Appeals.

A. Organization and Membership.

There shall be a Zoning Board of Appeals in accordance with the provisions of the Village Law of the State of New York. Said Board shall consist of five (5) members and shall be appointed as provided by statute.

B. 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 the said Board that is conferred by law.

1. Interpretation: upon appeal from a decision by an administrative official, to decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

2. Variances

a. Use variances

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, as defined herein.

2. "Use variance" shall mean 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.

3. No such use variance shall be granted by a 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, (i) the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence; (ii) 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; (iii) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) that the alleged hardship has not been self-created.

4. 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

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.

b. Area Variances

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

2. "Area variance" shall mean 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.

3. 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: (i) 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; (ii) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (iii) whether the requested area variance is substantial; (iv) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (v) 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.

4. 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.

5. 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. Such conditions shall be consistent with the spirit and intent of the Zoning Local Law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

6. Revocation of variances. Any variances granted pursuant to this chapter shall be revocable on the order of the Zoning Board of Appeals at any time upon the failure of the owner or operator of the use or structure covered by the variance to observe all requirements of this chapter with respect to the maintenance and conduct of the use or structure or upon the failure to observe all conditions in connection with such variance which was designated by the Zoning Board of Appeals in issuing the same. Prior to revoking any such variance, the Zoning Board of

Appeals shall give the holder of the variance at least ten (10) days written notice of violation. If within such ten (10) days the variance holder so requests, the Zoning Board of Appeals shall hold a hearing on the revocation of such variance and shall give the applicant for the hearing at least ten (10) days written notice thereof either by certified mail, return receipt requested or by personal service. The foregoing provisions shall not be deemed to preclude the use of any other remedy prescribed by law or by this chapter with respect to violations of the provisions of this chapter.

7. Expiration, lapse, extension and reinstatement of variance. Any variance granted pursuant to this Chapter shall automatically expire and be of no further force and effect six (6) months after the granting thereof unless, within such six (6) month period, substantial construction shall have been commenced. Such construction must be completed within one (1) year of the date of commencement of substantial construction. If construction is not completed within the one (1) year period the variance shall automatically expire and be of no further force and effect. The Zoning Board of Appeals shall be authorized, upon application and without hearing, to grant extensions of the variance for periods not to exceed six (6) months in duration or to reinstate a lapsed variance for good cause shown.

8. Extinguishment of variance. Whenever a use established pursuant to a variance shall have been abandoned for a term of six (6) months, or whenever the location of such use is substantially destroyed, the land, building or structure in which said use shall have existed shall not thereafter be used for the previously established use. Such six (6) month period of abandonment may be discontinued only by thirty (30) or more consecutive business days of operation. A structure shall be "substantially destroyed" if the cost to repair and replace the said structure exceeds fifty (50%) percent of the current structural replacement value thereof.

9. Revocation of variance. Any variance granted pursuant to this Chapter shall be revocable on the order of the Zoning Board of Appeals at any time upon the failure of the owner or the operator of the use or structure covered by the variance to observe all requirements of this Chapter with respect to the maintenance and conduct of the use or structure or upon failure to observe all conditions in connection with such variance which were designated by the Zoning Board of Appeals issuing the same. Prior to revoking any such variance, the Zoning Board of Appeals shall give the holder of the variance at least ten (10) days written notice of violation. If within such ten (10) days the variance holder so requests, the Zoning Board of Appeals shall hold a hearing on the revocation of such variance and shall give the applicant for the hearing at least ten (10) days written notice thereof either by certified mail, return receipt requested, or by personal service. The foregoing provisions shall not be deemed to preclude the use of any other remedy prescribed by law or by this Chapter or of any conditions of the variance. The violation of any condition imposed by the Zoning Board of Appeals as part of a variance shall constitute a violation of this Chapter.