

ZONING BOARD OF APPEALS BY-LAWS

ARTICLE TWELVE

BOARD OF APPEALS

POWERS AND DUTIES

A. BOARD OF APPEALS ESTABLISHED

A Board of Appeals, hereinafter called the Board, shall be formed and shall serve as provided by the General Statutes and Special Acts of the State of Connecticut and shall have the following powers and duties.

1. Adopt such rules and procedures as may be necessary to carry out these regulations.
2. To hear and decide appeals where it is alleged that there is error in any order, requirement, or decision made by the town official charged with enforcement of Chapter 124 of the Connecticut General Statutes or any bylaw, ordinance, or regulations adopted under provisions of that chapter, including the Zoning Regulations, and any order, requirement, or decision made by the Building Official.
3. To hear and decide all matters including Special Exceptions and Special Exemptions under Connecticut General Statutes Section 8-2g upon which the Board is required to decide by the specific terms of the Zoning Regulations.
4. To determine and vary the application of the Zoning Regulations in harmony with their general purpose and intent with due consideration for conserving the public health, safety, convenience, welfare, and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcels but not affecting generally the district in which it is situated, a literal enforcement of such regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured. The Zoning Board of Appeals shall be guided by the following standards in determining whether a request for variance shall be granted.

*These By-Laws shall govern unless they are in conflict with the specific wording of the Zoning Regulations themselves

- a. The applicant shall demonstrate that exceptional shape, size, topography or unique characteristic of the site requires a variance from a literal enforcement of the Zoning Regulations.
 - b. The exceptional difficulty or unusual hardship claimed shall not have been created by the owner or the person or persons requesting the variance.
 - c. The variance requested shall not adversely affect the neighborhood and shall be in harmony with the purpose and intent of the Zoning Regulations.
 - d. The application shall be for the least number of variances possible.
 - e. The applicant shall show that there is no reasonable alternative other than to grant the requested variance(s).
5. The requested variance(s) shall not permit on a site any use to exist or to be created which use is not already permitted by right as set forth in the Zoning Regulations for that zone.
 6. No variance to the Zoning Regulations shall be granted that is conditioned on an approval by another Board or Commission.
 7. No variance shall be granted that will continue or expand a non-conforming use.

B. DECISIONS OF THE BOARD OF APPEALS

1. In exercising the above mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of these regulations, reverse or affirm, wholly or partly, or may modify the order, requirement or decision appealed from and may make such order, requirement, or decision, or determination as ought to be made, and to that end shall have all the powers of the administrative official from whom the appeal is taken.
2. In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when they have been made a part of the terms under which the variance is granted, shall be deemed a violation of these

regulations. It shall be the responsibility of the Zoning Enforcement Officer to enforce the specific conditions of the variance.

C. PROCEDURE

1. Every application for variance from the Use Regulations as distinguished from the Height and Area Requirements shall be immediately transmitted to the Zoning Commission and the Planning Commission, and on or before the public hearing held by the Board on such application for variance, the Zoning Commission and Planning Commission shall make a report of their recommendation.

2. Public Information Notice Sign

Whenever an application filed with the Zoning Board of Appeals requires a public hearing, the applicant shall display a Public Information Notice Sign on the site giving notice that an application is pending before the Zoning Board of Appeals. The sign shall be in a manner and form prescribed by the Board and is provided by the Board to the applicant. It shall be displayed in a highly visible place at each location on the site where the property line abuts a public or private street or at a visible location nearest the site. It shall be the responsibility of the applicant to insure that the signs remain on display for a period of fifteen (15) days prior to the public hearing and are removed within seven (7) days following the close of the public hearing. The applicant, at the public hearing, shall supply the Board with an affidavit certifying that the Public Information Notice Sign has been placed for the period specified.

D. OFFICERS AND DUTIES-***Note: This Section forward is NEW to ZBA By-Laws:**

1. A biannual organizational meeting shall be held no sooner than the first meeting after the municipal elections at which time a Chairman and Secretary shall be elected from among the regular members of the Board by a majority vote of such members to serve for two years or until their successor is duly elected.
2. The Chairman shall:
 - a. Issue the call for the meeting
 - b. Preside over all meetings
 - c. Prepare and submit with the help of staff all reports required by law.
 - d. appoint all alternates to serve as regular members in the absence of sitting members at any given meeting.

3. The Secretary shall:

- a. *Read the call for the Public Hearing*
- b. With the help of staff keep all records of the Board.
- c. Certify all records
- d. Submit with the help of staff minutes of all meetings to the Board for approval.

In the absence of the Chairman, the senior regular member in point of service shall be acting Chairman with all the powers and duties of the Chairman.

