

permitting the same and, if such violation does not cease within such time as the Code Enforcement Officer may specify and a new certificate of occupancy is not obtained, he or she shall institute such of the foregoing criminal or civil actions as may be necessary to terminate the violation. Such notice may also be served by posting on the premises.

- C. The remedies provided for herein are cumulative and not exclusive and shall be in addition to any other remedies provided by law.

ARTICLE IX Zoning Board of Appeals

§ 210-58. Establishment and duties. [Amended 4-8-1999 by L.L. No. 1-1999]

Pursuant to § 267 of the Town Law, the Town Board shall appoint a Zoning Board of Appeals consisting of seven members, shall designate its Chairperson and also provide for compensation to be paid to said members and provide for such other expenses as may be necessary and proper. A member of the Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Board of Appeals for cause and after public hearing, as set forth in § 267-9 of the Town Law.

A. Term of appointment.

- (1) Of the members of the Board of Appeals first appointed, one shall hold office for the term of one year, one for the term of two years, one for the term of three years, one for the term of four years, one for the term of five years from and after his or her appointment.
- (2) Their successors shall be appointed for the term of five years from and after the expiration of the terms of their predecessors in office. If a vacancy shall

occur otherwise than by expiration of term, it shall be filled by the Town Board by appointment for the unexpired term.

- B. Staff. The Board of Appeals may employ such clerical or other staff assistance as may be necessary and prescribe their duties, provided that it shall not at any time incur expenses beyond the amount of the appropriations made by the Town Board and then available for that purpose.
- C. Rules of procedure; bylaws; forms. The Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this chapter. Such rules, bylaws and forms shall not be in conflict with nor have the effect of waiving any provisions of this chapter or any other ordinances of the Town of Hurley. Such rules, bylaws and forms and any subsequent amendments or supplements thereto shall be submitted to the Town Board by the Board of Appeals for approval and filing for public view. The Town Board shall move to approve, reject or modify such rules, bylaws and forms within 30 days after submission. Failure of the Town Board to so move shall be construed to constitute approval thereof.
- D. All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. The Chairperson or, in his or her absence, the Acting Chairperson may administer oaths and compel the attendance of witnesses. All meetings of such Board shall be open to the public. The concurring vote of a majority of all members of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Code Enforcement Officer or to decide in favor of an applicant in any matter upon which it is required to pass under any ordinance to effect any variation in this chapter. The Board of Appeals shall decide an appeal or any other matter referred to it within 62 days after the final hearing.

- E. The Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every question. If a member is absent or fails to vote, the minutes shall indicate such fact. Every rule and 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 after the day such decision is rendered and shall be a public record. A copy of any decision so filed with the Town Clerk shall be mailed to the applicant.
- F. All appeals and/or applications to be submitted to the Board of Appeals in accordance with this chapter shall be submitted in three copies to the Code Enforcement Officer, notwithstanding other provisions of Article IX. Within five days, the Code Enforcement Officer shall forward such application to the Board of Appeals. A second copy shall be forwarded to the Planning Board by the Code Enforcement Officer within five days of its receipt. The Planning Board shall submit a report of such advisory opinion to the Code Enforcement Officer prior to the date of said public hearing. The failure of the Planning Board to submit such opinion with 60 days shall be interpreted as a favorable opinion for the appeal or application.

§ 210-59. Public notice and hearing.

Public notice of any required hearing by the Board of Appeals shall be given in accordance with Town Law as follows:

- A. By publishing a notice of any appeal or application and the time and place of the public hearing in the official newspaper of the Town of Hurley not less than 10 days prior to the date of such hearing.
- B. By giving written notice of hearing to any appellant or applicant and any other such notice to property owners in an affected area as may be required by the Board of

Appeals and to the Planning Board not less than five days prior to such hearing.

- C. By giving written notice of hearing to any required municipal, county, metropolitan, regional, state or federal agency in the manner provided in § 267-a, Subdivision 10, of the Town Law. **[Amended 4-8-1999 by L.L. No. 1-1999]**

§ 210-60. Appeals.

The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination made by the Code Enforcement Officer under this chapter in accordance with the procedure set forth herewith:

- A. Notice of appeal shall be filed with the Code Enforcement Officer and the Secretary to the Board of Appeals in writing, in a form required by such Board, within 30 days of the date of the action appealed from, specifying the grounds thereof.
- B. Upon filing of a notice of appeal and payment of a filing fee as set forth in the fee schedule as adopted and amended from time to time by resolution of the Town Board by the appellant or applicant, the Code Enforcement Officer shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. **[Amended 4-8-1999 by L.L. No. 1-1999]**
- C. The Board of Appeals shall set a reasonable date for the hearing of each appeal, of which hearing date the appellant shall be given notice and at which hearing he or she shall appear in person or by agent or by attorney.
- D. An appeal stays all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer certifies to the Board of Appeals, after notice of appeal shall have been filed with him or her, 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 Code Enforcement Officer and on due cause shown.

- E. Following public notice and hearing, the Board of Appeals 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 in the premises and, to that end, shall have all the power of the Code Enforcement Officer. If the action by the Board of Appeals is to reverse the action of the Code Enforcement Officer in whole, the filing fee shall be refunded to the appellant. The Board of Appeals shall decide the same within 62 days following the final hearing. **[Amended 4-8-1999 by L.L. No. 1-1999]**

§ 210-61. Variances and interpretations.

