

LAND USE

105 Attachment 1

Town of Colton

Appendix A Board of Appeals

A Board of Appeals consisting of five members shall be designated by the Town Board to carry out the duties prescribed for such Board under this chapter and according to the applicable provisions of law.

I. Appointment, Terms and Removal

- A. Establishment - A Board of Appeals shall be established and the members thereof appointed by resolution of the Town Board upon the enactment of this chapter.
- B. Membership and Terms - The Board of Appeals shall consist of five members, including the Chairman, who shall be designated by the Town Board, with the members first appointed to staggered terms of one, two, three, four and five years, respectively, as the Town Board shall designate in making the appointments. The successors to the original appointees shall be appointed for terms of five years from and after the expiration of the terms of the members first appointed. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.

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.

Alternate members - 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.

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.

COLTON CODE

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.

C. Training and attendance requirements -

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.

To be eligible for reappointment to such Board, such member shall have completed the training promoted by the town pursuant to this subdivision.

The training required 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.

No decision of a Zoning Board of Appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

- D. Succession and Vacancy - Any member of the Board initially appointed may be appointed for one or more successive terms. If a vacancy shall occur otherwise than by expiration of a term, it shall be filled by an appointment made by the Town Board for the unexpired term.
- E. Removal - Members of the Board of Appeals shall serve at the pleasure of the Town Board and may be removed for cause, after public hearing, by a majority vote of the Town Board. 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.

II. Powers and Duties

- A. The Board of Appeals shall prescribe such rules for the conduct of its affairs as may be necessary to carry out its duties under this chapter, and all its determinations shall be made in accord therewith. In particular, the Board shall conduct itself according to the following:
 - 1. Meetings - All meetings of the Board of Appeals shall be held at the call of the Chairman and at such other times as a majority of the members of the full Board

LAND USE

may determine. All meetings shall be conducted in accord with the guidelines established by the Chairman or, in his absence, the acting Chairman, and such Chairman may administer oaths and compel the attendance of witnesses. All meetings of the Board of Appeals shall be open to the public.

2. Records - The Board shall keep minutes of its proceedings, including its examinations, findings and official actions, and shall record the vote of each member upon every question put to vote or, if absent or failing to vote, indicating such fact. All decisions of the Board shall be recorded in the minutes, which shall fully set forth the reasons for the decision of the Board and the findings of fact on which the decision was based, and an appropriate record of every official determination of the Board shall be on file in the office of the Town Clerk, together with all documents pertaining thereto.
 3. Voting Requirements - The concurring vote of a majority of the full membership of the Board of Appeals shall be required to constitute an official action by the Board.
 4. Eligible Applicant or Appellees - An application or appeal to the Board of Appeals may be initiated by any person or party aggrieved under or with a legitimate interest in this chapter, including the Town and its official instruments. An appeal for an interpretation or variance may be made only after a determination and notification of action taken by the Enforcement Officer or other body of original jurisdiction, except where such appeal is instituted by an official instrument of the Town.
- B. The Board of Appeals shall have all the powers and duties prescribed by law and by this chapter and may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made and, to that end, shall have all the powers of the officer or body from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the Board of Appeals shall have the power in passing upon appeals to vary or modify the application of any of the regulations or provisions of this chapter relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the Code shall be observed, public health, safety and welfare secured and substantial justice done. In particular, the powers of the Board of Appeals are as follows:
1. Interpretation - To decide any question involving the interpretation of any provision of this chapter, including determination of the exact location of any zoning district boundary if there is uncertainty with respect thereto, or any other determination made in the administration or application of this chapter. Such interpretation shall be considered and rendered by the Board only upon application or appeal following and based upon a determination made by the Enforcement Officer or other body to whom original jurisdiction has been assigned under the chapter; except as such may be requested by an official instrument of the Town.

COLTON CODE

2. Variance - To vary or adapt the strict application of any of the requirements of this chapter where strict application would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved, but in no other case. Use variances and area variances will be granted by the Board of Appeals in accordance with the guidelines set forth in Town Law § 267-b.