E. APPLICATION REQUIREMENTS

1. All applications must be submitted to the Board on the forms provided for by staff.
2. All information must be complete and all fees must be paid before the application is considered completed.
3. All applications must be submitted to staff **no later than 12 noon on the first Friday of the month** to be considered by the Board for that months hearing
4. A comprehensive plot plan or diagram drawn to scale showing all dimensions, location of existing and proposed buildings and such other information deem necessary to make a decision. This information may include Drainage designs, septic systems, water pumps and other items necessary to make a determination as to the aptness of the application.
5. For the purposes of notification of hearing, Applicant must submit to staff the names and address of all surrounding land owners within 100' feet of all property lines.
6. No rehearing of an application may be held unless six months has passed unless new and pertinent facts are presented. [**without specific authorization of the Chairman.**]
7. A certified plot plan must accompany the application showing the new building unless a signed waiver is available from any member of the board.

Notice of the time and place of all public hearings shall be published in a newspaper having a substantial circulation in the Town of Simsbury at least twice at intervals of not less than two days, the first not more than fifteen days nor less than 10 days, and the last not less than two days before such hearing.

F. MEETINGS

Regular meetings of the Board shall be held at the Town Hall at 7:30 PM on the fourth Wednesday of each month (depending upon business or applications). Special meetings may be called from time to time on such notice as the Chairman shall determine or any other time as may be agreed upon by a majority of the Board, so long as all legal notice requirements are met.

All meetings shall be open to the public, unless executive session is moved and voted.

Executive session may only be held in accordance with applicable Connecticut General Statutes.

A quorum shall consist of four members of the board. All actions on variances require at least four positive votes for approval of variance so if only four members are present, the application may be tabled at the request of applicant until at least five members are present without detriment to the applicant, so long as the delay does not affect any legislative requirements.

No member of the Board shall appear for or represent any other person on matters before the Board.

No member of the Board shall be seated on any application in which he/she is personally or financially interested or otherwise in conflict with applicable Connecticut General Statutes. If a member has a question he or she should consult with the ethics board and declare such conflict.

V. ORDER OF BUSINESS AT HEARINGS

The applicant or his representative must be present at the hearing or the hearing will be continued to the next meeting, if it occurs within 35 days. If applicant not present, written note of position from party representing the applicant must be submitted to the Board prior to the meeting. Otherwise the hearing shall be closed, unless the Board calls a special meeting.

All applications will be heard in order of publication in the paper unless rearranged by the Chairman and voted by the Board.

Applicant or representative will present application to the Board. The Board, through the Chairman may question all aspects of the application. The applicant may introduce any exhibits he/she feels will be helpful to the Board, , including, but not limited to photographs, site plans, letters from neighboring property owners, traffic studies or models. After the applicant has made his presentation. All such exhibits will be held by staff until appeal time lapses.

An applicant may request a postponement of a scheduled hearing if a request is made prior to the date of publication of the first legal notice or may request a continuance of a public hearing after it has been opened.

All members of the public who are in favor of the application may then speak followed by any correspondence in favor.

All members of the public who are opposed to the application will then be asked to speak and then any correspondence in opposition.

Applicant may then respond to any opposition.

No member of the public may be refused time to speak so long as the content is in the interest of the public and the hearing and is not derogatory toward any member or applicant.

In order to prevent long hearings the Chairman may set reasonable time limits for any public statements and limit the speaking to new information.

No meeting may continue past 11:00 pm of any meeting night.

At the end of discussion, the Chairman will close the public hearing. Once the public hearing is closed, there can be no more new information presented or discussion from the public.

X. EFFECTIVE DATE

A variance or decision of the Board will not become effective until 15 days after the decision has been published in a newspaper. The applicant is also required to record his Certificate of Decision in the Simsbury Land Records in the Office of the Town Clerk.

XI. WAIVER OR AMENDMENT OF RULES

These rules may be waived or amended by a majority vote the entire voting membership of the Board, only after the proposed change has been read and discussed at a previous regular meeting, except that these rules may be amended at any meeting by the unanimous vote of the entire voting membership of the Board.

XII. APPEALS FROM RULINGS

An appeal may be taken by any persons aggrieved by a decision of the Board in accordance with Connecticut General Statutes §8-7, as amended.

XIII. CONNECTICUT GENERAL STATUTES

All applicable Connecticut General Statutes are made part of these rules. Should any amendments or new statutes conflict with these rules, the requirements of the Connecticut General Statutes will take precedence.

ADOPTED: February 25, 2009

Revised April 25, 1990
Revised January 23, 1991
Revised May 20, 2008
Revised November 14, 2008
Revised December 24, 2008