


**NEW YORK**  
 STATE OF OPPORTUNITY.

**Division of Local Government Services**

# Zoning Board of Appeals Overview

A Division of the New York Department of State

1

---

---

---

---

---

---

---

---


**NEW YORK**  
 STATE OF OPPORTUNITY.

**Division of Local Government Services**

## Introduction

- Zoning
  - Zoning Board of Appeals (ZBA)
  - Zoning Enforcement Officer (ZEO)
  - Appellant
- Interpretations
- Use variances
  - Proof of unnecessary hardship
- Area variances
  - Individual benefit vs. community detriment considerations
- Procedures
  - SEQRA
  - Meetings & hearings
  - County referral
  - Rehearing
- Decisions, filing & findings

A Division of New York Department of State

2

---

---

---

---

---

---

---

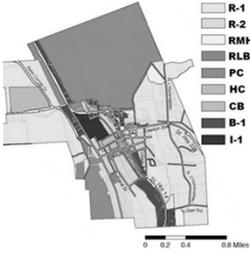
---


**NEW YORK**  
 STATE OF OPPORTUNITY.

**Division of Local Government Services**

## Zoning

- Goal: avoid incompatible land uses
- Regulates:
  - Land use
  - Density
  - Placement of structures on site
- Divides municipality into districts
- Optional



A Division of New York Department of State

3

---

---

---

---

---

---

---

---

4

## Zoning requires a safety valve

- Municipalities with zoning must have zoning board of appeals
- ZBA is a “buffer” for aggrieved applicants between decisions of zoning enforcement officer & State supreme court



A Division of New York Department of State NEW YORK  
Division of Local  
Government Services

4

---

---

---

---

---

---

---

---

5

## Zoning enforcement officer

- Administrative official charged with enforcement of zoning code
  - Renders initial decision regarding conformity with zoning
  - Cites violations of zoning code
- Municipal official solely designated as ZEO, or official with dual responsibilities
  - Municipal planner
  - Code enforcement officer
  - Other



A Division of New York Department of State NEW YORK  
Division of Local  
Government Services

5

---

---

---

---

---

---

---

---

6

## Statutory authority

	Town Law	Village Law	General City Law
Membership	§ 267	§ 7-712	§ 81
Procedure	§ 267-a	§ 7-712-a	§ 81-a
Variations	§ 267-b	§ 7-712-b	§ 81-b

Statutes online at:  
<http://public.leginfo.state.ny.us/navigate.cgi>

Or in the DOS Publication: Guide to Planning and Zoning Laws of New York State  
<https://dos.ny.gov/guide-planning-and-zoning-laws-new-york-state>

6

---

---

---

---

---

---

---

---

## ZBA members are public officers

- Appointing authority
  - Town board
  - City mayor
  - Village mayor with approval of trustees
- Number of members
  - Three or five (unless still have seven)
  - Terms equal to number of members
  - Staggered expiration
- Oath of office must be filed



A Division of New York Department of State

7

---

---

---

---

---

---

---

---

## Qualifications for membership

- At least 18 years old
- United States citizen
- Resident of local municipality
  - Village members can be on town or village boards
- Governing board members may not serve on the ZBA



A Division of New York Department of State

8

---

---

---

---

---

---

---

---

## State training requirements

- Annual 4 hours minimum
  - Excess hours may carry over
- Failure to comply
  - Does not void decisions
  - Ineligibility for reappointment
- Governing board approves and tracks training (or designates municipal clerk, for example)
- Variety of sources & formats
- Requirements may be waived or modified by resolution, if in best interest of municipality

A Division of New York Department of State



9

---

---

---

---

---

---

---

---

10

## Alternate member appointment

- NY statute allows for alternates to serve for conflicts of interest only
- For any other reason (i.e. quorum), local law or ordinance needed to supersede state law
- Local Governing board sets appointments:
  - Can set number of alternates
  - Can set terms of office for any time length

10

---

---

---

---

---

---

---

---

11

## Appointment of chairperson

- Same appointing authority as for membership
- If no chairperson is appointed by mayor or town board, the board should select an acting chair
- Possible duties:
  - Presides at meetings & hearings
  - Supervise agenda preparation
  - Liaison with governing board
  - Sign official documents
  - Supervise filing of documents



11

---

---

---

---

---

---

---

---

12

## Conduct and ethics

- Members may be removed from office for “cause”
- Municipality may specify reasons for removal in local law
  - Poor attendance
  - Continued inappropriate behavior
  - Failure to receive training
- Governing board must hold public hearing before removing member for cause

12

---

---

---

---

---

---

---

---

13

## Powers & Duties

Appellate Jurisdiction	Original Jurisdiction
<ul style="list-style-type: none"> <li>• All ZBAs               <ul style="list-style-type: none"> <li>– Interpret zoning regulations</li> <li>– Issue or deny appeals for variances</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Some ZBAs               <ul style="list-style-type: none"> <li>– When delegated by governing board                   <ul style="list-style-type: none"> <li>• Special use permits</li> </ul> </li> </ul> </li> </ul>

NYS statute specifies Planning Board perform subdivision review

A Division of New York Department of State


 Division of Local Government Services

13

---

---

---

---

---

---

---

---

---

---

14

## Appeals

<ul style="list-style-type: none"> <li>• ZEO must first act based on zoning regulations to:           <ul style="list-style-type: none"> <li>– Grant permit</li> <li>– Deny permit</li> <li>– Issue citation for violation or take another enforcement action</li> </ul> </li> </ul>	<p style="margin: 0;"><b>Exception:</b></p> <ul style="list-style-type: none"> <li>• Direct appeal for area variance within applications:           <ul style="list-style-type: none"> <li>– Site plan review</li> <li>– Subdivision review</li> <li>– Special use permit</li> </ul> </li> </ul>
--	--

A Division of New York Department of State


 Division of Local Government Services

14

---

---

---

---

---

---

---

---

---

---

15

## Direct appeal

<ul style="list-style-type: none"> <li>• When a direct appeal for an area variance is related to a Subdivision application the ZBA <b>shall</b> request a written recommendation from planning board</li> </ul>		<p style="font-size: small;">Example: Relief from minimum frontage on a curved street</p>
---	---	---

- Town Law §277(6)
- Village Law §7-730(6)
- General City Law §33(6)

