

Zoning Board of Appeals

Tuesday, February 16, 2021

HAND OUTS

Minutes – November 18, 2020

Ordinance 1961-2; Zoning Board of Appeals

Rules of the Zoning Board of Appeals of the Town of New Hartford – current

By-Laws of the Zoning Board of Appeals of the Town of New Hartford, CT – DRAFT Proposed

**New Hartford Zoning Board of Appeals
TOWN OF NEW HARTFORD, CONNECTICUT
REGULAR MEETING MINUTES
Wednesday, November 18, 2020 at 7:00 PM
Held Via ZOOM**

PRESENT: Chairman Mary Lou Rayno, Lew Chappel, Paul Griffin, David Jones, Alternate John Wilhelm; and Zoning Enforcement Officer Mike Lucas.

ABSENT: Bert Brander, Alternates Art Jackman and Keith Schaufler.

Chairman Mary Lou Rayno called the meeting to order at 7:05PM. Mr. Wilhelm was seated for Mr. Brander.

Prior to beginning the discussion of the business on the agenda, Ms. Rayno, Mr. Griffin, Mr. Chappel, and Mr. Wilhelm acknowledged the fifteen years of service by former Board member Scott Goff. Additionally, David Jones was introduced and welcomed as the newest Board member. Ms. Rayno reported Mr. Jones has served previously on the Planning and Zoning Commission.

1. PUBLIC HEARINGS:

None.

2. PENDING APPLICATIONS:

None.

3. NEW APPLICATIONS:

None.

4. OTHER MATTERS:

A. Review and Finalize By- Laws.

Ms. Rayno began the discussion by reviewing the amendment made in 2008 that included as part of the process for subsequent amendments a provision that "...bylaws may be amended by a majority vote of the regular voting members...". The language further requires that the amendments be reviewed at least one meeting ahead of the meeting at which a vote is taken to amend. She polled board members on whether they interpret that to mean that an amendment can only be made at a meeting when the entire board, both regular members and alternates, are present.

Ms. Rayno provided some history behind the last amendment in 2008, explaining that former Zoning Enforcement Officer Karl Nielson had advised that it was okay for a board member to convey their vote regarding bylaws amendments by an advance email. When questioned whether Mr. Lucas would agree with that, he indicated that he would.

Discussion ensued regarding the language "*regular voting members*", and whether it meant regular members, or the members present. The consensus was to remove the word, "*voting*".

The Board also agreed to change the phrasing "*review*" to "*hear and act upon*".

There was also agreement to add "*or Special Exception*" to the paragraph that allows the Board to not hear the same application within six months.

Zoning Board of Appeals – November 18, 2020 Regular Meeting Minutes

It was agreed that the only officers of the Board will be a chairman and a vice chairman and to conduct elections annually in November.

Language was modified in 9(1)(c) to read, "furnish all required information". Noticing by "certified mail" will be changed to reflect, "Certificate of Mailing".

B. Approve and Set 2021 Regular Meeting Schedule.

The Board reviewed changing the meeting dates from the third Wednesday of each month to the third Tuesday of each month.

MOTION: Mr. Chappel, Mr. Jones second, to accept the schedule as amended; unanimously approved.

MOTION: Mr. Chappel, Mr. Wilhelm second, to modify the agenda to add Election of Officers; unanimously approved.

C. Election of Officers.

MOTION: Mr. Griffin, Mr. Chappel second, to elect Mary Lou Rayno as chairman; unanimously approved.

MOTION: Ms. Rayno, Mr. Chappel second, to elect Paul Griffin as vice chairman; unanimously approved.

5. APPROVAL OF MINUTES – August 19, 2020:

The August 19, 2020 Minutes should include the following change:

In the first motion contained in the fifth paragraph on the second page, the text that follows the motion that reads, "to approve the", should be stricken.

MOTION: Mr. Griffin, Mr. Chappel second, to approve the August 19, 2020 Minutes as amended; Motion passed with Ms. Rayno, Mr. Chappel, Mr. Griffin, and Mr. Wilhelm voting aye while Mr. Jones abstained.

MOTION: Mr. Griffin, Mr. Chappel second, to adjourn at 8:16PM; unanimously approved.