- A. 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, after public notice and hearing, 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 this chapter shall be observed, public safety and welfare secured and substantial justice done.
- B. All applications for variances shall be filed with the Secretary of the Board of Appeals in writing, shall be made in a form required by the Board of Appeals and shall be accompanied by payment of a filing fee in accord with a fee schedule, as adopted and amended from time to time by resolution of the Town Board, and a plot plan, drawn to scale and accurately dimensioned, showing the location of all existing and proposed buildings and structures on the lot. **[Amended 4-8-1999 by L.L. No. 1-1999]**

- C. Any variance which is not exercised within one year from the date of issuance is hereby declared to be revoked without further hearing by the Board of Appeals.
- D. Criteria for granting variances. **[Amended 4-8-1999 by L.L. No. 1-1999]**
- (1) Use variance. A use variance, as defined in this chapter, may only be granted if there is a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district in which the property is located:
 - (a) The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence;
 - (b) The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood;
 - (c) The requested variance, if granted, will not alter the essential character of the neighborhood; and
 - (d) The alleged hardship has not been self-created.
 - (2) Area variance. Prior to granting an area variance, as defined in this chapter, the Zoning Board of Appeals shall consider the following:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the area variance;

- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) 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.
- (3) For reasons fully set forth in the findings, the granting of the variance by the Board of Appeals shall be the minimum variance necessary.
 - (4) In no case shall a variance be granted solely for reasons of additional financial gain on the part of the owner or land or building involved.
- E. Imposition of conditions. The Zoning 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 and/or the period of time such variance shall be in effect. 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. **[Added 4-8-1999 by L.L. No. 1-1999]**
- F. Interpretations. The Zoning 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 Code Enforcement Officer and to that end shall have all the powers of the Code Enforcement Officer from whose order, requirement or decision the appeal is taken. [Added 4-8-1999 by L.L. No. 1-1999]

§ 210-62. Relief from decisions of Zoning Board of Appeals.

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals 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 proceedings shall be governed by the provisions of Article 78 of the Civil Practice Law and Rules, except that it must be instituted as therein provided within 30 days after the filing of a decision in the office of the Town Clerk; the Court may take evidence or appoint a referee to take such evidence as it may direct and report the same, with the findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter; and the Court at special term shall itself dispose of the case on the merits, determining all questions which may be presented for determination under the provisions of § 1296 of said article. Costs shall not be allowed against the Board of Appeals 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.

**ARTICLE X
Amendments**

§ 210-63. Procedure.

The Town Board may, from time to time, on its own motion or on petition or on recommendation from the Planning Board amend the regulations and districts established under this

chapter, after public notice and hearing in each case. All petitions for any amendment of the regulations or districts herein established shall be filed in writing in a form required by the Town Board.

§ 210-64. Referral to Planning Board.

Every proposed amendment, unless initiated by the Planning Board, shall be referred to the Planning Board. The Planning Board shall report its recommendations thereon to the Town Board, accompanied by a full statement of the reasons for such recommendations, prior to the public hearing. If the Planning Board fails to report within a period of 45 days from the date of receipt of notice or such longer time as may have been agreed upon by it and the Town Board, the Town Board may act without such report.

§ 210-65. Public notice and hearing.

The Town Board, by resolution, shall fix the time and place of the public hearing and cause notice to be given in accordance with state and federal laws.

§ 210-66. Protest by owners.

If a protest against the proposed amendment is presented to the Town Board, duly signed and acknowledged by the owners of 20% or more of the area of land included in such proposed amendment or by the owners of 20% or more of the area of the land immediately adjacent extending 100 feet therefrom or by the owners of 20% or more of the area of land directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not be passed except by the favorable vote of at least four members of the Town Board, provided that the percent of such vote is not contrary to or in conflict with state law.

§ 210-67. Planning Board changes.

- A. The Planning Board, with the permission of the Town Board in accordance with § 278 of the Town Law and § 210-38 of this chapter, may, simultaneously with the approval of any plat, make any reasonable change to the regulations established under this chapter with respect to the land so platted. [Amended 4-8-1999 by L.L. No. 1-1999]
- B. Before the Planning Board shall make any such change, there shall be a public hearing preceded by the same notice as in the case of the approval of the plat itself. Once the plat is filed in the office of the County Clerk, such changes shall be and become part of the regulations of this chapter, shall take the place of any regulations established herein by the Town Board, shall be enforced in the same manner and shall be similarly subject to amendment.

§ 210-68. Publication and posting.

Every amendment to this chapter, including any map incorporated therein, adopted in accordance with the Town Law shall be entered in the minutes of the Town Board and a copy thereof, exclusive of any map incorporated therein, shall be published once in the official newspaper of the Town of Hurley and a copy of such amendment, together with a copy of any map incorporated therein, shall be posted on a sign board maintained by the Town Clerk pursuant to Subdivision 6 of § 30 of the Town Law. Affidavits of the publication and posting thereof shall be filed with the Town Clerk.

ARTICLE XI
Miscellaneous Provisions

§ 210-69. Regulations to be considered minimum.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for

the promotion of the public health, morals, safety and general welfare.

§ 210-70. Effect on other provisions.

This chapter shall not interfere with, abrogate, annul or repeal any ordinance or any rule, regulation or permit previously or hereafter enacted, adopted or issued pursuant to law, provided that, unless specifically excepted, where this chapter imposes greater restrictions, its provisions shall control.