 Division of Local Government Services

15

---

---

---

---

---

---

---

---

---

---

16

## Appellant must have standing



- One denied permit or cited for violation
- Third party to be harmed by ZEO's decision
- A municipal "officer, department, board or bureau"

A Division of New York Department of State NEW YORK  
Division of Local  
Government Services

16

---

---

---

---

---

---

---

---

17

## When to file appeal

- Within 60 days of ZEO filing action
  - Exception: Third parties must file within 60 days from date they should have known or could have knowledge of ZEO's action
    - File notice of appeal by letter if no ZBA form exists
    - File copies with ZEO & ZBA

A Division of New York Department of State NEW YORK  
Division of Local  
Government Services

17

---

---

---

---

---

---

---

---

18

## Appeal "stays" enforcement proceedings



A Division of New York Department of State NEW YORK  
Division of Local  
Government Services

18

---

---

---

---

---

---

---

---

# Interpretations

19

---

---

---

---

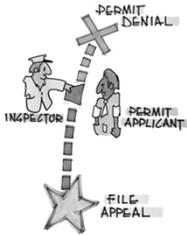
---

---

---

---

## Appeal for interpretation



Appellant believes ZEO incorrectly applied the law

- Common areas of interpretation:
- Definitions
  - Method of taking measurements

20

---

---

---

---

---

---

---

---

## Basis for interpretations decisions

Without concise definitions, board must come to consensus on what they think term or regulation means

- Past decisions on same regulations or similar facts
- Minutes, hearing comments & other records which reveal governing board's intention when zoning was adopted or amendment made
- Ordinary meaning of terms, if term is undefined

21

---

---

---

---

---

---

---

---

22

## Cited, but no definition

- “Rave” style music events new to armory
- “Auditoria” permitted use in district although not defined in Albany’s zoning
- BZA relied on its limited interpretation of auditorium definition that used “fixed seating” (use akin to “nightclub” in zoning)
- Appellate Division ruled City must define “auditoria” in petitioner’s favor



Washington Avenue Armory v. City of Albany

A Division of New York Department of State NEW YORK DEPARTMENT OF STATE  
Division of Local Government Services

---

---

---

---

---

---

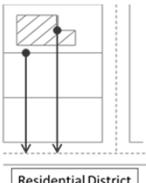
---

---

22

23

## Measurement for adult use permit



- Minimum “500’ radius from residential area” for adult uses
- Begin measurement from property line or building entrance
  - Appellate Division ruled
    - No statutory requirement
    - ZBA entitled to deference

Cupid's Video Boutique v. Town of Babylon ZBA

A Division of New York Department of State NEW YORK DEPARTMENT OF STATE  
Division of Local Government Services

---

---

---

---

---

---

---

---

23

24

# Use variance

A Division of the New York Department of State NEW YORK DEPARTMENT OF STATE  
Division of Local Government Services

---

---

---

---

---

---

---

---

24

25

**To use land for a purpose not allowed by zoning**

Alternative:  
rezone property



A Division of New York Department of State NEW YORK DEPARTMENT OF STATE  
Division of Local Government Services

25

---

---

---

---

---

---

---

---

26

**Use variance test**

The "burden of proof" is on the applicant

- No reasonable return
- Unique circumstances
- No self-created hardship
- No alteration to essential neighborhood character

A Division of the New York Department of State NEW YORK DEPARTMENT OF STATE  
Division of Local Government Services

26

---

---

---

---

---

---

---

---

27

**1. No reasonable return**

- Applicant must demonstrate the land is not capable of making a reasonable return with:
  - any permitted use
  - a current lawful nonconforming use
  - any use currently allowed by previous use variance

ZBA must consider property as a whole, not just the portion which is the subject of the application

27

---

---

---

---

---

---

---

---

### Reasonable rate of return

- No hard & fast numbers
  - Depends on particular facts of application
- ZBA determines
  - They do not have to agree with expert's opinion
    - Petruzzelli v. Zoning Bd of Appeals of the Village of Dobbs Ferry, 181 A.D.2d 825 (2d Dept. 1992)



28

---

---

---

---

---

---

---

---

### 2. Unique circumstances

- Parcel is only, or one of very few, affected to the extent zoning would create a hardship
- "Uniqueness of land" causing plight, not "uniqueness of the plight of the owner"



- Other circumstances:
- Physical features
  - Historic or architectural features
  - Adjacent uses

29

---

---

---

---

---

---

---

---

### 3. Self-created hardship

Examples:

- Request relief from restrictions which existed at time of sale;
- Owner bound by zoning restrictions, even without knowledge of them;
- Spending money on project not allowed by zoning



30

---

---

---

---

---

---

---

---

### 4. Neighborhood character

- Is proposed use consistent with existing development?
- Is there significant adverse impact on neighborhood or community?



31

---

---

---

---

---

---

---

---

### Pre-existing nonconforming uses



- Legally existed prior to current zoning
- Use variance not needed to continue, but needed for expansion
  - Must prove no reasonable return on allowed uses and nonconforming uses
- “Grandfathered” not necessarily permanent (abandonment, amortization)

32

---

---

---

---

---

---

---

---

### Area variance

33

---

---

---

---

---

---

---

---

### Area variance

To vary from dimensional requirements of zoning regulations

Example:

Property needed area variance for relief from setback requirements to construct driveway too close to lot line



A Division of the New York Department of State

34

---

---

---

---

---

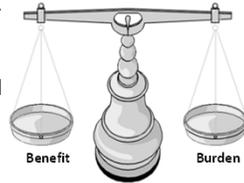
---

---

---

### Area variance test

- Change to neighborhood character
- Substantiality of the request
- Effect on physical or environmental conditions
- Alternatives not requiring a variance
- Is the situation self-created?



A Division of the New York Department of State

NEW YORK STATE  
Division of Local Government Services

35

---

---

---

---

---

---

---

---

### 1. Change to neighborhood character

Would undesirable changes be eliminated with conditions imposed?



36

---

---

---

---

---

---

---

---

37

## 2. Alternatives not requiring variance



Consider placing addition in rear instead of side



Applicants should present reasons for choosing one alternative over another:

<ul style="list-style-type: none"> <li>✓ Better view</li> <li>✓ Cheaper constructions</li> </ul>	<ul style="list-style-type: none"> <li>✓ Better internal pattern</li> <li>✓ Better overall aesthetics</li> </ul>
--	--

---

---

---

---

---

---

---

---

37

38

## 3. Substantiality of request

- Amount of variance requested
- Magnitude of variance requested



5' vs. 50' ?

