

# *Town of Canandaigua*

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*Established 1789*

## **2017 RULES OF PROCEDURES FOR THE ZONING BOARD OF APPEALS**

1. The Zoning Board of Appeals (hereinafter the ZBA) customarily holds public hearings on the 3<sup>rd</sup> Tuesday of every month. These meetings are held at the Town Hall and begin at 6 pm. The monthly agenda of the ZBA is available at the Town Hall or on the Town's website ([www.townofcanandaigua.org](http://www.townofcanandaigua.org)) approximately ten (10) days prior to the meeting. The ZBA will hear applications for an interpretation appealing a determination by the Zoning Officer or Code Enforcement Officer, an area variance application, and/or a use variance.
2. Applications are due on/before 12:00 pm of the deadline date noted on the yearly calendar provided by the Town Development Office. All applications submitted on/before the deadline date will be given consideration for the next month's ZBA agenda.
3. Upon receipt of an application, the applicant is provided a Project Notification Sign from the Town Development Office. The purpose of the sign is to have another mechanism to notify the neighborhood that the property is being considered by the ZBA. The applicant shall place the sign on the subject property as described on the instruction sheet. Should the applicant fail to place the sign on the subject property as described within the instruction sheet, the ZBA may continue the public hearing to its next scheduled meeting.
4. The applicant has the burden of proof to support the application. The applicant is expected to address the appropriate criteria set forth in NYS Town Law §267-a and 267-b.
5. Any representative of the owner must furnish to the ZBA a signed authorization from the record property owner confirming that the representative is an authorized agent of the owner.
6. Upon receipt of the application, the Planning Review Committee (PRC) will review the submitted application for completeness. If the PRC identifies items that need to be further addressed, the applicant shall resubmit the requested information within the time frame specified in the PRC Meeting Minutes. Should the applicant fail to submit the information as requested within the specified timeframe, the Zoning Officer shall consult with the ZBA chairperson that the applicant failed to submit the requested information. The chairperson will then determine if the application is complete for placement on the next ZBA agenda. If the application is deemed incomplete, the Zoning Officer will notify the applicant in writing of the decision including why the application was deemed incomplete and when the requested information is required to be submitted to be considered for the next available ZBA agenda.

7. An applicant may submit additional information (not requested by the PRC) supporting/supplementing their application no later than seven (7) days prior to the scheduled ZBA meeting at which their application will be heard. Should the applicant submit information after the 7 days prior to the ZBA meeting, the ZBA may continue the public hearing to the next scheduled meeting.
8. Meeting minutes shall be available in draft form at the Town Hall within 5 days of the meeting. The meeting minutes of the previous meeting shall be approved at the next month's ZBA meeting.
9. The Development Office shall submit the notice of public hearing to the Town's official newspaper within the timeframe required by NYS Town Law §267-a(7) as well as send a copy of the notice of public hearing to all property owners within 500 feet of the subject property.
10. Upon denial of a requested variance or interpretation, the applicant, successors or assigns shall wait one (1) year to reapply for the same variance or interpretation or they may request a rehearing of the ZBA. A motion for the ZBA to hold a rehearing to review an order, decision or determination of the board not previously reheard 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 provision as an original hearing. Upon such rehearing the ZBA may reverse, modify or annul its original order, decision or determination on 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 reheard order, decision, or determination will not be prejudiced (NYS Town Law §267-a(12) and Town Code Chapter 220 §220-92-D). All Requests for a Rehearing will be placed under Board Business on the meeting agenda.
11. At the first meeting of each year after the Town Board has appointed a chairperson, the ZBA shall appoint a vice-chairperson / acting chairperson. This board member will act as the chairperson when the Town Board appointed chairperson is unavailable to attend a ZBA meeting. This vice/acting-chairperson will be responsible for running the meeting, signing decision sheets, advising the Zoning Officer on application decisions.
12. The Town Board appoints an alternate member who will serve a five-year term. The alternate member will substitute for a member of the ZBA when a regular member is unable to participate on an application or matter before the board. (LL 2 of 2012). The meeting minutes and decision sheets shall reflect when the alternate member substitutes for the ZBA member.
13. The total number of new applications reviewed by the ZBA at each monthly meeting shall be limited to a maximum of four (4) new applications. Any changes to the number of new applications at the sole discretion of the chairperson.

#### Meeting Procedures:

1. All Board business, with the exception of an executive session, is open to the public.

2. Public hearings are opened according to the published schedule on the agenda. The agenda will be constructed in the following manner:
  - A. Pledge of Allegiance
  - B. Continued Public Hearings
  - C. New Public Hearings (in CPN # order)
  - D. Closed Public Hearings
  - E. Board Business
    1. Approval of Meeting Minutes
    2. Review of Next Month's Agenda
    3. Requests for Rehearing
    4. (other items as requested)
3. The Chairperson will read the notice of public hearing and then invite the applicant to begin their presentation. The ZBA strongly recommends that the applicant and/or its representative present the application and attend all ZBA deliberations.
4. The ZBA may question the applicant and offer comments on the application.
5. The ZBA shall then offer the public an opportunity to comment on the application.
  - A. Persons offering public comment shall provide their name and address for the record. The persons' address will not be noted in the meeting minutes. Each speaker will be allowed a maximum of five (5) minutes to comment and/or submit material. All comments are to be directed to the Chairperson of the ZBA. The ZBA, town staff, or applicant is not required to respond to any public comment.
  - B. Additional public comment, verbal or written, will not be accepted after a public hearing is closed, unless otherwise stated during the public hearing.
6. The ZBA shall decide, after consulting with the applicant, as to whether to continue or close the public hearing.
7. Should the ZBA decide to close the public hearing, a decision on the application shall be filed with the Town Clerk within sixty-two (62) days after the close of the public hearing.
8. Should the ZBA, after consulting with the applicant, decide to continue the application, the ZBA will identify a date when the public hearing will be re-opened. An application may be amended no later than the 2<sup>nd</sup> meeting following the initial presentation of an application. The ZBA shall close the public hearing at the 3<sup>rd</sup> meeting if the applicant has failed to supplement their application as requested by the ZBA.
9. It is the custom of the ZBA to vote after all public hearings have been heard by the applicants.
10. Decisions of the Board will be filed with the Town Clerk within five (5) business days from the date of the decision.

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Chairperson, Zoning Board of Appeals

ADOPTED: 10/23/06

REVISED / REAFFIRMED: JANUARY 17 AND MARCH 7, 2017