Respectfully submitted,
Pamela A. Colombie
Recording Secretary

1961-2

ZONING BOARD OF APPEALS

In order to provide for alternate members of the Zoning Board of Appeals of the Town of New Hartford, pursuant to the provisions of Section 8-5 of the 1959 Supplement to the Connecticut General Statutes, pertaining to zoning and to provide a uniform method for the election of regular and alternate members of said Board:

BE IT ORDAINED that the Zoning Board of Appeals, consisting of five regular members and three alternate members who shall be electors of the town, shall be elected in the following manner:

- A. All members of the Zoning Board of Appeals shall be elected in the same manner as other town officials at the biennial town election for the following terms:
 1. The terms of the five regular members shall continue to be for five years with one term commencing on the first Tuesday of October in each year. The terms of office of the regular members of the Zoning Board of Appeals as now constituted are ratified and confirmed, and their successors shall be elected as herein provided to fill the vacancies as each of said terms expires.
 2. The terms of the original alternate members shall be: one for three years; one for four years and one for five years commencing on the first Tuesday of October, 1961. Thereafter the terms of the alternate members shall be five years commencing on the first Tuesday of October of each year in which the term of an alternate member expires.
- B. At each biennial town election members shall be elected to fill all vacancies in the office of regular or special member which will occur by reason of the expiration of terms between said election and the succeeding biennial town election.

BE IT FURTHER ORDAINED that the Zoning Board of Appeals, by vote of its regular members only, shall elect a chairman from among its regular members and shall appoint a secretary who shall keep minutes of its proceedings showing the vote of each member and each alternate member, when seated, upon each question, or, if absent or failing to vote, indicating such fact; the secretary shall also keep records of its examinations and other official actions.

Special Town Meeting - May 22, 1961

Current

BOOK 1 0919

ZBA bylaws amended November 25, 2008

**RULES OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF NEW HARTFORD**

OFFICERS AND DUTIES

1. An annual organizational meeting shall be held no sooner than the first meeting after the November town elections nor later than the regularly scheduled December meeting at which time a Chairman shall be elected annually from among the regular members of the Board by a majority vote of such members to serve for one year or until his successor is duly elected.
2. The Chairman shall:
 - (a) Issue the call for all meetings.
 - (b) Preside over all meetings.
 - (c) Prepare and submit all reports required by law.
 - (d) Sign all expense orders approved by the Board.
 - (e) Designate a recording Secretary for the Board if necessary.

In the absence of the Chairman, the Vice Chairman, shall be acting Chairman with all the powers and duties of the Chairman.

3. The designated recording secretary shall;
 - (a) Keep the minutes and records of the Board.
4. The Land Use Secretary shall:
 - (a) Process all correspondence.
 - (b) Certify the records.
 - (c) Be Clerk of the Board with authority to receive notice of appeals to the Superior Court.
 - (d) Prepare and submit the minutes of all meetings to the Board for approval.

MEETINGS

4. Regular meetings of the Board shall be held at the New Hartford Town Hall at 7:00 P.M on the Fourth Tuesday of each month or at such other time and place as the Chairman may designate. Special meetings may be called from time to time on such notice as the Chairman shall determine. Whenever there shall be no business to be transacted at a regular meeting, the Chairman may cancel such meeting.
5. All meetings shall be open to the public except when the Board is in Executive Session.
6. A quorum shall consist of four members of the Board for the transaction of all business.
7. No member of the Board shall appear for or represent any other person on any matter before the Zoning Board of Appeals or the Planning and Zoning Commission.

8. No member of the Board shall hear or decide any application in which he is personally or financially interested. If a member shall be disqualified because of his interest, such fact shall be noted in the records of the Zoning Board of Appeals.

NOTICE OF PUBLIC HEARINGS

9. Notice of the time and place of all public hearings shall be published in a newspaper having a substantial circulation in the Town of New Hartford 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

APPLICATION REQUIREMENTS

10. All applications submitted to the Board shall:
- (a) Be made in writing on forms prescribed by the Board and signed by the applicant or his lawful agent. If an application is submitted by a person, firm or corporation other than the owner of the land which is the subject of the application, the application shall also be signed by the owner of the land or his lawful agent.
 - (b) Be obtained from the Zoning Enforcement Officer or his assistant.
 - (c) Furnish the information required.
 - (d) Be filed in duplicate with the Secretary along with a filing fee as per the town ordinance.
 - (e) Contain thereon or attach thereto a comprehensive plot plan or diagram drawn to scale showing lot dimensions, location of existing and proposed buildings and such other information as deemed necessary by the Board to process the application.
 - (f) A notice must be sent to all abutting property owners and the Zoning Enforcement Officer certified mail, return receipt, no later than 10 days before the public hearing explaining the purpose of the public hearing and listing the date, time and place the hearing will be held. The applicant will supply the Board with proof that the notices have been mailed at the time of the hearing.
 - (g) All applications for Certificates of Approval of location for the sale of gasoline submitted pursuant to the provisions of sections 14-321 and 14-322 of the General Statutes and or for approval of location for dealing in or repairing motor vehicles pursuant to the provisions of sections 14-54 and 14-55 of the General Statutes shall contain all of the information required to process said applications.
11. On an application for a re-hearing, the applicant must allege new facts and prove the same at the hearing.
12. Any application may be withdrawn prior to the public hearing, but there shall be no refund of the filing fee if any expense has been incurred by the Board.
13. All properly executed applications received by the secretary at least eighteen (18) days before the fourth Tuesday of each month shall be heard on such Tuesday, otherwise, such application shall be heard on the fourth Tuesday of the next following month.

