

**§ 280-317. Procedures.**

**A. General provisions.**

- (1) The Zoning Board of Appeals, consistent with this chapter, may adopt rules of conduct and procedure.

**B. Filing appeals**

- (1) An appeal to the Zoning Board of Appeals from any order, requirement, decision, interpretation, or determination of any administrative official charged with the enforcement of this chapter may be taken by any person aggrieved or by any officer, department, division, board, or bureau of the Town of Hamburg.
- (2) Such appeal shall be filed in the office of such administrative official charged with the enforcement of this chapter within five business days from the day it is rendered, and shall be a public record. Alternately, the Town Board may, by resolution, require that such filings instead be made in the Town Clerk's office.
- (3) Such appeal shall be taken, within 60 days after the filing of any order, requirement, decision, interpretation, or determination of the administrative official charged with the enforcement of this chapter by filing with such official and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The official from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

**C. Filing applications.**

- (1) An application for any matter upon which the Zoning Board of Appeals is required to pass may be made to the Building Inspector by the owner, the tenant of the property, or a duly authorized agent for which such appeal or application is sought.

**D. Stay of proceedings.**

- (1) Any appeal to the Zoning Board of Appeals shall stay all proceedings in furtherance of the action appealed from, except as otherwise provided in Subdivision 4 of § 267 of the Town Law.

**E. Hearing on appeal.**

- (1) The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice public notice thereof in accordance with the provisions of Subdivision 5 of § 267 of the Town Law at least five days prior to the date thereof.
- (2) The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, 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.
- (3) The Zoning Board of Appeals shall decide upon the appeal within 62 days after the

conduct of said hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

**F. Meetings, witnesses, and records.**

- (1) Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman and at such other times as the Board may determine. All meetings shall be open to the public.
- (2) The Chairman of the Zoning Board of Appeals or, in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses.
- (3) The Zoning 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 keep records of its examinations and other official action. Every rule and regulation, every amendment or repeal thereof, and every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

**G. Decisions of the Zoning Board of Appeals**

- (1) The concurring vote of a majority of the members of the Zoning Board of Appeals, as fully constituted regardless of vacancies or absences, shall be necessary to reverse any order, requirement, decision, interpretation, or determination of the Building Inspector or to decide in favor of the applicant any matter upon which it is required to pass under this chapter or to effect any variation in this chapter.
- (2) Every decision of the Zoning Board of Appeals shall be by resolution. Where findings are required, the decision shall set forth each required finding, supported by substantial evidence or other data considered by the Zoning Board of Appeals in each specific case, or, in the case of denial, the decision shall include the findings which are not satisfied.
- (3) If an affirmative vote of a majority of all members of the Zoning Board of Appeals is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision, interpretation, or determination of the administrative official charged with enforcement of this chapter within the time allowed by § 280-311E(3), the appeal is denied. The Board may amend that failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process.
- (4) The decision of the Zoning 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.

**H. Compliance with SEQR.**

The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQR) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617. The ZBA is subject to the New York SEQR law and for those actions not meeting the Type II designation (not subject to SEQR) completed prior to the ZBA taking an action. Typically, the lead agency shall be

determined and designated by mutual agreement of all involved agencies within 30 calendar days of the EAF being mailed, as provided by Section 617.6 of Title 6 of NYCRR. In all cases, the lead agency shall be the agency, board or body having final authority to approve or undertake the action. When projects require multiple approvals from the Town's Zoning, Planning and Town Boards, the Town Board of the Town of Hamburg shall be the lead agency. When projects require multiple approvals from the Town's Zoning and Planning Boards, the Planning Board of the Town of Hamburg shall be the lead agency. [Amended 5-8-2023 by L.L. No. 6-2023]

I. Violation of conditions or restrictions.

(1) Failure to comply with any condition or restriction prescribed by the Zoning Board of Appeals in approving any appeal for a variance or application for a special permit or a modification of regulations shall constitute a violation. Such violation may constitute the basis for revocation of a variance, special permit, or modification, or for penalties and other applicable remedies.

J. Lapse of authorization.

(1) Lapse of authorization. Any variance, special use permit or modification of regulations authorized by the Zoning Board of Appeals (ZBA) shall be automatically revoked, unless a building permit conforming to all of the conditions and requirements established by the Zoning Board of Appeals is obtained within six twelve months of the date of approval by the Zoning Board of Appeals, or a single six-month extension has been granted by the Zoning Board. All extensions will be coordinated with the Planning Board, if site plan approval is required. [Amended 8-9-2010 by L.L. No. 6-2010; 6-22-2015 by L.L. No. 6-2015; 8-3-2020 by L.L. No. 3-2020]

K. Rehearing.

(1) There shall be no rehearing of an appeal or application by the Zoning Board of Appeals, except in accordance with Subdivision 6 of § 267 of Article 16 of the Town Law.