III. Procedure.

- A. The Board of Appeals shall act in strict accordance with the procedures specified by law and by this chapter and shall be in accord with the following:
 1. Application - All appeals and applications made to the Board of Appeals shall be in writing, in the form prescribed by the Board. Every appeal or application shall refer to the specific provisions of the Code involved and shall exactly set forth the interpretation that is claimed, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative official which is being appealed by filing with the Board of Appeals a notice of application or appeal specifying the grounds thereof. Upon such application, the Enforcement Officer shall transmit to the Board all of the papers constituting the record upon which the action appealed from was taken.
 2. Stay - An appeal stays all proceedings in furtherance of the action appealed from unless the Enforcement Officer from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal shall have been filed with him that by reason of acts stated in the certificate a stay would, in his 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 Enforcement Officer from whom the appeal is taken and on due cause shown.
 3. Notification and Public Hearing - The Board of Appeals shall fix a reasonable time for any public hearing in connection with an appeal or application and shall give public notice thereof by publication in the official paper of a notice of such public hearing at least five days prior to the date thereof; and shall, at least five days before such public hearing, mail notice thereof to the applicant or appellees.
 4. Referrals - Prior to the date of any public hearing required by law on an application or appeal to the Board of Appeals, the Board may transmit to the Planning Board a copy of said application or appeal, together with notice of the aforesaid public hearing, and shall request that the Planning Board submit to the Board of Appeals its advisory opinion on said application or appeal; and the Planning Board may submit a report of such advisory opinion prior to the date of said public hearing.

LAND USE

Further, where an appeal for variance involves lands within the Adirondack Park, the appeal shall be referred to the Adirondack Park Agency in accord with the procedures detailed in Appendix E of this chapter.

5. Upon receipt of application for preliminary and/or final approval of a subdivision plat or proposal to develop an undeveloped plat and/or plats already filed in the office of the County Clerk, such plats shall be referred to the County Planning Board if the plat applies to real property within five hundred feet of the following:
 - (a) the boundary of any city, village, or town; or
 - (b) the boundary of any existing or proposed county or state park or other recreation area; or
 - (c) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
 - (d) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
 - (e) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
 - (f) the boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.
6. Thirty-day review. The County Planning Board shall have thirty days after receipt of a preliminary plat or proposal to develop an undeveloped plat, or such longer period as may have been agreed upon by the County Planning Board and the Town Planning Board, to report its recommendations to the Town Planning Board, accompanied by a statement of the reasons for such recommendations. If the County Planning Board fails to report within such period, the Town Planning Board may take final action on the referred plat without such report. However, any County Planning Board report received after thirty days or such longer period as may have been agreed upon, but two or more days prior to final action by the Town Planning Board, shall be subject to the provisions of extraordinary vote.
7. Extraordinary vote upon recommendation of modification or disapproval. If the County Planning Board recommends modification or disapproval of a referred plat, the Town Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.
8. Report of final action. Within thirty days after final action, the Town Planning Board shall file a report of the final action it has taken with the County Planning Board. If the Town Planning Board acts contrary to a recommendation of modification or disapproval of a proposed action, it shall set forth the reasons for the contrary action in such report.
9. Decision and Notification - Within 62 days from the date of final closing of any public hearing, the Board shall render a determination with respect to the subject under consideration, and the applicant or his authorized representative so notified in writing within five days of the date of determination. When specifically requested by the applicant, such notification shall be by certified mail. Every

COLTON CODE

decision of the Board of Appeals shall be by resolution and in accord with the requirements of Section I of this Appendix with respect to the keeping of records and voting requirements. The Board of Appeals shall notify the Enforcement Officer, Town Clerk and Planning Board of the action taken on any application before the Board with respect to an interpretation or variance.

10. Appeal - Any person or persons, jointly or severally aggrieved by any decision of the Board of Appeals, may apply for review by a proceeding under Article 78 of the Civil Practice Law and Rules, provided such proceeding is instituted within 30 days after the filing of the Board's decision in the office of the Town Clerk.