ORDER OF BUSINESS

14. Applications shall be heard in the order in which they are properly filed with the secretary.
15. Should the applicant and his agent fail to appear at the public hearing, the Board may deny the application for failure to prosecute or, for good cause shown, recess the hearing to a later date not more than thirty days hereafter.
16. The Chairman may, in his discretion, administer oaths to and compel the attendance of witnesses.
17. The order of proof shall be as follows:
 - (a) The applicant in person or by his attorney or agent, and his witnesses, each of whom may be cross-examined by any opponent.
 - (b) The opponents, who shall also be subject to cross-examination.
 - (c) Rebuttal and surrebuttal by witnesses or counsel.
18. All public hearings shall be recorded by a voice recording machine, a recording secretary or a combination of each. The transcript of the evidence adduced or the tape or other recorded medium shall be filed as part of the records of the Board.

RECORDS OF THE BOARD

19. All official records of the Board shall be filed with the Town Clerk and shall be available for public inspection at the Town Clerk's office during regularly scheduled hours of that office. No records shall be removed from said office except those which the Secretary deems necessary to remove temporarily in the performance of his duties.

DECISIONS

20. Whenever the Board grants or denies an application applicable to any property or sustains or reverses wholly or partly any order, requirement or decision of the Zoning Enforcement Officer, it shall state upon its records the reason for its decision and the zoning regulation which is varied for its application and when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which the decision is based.
21. Notice of the decision of the Board shall be published in a newspaper having a substantial circulation in the Town of New Hartford and addressed by certified mail to the applicant within fifteen days after such decision has been rendered.
22. No variance shall become effective until a copy thereof, certified by the Board, containing a description of the premises to which it relates and specifying the nature of the variance, including the regulation which is varied in its application and stating the name of the owner of record is recorded in the land records of the Town of New Hartford.

BOOK

1 0922

AMENDMENTS

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

MISCELLANEOUS

24. A copy of these bylaws shall be filed with the Town Clerk and the First Selectmen and extra copies shall be made available at the Town Clerk's office for those who desire them.

25. These bylaws were adopted by the Zoning Board of Appeals on November 25, 2009.

NEW HARTFORD ZONING BOARD OF APPEALS

By

Mary Lou Ringklib, Chairman



Proposed

**BY-LAWS OF THE ZONING BOARD OF APPEALS
OF THE TOWN OF NEW HARTFORD, CT 06057**

DRAFT

By-Laws amended Month 2021

ARTICLE I: NAME

- 1) The Board shall be known as the *Zoning Board of Appeals*. In these By-Laws it will be referred to as the "Board".

ARTICLE II: PURPOSE

- 1) The Board shall have all the powers and duties imposed generally upon said boards by the Connecticut General Statutes, Chapter 124-Section 8-5 through Section 8-13a.
- 2) The Board hears applications from local residents regarding the usage of their property that does not meet the Planning & Zoning requirements.
- 3) Variances: The Board's primary function is to **hear and act upon** applications for variances from the Zoning Regulations in which strict adherence to the regulations would result in an unusual hardship. Conditions of hardship must be inherent to the land or tied to some character of the land. It cannot be financial or personal. The impact must be beyond the control of the landowner (i.e., not self-created). The applicant must put forth the hardship on their application and also state the hardship during the hearing.
- 4) Special Exceptions: The Board shall ~~review~~ **hear and act upon** applications to make Special Exceptions to the regulations for non-conforming use.
- 5) The Board serves as an agent for the State of Connecticut Department of Motor Vehicles to hear and act upon applications for Certificates of Approval for automotive sales, repairs, and the sale of gasoline products.
- 6) The Board hears cases where applicants allege errors in the Zoning Enforcement Officer's determinations.
- 7) **The Board shall not be required to hear any application for the same special exception,** variance or substantially the same variance for a period of six (6) months after a decision by the Board or by a court on an earlier such application.