5' of a 10' setback  
or  
50' of a 300' frontage?

A Division of the New York Department of State

---

---

---

---

---

---

---

---

38

39

## 4. Physical or environmental impacts




Examples:

- blocked views
- drainage problems
- impacted wetlands
- parking shortages

A Division of the New York Department of State NEW YORK STATE  
Division of Local Government Services

---

---

---

---

---

---

---

---

39

40

## 5. Is situation self-created?

If so, the owner is not necessarily precluded from being granted an area variance.



Examples:  
Shed needs setback relief because of substandard sized lot  
Addition begun in violation of height restrictions

40

---

---

---

---

---

---

---

---

41

## Conditions

- Clearly specify conditions imposed
- Must be reasonably related to the impact of proposal being considered
- Nexus



"Such conditions might properly relate 'to fences, safety devices, landscaping, screening, and access roads related to period of use, screening outdoor lighting and noises...incidental to comfort, peace, enjoyment, health, or safety of the surrounding area."  
St. Onge v. Donovan, 71NY2d 507, 516 (1998)

41

---

---

---

---

---

---

---

---

42

## Grant minimum variance necessary

Board need not grant or deny variance request as submitted:

"The Board of appeals, in the granting of... 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."

- Town Law §267-b
- Village Law §7-712-b
- General City Law §81-b

A Division of the New York Department of State

42

---

---

---

---

---

---

---

---

43

Procedures

A Division of the New York Department of State

Division of Local Government Services

43

---

---

---

---

---

---

---

---

44

## Board rules of procedures

To be binding, board rules of procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:

Officer and committee duties

Calling meetings, agendas, public input

Referrals

Minutes

Official document signatures

A Division of the New York Department of State

Division of Local Government Services

44

---

---

---

---

---

---

---

---

45

## State Environmental Quality Review Act

- Board determines environmental impacts if variance were granted
- Evaluate potential environmental impacts prior to decision

Type II classification ends SEQR

- Examples:
  - Interpretations
  - Setback relief

**SEQR homepage:** <https://www.dec.ny.gov/permits/357.html>

**SEQR EAF Mapper:** <https://gisservices.dec.ny.gov/eafmapper/>

A Division of the New York Department of State

Division of Local Government Services

45

---

---

---

---

---

---

---

---

46

## Open meetings

- Notice to media
  - Post in conspicuous place & on municipal website
  - If scheduled 1 week or more ahead, 72 hours notice
  - If scheduled 1 week or less ahead, to the extent practicable
- Access for public
- Executive sessions
  - No meeting behind closed doors to discuss applications or board business
  - Only held for reasons defined in OML
  - Open Meetings Law Article 7 Public Officer's Law §105

A "work session" or "site visit" is a meeting subject to OML if quorum gathers to discuss public business

Division of Local Government Services

---

---

---

---

---

---

---

---

46

47

## Open meetings

- Records scheduled for discussion at open meeting must be available for public review on agency's website at **least 24 hours prior** to the meeting
- Records include:
  - Proposed resolution; law, rule or regulation; policy or amendment to a policy
- More info: <https://www.governor.ny.gov/news/governor-hochul-signs-two-pieces-legislation-boosting-transparency-state-and-local-government>

Division of Local Government Services

---

---

---

---

---

---

---

---

47

48

## Remote participation & videoconferencing

Non-public locations	Public locations
<ul style="list-style-type: none"> <li>• OML §103-a authorizes public bodies to adopt local law for Boards to participate &amp; vote via videoconference in <b>non-public location under "extraordinary circumstances"</b> (undefined)</li> <li>• Quorum required in public location(s)</li> <li>• Public location(s) notice and access required</li> </ul>	<ul style="list-style-type: none"> <li>• Boards may participate via videoconferencing where they are seen, heard, AND their remote location is open to public (i.e.; member participates via videoconference in another state in public location)</li> <li>• Remote public location(s) notice and access required</li> <li>• No local law needed for this option</li> </ul>

More info and model law: <https://opengovernment.ny.gov/>

---

---

---

---

---

---

---

---

48

49

## State hearing notice requirements

- Public meeting requirements
- Legal notice in official newspaper 5 days prior to hearing date
- Mail notice to parties to the appeal
  - Regional state park commission, if 500' from state park or parkway
  - Other agencies, if applicable
    - GML §239-m & GML §239-nn

**Notice content:**

- Date, time & place
- Nature of proposed action
- Location of subject property, if applicable

A Division of the New York Department of State

Division of Local Government Services

---

---

---

---

---

---

---

---

49

50

## Local hearing notice requirements

- Municipalities may adopt additional local noticing requirements:
  - Signs on application property (best practice)
  - Mailings to neighbors
  - Municipal ListServ

A Division of the New York Department of State

Division of Local Government Services

---

---

---

---

---

---

---

---

50

51

## Hearing notice

- When decision on interpretation dictates if variance will be required...
- ...include language in notice for variance request in the event interpretation isn't in applicant's favor

LEGAL NOTICE (Excerpt)  
NOTICE IS HEREBY GIVEN  
.....

The Applicant requests an interpretation whether the Applicant's proposed single family dwelling complies with the sixty(60) foot setback from Pearl River Road. The Applicant also requests a variance from the sixty (60) foot setback *from* Pearl River Road in the event the Zoning Board of Appeals determines that the proposed dwelling's location does not comply with the sixty (60) foot setback.

