

**ARTICLE VII  
APPEALS****§ 102-32. General Appeals Procedure.**

It is the intent of this article to set forth the procedures for the various appeals to the Planning Board, Zoning Board of Adjustment and the Borough Council as permitted by this chapter. In addition to the procedures set forth in the following sections for each type of appeal, the procedures set forth for review of site plan and subdivision applications in Article VII of this chapter shall apply, unless the context clearly indicates otherwise or unless contrary to law, including but not necessarily limited to the following:

- A. The filing procedures in § 102-43.
- B. The procedures for filing simultaneous applications in § 102-44.
- C. The completeness review procedures in § 102-45 and § 102-68.
- D. The general review procedures in § 102-46.
- E. The conditional approval provisions in § 102-53.
- F. The default approval provisions in § 102-54.
- G. The provisions for extensions and tolling of approvals in § 102-55 and § 102-56, respectively.
- H. The provisions for reservation of public areas, payment of taxes and assessments, disclosure of ownership and binding nature of approvals in § 102-64, § 102-65, § 102-66 and § 102-67, respectively.

**§ 102-33. Appeal Alleging Erroneous Administrative Officer Decision.**

Appeals to the Zoning Board of Adjustment may be taken by any interested party when it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by the Zoning Officer or Construction Official of the Borough based on or made in the enforcement of the zoning regulations, Article XI of this chapter. The following provisions shall apply to such appeals:

- A. Appeals must be taken within twenty (20) days of the decision of the Zoning Officer or Construction Official.
- B. A notice of appeal shall be filed with the Zoning Officer or Construction Official, specifying the grounds of the appeal. The officer from whom the appeal is taken shall immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- C. Fees required by this chapter shall be submitted with the notice of appeal, as well as proof of payment of taxes and assessments.

- D. An appeal to the Zoning Board of Adjustment shall stay all proceedings in furtherance of the action in respect to which the decision appealed from was made unless the officer from whose action the appeal is taken certifies to the Zoning Board of Adjustment, 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 or her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by an order of the Superior Court upon notice to the officer from whom the appeal is taken and on due cause shown. **[Amended 12-17-01 by Ord. 2118]**
- E. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. If the appeal is made by an interested party other than the owner of the property which was the subject of the decision by the Zoning Officer or Construction Official, notice shall also be sent to said property owner. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
- F. The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the action, order, requirement, decision, interpretation or determination appealed from and to that end shall have all the powers of the officer from whom the appeal is taken.
- G. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date the appeal is taken from the Zoning Officer or Construction Official, or within such further time as may be consented to by the applicant.
- H. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

**§ 102-34. Request for Interpretation or Other Special Questions.**

The Zoning Board of Adjustment shall hear and decide requests for interpretation of the zoning map or zoning regulations, Article XI of this chapter, or for decisions upon other special questions upon which the Board is specifically authorized to pass by this chapter, including but not limited to certification of nonconforming uses and/or structures pursuant to § 102-121B(7). The following provisions shall apply to such requests: **[Amended 06-16-03 by Ord. 2143]**

- A. An application form shall be completed and shall be accompanied by a specific written request which outlines that part of the zoning map, zoning regulations or official map for which an interpretation is sought, or outlines the special question that the Board is asked to consider. In the case of an application for certification of nonconforming uses and/or structures, the applicant shall also be required to submit the information set forth in § 102-78. **[Amended 06-16-03 by Ord. 2143]**

- B. Sixteen (16) copies of the application form and all accompanying documentation shall be submitted to the Secretary of the Board.
- C. Fees required by this chapter shall be submitted with the request, as well as proof of payment of taxes and assessments.
- D. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall publish notice of the hearing on the request in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation in the Borough. If the request for interpretation or special question concerns a specific property, the appellant shall also give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. If the request is made by a person other than the owner of the specific property which is the concern of the interpretation or special question, notice shall also be sent to said property owner. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
- E. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report.

**§ 102-35. Appeal for Issuance of Permits for Areas on Official Map.**

Appeals to the Zoning Board of Adjustment may be taken from a refusal by the Construction Official to issue a permit for any building or structure in the bed of any street or public drainage way, flood control basin or public area reserved on the Official Map; provided that if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any appeal pursuant to this section. The following provisions shall apply to such appeals or applications:

- A. A developer may file an application for development with the appropriate board under this section without prior application to the Construction Official. In addition, the developer may elect to submit a separate application requesting direction for the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the same Board that directed the issuance of a permit.
- B. Any appeal or application pursuant to this section shall be required to submit sixteen (16) copies of a map showing the property in question and the location of the proposed building and/or structure in relation to the bed of the mapped street or public drainage way, flood control basin or public area reserved on the Official Map. In addition, fees required by this chapter shall be submitted with the notice of appeal, as well as proof of payment of taxes and assessments.
- C. An appeal pursuant to this section shall stay all proceedings in the same manner as specified in § 102-33D.

