

**SECTION VIII: APPEALS**

**1. ADMINISTRATIVE APPEALS.** The Board of Appeals shall hear and decide appeals where it is alleged that there is any error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or the Planning Board in the administration of this Ordinance. When errors of administrative procedures or interpretation are found, the case shall be remanded to the Code Enforcement Officer or Planning Board for correction.

**2. HEARINGS.**

- a. For all appeals from decisions by the Code Enforcement Officer concerning applications for permits authorized by this ordinance, the Board of Appeals shall hold a public hearing as prescribed herein. The Town Clerk shall cause to be published and posted a notice which shall indicate the property involved, the nature of the appeal and the time and place of public hearing.
- b. The Code Enforcement Officer, unless prevented by illness or absence from the state, shall attend all hearings and shall present to the Board of Appeals all plans, photographs, and other factual information which is appropriate to an understanding of the appeal.
- c. All appeals to the Board of Appeals must be filed within 30 days of the date of decision or action.

**3. VARIANCES.** The Board of Appeals shall authorize variances upon appeal, within the limitations set forth in this Ordinance.

- a. Dimensional variances may be granted only from dimensional requirements including frontage, lot area, lot width, height, and setback requirements.
- b. Variances shall not be granted for establishment of any use otherwise prohibited by this Ordinance.
- c. The Board shall not grant a variance unless it finds that:
  - 1. The proposed structure or use would meet the performance standards of this Ordinance except for the specific provision which has created the non-conformity and from which relief is sought; and
  - 2. The strict application of the terms of this Ordinance would result in an undue hardship. The term “undue hardship”, shall mean the following:

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- a.) The land in question cannot yield a reasonable return unless a variance is granted;
  - b.) That the need for a variance is due to the circumstances of the property and not to the general conditions of the neighborhood;
  - c.) That the granting of a variance will not alter the essential character of the locality; and
  - d.) That the hardship is not the result of action taken by the applicant or a prior owner.
- d. The Board may grant a variance to a property owner for the purpose of making that property accessible to a person with a disability who is living or regularly visits the property. The Board shall restrict any variance granted under this Sub-Section solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability.
- e. The Board may grant a variance to a property owner from a setback requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. A variance under this section may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage (if applicable). If the petitioner has obtained the written consent of an affected abutting landowner, the 20% limitation may be extended. The term "undue hardship" for this section means:
1. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  2. The granting of a variance will not alter the essential character of the locality;
  3. The hardship is not the result of action taken by the applicant or a prior owner;
  4. The granting of the variance will not substantially reduce or impair the use of abutting property; and
  5. That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

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**4. VARIANCES RECORDED.** If the board grants a variance under this section, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form. This certificate must be recorded in the local registry of deeds within 90 days of the date of the final written approval of the variance of the variance is void. A variance is not valid until recorded as provided in this section. The date of the final written approval shall be the date stated on the written approval.

**5. APPEAL TO SUPERIOR COURT.** An appeal may be taken within thirty (30) days after any decision is rendered by the Board of Appeals, by any party to Superior Court in accordance with State Law.

**6. APPEALS.** Appeals from decisions of the Code Enforcement Officer or the Planning Board may be taken pursuant to the provisions of this Ordinance.