A Division of the New York Department of State

Division of Local Government Services

---

---

---

---

---

---

---

---

51

### Notice to adjacent municipality

- GML §239-nn
  - Special Use Permits or Use Variances within 500' of adjacent municipality require notifying neighboring clerk:
  - by mail or electronic transmission
  - at least 10 days prior to any hearing

---

---

---

---

---

---

---

---

52

### County referral

- GML §239-m applies to applications within 500' of:
  - Municipal boundaries
  - State or county parks, highways, streams, or institutions
  - Land on which a state or county building is located
  - Farm operations in State Agricultural Districts
    - Area variances exempted




---

---

---

---

---

---

---

---

53

### Waiting to act

- ZBA cannot take final action until:
  - ZBA receives the county planning agency's report

OR



Two day rule

- 30-days after county receives full statement

Time period may be extended by mutual agreement

---

---

---

---

---

---

---

---

54

55

## Effect of county referral

- If county recommends disapproval, or approval with conditions, local board may act contrary to that recommendation by a supermajority vote (majority vote plus one)
- Send "Report of Final Action" within 30 days of local decision



A Division of the New York Department of State

---

---

---

---

---

---

---

---

55

56

## Taking action

- Motion/resolution only passes with a majority of ENTIRE board
- If motion fails:
  - Variance request or zoning interpretation request is denied\*
  - "No action" on matters of original jurisdiction, such as special use permit
  - Additional votes taken within statutory time frame won't trigger rehearing process



A Division of the New York Department of State

---

---

---

---

---

---

---

---

56

57

## Rehearing

ZBA can vote to reconsider a matter it previously acted on if:

- Matter has not been previously reheard
- Motion to rehear matter receives unanimous vote of all present
- Change of original decision receives unanimous vote of all present

**Note:** rehearing must comply with notice provisions



A Division of the New York Department of State

---

---

---

---

---

---

---

---

57

58

## Decisions, Findings, and Filing

A Division of the New York Department of State

Division of Local Government Services

58

---

---

---

---

---

---

---

---

59

## Decisions

- Must be made within 62 days after hearings close
- Minutes must contain record of each vote
- Should include language of motion and any conditions passed
- Send copy with findings to applicant, and county if applicable

A Division of the New York Department of State

Division of Local Government Services

59

---

---

---

---

---

---

---

---

60

## Findings

Should be able to support decision if challenged in court

- Analysis applying law to facts, leading to conclusions
- Describe denial or approval reasons
- May also support why conditions were imposed
- Should be approved by board, not simply drafted by attorney and filed

A Division of the New York Department of State

Division of Local Government Services

60

---

---

---

---

---

---

---

---

### Filing

- Begins when records are placed “under municipal clerk’s control”
- File decisions within 5 business days after decision is rendered (or sooner)
- Start of 30-day appeals period for Article 78 proceeding is established




---

---

---

---

---

---

---

---

61

### New York Department of State

Division of Local Government Services

518-473-3355

[localgov@dos.ny.gov](mailto:localgov@dos.ny.gov)

<https://dos.ny.gov/training-assistance>

---

---

---

---

---

---

---

---

62

## **Town Law § 267**

### **Zoning Board of Appeals**

1. Definitions. As used in this section:
  - (a) "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.
  - (b) "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.
2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.
3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.
4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.
7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

7-A. Training and attendance requirements.

- (a) Each member of the board of appeals shall complete, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to, electronic media, video, distance learning and traditional classroom training.
- (b) to be eligible for reappointment to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.
- (c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.
- (d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board 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 town board by local law or ordinance.

10. Chairperson duties. All meetings of the board of appeals shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chair person, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

- (a) A town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.
- (b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.
- (c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy

in office, removal, and service on other boards, shall also apply to alternate members.

---

**§ 267-a. Board of appeals procedure.**

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such 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.
2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.
3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.
4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.
5. Filing of administrative decision and time of appeal.
  - (a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk's office.
  - (b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.
6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, 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 board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.
7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of

sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.
9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.
10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.
11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.
12. 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 in reliance upon the reheard order, decision or determination will not be prejudiced thereby.
13. Voting requirements.
  - a. Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the 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 or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.
  - b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion 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 subdivision twelve of this section.



**CITY OF UTICA, NEW YORK  
ZONING BOARD OF APPEALS APPLICATION  
USE VARIANCE**

*It is the responsibility of the applicant to complete this form in its entirety, including all required attachments, and as precisely as possible. Failure to submit a complete application may result in a delay in being placed on a Zoning Board of Appeals agenda or a delayed decision from the Zoning Board.*

PROPERTY ADDRESS: \_\_\_\_\_

COUNTY TAX MAP IDENTIFICATION NUMBER: \_\_\_\_\_

**APPLICANT INFORMATION**

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_  
PHONE \_\_\_\_\_  
FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_  
*City State ZIP*

**OWNER INFORMATION**

*(complete **only** if applicant is not the owner of the property)*

NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_  
PHONE \_\_\_\_\_  
FAX \_\_\_\_\_ E-MAIL \_\_\_\_\_  
*City State ZIP*

**RELATIONSHIP OF APPLICANT TO PROPERTY:**

- |   |                                     |
|---|-------------------------------------|
| <input type="checkbox"/> CONTRACT PURCHASER | <input type="checkbox"/> CONTRACTOR |
| <input type="checkbox"/> ARCHITECT/ENGINEER | <input type="checkbox"/> LESSEE     |

**OFFICE USE ONLY**

RECEIVED BY: \_\_\_\_\_ DATE/TIME RECEIVED: \_\_\_\_\_  
FEE AMOUNT: \_\_\_\_\_ CHECK/MONEY ORDER #: \_\_\_\_\_  
ZONING: \_\_\_\_\_ FEE TRANSMITTAL DATE: \_\_\_\_\_  
AGENDA DATE: \_\_\_\_\_ DEADLINE DATE: \_\_\_\_\_

**BRIEF HISTORY OF PROPERTY**

*(historic use of property, ownership history, etc.)*

---

---

---

**DESCRIPTION OF PROPOSED ACTION**

*(include specific use proposed, hours, # of employees, etc.)*

---

---

---

---

---

---

**VARIANCE STANDARDS**

*(§ 2-29-67(d)(2))*

*Applications for use variances must be based on alleviating a clearly demonstrable hardship, as opposed to a special privilege of convenience sought by the owner. Furthermore, the hardship must be peculiar to the land or building and must not generally apply to land throughout the neighborhood. An example of a property that may potentially have a valid case for a use variance is a corner store in a predominantly residential neighborhood. If the building has large plate glass storefront windows, a parking lot and loading docks in the rear, it would be extremely costly to convert the building to residential uses to comply with existing zoning regulations.*

**DESCRIPTION OF HARDSHIP**

*(describe the features or conditions of the property that restrict reasonable use of the property under current zoning regulations)*

---

---

---

---

---

---

**COMPATIBILITY WITH NEIGHBORHOOD**

*(describe the manner by which the proposed use will be consistent with adjoining development and will not cause substantial injury to neighboring properties)*

---

---

---

---

---

---

**APPLICATION ATTACHMENTS**

To ensure appropriate and timely review of the application, please provide the following additional documentation in support of the application. Failure to provide all of the applicable materials listed below may result in a delay in scheduling the application for review by the Zoning Board of Appeals.