- D. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
- E. The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the refusal of the Construction Official and direct the issuance of a permit subject to the following provisions:
- (1) There must be a showing by the appellant, and the Board must find, that the subject property cannot yield a reasonable return to the owner unless a building permit is granted.
  - (2) Any decision of the Board to direct the issuance of a permit pursuant to this section shall only be by an affirmative vote of a majority of the full authorized membership of the Board.
  - (3) Any decision of the Board to direct the issuance of a permit pursuant to this section shall be in accordance with terms and conditions which will as little as practicable increase the cost of opening such street, or tend to cause a minimum change of the Official Map, and the Board shall impose reasonable requirements as a condition of granting the permit so as to promote the health, morals, safety and general welfare of the public.
- F. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date 1) an appeal is taken from the Construction Official or 2) a development application is certified to be complete pursuant to this chapter, or within such further time as may be consented to by the applicant.
- G. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

**§ 102-36. Appeal for Permits for Lot Not Abutting a Street.**

Appeals to the Zoning Board of Adjustment may be taken from a refusal by the Construction Official to issue a permit for any building or structure on a lot which does not abut a street giving access to such building or structure; provided that if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any appeal pursuant to this section. The following provisions shall apply to such appeals or applications:

- A. A developer may file an application for development with the appropriate board under this section without prior application to the Construction Official. In addition,

the developer may elect to submit a separate application requesting direction for the issuance of a permit and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate direction for the issuance of a permit shall be conditioned upon grant of all required subsequent approvals by the same Board that directed the issuance of a permit.

- B. Any appeal or application pursuant to this section shall be required to submit sixteen (16) copies of a map showing the property in question and the manner by which access will be provided to the building and/or structure, including the location of the nearest street from which access may be obtained. In addition, fees required by this chapter shall be submitted with the notice of appeal, as well as proof of payment of taxes and assessments.
- C. An appeal pursuant to this section shall stay all proceedings in the same manner as specified in § 102-33D.
- D. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
- E. The Zoning Board of Adjustment may reverse or affirm, wholly or in part, or may modify the refusal of the Construction Official and direct the issuance of a permit subject to the following provisions:
  - (1) There must be a showing by the appellant, and the Board must find, that the refusal to issue a permit would entail practical difficulty or hardship, or that the circumstances of the case do not require the building or structure to be related to a street.
  - (2) Any decision of the Board to direct the issuance of a permit pursuant to this section shall be in accordance with terms and conditions which will provide adequate access for fire fighting equipment, ambulances and other emergency vehicles necessary for the protection of health and safety and that will protect any future street layout shown on the Official Map or on the circulation plan element of the Borough Master Plan.
- F. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date 1) an appeal is taken from the Construction Official or 2) a development application is certified to be complete pursuant to this chapter, or within such further time as may be consented to by the applicant.
- G. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

**§ 102-37. "C" Variance Appeals.**

Appeals to the Zoning Board of Adjustment may be taken for relief from the zoning regulations, Article XI of this chapter. Notwithstanding the above, if the proposed development requires approval by the Planning Board of a subdivision, site plan or conditional use, the Planning Board shall also hear any such variance appeals, except for "D" variances. The following provisions shall apply to "C" variance appeals or applications:

- A. A developer may file an application for development with the appropriate board under this section without prior application to the Zoning Officer or Construction Official.
- B. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the same Board that approved the variance.
- C. Any appeal or application pursuant to this section shall be required to submit the information required by § 102-69.
- D. An appeal pursuant to this section shall stay all proceedings in the same manner as specified in § 102-33D.
- E. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. Affidavits of proof of service of notice shall be submitted at least two (2) business days prior to the hearing.
- F. The Zoning Board of Adjustment may grant a "C" variance to allow departure from the zoning regulations if there is a showing by the appellant, and the Board finds that all of the following conditions are met:
  - (1) The strict application of the specific zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardship upon the developer of the subject property due to a) exceptional narrowness, shallowness or shape of the subject property, b) exceptional topographic conditions or physical features uniquely affecting the subject property, or c) an extraordinary and exceptional situation uniquely affecting the subject property or the structures lawfully existing thereon; or the purposes of the Municipal Land Use Law would be advanced by the requested variance, and the benefits of the variance would substantially outweigh any detriment; provided, however, that the fact that a proposed use is an inherently beneficial use shall not be dispositive of a decision on a variance under this paragraph. **[Amended 12-17-01 by Ord. 2118]**
  - (2) The variance can be granted without substantial detriment to the public good.

