

c) Notice:

Notice of each public hearing shall be published in a newspaper of general circulation in the Village of Victory at least ten (10) days prior to such hearing. At least five (5) days before such hearing, a written notice of the public hearing is to be forwarded to the appropriate official any National or State Park Commission having jurisdiction over any park or parkway within five hundred (500) feet of the property affected by an appeal and to the County Planning Board as required by General Municipal Law §239m. 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. Upon the hearing, any party may appear in person, or by agent or attorney. At the time of submission of the application for a variance, the applicant shall submit, in addition to otherwise required documentation, the following:

- 1) A reproduced copy of the Tax Map or extract of the Tax Map depicting the parcel(s) of land in question and all lands within 500 feet distance from the perimeter thereof.
- 2) A schedule of the names and addresses of the property owners within 500 feet distance from the perimeter of the parcel in question as ascertained from the office of the Town Assessor.
- 3) Satisfactory proof that the property owners within 500 feet of the perimeter of the parcel have been notified in writing of the nature of the request for a variance (include a brief narrative). Such notification shall include the following written statement: "An application for a variance for lands within 500 feet of your property is being proposed". The permit application will be filed with the Code Enforcement Officer and may be reviewed by you during normal business hours at the Village Hall. Proof shall be deemed satisfactory for purposes hereof if the applicant provides evidence of mailing, by certified or registered mail, or certificate of mailing and files the receipts with the submission. Regular mail is not satisfactory notice.
- 4) In the event that the applicant or a related company or corporation owns lands adjacent to the parcel in questions, then, in such event, the notice required herein shall be provided to property owners with 500 feet of the parcel adjacent to the parcel in question.
- 5) For purposes of this Section only, the term "applicant" shall include owner, agent or applicant.

d. Voting Requirements:

Every motion or resolution of the ZBA shall require for its adoption the affirmative vote of a majority of all the members of the board 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 §239-m of the General Municipal Law shall apply.

e. Appeals Procedure:

Any person allegedly aggrieved by a decision, determination, act, or refusal to act, of the Code Enforcement Officer may file an appeal with the ZBA. Such request shall clearly State the decision, determination, act, or failure to act, of the Code Enforcement Officer from which the appeal is taken. An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer.

f. Stay Upon Appeal:

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the ZBA, after the notice of appeal shall have been filed with the Village Clerk, 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 ZBA or by a court of record on application, on notice to the Village Clerk from whom the appeal is taken and on due cause shown.

g. Findings and Conclusions:

Within sixty-two (62) days after such public hearing, and after considering the application, the ZBA shall either grant or deny the request or appeal and make a written report on the findings and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. The time within which the ZBA must render a decision may be extended by mutual consent of the applicant and the board. Such decision shall be filed in the office of the Village Clerk within five (5) days after the day such decision is rendered, and a copy thereof mailed to the applicant.

h. Filing of Administrative Decision:

Each order, requirement, decision, interpretation or determination of the Code Enforcement Officer shall be filed with the Village Clerk within five (5) business days from the day it is rendered, and shall be a public record.

i. Compliance with State Environmental Quality Review Act:

The ZBA shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.

j. Rehearing:

A motion for the ZBA 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.

k. Default Denial of Appeal:

In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the ZBA is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision, or determination of the Code Enforcement Officer within sixty-two (62) days, 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 Section j above.

l. Referrals:

1) Village Planning Board:

At least thirty (30) days before the date of a public hearing held in connection with any application for a variance submitted to the ZBA, the ZBA shall transmit to the Planning Board a copy of said application, and shall request that the Planning Board submit to the ZBA its advisory opinion on said application prior to the date of said hearing. The failure of the Planning Board to submit such report shall be interpreted as a favorable opinion for the granting of the variance applied for.

2) Saratoga County Planning Board:

Any application for a variance involving real property located within five-hundred (500) feet of any of the following shall be referred to the Saratoga County Planning Board prior to final

action in accord with §§239-l and 239-m of the General Municipal Law:

- a. The boundary of any Village or Town.
- b. The boundary of any existing or proposed County of state park or other recreation area.
- c. The right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway.
- d. The right-of-way of any existing or proposed stream or drainage channel owned by the County or for which the County has established channel lines.
- e. The boundary of any existing or proposed County or State owned land on which a public building or institution is situated.
- f. The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agricultural and Markets Law, except this provision does not apply to the granting of area variances.

3) Time Allotted for County Review:

The Saratoga County Planning Board is obligated to respond in writing to the zoning referral within thirty (30) days of receipt of said referral. If the County fails to respond within the thirty (30) day time frame, the ZBA is free to render a decision on the application.

4) Voting Requirements upon Receipt of County Report:

Should the Saratoga County Planning Board recommend modification to or denial of the application, the ZBA may only approve such application by a majority plus one vote of the entire board membership.

5) Relief from decision:

Any person or persons jointly or severally aggrieved by any decision of the Board may apply to the Supreme Court for relief by a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York. Such proceeding shall be governed by the provisions of Article 78 of the Civil Practice Law and Rules, except that:

- a. It must be instituted as therein provided within thirty (30) days after filing of a decision in the office of the Village Clerk.

- b. The Court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusion of law if it shall appear that testimony is necessary for the proper disposition of the matter.
- c. The Court, at special term, shall itself dispose of the case on the merits, determining all questions which may be presented by determination.
- d. Costs shall not be allowed against the ZBA unless it shall appear to the Court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

C. Code Enforcement Officer:

1. Powers and Duties:

It shall be the duty of the Code Enforcement Officer to keep written record of all applications for Building Permits together with any conditions or requirements for issuance. The Code Enforcement Officer shall file and safely keep copies of all plans and documents submitted, which shall be available to the Village Board, other commissions, Village staff, and the general public. The Code Enforcement Officer shall issue no Building Permit or Certificate of Occupancy except when provisions of this ordinance, together with applicable conditions, requirements, rules, or laws shall be complied with. The Code Enforcement Officer shall have no authority to vary the regulations of this ordinance.

2. Procedures:

a) Requirements for a Building Permit:

- 1) No building or structure shall be constructed, erected, relocated, altered, repaired, extended, removed, demolished, or structurally changed, nor shall any excavation be made or footing or foundation be constructed, nor shall the use of an existing facility or land be changed until a Building Permit has been issued by the Code Enforcement Officer.
- 2) No Building Permit or Certificate of Occupancy permit shall be issued unless the Code Enforcement Officer is satisfied that the land or parcel in question has no natural characteristics which would endanger the health, safety or welfare of the resident, or others. Such natural characteristics may include fire, flooding and excessive slope.
- 3) The Code Enforcement Officer shall in no case, except under written order of the ZBA, grant any Building Permit where the