ARTICLE III: REGULAR MEMBERS

- 1) The Board shall consist of five (5) Regular Members who shall be **elected** of the town. All Regular Members of the Board shall continue in office for a five (5) year term for which they were elected on a rotating basis.

- 2) No Member of the Board shall appear for or represent any other person on any matter before the Board, the Planning and Zoning Commission, or the Inlands Wetlands Commission.

ARTICLE IV: ALTERNATE MEMBERS

- 1) There shall be three (3) alternate members of the Board who shall be [REDACTED] of the town. Alternate members shall continue in office for a five (5) year term for which they were elected on a rotating basis.
- 2) If a regular member of the Board is absent, the Chairman or Acting Chairman of the Board shall:
 - a. Designate an alternate member to act in his/her place.
 - b. Choose alternates in rotation so that they shall act as nearly as equal a number of times as possible.
 - c. If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting.
 - d. When seated, said alternates shall have all the powers and duties set forth in this chapter for the Board and its members.
 - e. In the case of an absence, the alternate stays with the cases heard even if the absent member returns.
 - f. No Member of the Board shall appear for or represent any other person on any matter before the Board, the Planning and Zoning Commission, or the Inlands Wetlands Commission.

ARTICLES V: OFFICERS

- 1) The officers of the ZBA Commission shall consist of a Chairman and a Vice Chairman. ~~and a Secretary.~~
- 2) The Chairman shall:
 - a) Issue the call for all meetings.
 - b) Preside over all meetings.
 - c) Be familiar with Parliamentary Protocol.
 - d) Prepare and submit all reports required by law.
 - e) Approve agendas and legal notices with the assistance of Land Use Staff.
 - f) Sign all expense orders approved by the Board.
 - g) Designate a Secretary to the Board if necessary.
- 3) The Vice-Chairman in the absence of the Chairman, shall be acting Chairman with all the powers and duties of the Chairman.

ARTICLE VI

1) Recording Secretary

~~4) The Recording Secretary shall:~~

- a. Record and keep the legal minutes of the official Board meetings.
- b. Record the minutes on a digital recorder.
- c. Correspond the draft minutes to the Board Members.
- d. The Secretary need not be a member of the Board.

ARTICLE VII: ELECTION OF OFFICERS

- 1) The Chairman shall be elected yearly by the Regular Members from among its members in November.
- 2) The Vice Chairman shall be elected yearly by the Regular Members from among its members in November.

ARTICLE VIII: MEETINGS

- 1) A quorum shall consist of four (4) Members of the Board for the transaction of all business of the Board.
- 2) Specifically, a QUORUM of four members and/or alternates is required to make a decision on a hearing.
- 3) Regular monthly meetings shall be held at the New Hartford Town Hall at 7pm. The dates of the meetings will be voted upon by the Members at the November meeting for the following year. The dates shall be recorded with the Town Clerk and posted on the New Hartford web page.
- 4) Special Meetings may be called as needed and shall be determined by the Chairman.
- 5) Regular Meetings may be cancelled whenever there is no business to be transacted by the Chairman.
- 6) Immediately after hearing all the applications scheduled for that particular meeting, the Board may engage in its decision making process and render its decision on each appeal heard that night.
- 7) No Member of the Board shall hear or decide any application for which he is personally or financially interested. If a member shall be disqualified because of his interest, such fact shall be noted in the records of the Board.
- ~~8) Your task is to listen, question, and consider what you hear.~~

- 8) All meetings are open to the public except when the Board is in Executive Session.

ARTICLE IX: NOTICE OF PUBLIC HEARING

- 1) The Notice of a time and place of all Public Hearings shall be published in a newspaper having a substantial circulation in the Town Of New Hartford at least twice at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days before a hearing.

