



City of Kingston Laws and Rules Committee
Meeting Agenda
Thursday, October 19, 2017

PUBLIC HEARING - *Laws and Rules Public Hearing relative to a proposed amendment to the Zoning Law,
Chapter 405 Article VII, Zoning Board of Appeals*

Public Hearing Re: Proposed Amendment to the Kingston Zoning Law

[UCPB.pdf](#)

[zba.405-final.draft.pdf](#)

Ulster County Planning Board



Dennis Doyle, Director

RECOMMENDATION

Carly Winnie, City Clerk
City of Kingston
420 Broadway
Kingston, N.Y. 12401

REFERRAL NO: 2017-147
DATE REVIEWED: 9/6/2017

Re: Resolution #168 of 2017 - Zoning Statute Amendment

Summary

This is a proposed local law to amend and update "Section §405-53 Board of Appeals" within the City's zoning statute.

The following materials were received for review:

- UCPB Referral Form
- Proposed local law
- Laws and Rules Committee Report

Recommendations

Referral to County Planning Board

The Ulster County Planning Board is supportive of this amendment to the City's zoning statute, which includes provisions that render it compliant with NYS Planning Law, gives the City a path to allowing alternates to serve on the board, sets out the training requirement, and places the tests for both area and use variances directly in the law. While the local law cites the need to refer to the County under General Municipal Law, it omits the reference to Ulster County's Administrative Code, which provides for additional controls, outside of the 500' requirements, on the land use referral process.

Advisory Comment

In addition to citing both NYS General Municipal Law 239-m and 239-n, the law should also cite "§A7-7 Review and approval over land use" of the Ulster County Administrative Code.

Reviewing Officer

Robert A. Leibowitz, AICP
Principal Planner

ARTICLE VII

Board of Appeals

§405-53. Purpose.

A Zoning Board of Appeals shall be maintained and operate in accordance with Article 5-A of the New York State General City Law, Sections 81, 81-a, 81-b. The Zoning Board of Appeals shall have all of the authority, jurisdiction and duties granted to such Board by Sections 81, 81-a, 81-b and any other applicable State law, and shall fulfill its duties in accordance with those grants of authority and in accordance this Zoning Law.

§405-53.1. Establishment and Membership.

Pursuant to Section 81 of the New York State General City law there is hereby established a Zoning Board of Appeals consisting of five (5) members appointed by the Mayor. All members of the Zoning Board of Appeals shall be residents of the City of Kingston. The members of the Board serving at the time this chapter is passed shall continue in office as members of the Board hereby established.

- A. The Mayor shall choose two (2) of these members to serve one-year terms; two (2) of these members to serve two-year terms; and one (1) member to serve three-year term.
- B. The Mayor shall designate one of the Zoning Board of Appeals members as chairperson to preside at all meetings and hearings and to fulfill the authorized duties of that office. In the absence of the chairperson, the Zoning Board of Appeals may designate another member of the Zoning Board of Appeals to serve as acting chairperson. All meetings of the Zoning Board of Appeals shall be held at call of the chairperson and at such time as the Zoning Board of Appeals may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
- C. Pursuant to Section 81(11)(a) of the New York General City Law, alternate Zoning Board of Appeals member positions for the City of Kingston Zoning Board of Appeals are hereby established for use when a regular member

cannot participate due to a conflict of interest. Under New York Municipal Home Rule Law, alternate Zoning Board of Appeals members shall also serve in place of a regular member who is absent. Alternate members shall be appointed by the Mayor.

(1) The Mayor shall appoint up to three (3) alternate Zoning Board of Appeals members.

(a) The first appointment shall be for a period of three years.

(b) The second appointment shall be for a period of two years.

(c) The third appointment shall be for a period of one year.

(d) Thereafter, all appointments shall be for a period of three years.

(2) The Chairperson shall designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest of an application or matter before the board, or by absence. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.

(3) All provisions relating to Zoning Board of Appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, compatibility of office and service of other boards, shall also apply to alternate members.

D. No person who is a member of the Common Council shall be eligible for membership on the Zoning Board of Appeals.

§405-53.2. Terms of members now in office.

Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the Board.

§405-53.3. Training requirements.

- A. Each member of the Zoning Board of Appeals and each Alternate Member shall complete a minimum of four (4) hours of training each year, designed to enable such members to more effectively carry out their duties. Training received by a member in excess of four (4) hours in any one (1) year may be carried over onto succeeding years in order to meet this requirement. Such training shall be approved by the Common Council and may include, but is not limited to, training provided by a municipality, regional or county planning office or commission, county planning federation, state agency, statewide municipal association, college or other similar entity. Training may be provided in a variety of formats, including but not limited to electronic media, video, distance learning and traditional classroom training.
- B. To be eligible for reappointment, a member or alternate member must have completed the training approved by the city.
- C. The training requirement may be waived or modified by resolution of the Common Council, when, in the Council's judgment, it is in the best interest of the City to do so.
- D. No decision shall be voided or declared invalid because of a failure to comply with this requirement.

§405-53.4. Vacancies

Members of the Zoning Board of Appeals shall continue to serve until a successor is appointed. In the event a vacancy occurs, other than by the expiration of a term, the Mayor shall appoint a new member for the remainder of the unexpired term.

§405-53.5. Removal of Members

- A. The Mayor shall have the power to remove any member or alternate member of the Zoning Board of Appeals for cause. Cause for removal of a member or alternate member may include one or more of the following:
- (1) Failure to complete mandatory training requirement.
 - (2) Failure to attend 80% of scheduled meetings without a documented medical and/or emergency excuse approved by the Chair of the Commission.
 - (3) Any person or persons jointly or severally aggrieved by any decision to remove for cause may apply to the Ulster County Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision by the Mayor to remove.

§405-54 Powers and duties.

- (1) The Zoning Board of Appeals shall have all the powers and duties prescribed by Section 81-b of Article 5-A of the New York State General City Law and by this chapter, which are more particularly specified as follows:
 - A. Orders, requirements, decisions, interpretations and determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the Enforcement Officer. To that end, the Zoning Board of Appeals shall have all the powers of the Enforcement Officer from whose order, requirement, decision, interpretation or determination the appeal is taken.
 - B. Filing Requirement. Every Rule, Regulation, every amendment or repeal thereof, and every order, requirement, decision, or determination of the Zoning Board of Appeals shall be filed in the office of the city clerk within five (5) business days and shall be a public record.
 - C. Assistance to the Zoning Board of Appeals. Subject to Chapter C-13-3 (J) of the charter of the City of Kingston, the Zoning Board of Appeals shall have the authority to call upon any Department, agency or employee of the City of

Kingston for such assistance as shall be deemed necessary and as shall be authorized by the Mayor.

- D. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination, made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the city.
- E. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, 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 which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, or notice to the administrative official from whom the appeal is taken and on due cause shown.
- F. Filing of administrative decision and time of appeal.
 - (1) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record. Alternately, the legislative body of the city may, by resolution, require that such filings instead be made in the city clerk's office.
 - (2) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom

the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

- G. Public Hearing. The Zoning Board of Appeals shall fix a reasonable time for hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the City of Kingston at least five (5) days prior to the date of the hearing. The cost of sending or publishing the notice shall be borne by the appealing party and shall be paid to the Zoning Board of Appeals prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.
- (1) Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.
- (2) In any application or appeal for a variance, the Clerk of the Zoning Board of Appeals shall provide written notice of the public hearing, along with the substance of the variance appeal or application, to: the owners of all property abutting, or directly opposite, that of the property affected by the appeal; and to all other owners of property within one hundred (100) feet of the property which is subject of the appeal. Such notice shall be provided by certified mail at least five (5) days prior to the date of the hearing.
- H. Compliance with the State Environmental Quality Review Act. The Zoning Board of Appeals shall comply with the provisions of the New York State Environmental Quality Review Act ("SEQRA") under Article 8 of the Environmental Conservation Law and its implementing regulations.

