

such application by a majority plus one vote of the entire board membership.

B. Zoning Board of Appeals:

1. Organization:

Pursuant to applicable provisions of the Village Law §7-712, there shall be a Zoning Board of Appeals (ZBA) consisting of three (3) members appointed by the Village Board of Trustees. No member of the ZBA shall be a member of the Village Board of Trustees. The ZBA shall select a Chairman and a Secretary from its own membership. In the absence of a chairperson, the ZBA may designate a member to serve as acting chairperson. The Village Board of Trustees may require ZBA members to complete training and continuing education courses. Compensation for members of the ZBA will be determined by the Village Board by separate resolution.

a) Terms of Office:

The terms of members of the Zoning Board of Appeals first appointed shall be so fixed that the term of one (1) member shall expire at the end of the Village official year in which such member was initially appointed. The terms of the remaining members first appointed shall be so fixed that one term shall expire at the end of each official year thereafter. In other words, one (1) member shall serve one (1) year, one (1) member shall serve two (2) years, and one (1) member shall serve three (3) years. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term of three years. A vacancy occurring for reason other than by expiration of a term shall be filled by the Village Board of Trustees by appointment for the unexpired term only.

b) Alternate Members:

The Village Board of Trustees may appoint two alternate members to the ZBA. These individuals would serve when other members are absent or unable to participate on an application or matter before the ZBA because of a conflict of interest. All provisions of this section relating to ZBA 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.

c) Removal of Members:

After a public hearing, any member of the ZBA may be removed for non-compliance with minimum requirements relating to meeting

attendance and training as established by the Village Board of Trustees by Local Law.

2. Powers and Duties:

- a) Unless otherwise provided by Local Law, the jurisdiction of the Zoning 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 Code Enforcement Officer pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Village.
- b) The Zoning Board of Appeals shall have the power to make, adopt, and promulgate such written rules of procedure, bylaws and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this Law. Such rules, bylaws and forms shall not be in conflict with, nor have the effect of waiving any provision of, this Law or any other Law of the Village of Victory.
- c) The ZBA is governed by, and shall act in strict accordance with, the procedures specified by Village Law §7-712, this Law, and its own duly adopted rules, bylaws, and forms. Upon proper request made in the form and manner prescribed by the ZBA and accompanied by a fee in accord with a schedule adopted by the Village Board, the ZBA shall perform the following functions:
 - 1) Hear and decide any question properly brought before it involving the interpretation of any provision of this Law.
 - 2) Hear and decide appeals from any decision, determination, act, or failure to act of the Code Enforcement Officer, and all matters properly referred to it by the enforcement officer.
- d) In exercising the above-mentioned powers, and duties, the Zoning Board of Appeals may, in conformity with Village Law, reverse, affirm or modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as ought to be made in the case referred to it. To that end, the ZBA shall have all the powers of the Code Enforcement Officer from whom the appeal is made. The concurring vote of a majority of the ZBA shall be necessary to reverse any order, requirement, decision, or determination of the Code Enforcement Officer or to decide in favor of the applicant any matter upon which such board is required to pass.

e) Interpretation:

The Zoning Board of Appeals shall upon proper request interpret any decision or interpretation of the Code Enforcement Officer regarding the regulations and requirements of this Zoning Law. Following the denial of a Building Permit application or Certificate of Occupancy in which an individual or corporation disputes the Code Enforcement Officer's reading or interpretation of any provisions of this Law, the individual or corporation can appeal said decision or interpretation in writing to the ZBA. The ZBA is required to hold a public hearing prior to acting on any appeal involving an interpretation.

f) Use Variances:

- 1) 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.
- 2) A use variance is a mechanism that allows for the establishment of a land use that is not permitted within a particular zoning district. For example, if an individual would like to open a restaurant in a single-family residential zoning district that prohibits restaurants, the use variance would provide a means of "relief" if warranted.
- 3) While the establishment of a prohibited land use within a particular zoning district could have a significant adverse impact on the neighborhood, there may be instances where a property owner is subjected to "unnecessary hardship" as a result of zoning restrictions placed on his/her property. Following denial of a Building Permit by the Code Enforcement Officer, an individual or corporation may appeal to the ZBA and seek administrative relief via a use variance.
- 4) In order to prove "unnecessary hardship", the applicant shall demonstrate to the ZBA 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 demonstrated by competent financial evidence.
 - b. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
 - c. That the requested use variance, if granted, will not alter the essential character of the neighborhood.

d. That the alleged hardship has not been self-created.

- 5) The ZBA 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.

g. Area Variances:

- 1) 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) An area variance is a mechanism that allows a landowner to build on their property in a way that is otherwise prohibited by this Zoning Law. Typically, an area variance is sought by an individual or corporation wishing to waive one or more dimensional standards such as minimum front, rear and side yard setbacks, maximum site coverage, minimum lot width, minimum or maximum parking spaces, etc.
- 3) Due to the peculiarities of a particular parcel, i.e. rock outcrops, odd-shaped parcel, excessively steep slopes, etc., there may be instances when it simply is not possible or practical to build on a parcel without violating certain dimensional zoning regulations. Following denial of a building permit by the Code Enforcement Officer, an individual or corporation may appeal to the ZBA and seek administrative relief via an area variance.
- 4) In evaluating an area variance application, the ZBA 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 a determination, the ZBA shall apply the following criteria or "tests":
 - 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 ZBA, but shall not necessarily preclude the granting of the area variance.
- 5) The ZBA, 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.

h. Imposition of Conditions:

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

3. Procedure:

a) Meetings Minutes and Records:

- 1) All meetings of the ZBA 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 chairperson, may administer oaths and compel the attendance of witnesses.
- 2) Meetings of such ZBA shall be open to the public to the extent provided in Article 7 of the NYS Public Officers Law. Such board 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.
- 3) Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the ZBA shall be filed in the office of the Village Clerk within five (5) business days and shall be a public record.

b) Public Hearing:

The ZBA is hereby required to hold a public hearing prior to acting on any appeal or application for a variance or interpretation.