- (3) The grant of the variance will not substantially impair the intent of the zone plan and zoning regulations.
- G. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date 1) an appeal is taken from the Zoning Officer or Construction Official or 2) a development application is certified to be complete pursuant to this chapter, or within such further time as may be consented to by the applicant.
- H. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

**§ 102-38. "D" Variance Appeals.**

In particular cases, appeals to the Zoning Board of Adjustment may be taken for "D" variance requests. Whenever the proposed development involves a "D" variance, the Zoning Board of Adjustment shall also hear any subdivision, site plan, conditional use application and any other variance applications required for the development. The following provisions shall apply to "D" variance appeals or applications:

- A. A developer may file an application for a "D" variance with the Zoning Board of Adjustment without prior application to the Zoning Officer or Construction Official.
- B. The developer may elect to submit a separate application requesting approval of the variance and a subsequent application for any required approval of a subdivision, site plan or conditional use. The separate approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Zoning Board of Adjustment.
- C. Any appeal or application pursuant to this section shall be required to submit the information required by § 102-69.
- D. An appeal pursuant to this section shall stay all proceedings in the same manner as specified in § 102-33D.
- E. A public hearing shall be held in accordance with the provisions for hearings in this chapter. The appellant shall give public notice of the hearing in the manner specified for development applications in this chapter; provided that the parties entitled to notice shall be as specified in § 102-12B(1) of this chapter. Affidavits of proof of service of notice shall be submitted at least two business days prior to the hearing.
- F. The Zoning Board of Adjustment may grant a "D" variance to allow departure from the zoning regulations subject to the following provisions:
  - (1) There must be a showing by the appellant, and the Board must find, that all of the following conditions are met:

- (a) Special reasons exist justifying the grant of the variance.
  - (b) The variance, including a variance or other relief involving an inherently beneficial use, can be granted without substantial detriment to the public good. **[Amended 12-17-01 by Ord. 2118]**
  - (c) The grant of the variance, including a variance or other relief involving an inherently beneficial use, will not substantially impair the intent of the zone plan and zoning regulations. **[Amended 12-17-01 by Ord. 2118]**
- (2) Any decision of the Board to grant a "D" variance pursuant this section shall only be by an affirmative vote of at least five (5) members of the Board.
- G. The Zoning Board of Adjustment shall render a decision not later than one hundred twenty (120) days after the date 1) an appeal is taken from the Zoning Officer or Construction Official or 2) a development application is certified to be complete pursuant to this chapter, or within such further time as may be consented to by the applicant.
- H. The Zoning Board of Adjustment may refer an application pursuant to this section to any appropriate person or agency, including the Planning Board, for its report; provided that such reference shall not extend the period of time within which the Board shall act.

**§ 102-39. Appeal of "D" Variance Approval to the Borough Council.**

Any interested party may appeal to the Borough Council any final decision of the Zoning Board of Adjustment approving an application for development involving a "D" variance. The following provisions shall apply to such appeals:

- A. Appeals to the Borough Council shall be made within ten (10) days of the date of publication of the final decision of the Zoning Board of Adjustment.
- B. The appeal to the Borough Council shall be made by serving the Borough Clerk in person or by certified mail with a notice of appeal specifying the grounds thereof, the name and address of the appellant and the name and address of his or her attorney, if represented. **[Amended 12-17-01 by Ord. 2118]**
- C. An appeal pursuant to this section shall stay all proceedings in the same manner as specified in § 102-33D.
- D. The appellant shall, within five days of service of the notice of the appeal, arrange for a transcript pursuant to § 102-18 for use by the Borough Council and pay a deposit as specified in Article V of this chapter, or within thirty-five (35) days of service of the notice of appeal, submit a transcript as otherwise arranged to the Borough Clerk; otherwise, the appeal may be dismissed for failure to prosecute.