- \$150.00 application fee (check or money order only payable to City of Utica)
- Detailed site plan (see sample on following page)
- Detailed drawings for parking layout, landscaping and signage
- Photographs of existing conditions

**APPLICANT/OWNER AFFIRMATION**

I, THE UNDERSIGNED, DO HEREBY AFFIRM THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND I FURTHER UNDERSTAND THAT INTENTIONALLY PROVIDING FALSE OR MISLEADING INFORMATION IS GROUNDS FOR IMMEDIATE DENIAL OF MY APPLICATION.

FURTHERMORE, I UNDERSTAND THAT I (OR A DESIGNATED REPRESENTATIVE) MUST BE PRESENT AT THE MEETING TO REPRESENT THE APPLICATION AND RESPOND TO ANY QUESTIONS FROM THE ZONING BOARD OF APPEALS MEMBERS.

\_\_\_\_\_  
Signature (Applicant)

\_\_\_\_\_  
DATE

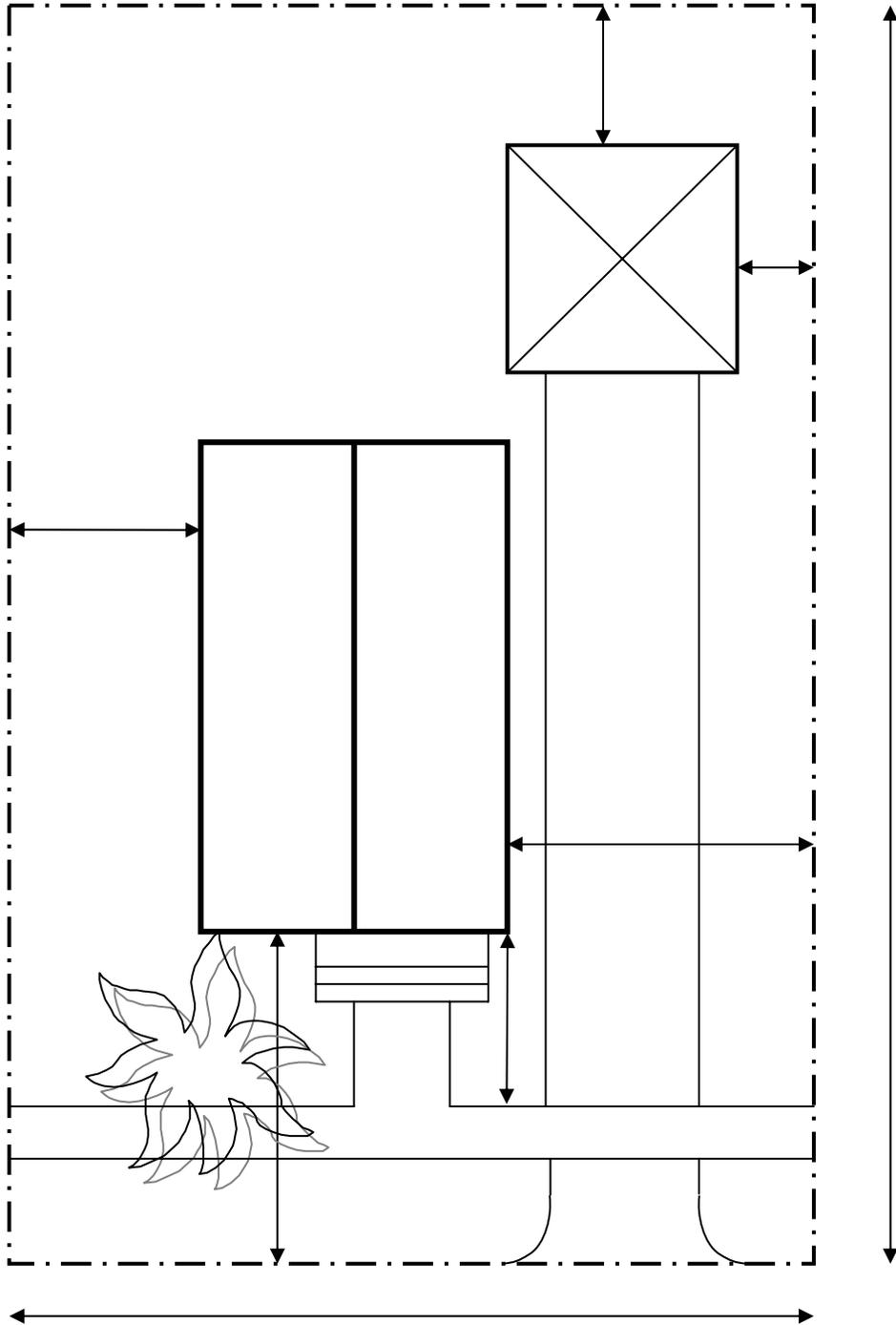
**IF APPLICANT IS NOT THE OWNER OF RECORD FOR SUBJECT PARCEL:**

I, THE UNDERSIGNED, HEREBY AFFIRM THAT I AM THE OWNER OF RECORD FOR THE SUBJECT PARCEL AT THE TIME OF APPLICATION. FURTHERMORE, I AM FAMILIAR WITH THE REQUEST BY THE APPLICANT AND AUTHORIZE SAID APPLICANT TO REPRESENT THE INTEREST OF THE OWNER(S) IN FURTHERANCE OF THE REQUEST.

\_\_\_\_\_  
Signature (Owner)

\_\_\_\_\_  
DATE

**DETAILED SITE PLAN (SAMPLE)**



Village of Pittsford  
Village Code, Excerpt

§ 210-111 Notice of public hearing.

[Added 3-14-2000 by L.L. No. 4-2000]

A. All applicants to the Board of Appeals, Planning Board or Board of Trustees for variances, site plan approval, special exception uses, special permits, temporary permits or any other application or appeal shall be required to give notice of such application and public hearing in the following manner not less than 10 days immediately preceding the public hearing date or any adjourned date. Said notice(s) shall contain the type of application being made and the date, time and place of the public hearing.

B. The applicant shall be required to erect a sign provided by the Village Clerk on the premises of the subject property or properties facing each public street on which the property abuts. The sign shall be erected not more than 10 feet from the property line facing the public street and not less than two feet nor more than six feet above the grade at the property line. The sign shall be securely attached to durable material and protected from the elements. The applicant shall take reasonable care that the sign is visible to the public at all times during the prescribed time period.

