

ARTICLE 8

ZONING BOARD OF APPEALS

Section 8.1 Establishment of Zoning Board of Appeals

A. Appointment

1. In accordance with Town Law §274-a, the Town Board of the Town of Caneadea, pursuant to the provisions of the Town Law applicable thereto, shall appoint a Zoning Board of Appeals consisting of five members. 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. All terms of office shall expire at the end of the calendar year. Members of the Town Board are not eligible for membership on the Zoning Board of Appeals.
2. The Town Board shall designate the chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson.
3. Article 8 applies unless it is inconsistent with the provisions of the Town Law, in which case, the provisions of the Town Law, as amended from time to time, shall govern.

B. Vacancies

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

C. Training and Attendance Requirements

1. Members of the Zoning Board of Appeals shall complete annual training as required by Law.
2. The Town Board may establish minimum requirements for attendance at Zoning Board of Appeals meetings.

Section 8.2 Powers and Duties

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

1. After a public hearing, approve, approve with conditions, or deny each application for a use or area variance.
2. Hear and determine appeals from and review any order, requirement, decision or determination made by the Zoning Official charged with the enforcement of this Code. The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the Zoning Official.
3. After a hearing, revoke any decision to grant a variance, if the current owner or operator fails to comply with any conditions of approval of the original application. Prior to a public hearing on this issue, the Zoning Official shall pursue abatement of the failure to comply as a violation in accordance with Article 7 of this Law.
4. Prescribe rules for the conduct of its affairs and forms for the submission of applications for its consideration.

5. Call upon any department, agency, employee of or consultant to the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.

B. Meetings

1. 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.
2. The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
3. 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.
4. A quorum shall consist of three (3) members.

8.3 Procedure

A. Application and Filing of Appeals

1. Each order, requirement, decision, interpretation or determination of the Zoning Official shall be filed, in writing, in his/her office within five (5) business days from the day it is rendered, and shall be a public record.
2. Any party aggrieved by a decision of the Zoning Official shall have sixty (60) days after the filing of such order, requirement, decision, interpretation or determination to file an appeal with the Zoning Board of Appeals and with the Zoning Official.
3. The appeal shall be in writing, on forms prescribed by the Zoning Official, and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of this 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. The appeal shall also contain the following information:
 - a. The name and address of the appellant/applicant, and property owner, if different from the applicant. If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted.
 - b. The location of the lot.
 - c. A statement of the current use of the site.
 - d. An accurate description of the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof, if applicable.
 - e. A plot plan of the site, drawn to scale, with a north arrow, indicating the location and size of the lot, location and size of existing structures, and location and size of proposed structures and/or other improvements. Distance from the existing and proposed structures to all lot lines shall be indicated. If the Zoning Board of Appeals determines that it is necessary, the Board may require a survey be prepared by a licensed surveyor that shows building locations and lot lines.
 - f. An Environmental Assessment Form, with Part I completed and signed by the applicant, if applicable. (g) All required fees.

4. The Zoning Official shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action.

B. Hearing

1. Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a hearing. The hearing shall be held within 62 days of the date that the complete appeal is received. The Zoning Board of Appeals shall determine when the appeal is complete.
2. Notice of the hearing shall be published in the following ways:
 - a. by publication in a newspaper of general circulation in the Town at least five (5) days prior to the date of the hearing; and
 - b. by applicant mailing a notice by certified mail, return receipt, of the hearing to the owners of every parcel that is within one hundred (100) feet of the perimeter of the site that is the subject of the application. However, if a townhouse or condominium project is one of the properties within the 100 foot radius from the applicant's property or if a Homeowners Association owns one of the properties within said 100 foot radius, notice shall be given to the Management Committee, Board of Directors, the condominium owner's association, or the Homeowners Association rather than to each individual unit owner. Notice may also be mailed to such other persons as the chairperson of the Zoning Board of Appeals may direct. Such notices shall be mailed to the address shown on the current assessment roll, at least ten (10) days prior to the hearing; and
 - c. for all appeals that meet the requirements contained in Section 239-m of the General Municipal law, the Zoning Board of Appeals shall mail notice of such hearing to the Allegany County Planning Board. Such notice shall be mailed at least five (5) days prior to the hearing; and
 - d. (e) for a use variance only, where the site is located within 500 feet of any municipal boundary, a notice of hearing shall be mailed to the clerk of that municipality at least ten (10) days prior to the public hearing.
3. At the hearing any person may appear in person, by agent or by attorney.

C. Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Official certifies to the Zoning Board of Appeals, after the notice of appeal has 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 this case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Zoning Official and for due cause shown.

D. Decision

1. The Zoning Board of Appeals shall issue its decision upon the appeal within sixty-two (62) days after the close of the 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.
2. All decisions of the Board shall be by resolution and shall contain a full record of the findings of the Board, the evidence considered, the persons who have appeared, the vote or abstention of each member and every other official act of the Board in connection with the application. The required findings of the Board shall disclose the facts upon which they are based.

3. Except as provided in Sub-section 8.3F, Rehearing, every motion or resolution of the Board of Appeals shall require the concurring vote of a majority of the total membership of the Board for its adoption. If the action has been referred to the Allegany County Planning Board, pursuant to Section 239-m of General Municipal Law, the voting provisions of that law shall apply.
4. If an affirmative vote of a majority of all the members of the Zoning Board of Appeals is not attained on a resolution to grant a variance or reverse any order, requirement, decision or determination of the Zoning Official, the appeal is denied, pursuant to Section 267-a.13b of the Town Law. In that event, the Board may amend the failed resolution and vote on the amended resolution within the time allowed without being subject to the rehearing process required by subdivision F of this Section.

E. Filing of Decision and Notice to the Applicant

1. Every decision of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is made and shall be a public record.
2. A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within five (5) business days of issuance of such decision.

F. Rehearing

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. Such rehearing is subject to the same notice provisions as an 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 reliance upon the reheard order, decision or determination will not be prejudiced thereby.

G. Expiration of Grant of Variance

1. A variance shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the grant of variance has not commenced, in cases where a building permit is not needed. The Zoning Board of Appeals may grant an extension of the variance for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Zoning Board of Appeals for such extension, prior to the expiration of the grant of variance. The extension of the grant of variance is deemed to be a *de minimus* action that does not require a public hearing. However, the Board of Appeals may choose to hold a public hearing prior to any such extension of the grant of variance.
2. A use variance shall expire if the use of the property in accordance with the grant of a variance shall cease continuously for one (1) year.
3. Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a variance be renewed periodically.

H. Abandoned Application

If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Zoning Board of

Appeals, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.

"No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Code or by the requirements of the State Environmental Quality Review Act.

Section 8.4 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 Town of Caneadea, provided such variance complies with the standards set forth in the Town Law 267a as amended from time to time and in this section. 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.
3. Any use variance granted by the Zoning Board of Appeals will subsequently be referred to the Planning Board for site plan review.

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.

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 this Law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.