

# TOWN OF CANDOR BOARD OF APPEALS LAW

A Local Law to establish a Board of Appeals.

Be it enacted by the Town Board of the Town of Candor as

follows:

## SECTION 1 LEGISLATIVE INTENT

WHEREAS, the purpose of the Board of Appeals is to hear and decide appeals of any person(s) who is aggrieved by the administration, enforcement and application of the Town's regulations pertaining to land use by the Enforcement Officer or any other authorized agent or employee of the Town; and

WHEREAS, the Board of Appeals is created according to the provisions of Section 267 of NY Town Law;

NOW, therefore, be it ordained by the Town Board of the Town of Candor as follows:

## SECTION 2 APPOINTMENT

The Town Board of the Town of Candor may appoint members to the Board of Appeals to serve as provided in this Local Law. The number of members so appointed pursuant to this section shall be five who shall initially serve for the remainder of 2016. The terms of the first five members will be broken down as follows on the first meeting in January of 2017: one member will be appointed for a five year term; one member will be appointed for a four year term; one member will be appointed for a three year term; one member will be appointed for a two year term; one member will be appointed for a one year term. After the initial appointments each member will serve a five year term thereafter.

## SECTION 3 AUTHORITY AND POWER OF BOARD OF APPEALS

3.1 The Board of Appeals shall have the powers and duties delegated to it according to Section 267 of NY Town Law.

3.2 The Board of Appeals shall have the powers of the appellate review of any order, requirement, decision or determination made by the Code Enforcement Officer in the administration and enforcement of local and state laws. Such order, requirement, decision or determination shall include, but are not limited to, building permits and certificates of occupancy.

Interpretations, requirements, decisions, determinations. The 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.

### 3.3 Area Variances

(a) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, to grant area variances from the area or dimensional requirements which apply in the Town of Candor.

(b) In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

[1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

[2] Whether the benefit sought by the application can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

[3] Whether the requested area variance is substantial.

[4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

[5] 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.

(c) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

3.5 Imposition of Conditions. The Board of Appeals shall, in granting 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, 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.

#### SECTION 4 PROCEEDINGS FOR FUNCTIONING OF THE BOARD OF APPEALS

4.1 All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board may determine. The Chairperson, or, in his absence, the Acting Chairperson, designated by the Board members may administer oaths and compel the attendance of witnesses

4.2 The Board of Appeals shall establish and adopt general rules, which are not inconsistent with this Local Law, as to the procedures by which appeals may be taken. Such rules shall be made a part of the public record to the Town Board and in the office of the Town Clerk.

4.3 Meetings of the Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The 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 also keep records of its examination and other official actions. Every rule and regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall be a public record and immediately be filed in the office of the Town Clerk and Code Enforcement Officer.

4.4 An applicant before the Board has the burden of proof with respect to the relief which he/she is seeking. When the Board renders a decision, it shall specify the basis for the decision in detail.

4.5 The Board of Appeals shall have the authority to call upon any department or employee of the Town for assistance deemed necessary and as shall be authorized by the Town Board.

4.6 The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6NYCRR Part 617.

4.7 The Board of Appeals shall comply with General Municipal Law 239-m and 239-l. Prior to taking action on any matter requiring referral under

section 239-l or 239-m of the General Municipal Law, the board shall make referrals to the Tioga County Planning Department, or in the absence of such planning department, to a metropolitan or regional planning agency having jurisdiction under sections 239-l and 239-m of the General Municipal Law. Within 30 days after receipt of a full statement of such referred matter, the County Planning Department to which referral is made disapproves the proposal, the Board shall not act contrary to such disapproval except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The Chairperson of the Board shall read the report of the County Planning Department at the public hearing on the matter under review. If such County Planning Department fails to report within such 30 days or such longer period as may have been agreed upon by the Board and the County Planning Department, the Board may act without such report.

## SECTION 5 APPEAL PROCEDURES

5.1 An appeal to the Board of Appeals for administrative review or variance may be taken by any person, firm or corporation aggrieved or by any governmental officer, department, board or bureau affected by any decision of the Code Enforcement Officer based in whole or in part upon the provisions of this chapter or other applicable laws.

5.2 Appeal shall be taken to the Board of Appeals within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer by filing with the Code Enforcement Officer and the Board of Appeals a notice of appeal specifying the grounds thereof and the relief sought.

