

ARTICLE VII

APPEALS, VARIANCES, INTERPRETATIONS

7-1 APPEALS

- (A) An appeal from any final order or decision of the Zoning Inspector may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the Zoning Inspector and the Board of Adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the Zoning Inspector and the Board of Adjustment when delivered to the office of the Town Clerk, the required filing fee paid, and the date and time of filing entered on the notice by the Town Clerk.
- (B) An appeal must be taken within thirty days after the date of the decision or order appealed from.
- (C) Whenever an appeal is filed, the Zoning Inspector shall forthwith transmit to the Board of Adjustment all the papers constituting the record relating to the action appealed from.
- (D) An appeal stays all actions by the Zoning Inspector seeking enforcement of or compliance with the order or decision appealed from, unless the Zoning Inspector certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Zoning Inspector.
- (E) The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.

7-2 VARIANCES

- (A) An application for a variance along with the required filing fee shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk.
- (B) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of this Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of this Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:
 - (1) If the applicant complies strictly with the provisions of the ordinance, he can make no reasonable use of his property;

- (2) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public;
 - (3) The hardship relates to the applicant's land, rather than personal circumstances;
 - (4) The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
 - (5) The hardship is not the result of the applicant's own actions; and
 - (6) The variance will neither result in the extension of a nonconforming situation in violation of Article VI, authorize the initiation of a nonconforming use of land, nor authorize a use of land not permitted in the district in which it is to be located. *(Amended 01-09-07)*
- (C) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. Such conditions must be reasonably related to the condition or circumstance that gives rise to the need for a variance. *(Amended 01-09-07)*
- (D) A variance may be issued for an indefinite duration or for a specified duration only. Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within 60 days from the date of the decision or if construction of the use has not commenced within 180 days from the date of the issuance of a building permit.
- (E) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

7-3 INTERPRETATIONS

- (A) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Zoning Inspector, they shall be handled as provided in Section 7-1.
- (B) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Town Clerk. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

7-4 REQUESTS TO BE HEARD EXPEDITIOUSLY

The Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 7-8, and obtain the necessary information to make sound decisions.

7-5 BURDEN OF PROOF IN APPEALS AND VARIANCES

- (A) When an appeal is taken to the Board of Adjustment in accordance with Section 7-1, the Zoning Inspector shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 7-2(B), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

7-6 BOARD ACTION ON APPEALS AND VARIANCES

- (A) With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, then the motion is not approved.
- (B) Before granting a variance, the Board of Adjustment must take a vote and vote affirmatively (by a 4/5 majority) on the required findings stated in subsection 7-2(B). Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Section 7-2(B) shall include a statement of the specific reasons or findings of fact supporting such motion.
- (C) A motion to deny a variance may be made on the basis that any one or more of the six criteria set forth in Section 7-2(B) are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by more than one fifth of the Board's membership (excluding vacant seats).

7-7 HEARING PROCEDURES REQUIRED ON APPEALS AND VARIANCES

- (A) Before making a decision on an appeal or an application for a variance, the Board of Adjustment shall hold a hearing on the appeal or application.
- (B) Subject to subsection (C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

- (C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published.

7-8 NOTICE OF HEARING

The Town Clerk shall give notice of any hearing required by Section 7-7 as follows:

- (A) Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten days before the hearing.
- (B) Notice shall be given to neighboring property owners by mailing a written notice not later than ten days before the hearing to those persons who have listed for taxation real property any portion of which is located within 100 feet of the lot that is the subject of the application or appeal. Notice may also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted not less than seven days prior to the hearing.
- (C) The notice required by this Section shall state the date, time and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

7-9 EVIDENCE

- (A) The provisions of this Section apply to all hearings for which a notice is required by Section 7-7.
- (B) All persons who intend to present evidence to the Board of Adjustment, rather than arguments only, shall be sworn.
- (C) All findings and conclusions necessary to the issuance or denial of the requested appeal or variance (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.
- (D) The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the Court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the Board of Adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on

the examination. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor. *(Amended 01-09-07)*

7-10 MODIFICATION OF APPLICATION AT HEARING

- (A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (B) Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board of Adjustment may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Zoning Inspector.

7-11 RECORD

- (A) A record shall be made of all hearings required by Section 7-7, and such record shall be kept as provided by state law. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.
- (B) Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings.

7-12 WRITTEN DECISION

- (A) Any decision made by the Board of Adjustment regarding an appeal or variance shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.
- (B) In addition to a statement of the Board of Adjustment's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts.

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