

**§ 77-58 Procedure.**

The powers and duties of the Board of Appeals shall be exercised in accordance with the following procedure:

**A.** Public hearing; notice required.

**(1)** The Board of Appeals shall not decide any appeal for a variance or interpretation of this chapter without first holding a public hearing, notice of which hearing, including the substance of the appeal or application, shall be given by publication in the official newspaper of the Town at least **five days before the date** of such hearing. In addition to such published notice, the applicant shall cause notification to be:

**(a)** Mailed by certified mail, return receipt requested, to owners of neighboring property **within 100 feet of the subject premises**, if the subject premises is within an R-10 District;

**(b)** Mailed by certified mail, return receipt requested, to owners of neighboring property within **500 feet of the subject premises**, if the subject premises is within an R-40 or R-80 District; or

**(c)** Mailed by certified mail, return receipt requested, to owners of neighboring property within **100 feet of the subject premises**, if the subject premises is within a PRD, a Commercial, or IOC District.

**(2)** **Such notices shall be mailed at least seven days before the hearing.**

Additional mailings may be required by the Board to be made, as the Board may deem advisable.

**(3)** The names and addresses of said neighboring property owners shall be taken as they appear on the last completed tax roll of the Town. Proof of mailing shall be provided to the Zoning Board at the time of the hearing. In the alternative, an acknowledgment of receipt of such notice signed by the neighboring property owners shall constitute compliance with the above.

**B.** The failure to give notice in exact conformance herewith shall not be deemed to invalidate action taken by the Board of Appeals in connection with the granting of any appeal or variance, provided that due notice shall have been published and that there shall have been substantial compliance with the remaining provisions of this section.

**C.** In any matter which relates to a property which lies within 500 feet of the boundary of another municipality, the Secretary of the Board of Appeals shall transmit to the Municipal Clerk of such other municipality a copy of the official notice of the public hearing on such matter not later than one day after publication thereof. Such other municipality shall have the right to appear and to be heard at such public hearing.

**D.** All appeals and applications made to the Board of Appeals shall be in writing and shall be accompanied by the required fee. The amount of such fee shall be set by the Town Board.<sup>11</sup>

**E.** Each appeal or application shall fully set forth the circumstances of the case, shall refer to the specific provision of this chapter involved and shall exactly set forth, as the case may be, the interpretation that is claimed, the details of the variance that is applied for and the grounds on which it is claimed that the same should be granted.

**F.** Time of decision. The Zoning Board of Appeals shall make a decision within 62 days after the final hearing. The concurring vote of the majority of all members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any official charged with the administration of this chapter or to decide in favor of an applicant in any matter upon which it is required to pass under this chapter.

**G.** Referrals to the Planning Board. In connection with any appeal or application submitted to the Zoning Board of Appeals, said Board may transmit to the Planning Board a copy of said appeal or application for an advisory opinion. Upon such request, the Planning Board shall submit a report of such advisory opinion within 30 days of the receipt of the referral.

**H.** County referral. Prior to action on an application for an area variance, a use variance, or a special use permit under this section, a copy of said application shall be forwarded to the Putnam County Planning Department for review pursuant to General Municipal Law § 239-m if the boundary of the property that is the subject of the application is located within 500 feet of:

**(1)** The boundary of any city, village, or town; or

**(2)** The boundary of any existing or proposed county or state park or other recreation area; or

**(3)** The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or

**(4)** 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

**(5)** The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or

**(6)** The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

**I.** Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a use variance, area variance, or a special use permit application involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the Clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

**J.** Notice to park commission. At least five days before such hearing, the Board of Appeals shall mail notices thereof to the parties and to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal.

**K.** Agricultural data statement. An application for an area variance, a use variance, or a special use permit must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within 500 feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a Tax Map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

**L.** Every decision of the Board of Appeals shall be recorded in accordance with standard forms adopted by the Board, shall fully set forth the circumstances of the case, and shall contain a full record of the findings on which the decision is based. Every decision of said Board shall be filed with the Town Clerk within five days of the date of decision.

**M.** The Board 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. The records of the Board's examinations and official actions shall be a public record.

**N.** All provisions of this chapter relating to the Board of Appeals shall be strictly construed. Said Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in compliance with all limitations contained therein.

**O.** Default denial. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement officer within the time allowed by Subsection **F** herein, the appeal shall be deemed as denied. The Board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to a rehearing process.