- E. Notice of the meeting to review the record below shall be given by the Borough Council by personal service or certified mail to the appellant, or to his or her attorney if represented, to those entitled to notice of a decision pursuant to § 102-20A, and to the Zoning Board of Adjustment at least ten (10) days prior to the date of the meeting. **[Amended 12-17-01 by Ord. 2118]**
- F. The appeal shall be decided by the Borough Council only upon the record established before the Zoning Board of Adjustment. The parties may submit oral and written argument on the record at such meeting, and the Borough Council shall provide for verbatim recording and transcripts of such meeting pursuant to § 102-18.
- G. The Borough Council may reverse, remand, or affirm with or without the imposition of conditions the final decision of the Zoning Board of Adjustment granting a "D" variance.
- H. The affirmative vote of a majority of the full authorized membership of the Borough Council shall be necessary to reverse or remand to the Zoning Board of Adjustment or to impose conditions on or alter conditions to any final action of the Zoning Board of Adjustment; otherwise the final action of the Zoning Board of Adjustment shall be deemed to be affirmed. A tie vote of the Borough Council shall constitute affirmance of the decision of the Zoning Board of Adjustment.
- I. The Borough Council shall conclude a review of the record below not later than ninety-five (95) days from the date of publication of notice of the decision below pursuant to § 102-20C, unless the applicant consents in writing to an extension of such period.
- J. Failure of the Borough Council to hold a hearing and conclude a review of the record below and to render a decision within the period specified in subsection I. above shall constitute a decision affirming the action of the Zoning Board of Adjustment.
- K. The Borough Council shall mail a copy of the decision to the appellant, or if represented then to his or her attorney, without separate charge, and for a fee as provided by Article V of this chapter, to any interested party who has requested it, not later than ten (10) days after the date of the decision. **[Amended 12-17-01 by Ord. 2118]**
- L. A brief notice of the decision shall be published in the official newspaper of the Borough, if there be one, or in a newspaper of general circulation in the Borough. Such publication shall be arranged by the Borough Clerk; provided that nothing herein shall be construed as preventing the applicant from arranging such publication if he or she so desires. The Borough Council shall require a fee for the publication as specified in Article V of this chapter. **[Amended 12-17-01 by Ord. 2118]**
- M. Nothing in this section shall be construed to restrict the right of any party to obtain a review by any court of competent jurisdiction according to law. The period of time

in which an appeal to a court of competent jurisdiction may be made shall run from the first publication of the decision of the Borough Council, whether arranged by the Council or the applicant.

**§ 102-40. Expiration of Variances.**

Variances granted after the effective date of this ordinance by the Planning Board or the Zoning Board of Adjustment shall expire unless the development associated with the variance is promptly completed; provided, however, that no variance which was a prerequisite for subdivision approval shall expire if the plat or deed for the subdivision has been filed with the County Recording Officer as required by law. All other variances shall expire in accordance with the following provisions:

- A. Variance approvals not subject to site plan, subdivision or conditional use approval. In the case of a variance approval from the Zoning Board of Adjustment which does not also require subdivision, site plan or conditional use approvals from the Board, the required building permits must be obtained within twelve (12) months of the date of the resolution of approval or within twelve (12) months of the date that all conditions precedent of approval, if any, have been satisfied, whichever occurs later, or the variance will expire.
- B. Variance approvals subject to or part of site plan or conditional use approval. In the case of a variance approval from the Planning Board or the Zoning Board of Adjustment which also requires site plan or conditional use approvals from the Board, the required building permits must be obtained prior to the date of expiration of the period of statutory protection against changes in the zoning regulations, which periods are provided in Article VIII of this chapter, or the variance will expire.
- C. Bifurcated variance applications. In the case of a bifurcated variance approval from the Planning Board or the Zoning Board of Adjustment which requires subsequent subdivision, site plan or conditional use approvals from the Board, all such subsequent applications shall be filed within twelve (12) months of the date of the resolution approving the original variance, or within twelve (12) months of the date that all conditions precedent of the approval for the original variance, if any, have been satisfied, whichever occurs later, or the variance will expire.
- D. Extensions. The Planning Board or the Zoning Board of Adjustment, as applicable, may, upon good cause shown in writing, extend the expiration dates for variances specified in Subsections A., B. and C. above, provided that the extension is applied for prior to or within ten (10) days of the date upon which the variance would otherwise expire.
- E. Appeal of expiration. Should the developer fail to meet the deadlines for the expiration of variances specified in this section, said relief shall be deemed to be automatically rescinded by the Board unless the developer, within ten (10) days of the required deadline, provides in writing sufficient cause to show why such relief should not be rescinded. Should the developer submit a written showing of cause, the Board shall hold a public hearing on the request by the developer, with public notice to be served the same as in the original variance application.