5.3 Appeal shall be filed in accordance with this Local Law and according to any general rules established by the Board of Appeals and become part of the public record in the office of the Town Clerk.

5.4 The Board of Appeals shall send one copy of the appeal to the Town Clerk and one copy to the Planning Board.

5.5 The Code Enforcement Officer shall transmit to the Board of Appeals all the papers constituting the record upon which the action appealed was taken.

## SECTION 6 NOTICE OF PUBLIC HEARING

6.1 The Board of Appeals shall publish a notice of the public hearing in a paper of general circulation in the Town a minimum of five calendar days in advance of such hearing. Such notice shall, a minimum of five calendar days in advance of such hearing, be mailed to the parties to the appeal, to the

county, regional planning agency pursuant to General Municipal Law, section 239-m and to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by the appeal. Within 10 days of the public hearing, notice shall be given to any adjacent cities, towns and villages within 500 feet of the affected property in the notice of appeal. Notice of the public hearing shall also be mailed to owners of the property within the following distances of the boundary lines of the affected property:

(A) For all area variances associated with nonresidential property, 200 feet.

(B) For all area variances for residential property, 100 feet. Notice shall also be transmitted to the Town Board.

The notice shall contain the time, date and location of the meeting and the location of the affected property. Failure of an intended recipient to receive said notice shall not be cause for review of the Board's determination.

## SECTION 7 PUBLIC HEARING

The Board of Appeals shall fix a reasonable time for at least one public hearing on any appeal. At the hearing on the matter under review, the Chairman shall make available all reports received, including those of the Code Enforcement Officer. At the hearing, any person may appear in person or by agent or by attorney.

## SECTION 8 DECISION

8.1 The Board of Appeals shall decide such appeal within 62 days of the closing of the public hearing. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board.

8.2 In cases in which a referral has been made to the Planning Board for its review and report, the decision of the Board of Appeals shall not be rendered until either receipt of the report of the Planning Board or 30 calendar days from the date of referral to the Planning Board, whichever shall sooner occur.

8.3 The Board of Appeals shall not act contrary to any recommendations of the Code Enforcement Officer without first setting forth in the record the reasons for such action.

8.4 The decision shall be made by a majority of the total membership of

the Board of Appeals if such decision shall reverse any order, requirement, decision or determination of the Code Enforcement Officer, or decide in favor of the applicant, or effect any variation in such ordinance or local law as is required under Section 267 of NY Town Law.

8.5 All decisions shall be filed with the Town Clerk and the Code Enforcement Officer within five business days after the date such decision is rendered and a copy thereof mailed to the applicant.

8.6 The Enforcement Officer shall, within seven calendar days of the filing of the decision, issue a permit, certificate of occupancy or otherwise comply with the decision of the Board of Appeals.

## SECTION 9 REHEARING

A motion for the Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reviewed 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 provisions as an original hearing. Upon such rehearing, the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in any person acting in good faith in reliance upon the reviewed order, decision or determination will not be materially prejudiced thereby.

## SECTION 10 STAY OF PROCEEDINGS

An appeal stays all proceedings in furtherance of the action appealed from unless the Code Enforcement Officer certifies to the Board of Appeals, after the notice of appeal shall have been filed with him that, by reason of facts stated in the certificate, a stay would, in his 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 the Supreme Court or by any other Court of competent jurisdiction.

## SECTION 11 SUPREME COURT REVIEW

12.1 Article 78 Proceedings. Any person or persons jointly or severally aggrieved by any decision of the Board of Appeals or by any officer, department, board or bureau of the town may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules and as provided in Section 267 of NY Town Law. Such proceeding shall be instituted within 30 calendar days after the filing of a decision in the office of the Town Clerk.

12.2 Costs of appeal. Costs shall not be allowed against the Board of Appeals unless it shall appear to the Supreme Court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

## SECTION 12 FEES

Upon the filing of a notice of appeal or a motion for a rehearing by any person or entity, there shall be paid fees according to the Town of Candor Schedule of Fees to the Town Clerk. In the event the Board must hire a consultant, expert or other professional, the reasonable costs and expenses of such hire shall be borne by the applicant.

## SECTION 14 REPEALER

All reference to or sections of Local Laws involving waivers, appeals, and variances are hereby repealed in their entirety as of the effective date of this Local Law, as hereinafter provided, and shall be superseded by this Local Law.

## SECTION 15 EFFECTIVE DATE

This Local Law shall become effective immediately upon its filing with the Secretary of State.