C. The Village Clerk shall notify, by regular mail, all property owners within 300 feet of the subject property or properties. A copy of the notice, the list of property owners and their mailing addresses shall be provided to the appropriate Board by the Village Clerk prior to the public hearing.

D. The applicant shall provide, prior to the public hearing, an affidavit of compliance with the provisions of this section.

# NOTIFICATION BY MAIL REQUIREMENT

This mailing is not performed until after submission of your APPLICATION and receipt of the NOTICE OF HEARING from the ZBA office.

Town of Huntington TOWN CODE §198-112(E) states:

“The applicant shall mail notices, post marked no less that thirty (30) days nor more that thirty five (35) days before the hearing, to the owners as well as the occupants of all adjoining properties within five hundred (500) feet of the exterior limits of the applicant’s total property holding, as shown on the current tax roll; with the exception of applications in the R-15, R-10 and R-5 zoning districts where notification to adjoining property owners and occupants shall be to those within two hundred (200) feet of the exterior limits of the applicants total property holding, as shown on the current tax roll.”

“In addition the applicant shall provide a “Certificate of Mailing” for each recipient, which legibly indicates the name and address of the person, including the occupant, to which the notice was mailed, and is duly certified by the post office.”

“The applicant shall also file an affidavit of mailing together with the duly certified “Certificates of Mailing” to the Zoning Board of Appeals office, in no less than five (5) working days before the hearing. Said affidavit shall include the name of the person that actually mailed the notices and the names and addresses of the property owners and the addresses of the occupants that were notified.”

“Failure to mail the notices and/or provide the affidavit and/or the Certificates of Mailing to the Zoning Board of Appeals office may result in postponement of the public hearing. . . .”

# POSTING A SIGN REQUIREMENT

Town of Huntington TOWN CODE §198-112(F) states:

As well as the notification provision in Subsection E above, the applicant or his/her authorized agent shall also post a sign on each frontage of the subject property giving notice that an application is pending before the Zoning Board of Appeals and the nature of that application as well as the date, time and place at which the public hearing will take place.

(1) The sign(s) shall be 20 inches by 30 inches and shall be supplied to the applicant by the Town Planning Department for a fee. Said sign shall be located at the center of the frontage of the property, not more than 10 feet back from the property line. It shall be nailed to a tree, pole or post not less that two feet nor more that six feet above grade and it must be clearly visible from the street. On or before the date and time of the public hearing the applicant or his/her agent shall certify, in writing, in a notarized affidavit to the Board, that he/she has erected the sign as described herein. At the discretion of the Board, failure to erect the sign or submit the affidavit may mean cancellation of the hearing.

(2) Such sign or signs shall be displayed for a period of not less than five days immediately preceding the public hearing and shall be removed by the applicant or his/her agent within three days after the hearing has taken place.

# USE VARIANCE FINDINGS & DECISION

(Dept. of State Example)

## OFFICE USE ONLY

Application No. UV- \_\_\_\_\_  
Date of Application: \_\_\_\_\_  
(Postmarked or Hand Delivered)  
Date of Public Hearing: \_\_\_\_\_  
Date Notice Published: \_\_\_\_\_  
Date of County Referral: \_\_\_\_\_  
Date of Final Action: \_\_\_\_\_  
Date of Filing of Decision with the  
Municipal Clerk: \_\_\_\_\_

Applicant: \_\_\_\_\_

Appeal Concerns Property at the following address:

County Tax Map Section: \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Zoning District Classification: \_\_\_\_\_

Use for which Variance is Requested: \_\_\_\_\_

Applicable Section of Zoning Code: \_\_\_\_\_

Permitted Uses of Property: \_\_\_\_\_

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes \_\_\_ No \_\_\_

Proof: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### ILLUSTRATIONS OF FINANCIAL EVIDENCE

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes \_\_\_ No \_\_\_

Proofs: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### ILLUSTRATIONS OF UNIQUENESS

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes \_\_\_ No \_\_\_

Proof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ILLUSTRATIVE  
NEIGHBORHOOD  
CHARACTER FACTORS  
• Board members' observations of neighborhood.  
• Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes \_\_\_ No \_\_\_

Proof: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SELF-CREATED  
• What were the permitted uses at the time the property was purchased by the applicant?  
• Were substantial sums spent on remodeling for a use not permitted by zoning?  
• Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing the above four proofs, finds:

- That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.
- That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE) \_\_\_\_\_  
\_\_\_\_\_

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No. 2: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No .3: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Condition No. 4: \_\_\_\_\_

\_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Chairman, Zoning Board of Appeals Date

## RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

**ZONING BOARD OF APPEALS  
AREA VARIANCE FINDINGS & DECISION**

**OFFICE USE ONLY**

Application No. AV- \_\_\_\_\_  
Date of Application: \_\_\_\_\_  
(Postmarked or Hand Delivered)  
Date of Public Hearing: \_\_\_\_\_  
Date Notice Published: \_\_\_\_\_  
Date of County Referral: \_\_\_\_\_  
Date of Final Action: \_\_\_\_\_  
Date of Filing of Decision with the  
Municipal Clerk: \_\_\_\_\_

Applicant: \_\_\_\_\_

Appeal Concerns Property at the following address:

County Tax Map Section: \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Zoning District Classification: \_\_\_\_\_

Requirement for which Variance is Requested: \_\_\_\_\_

Applicable Section(s) of Zoning Code: \_\_\_\_\_

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

3. Whether the requested variance is substantial: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

5. Whether the alleged difficulty was self-created: Yes \_\_\_ No \_\_\_

Reasons: \_\_\_\_\_

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, finds that:

- the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.
- the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

Reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The ZBA further finds that a variance of \_\_\_\_\_ from Section \_\_\_\_\_ of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: \_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Condition No. 2: \_\_\_\_\_

Adverse impact to be minimized: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Chairman, Zoning Board of Appeals      Date

-----

**RECORD OF VOTE**

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

## NEW YORK STATE COMMITTEE ON OPEN GOVERNMENT

### QUESTIONS AND ANSWERS CHAPTER 56 OF THE LAWS OF 2022

On April 9, 2022, Governor Hochul signed Chapter 56 of the Laws of 2022 relating to the New York State budget for the 2022-2023 state fiscal year. Included in the bill is an amendment to the Open Meetings Law (OML) to make permanent (until July 1, 2024) the expanded use of videoconferencing by public bodies to conduct open meetings, *under extraordinary circumstances*, regardless of a declaration of emergency.

