

Applying for an Interpretation (Appealing a Decision of the ZEO)
Town of Rhinebeck Zoning Board of Appeals

General Information¹

What is an interpretation?

New York State law provides zoning boards of appeal with the power to hear and decide appeals from and review decisions of the administrative official responsible for the enforcement of the zoning regulations. In Rhinebeck, as in most towns, that official is the Zoning Enforcement Officer (ZEO). The state statutes, and the Town of Rhinebeck Zoning Law, specifically allow the Town Zoning Board of Appeals (ZBA) to reverse or affirm, wholly or partly, or to modify the decisions appealed to it.² This general statement of the board's appellate jurisdiction allows the board to interpret the municipality's zoning regulations.

The interpretation power is part of the ZBA's appellate jurisdiction, and cannot lawfully be exercised unless an appeal has been taken from a decision by the Town ZEO. In its simplest terms, an appeal seeking an interpretation is an appeal to the ZBA claiming that the decision of the ZEO was incorrect.

For example, if an applicant for a building permit receives a decision from the ZEO denying the permit, and if the applicant believes that the permit should have been granted under the terms of the zoning law, the applicant may appeal from the denial to the ZBA. The appeal would claim that the denial of the permit was incorrect, and would ask the board of appeals to reverse the decision of the enforcement official. Thus, in *Hinna v. Board of Appeals*³, the applicant had applied to the building inspector for a permit to build a motel. The application was denied, since it was not clear that motels were allowed in the zoning district. The applicant appealed from that denial to the ZBA, seeking a decision interpreting the zoning ordinance in her favor. The ZBA upheld the denial of the permit, and agreed with the building inspector's interpretation that the zoning district regulations did not permit motels. The ZBA's decision was subsequently sustained by a court.

The appeal could also be from a decision of the ZEO citing a violation of the zoning regulations. Thus, in *Matter of Levine v. Buxenbaum*⁴, the court held that the ZBA has the power to hear an appeal from a notice of violation where the landowner claimed that there was in fact no violation because the property was a valid nonconforming use.

An appeal may also be taken to the ZBA a decision of the enforcement official issuing a permit. Thus, where a permit has been issued, a neighbor may file an appeal with the board of appeals claiming that the issuance was incorrect, and asking the board to interpret the zoning regulations and reverse the decision of the enforcement official. Thus, in *Pansa v. Damiano*⁵, petitioners, who owned residential property, were able to appeal to the ZBA from the issuance of a permit for a structure on property adjacent to theirs. They claimed that the permit had been

¹ This guidance is adapted in part from the New York State Department of State publication entitled "Zoning Board of Appeals", first published in 2005 and revised in 2015. Available at: https://www.dos.ny.gov/lg/publications/Zoning_Board_of_Appeals.pdf

² New York State Town Law Section 267-b(1), Town of Rhinebeck Zoning Law Section 125-124.

³ 11 Misc.2d 349 (Sup. Ct., Nassau Co., 1957).

⁴ 19 Misc.2d 504 (Sup. Ct., Nassau Co., 1959).

⁵ 14 N.Y.2d 356 (1964).

issued for a use which was prohibited in the zoning district and that the setback requirements were violated.

Regardless of the type of action appealed from, the ZBA may interpret the language of the zoning regulations, apply it to the facts before it and render a decision. The statutes provide that the ZBA shall make such order, decision or determination "as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement" of the zoning regulations.

What information does the ZBA need?

Your case will best be served by presenting to the ZBA specific and detailed information about your appeal. This will include specific information about the decision from the ZEO which you are appealing, and a copy of the written decision by the ZEO should be given to the ZBA with your appeal application.

You should also present to the ZBA as part of your appeal application a full and detailed statement as to why you think the ZEO's decision is wrong. You should provide a complete, written explanation of this point. Your explanation should specifically reference the specific sections of the Town of Rhinebeck Zoning Law which support your case.

Background information is also helpful to the ZBA. If pictures of the property involved or maps of the property will help the ZBA to best understand why you think the ZEO's decision is wrong, then you should provide those photos or maps to the ZBA as part of your appeal application.

Why is an escrow deposit required in some cases?