ARTICLE X: APPLICATION REQUIRMENTS

- 1) All applications submitted to the Board shall:
 - a. Be made in writing on forms prescribed by the Board and signed by the applicant or his lawful agent. If an application is submitted by a person, firm or corporation other than the owner of the land which is the subject of application, the application shall also be signed by the owner of the land or his lawful agent.
 - b. Be obtained by the Zoning Enforcement Officer or their assistant.
 - c. Furnish ~~information required~~ all required information.
 - d. Be filed in duplicate with the Land Use Office with a filing or application fee as per Town Ordinance.
 - e. Contain therein or attach thereto a comprehensive plot plan or diagram drawn to scale showing lot dimensions, location of existing buildings and such other information as deemed necessary by the Board to process the application.
- 2) A notice must be sent to all abutting property owners and the Zoning Enforcement Officer by ~~certified mail~~ certificate of mailing return receipt no later than 10 days before the public hearing explaining the purpose of the public hearing and listing the date, time and place the hearing will be held. The applicant will supply the Board with proof that the notices have been mailed at the time of the hearing.
- 3) All applications for Certificates of Approval of location for the sale of gasoline submitted pursuant to the provisions of sections 14-321 and 14-322 of the General Statues or for approval of location for the dealing in or repairing of motor vehicles pursuant to the provisions of sections 14-54 and 14-55 of the General Statues shall contain all of the information required to process said applications.
- 4) On an application for a re-hearing, the applicant must allege new facts and prove the same at the hearing.
- 5) Any application may be withdrawn prior to the public hearing, but there shall be no refund of the filing fee if any expense has been incurred by the Board.
- 6) All properly executed applications received by the Land Use Office at least 18 days before the scheduled monthly meeting, shall be heard, otherwise, such application will be heard at the regularly scheduled meeting the next following month.

ARTICLE XI: ORDER OF BUSINESS

- 1) Roll Call
- 2) The Chairman shall read the legal notice and note the dates and the newspaper the advertisement appeared
- 3) The Chairman shall announce and describe the method of conduct during the hearing
- 4) Public Hearings
 - a. Applications shall be heard in the order in which they are properly filed with the Land Use Office
 - b. Applicant (personally, and/or by its representatives and consultants) presentation
 - c. Questions from the Board
 - d. Comments from the public
 - i. All public comments are to be limited to the Application at hand. Persons whose comments are deemed by the Chair to be outside the scope of the Application, may be ruled out of order by the Chair.
 - ii. The Chair also reserves the right to limit the time of each public commenter to five minutes
 - iii. Written comments, including all forms of electronic communication, from members of the public must be submitted to the Land Use Office prior to the Public Hearing for consideration by the ZBA
 - e. Close Closure of the Public Hearing after all comments have been heard with no further input from the applicant or the public
 - ~~f. Remind applicant that no comment shall be entertained after the hearing is closed~~
- 5) Deliberation by the Board after each public hearing is closed
- 6) Resolution
- 7) New Business
- 8) Review of Minutes
- 9) The regular order of business at a stated meeting may at any time be altered by the affirmative vote of the majority of the members present

ARTICLE XII: RECORDS OF THE BOARD

- 1) All official records of the Board shall be filed with the Town Clerk and shall be made available for public inspection at the Town Clerk's office during regularly scheduled hours of that office. No records shall be removed from said office except those which the Secretary deems necessary to remove temporarily in the performance of his/hers duties.

ARTICLE XIII DECISIONS

- 1) Whenever the Board grants or denies an application applicable to any property or sustains or reverses wholly or partly ~~and~~ any order, requirement or decision of the Zoning Enforcement Officer, it shall state upon its records the reason for its decision and the zoning regulation which is varied for its application and when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which the decision is based.
- 2) Notice of the decision of the Board shall be published in a newspaper having a substantial circulation in the Town of New Hartford and addressed by certified mail to the applicant within fifteen (15) days after such decision has been rendered.
- 3) No variance shall become effective until a copy thereof, certified by the Board, containing a description of the premises to which it relates and specifying the nature of the variance, including the regulation which is varied in its application and stating the name of the owner of record is recorded in the land records of the Town of New Hartford.

ARTICLE XIV: AMENDMENTS

- 1) These bylaws may be amended by a majority vote of the regular ~~voting~~ members, only after the proposed change has been read and discussed at a previous regular meeting, except that these bylaws maybe amended at any meeting by the unanimous vote of the entire voting membership of the Board.

ARTICLE XV: MISCELLANEOUS

- 1) A copy of these bylaws shall be filed with the Town Clerk and the First Selectman and extra copies shall be made available at the Town Clerk's office for those that desire them.
- 2) These bylaws were adopted by the Zoning Board of Appeals on ...?????????

Zoning Board of Appeals

By:

Mary Louise Rayno, Chairman
Paul Griffin, Vice Chairman
Lew Chappel, Regular Member
Bert Brander, Regular Member

David Jones, Regular Member
John Wilhelm, Alternate Member
Keith Schaufler, Alternate Member
Arthur Jackman, Alternate Member