As a threshold matter, it is our understanding that the new law is not meant to change or curtail what has always been required of public bodies complying with the Open Meetings Law. Public bodies may continue to operate now as they did *before* the onset of the pandemic in early 2020 when the “in person” aspects of the Open Meetings Law were first suspended. In other words, we believe that if a public body was permitted to do it before the pandemic, this law does not change that. As noted above, this law is intended to expand, in extraordinary circumstances only, the ability of public bodies to meet using remote access technology.

Below we have identified areas of the law that may require clarification.

**Q. Are public bodies required to comply with the new videoconferencing requirements right away?**

A. No. For sixty days after the effective date of Chapter 56 (April 9, 2022; accordingly through June 8, 2022), public bodies are authorized to meet and take such action authorized by law without permitting in public-in-person access to meetings and authorize such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed. This language closely models the language of Chapter 417 of the Laws of 2021 and [Chapter 1 of the Laws of 2022](#), the requirements of which have been in effect since September 2021.

**Q. What is considered an “extraordinary circumstance” under which a public body may permit a member to participate remotely by videoconference from a location not open to the public?**

A. Each public body that wishes to allow for remote attendance by its members at locations that do not allow for in-person physical attendance by the public is required to adopt a local law (governing bodies of counties, cities, towns and villages), adopt a joint resolution (New York State Senate and Assembly), or adopt a resolution (any other public body) authorizing such remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.” The Law includes a non-exhaustive list of examples of such circumstances, “including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.”

**Q. Are public bodies permitted to conduct its meetings at multiple physical locations from which members of the body may participate if those locations are open to in-person public attendance, regardless of extraordinary circumstances?**

A. Yes. We understand that the intent of the amendments to the OML was to *expand* the authority of a public body to allow its members to participate in a meeting using videoconferencing under limited circumstances when the member’s location is not open to in-person public attendance. Before the onset of the pandemic in 2020, public bodies routinely held proper open meetings by videoconference from

multiple physical locations identified in the meeting notice that were open to the public, connected virtually together by videoconference. This remains proper. It was not the intent to limit the existing authority to virtually connect multiple public locations from which members and the public may attend through the use of videoconferencing technology.

**Q. Which members of the public body may count toward a quorum?**

A. Any member who participates at a physical location that is open to in-person physical attendance by the public (and which location has been included in the meeting notice) may count toward a quorum and may fully participate and vote in the meeting. If there is a quorum of members at a physical location open to the public, the public body may properly convene a meeting; a member who is participating from a remote location that is *not* open to in-person physical attendance by the public may not be counted toward a quorum of the public body (but may participate and vote if there is a quorum of members at a physical location open to the public).

**Q. Can members of a public body participate remotely in a meeting, for any reason, without convening at least a quorum of members at a physical location (or locations) open to the public?**

A. No. Chapter 56 states that members of the public body “shall be physically present at any such meeting unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances.”

**Q. Are public bodies *required* to allow their members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public?**

A. No. Chapter 56 states that a public body “may, in its discretion” allow its members to participate remotely, under extraordinary circumstances and so long as there is a quorum of members gathered at a physical location or locations open to the public, at locations that do not allow for in-person physical attendance by the public.

**Q. If a public body allows its members to participate remotely, under extraordinary circumstances, at locations that do not allow for in-person physical attendance by the public, must it afford members of the public the opportunity to view the meeting by videoconference as well?**

A. Yes. If a public body uses videoconferencing to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used and must include directions for how the public can view and/or participate (if participation is permitted) in such meeting. The public body must provide the opportunity for members of the public to view the meeting, using remote technology or in person, in real time.

**Q. If a public body allows for public comment or public participation by members of the public who attend its meetings in-person, must it allow the same for members who attend remotely?**

A. Yes. The law requires public bodies to allow members of the public to participate in proceedings by videoconference in real time where public comment or participation is authorized and shall ensure that videoconferencing authorizes the same public participation or testimony as in person participation or testimony.

**Q. Is participation by a member of a public body by teleconferencing (audio only) authorized by Chapter 56?**

A. No. The Law requires that except in the case of executive sessions, a “public body shall ensure that members of the public body can be heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon.” (Note that an executive session may only be properly convened after a successful motion made during an open session, and that but for the requirement to permit the public to attend and view the session, all other requirements of the Law continue to apply to executive sessions.)

**Q. Must the meeting minutes reflect which members of the public body participated remotely?**

A. Yes. The Law requires that “minutes of the meetings involving videoconferencing shall include which, if any, members participated remotely.”

**Q. Are public bodies required to record and/or transcribe open meetings conducted using videoconferencing?**

A. Yes. The Law requires that “each meeting conducted using videoconferencing shall be recorded and such recordings posted or linked on the public website of the public body within five business days following the meeting and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.”

**Q. Are public bodies required to record and/or transcribe the executive session portions of meetings conducted using videoconferencing?**

A. No. In our view the obligation to record and transcribe upon request only applies to the open portions of the meeting that the public is entitled to attend.

**Q. What if a local public body does not maintain an official website for purposes of posting the recording of its meetings?**

A. Any local public body electing to utilize the “extraordinary circumstances” videoconferencing described in the Law to conduct its meetings *must* maintain an official website.

**Q. Does the Law address the ability of a public body to hold fully remote meetings during a state of emergency?**

A. Yes. The Law states that the “in person” participation requirements of the Law shall not apply during a state disaster emergency declared by the governor pursuant to section twenty-eight of the executive law, or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to section twenty-four of the executive law, if the public body determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the public body to hold an in person meeting.