As noted above, when deciding an interpretation appeal the ZBA is making a quasi-judicial decision. In doing so, the ZBA will almost always utilize the advice of its legal counsel. In some cases, the ZBA will be empowered by law to have the cost of its legal counsel's professional services reimbursed by the person bringing the appeal.

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Application – Case # _____

Instructions: Please complete this form with as much detail as you can provide to the Zoning Board of Appeals. If you should require more space to write, please include any additional attachments and documents to this application.

Date Submitted: _____

1. Applicant(s): _____

2. Contact Person (if different from Applicant): _____

3. Mailing Address: _____

4. Phone: _____ E-Mail: _____

5. Property Address where Interpretation is requested: _____

Tax Map #: _____ Zoning District: _____

6. Property Owner (if different from Applicant): _____

7. Identify below the decision of the Zoning Enforcement Officer that you are appealing. Be sure to provide the date of the decision and identify the property involved. A copy of the decision should be attached to your application. Please be complete and specific. Attach your explanation as a separate sheet or letter if needed.

8. Identify below each reason in support of your position that the Zoning Enforcement Officer's decision should be overturned by the ZBA. Again, please be complete and specific. If you are relying upon provisions of the Town of Rhinebeck Zoning Law, you should identify those provisions as part of your explanation. Attach your explanation as a separate sheet or letter if needed.

Applicant Signature: _____ **Date:** _____

Please attach the following to this application and provide 11 copies, unless otherwise specified:

- The Decision of the Zoning Enforcement Officer from which you are appealing;
- Any cover letter or narrative;
- Map showing the existing conditions or site plan, including site topography, existing development and significant natural features, such as wetlands and stream courses. This can be on an existing survey or obtained with help from the Clerk using Dutchess County Parcel Access;
- Plot plan, showing parcel with existing buildings and proposed new structures or additions (depending on the subject of your appeal, the ZBA may request a plot plan drawn to scale);
- Photos showing a visual image of the property which is the subject of the ZEO's decision;

- Application Certification Authorization Form
- One check for Administrative Review - \$500
- One signed copy of the Escrow Agreement
- One check for initial Escrow deposit = \$500

What happens next?

After the submission of your application to appeal to the ZBA from the Zoning Enforcement Officer's decision, the next step will be to present your case to the ZBA.

- **Scheduled Date the ZBA hears your application.** The Secretary to the ZBA will provide you with a date on which the ZBA will hear your application. At this meeting, the ZBA will ask that you make a brief presentation of your appeal and describe the reasons why you think the decision of the Zoning Enforcement Officer should be overturned.
- **Application Accepted as Complete.** The ZBA will review your application and determine if it is complete to begin their review. The ZBA will also classify the action under the New York State Environmental Quality Review Act to determine if any additional environmental review is required for your proposed project. The ZBA may also require that certain referrals be made to other agencies. Whether any of this will be required will be determined by the substance of each particular appeal. If your application is deemed complete and there is no environmental review required, the ZBA will schedule a public hearing.
- **Schedule Public Hearing.** The public hearing allows members of the public to make comments to the ZBA in connection with your appeal. Comments made during the public hearing are added to the record and considered by the ZBA in their decision.
- **Mail Public Notice.** Before the public hearing takes place, the Secretary to the ZBA will circulate a public notice that will be placed in the local newspaper and on the Town of Rhinebeck website. This is to let the public know the date and time of the meeting, and afford them the opportunity to speak before the ZBA. In addition, a notice will also be sent to any adjoining properties and any landowner that is within 500 feet of the property's boundary line. The Secretary of the ZBA will be responsible for circulating the public notice. ****The Applicant will be responsible for paying the cost of mailing the notices**.**
- **Attend Public Hearing.** The ZBA will open the public hearing. At this hearing, you will be expected to make a detailed presentation of your case to the Board and for the benefit of the public. You should be prepared to make such a presentation on the night of the public hearing. The ZBA can decide to close the public hearing after all the testimony is taken, or they can decide to keep the hearing open in anticipate of further comments or because additional information has been requested by the applicant.
- **Decision.** Once the public hearing is closed, the ZBA will issue a decision within 62 days of the close of the public hearing. The ZBA, on occasion, may ask the Applicant to allow for an extension beyond those 62 days. If the Applicant agrees, then a new deadline will be set for the decision.