

ZONING

480 Attachment 3

Town of Webb

**Appendix A
Board of Appeals**

[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I)]

- I. Appointment of members to and organization of the Board of Appeals. The Town Board has heretofore appointed a Board of Appeals consisting of five members, and such five-member Board is hereunto continued. The Town Board 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, from time to time, 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. In making such appointments, the Town Board may require Board of Appeals members to complete training and continuing education courses in accordance with any requirements for the training of such members as the Town Board may so determine from time to time.

No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.

The appointment of members to the Board shall be for fixed terms of five years and shall expire at the end of a calendar year in each of five successive years. No replacement member shall take part in consideration of any matter for which an application was on file with the Board of Appeals at the time of his or her appointment.

If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the expired term.

The Town Board shall have the power to remove, after public hearing, any member of the Board of Appeals for cause. The Town Board may remove any Board of Appeals member for noncompliance with minimum requirements relating to meeting attendance and training as such requirements may be established from time to time by the Town Board by local law.

All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. Such Chairperson, or, in his or her absence, the Acting Chairperson, may administer oaths and compel the attendance of witnesses.

- II. Powers and duties.

- A. The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the enforcement officer and to that

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end shall have all the powers of the enforcement officer from whose order, requirement, decision, interpretation or determination the appeal is taken.

- B. Use variances. The term “use variance” shall mean the authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by applicable zoning regulations of the Town of Webb.

The Board of Appeals, on appeal from the decision or determination of the enforcement officer, shall have the power to grant use variances, as defined herein. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence; (2) 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; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created. The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven 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.

- C. Area variances. The term “area variance” shall mean the authorization by the 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 of the Town of Webb.

The Board of Appeals shall have the power, upon an appeal from a decision or determination of the enforcement officer, to grant area variances as defined herein. In making the determination, the Board of Appeals 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 determination, the Board shall also consider (1) whether an undesirable change will be produced in the character of the neighborhood or detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance. The Board of Appeals, 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.

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- D. Imposition of conditions. The Board of Appeals 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 chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- E. The Board of Appeals shall prescribe such rules for the conduct of its affairs as may be necessary to carry out its duties, and all Board duties shall be made in accordance therewith.

III. Board of Appeals procedures.

- A. Meetings, minutes, records. Meetings of the Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law and shall be subject to applicable publication and posting requirements of such law. The 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.
- B. 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.
- C. Assistance to Board of Appeals. The 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.
- D. Applications. All applications to the Board of Appeals, including requests for interpretation of any provisions of this chapter and all appeals, collectively herein referred to as an "appeal," shall be in writing on forms prescribed for such purposes by the Board. All appeals shall be made by the owner of the real property subject to said appeal, or by his duly authorized designee, provided that said owner shall have authorized, in writing, the making of said appeal. Every appeal shall refer to the specific provisions of this chapter involved and shall set forth exactly the interpretation requested or the details of the variance that is sought and the grounds on which it is claimed said variance should be granted, as the case may be. The Board of Appeals, or its duly authorized agent, shall have the right to make relevant physical inspections of any real property subject to the appeal, and said owner shall be deemed to give said permission upon the making of any such appeal herein.
- E. Planning Board referral. Following the receipt of an application for an appeal and prior to a public hearing thereon, the Board of Appeals shall transmit to the Planning Board a copy of said application for appeal, together with a notice of the public hearing, and said transmittal shall be deemed a request to the Planning Board to render to the Board of Appeals an advisory opinion on the application for appeal. The Planning Board shall submit to the Board of Appeals, for the latter's receipt prior to

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said public hearing, a written advisory opinion in the matter before the Board of Appeals.

- F. Hearing appeals. 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 enforcement officer. The concurring vote of a majority of the members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the enforcement officer, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the Town.
- G. Time of appeal. Such appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the enforcement officer by filing with such officer and with the Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The enforcement officer shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken.
- H. Stay upon appeal. An appeal shall stay 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 the enforcement officer, 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 enforcement officer from whom the appeal is taken and on due cause shown.
- I. 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 of 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 as determined from time to time by the Town Board, 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.
- J. Decision. The Board of Appeals shall render findings of fact applicable to the matter before it and shall decide upon the appeal within 62 days after the conduct of said hearing. Each decision shall set forth fully the reasons for the decision and the findings of fact on which the decision was based. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.
- K. 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. Further, the Board of Appeals shall provide the Town Board and the Planning Board with a copy

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of any said decision which grants a use variance, area variance, or of any decision which renders an interpretation of this chapter.

- L. Referral to County Planning Board. At least five days before such hearing, the Board of Appeals shall refer any matter before the Board to the Herkimer County Planning Board, as may be required in § 480-43A of this chapter.
- M. Compliance with State Environmental Quality Review (SEQR) Act. The Board of Appeals shall comply with the provisions of the SEQR Act under Article 8 of the Environmental Conservation Law and its implementing regulations.
- N. Rehearing. A motion for the Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed 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 public 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 reviewed order, decision or determination will not be prejudiced thereby.
- O. Enforcement; violations and remedies: as provided in § 480-44 of this chapter.