- I. Time to Render Decision. The Zoning Board of Appeals shall make its decision on the appeal within sixty-two (62) days after the close of the public hearing. The time in which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Zoning Board of Appeals. In the event that a decision is not rendered within sixty-two days, absent an extension entered by mutual consent, the appeal will be deemed granted.
- J. Voting Requirements.
- (1) Decision of the Board. Except as in the case of a rehearing as set forth in §405-55.1 of this Law, every motion or resolution of the Zoning Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the Zoning Board of Appeals as fully constituted regardless of vacancies or absences. Where an action is subject to referral to the County Planning Board, the provisions of Section 239-m of the New York State General Municipal Law and Section A-7 of the Ulster County Administrative Code shall apply.
 - (2) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Zoning Board of Appeals is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Enforcement Officer within the time allowed section (I) above, the appeal is denied. The Zoning Board of Appeals may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed being subject to the rehearing process, as set forth in §405-55.1 of this Law.
- K. Filing of Decision. The decision shall be filed in the office of the city clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

§405-55.1 Variances.

The Zoning Board of Appeals is empowered to authorize, in accordance with General City Law 81b(3) and (4), upon denial of a building permit, a variance from

the terms of this chapter. In determining an application for a variance pursuant to the standards below, the applicant may introduce and the Board may consider evidence regarding the impact of the requested variance on the public interest where, owing to exceptional and extraordinary circumstances, there are practical difficulties or unnecessary hardships in the way of the carrying out of the strict letter of this chapter.

A. Use Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer shall have the power to grant use variances, authorizing a use of land which otherwise would not be allowed or would be prohibited by the terms of this chapter.

(1) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under this Zoning Law for the particular district where the property is located:

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

(2) The Zoning Board of Appeals, in granting the use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

B. Area Variances. The Zoning Board of Appeals, upon appeal from the decision or determination of the Enforcement Officer, shall have the power to grant area variances.

-
- (1) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Zoning Board of Appeals shall also consider:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - (b) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (c) Whether the requested area variance is substantial;
 - (d) Whether the proposed variance will have an adverse effect on impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) Whether the alleged difficulty was self-created. This consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - (2) The Zoning Board of Appeals, in granting of the area variance, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- C. The Zoning Board of Appeals shall, in granting both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Zoning Law and Comprehensive Plan for the City of Kingston, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
 - D. Once granted, variances run with the land and, once granted, every subsequent owner of the property shall have the benefit thereof.

§405-55.2 Rehearing.

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination not previously reheard may be made by any member of the Zoning Board of Appeals. A unanimous vote of all members of the Zoning Board of Appeals then-present at the meeting is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original public hearing. Upon such rehearing, the Zoning Board of Appeals may reverse, modify or annul its original order, decision or determination. The vote must be unanimous of all the members of the Zoning Board of Appeals that are present at the meeting, provided the Zoning Board of Appeals finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

§405-55.3 Proceedings.

- A. The powers and duties of the Board of Appeals shall be exercised in accordance with its own rules of conduct and procedure, which rules shall be consistent with and pursuant to all the provisions of City law applicable thereto.
- B. In addition, at least 10 days before the date of any public hearing, the Clerk of the Zoning Board of Appeals shall transmit to the Planning Office of the City of Kingston and, where the property concerned is in a Landmark Overlay District, to the Kingston Historic Landmark Preservation Commission, a copy of any appeal or application, together with a copy of the notice of such hearing. The Planning Board or Historic Landmark Preservation Board, may submit to the Zoning Board of Appeals an advisory opinion on said appeal or application at any time prior to the public hearing, and such opinion shall be made part of the official record thereof.
- C. The Building Safety Division of the Kingston Fire Department shall give notice of a variance application or zoning change request by first-class mail at least 10 days prior to the public hearing to all properties contiguous and adjacent to the applicant's property. Adjacent shall be deemed to include the properties across any streets or roadways as if the street or roadway did not exist. A sign or signs will be posted on the applicant's property by Building

Safety at the expense of the owner/applicant 10 days prior to the public hearing.

§405-55.4 Relief from Decisions.

Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals or any officer, department, board or bureau of this City may apply to the Ulster County Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceeding shall be instituted within thirty (30) days after the filing of a decision of the Zoning Board of Appeals in the office of the city clerk.