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# TOWN OF CORTLANDT

## ZONING BOARD OF APPEALS

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### Zoning Board of Appeals (“ZBA”) Information Sheet Town of Cortlandt, New York

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**Disclaimer:** This is NOT legal advice

The following is a brief discussion of things commonly presented to the ZBA and an outline of New York State’s Town Law § 267 and § 267-b. The Town of Cortlandt is providing this material for informational purposes only.

This information should not be construed as legal advice by The Town or any of its officers. This information sheet is not exclusive, nor is it exhaustive. Each case before the ZBA is decided on its own merits considering specific information provided to the ZBA related to that specific matter.

If you have any legal questions or concerns related to the Zoning Board of Appeals you should consult an Attorney.

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#### **Preparing for your zoning appeal:**

When an applicant is attending a ZBA meeting, or work session, they should be prepared to answer questions from both the ZBA Chairperson and Members related to their matter.

In preparing for the meeting or work session, the applicant may want to:

1. Give an explanation, or overview, of the matter before the ZBA;
2. Have plans and information prepared in advance and provided to the ZBA with ample time to review the information;
3. Have prepared pictures prepared in advance and provided to the ZBA with ample time to review the information;
4. Have neighbor statements prepared in advance and provided to the ZBA with ample time to review the information;
5. Review “**Things typically considered by a ZBA**” (See page 2).

### **Things typically considered by a ZBA:**

Typically, there are two forms of variances, “**area**” and “**use**.” An **area variance** deals with the physical and dimensional limitations placed on a property. For example, think about the height of a roof, or the distance from a property line. A **use variance** deals with the purpose for which the land is used as a whole. For example, think about land being used for a restaurant as opposed to being used as a single-family home.

**Area variances:** In the review of a request for an area variance, a five-factor test will typically be used to determine the benefit to the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community.

In doing so, the ZBA considers these factors:

- (1) Whether an undesirable change will be produced in the character of the neighborhood, or if a detriment to nearby properties will occur;
- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested 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;

Note that these five factors are relevant to a ZBA determination, but do not necessarily preclude, or ensure, the granting of an appeal.

**Use variances:** When considering a “use variance,” typically the ZBA will attempt to discern if the zoning regulations have caused an “**unnecessary hardship**” to the applicant.

In order to prove such unnecessary hardship, the applicant must demonstrate, for each and every permitted use under the zoning regulations for the particular district where the property is located, that:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

**Generally:** In considering variances, the ZBA will grant the minimum variance, if any, that it shall deem necessary and adequate. In doing so, the ZBA will seek to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.