Resolution No. \_\_\_\_\_

[PUBLIC BODY]

**WHEREAS**, by passing Chapter 56 of the Laws of 2022 (“Chapter 56”), the New York State Legislature amended Section 103 of the Open Meetings Law; and

**WHEREAS**, Chapter 56 adds Section 103-a of the Open Meetings Law, permitting the [PUBLIC BODY] to authorize its members to attend meetings by videoconferencing under extraordinary circumstances; and

**WHEREAS**, Section 103-a(2)(a) requires the [PUBLIC BODY] to adopt a resolution following a public hearing authorizing the limited use of videoconferencing under such circumstances; and

**WHEREAS**, Section 103-a(2) allows for hybrid meetings by requiring “that a minimum number of members are present to fulfill the public body’s quorum requirement in the same physical location or locations where the public can attend”; and

**WHEREAS**, Section 103-a(2)(c) requires that members be physically present at any such meeting “unless such member is unable to be physically present at any such meeting location due to extraordinary circumstances . . . including disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting”; and

**WHEREAS**, in accordance with Section 103-a(2)(d), any members attending by videoconference must, except during executive session, be “heard, seen and identified, while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon”; and

**WHEREAS**, Section 103-a(2)(g) requires that any meeting where a member attends by videoconference be recorded, posted to the [PUBLIC BODY] webpage within five business days, and transcribed upon request; and

**WHEREAS**, Section 103-a(2)(h) requires that members of the public be permitted to attend and participate, if authorized, in any meeting by videoconference when a member attends by videoconference.

**BE IT RESOLVED**, that the [PUBLIC BODY] authorizes its members who experience an extraordinary circumstance, as described above and further defined by any rules or written procedures later adopted, to attend meetings by videoconference: (i) as long as a quorum of the members attend in-person at one or more locations open to the public; (ii) as long as the member can be seen, heard, and identified while the open portion of the meeting is being conducted; and (iii) as otherwise permitted under Chapter 56 of the Laws of 2022; and be it further

**RESOLVED**, that the [PUBLIC BODY] shall create written procedures further governing its use of videoconferencing by its members in compliance with Chapter 56 of the Laws of 2022.

**MODEL Procedures for Member Videoconferencing**  
**Pursuant to Public Officers Law § 103-a**

In compliance with Public Officers Law (POL) § 103-a(2)(a), the [PUBLIC BODY], following a public hearing, authorized by resolution on [insert date] the use of videoconferencing as described in POL § 103-a.

The following procedures are hereby established to satisfy the requirement of POL § 103-a(2)(b) that any public body which in its discretion wishes to permit its members to participate in meetings by videoconferencing from private locations – under extraordinary circumstances – must establish written procedures governing member and public attendance.

1. [PUBLIC BODY] members shall be physically present at any meeting of the [PUBLIC BODY] unless such member is unable to be physically present at one of the designated public meeting locations due to extraordinary circumstances.
2. For purposes of these procedures, the term “extraordinary circumstances” includes disability, illness, caregiving responsibilities, or any other significant or unexpected factor or event which precludes the member’s physical attendance at such meeting.
3. If a member is unable to be physically present at one of the designated public meeting locations and wishes to participate by videoconferencing from a private location due to extraordinary circumstances, the member must notify [REPRESENTATIVE OR CHAIR OF PUBLIC BODY] no later than four business days prior to the scheduled meeting in order for proper notice to the public to be given. If extraordinary circumstances present themselves on an emergent basis within four days of a meeting, the [PUBLIC BODY] shall update its notice as soon as practicable to include that information. If it is not practicable for the [PUBLIC BODY] to update its notice, the [PUBLIC BODY] may reschedule its meeting.
4. If there is a quorum of members participating at a physical location(s) open to the public, the [PUBLIC BODY] may properly convene a meeting. A member who is participating from a remote location that is not open to in-person physical attendance by the public *shall not* count toward a quorum of the [PUBLIC BODY] but may participate and vote if there is a quorum of members at a physical location(s) open to the public.
5. Except in the case of executive sessions conducted pursuant to POL § 105, the [PUBLIC BODY] shall ensure that its members can be heard, seen, and identified while the meeting is being conducted, including but not limited to any motions, proposals, resolutions, and any other matter formally discussed or voted upon. This shall include the use of first and last name placards physically placed in front of the members or, for members participating by videoconferencing from private locations due to extraordinary circumstances, such members must ensure that their full first and last name appears on their videoconferencing screen.
6. The minutes of the meetings involving videoconferencing based on extraordinary circumstances pursuant to POL § 103-a shall include which, if any, members participated by videoconferencing from a private location due to such extraordinary circumstances.

**MODEL Procedures for Member Videoconferencing  
Pursuant to Public Officers Law § 103-a**

7. The public notice for the meeting shall inform the public: (i) that extraordinary circumstances videoconferencing will (or may) be used, (ii) where the public can view and/or participate in such meeting, (iii) where required documents and records will be posted or available, and (iv) the physical location(s) for the meeting where the public can attend.
8. The [PUBLIC BODY] shall provide that each open portion of any meeting conducted using extraordinary circumstances videoconferencing shall be recorded and such recordings posted or linked on the [PUBLIC BODY] website within five business days following the meeting, and shall remain so available for a minimum of five years thereafter. Such recordings shall be transcribed upon request.
9. If members of the [PUBLIC BODY] are authorized to participate by videoconferencing from a private location due to extraordinary circumstances, the [PUBLIC BODY] shall provide the opportunity for members of the public to view such meeting by video, and to participate in proceedings by videoconference in real time where public comment or participation is authorized. The [PUBLIC BODY] shall ensure that where extraordinary circumstances videoconferencing is used, it authorizes the same public participation or testimony as in person participation or testimony.
10. Choice 1:

Open meetings of the [STATE PUBLIC BODY OR AUTHORITY] conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall be broadcast pursuant to the requirements of POL § 103(f) and shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, “disability” shall have the meaning defined in Executive Law § 292.

Choice 2:

Open meetings of the [ALL OTHER PUBLIC BODIES] conducted using extraordinary circumstances videoconferencing pursuant to the provisions of POL § 103-a shall utilize technology to permit access by members of the public with disabilities consistent with the 1990 Americans with Disabilities Act (ADA), as amended, and corresponding guidelines. For the purposes of this guideline, “disability” shall have the meaning defined in Executive Law § 292.
11. The in-person participation requirements of POL § 103-a(2)(c) shall not apply during a [state disaster emergency declared by the governor pursuant to Executive Law § 28 or a local state of emergency proclaimed by the chief executive of a county, city, village or town pursuant to § 24 of the Executive Law] if the [PUBLIC BODY] determines that the circumstances necessitating the emergency declaration would affect or impair the ability of the [PUBLIC BODY] to hold an in-person meeting.
12. These procedures shall be conspicuously posted on the [PUBLIC BODY] website.