



TOWN OF AMENIA TOWN BOARD

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TOWN OF AMENIA **Local Law No. ____ of 2025**

A Local Law entitled “Local Law No. ____ of the Year 2025, Repealing § 121-59. Zoning Board of Appeals, in its Entirety and Creating a New § 121-59. Zoning Board of Appeals”.

BE IT ENACTED by the Town Board of the Town of Amenia, County of Dutchess as follows:

Section-I: TITLE.

This Local Law shall be known and cited as Town of Amenia Local Law No. ____ of 2025 entitled “Local Law No. ____ of the Year 2025, Repealing § 121-59. Zoning Board of Appeals, in its Entirety and Creating a New § 121-59. Zoning Board of Appeals”.

Section-II: LEGISLATIVE INTENT.

The Town Board of the Town of Amenia hereby enacts this Local Law with the intent to repeal section 121-59. Zoning Board of Appeals, in its entirety and create a new section 121-59. Zoning Board of Appeals, for the purpose of reordering and restructuring the Code, amending the appointment of Alternates and their designation to serve on the Zoning Board of Appeals and adding new provisions for training and attendance requirements.

Section-III: CREATION OF NEW SECTION 121-59. ZONING BOARD OF APPEALS.

Section 121-59. Zoning Board of Appeals shall be repealed in its entirety and a new section 121-59. Zoning Board of Appeals shall be created to reads as follows:

“§ 121-59 Zoning Board of Appeals.

A. Establishment of Zoning Board of Appeals. Pursuant to the provisions of § 267 of Town Law, there is hereby established a Zoning Board of Appeals consisting of five members appointed by the Town Board. Each such member shall serve for a term of 5 years. The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this Chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this Chapter, generally the Code Enforcement

Official. An appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town.

B. Appeals of orders, requirements, decisions, interpretations, or determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed from, and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this chapter. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

C. Appeals for variance.

- (1) Where there are practical difficulties or unnecessary hardships imposed by the strict letter of this chapter, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Code Enforcement Official and after public notice and hearing, to vary or modify the application of any of the provisions of this chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.
- (2) All applications for variances shall be submitted to the Code Enforcement Official at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. An application for a use variance may require submission of an agricultural data statement pursuant to § **121-37C**.
- (3) Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within one year of the date of issuance shall automatically lapse.

D. Use variances.

- (1) The Zoning Board of Appeals, on appeal from a decision or determination of the Code Enforcement Official, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this chapter. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under this chapter for the district in which the applicant's 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) Failure to demonstrate any one of the requirements in Subsection **D(1)(a)** through **(d)** above is sufficient to justify the denial of a use variance.
- (3) The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to § **121-37C**.
- (4) The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems 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.
- (5) In addition to the grounds for granting a use variance in Subsection **D(1)** above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property. In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.
- (6) If the use variance is granted for a non-residential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

E. Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Official, to grant area variances from the area or dimensional requirements. Where a proposed special permit or site plan application contains one or more features which do not comply with the dimensional requirements of this chapter, application may be made to the Zoning Board of Appeals for an area variance without a decision or determination by the Code Enforcement Official.
- (2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community of such grant. In making its determination, the Board 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 or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board but which shall not necessarily preclude the granting of the area variance.
- (3) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

F. Imposition of conditions. The Zoning Board of Appeals shall, in granting use variances and area variances, 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 chapter and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

G. Procedures.

- (1) Application. Appeals shall be taken by filing a written notice of appeal and any required plans with the Code Enforcement Official and the Zoning Board of Appeals, within 60 days after the filing of the order, requirement, decision, interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Code Enforcement Official shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.
- (2) Referral to County Planning Board.
 - (a) Requests for variances that require referral to the County Planning Board shall be so referred pursuant to General Municipal Law Article 12-B, §§ 239-l and 239-m, as amended.
 - (b) No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the county and Town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.
 - (c) County disapproval. A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the County

Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

H. Hearing and public notice.

- (1) If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of any variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.
- (2) The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.
- (3) The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.
- (4) At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to the Planning Board and by certified mail to all property owners within 200 feet of the property upon which the appeal is taken. The cost of publishing and mailing such notices shall be borne by the appellant.
- (5) If the application is for a use variance on property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the Clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard.
- (6) At the hearing, any party may appear in person or by agent or by attorney.
- (7) The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal. If the hearing is adjourned for more than 30 days, the Board may require that it be re-noticed as provided in Subsection **H(4)** above.

I. Action. The Zoning Board of Appeals may, in conformity with the provisions of this chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this chapter.

- (1) Any such action shall be decided within 62 days after the close of the hearing.

- (2) Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by resolution which contains a full record of the findings and rationale for the decision. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the County Planning Board, it shall give written reasons for such action.

J. Filing. Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the appellant within the same five-day period.

K. Court review of board decisions. Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules and § 267-c of the Town Law.

L. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within 12 months of the date of such decision.

M. Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Code Enforcement Official certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Code Enforcement Official's opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Code Enforcement Official for due cause shown.

N. Special permits. In addition to the power to hear appeals, the Zoning Board of Appeals shall have the power to issue special permits where so indicated in this chapter. When reviewing and deciding upon special permit applications, the Zoning Board of Appeals shall apply the rules, standards, and procedures contained in Article **IX**, Special Permits and Site Plan Review.

O. Appointment and designation of alternate voting members.

- (1) Definitions. As used in this section, the following terms shall have the meanings indicated:

ALTERNATE VOTING MEMBER

An individual appointed by the Town Board to serve as a Zoning Board of Appeals member, with respect to one or more particular applications or matters, upon the designation of the Chair or Acting Chair of the Zoning Board of Appeals, when a regular Zoning Board of Appeals member is unable to participate or vote on an application or matter before the Board because such regular Zoning Board of Appeals member has determined that recusal is appropriate based upon a conflict of interest or to avoid even an appearance of

impropriety; or is absent from a meeting, whether by reason of illness, vacation, seasonal or temporary relocation, work assignment, or other cause.

ZONING BOARD OF APPEALS or BOARD

The Zoning Board of Appeals of the Town of Amenia as established by the Town Board, pursuant to the provisions of § 267 of the Town Law.

REGULAR ZONING BOARD OF APPEALS MEMBER or ZONING BOARD OF APPEALS MEMBER

An individual appointed by the Town Board to serve on the Zoning Board of Appeals pursuant to the provisions of § 267 of the Town Law and § 121-59 of the Town of Amenia Code.

- (2) The Town Board may appoint one or more alternate voting members of the Zoning Board of Appeals. Each such alternate voting member shall serve for a term established by the Town Board.
- (3) All provisions of New York State law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office, and service on other boards, and any provisions of any local laws relating to training, continuing education, compensation and attendance, shall also apply to alternate voting members. Upon appointing an alternate voting member, the Town Board shall review the background of any appointee and may, in its discretion, require that such appointee complete specified training prior to any designation to serve as an alternate voting member, or within a specified time thereafter.
- (4) The Zoning Board of Appeals Chair, or acting Chair, shall designate an alternate voting member to serve in the place of a regular Zoning Board of Appeals member in the following circumstances, and for the following periods:
 - (a) When a regular Zoning Board of Appeals member has recused himself or herself with respect to a matter, constituting one or more particular applications before the Board, the Zoning Board of Appeals Chair, or acting Chair, shall designate an alternate voting member to serve in such regular member's place throughout the entire remaining period of the Zoning Board of Appeal's review, consideration, and voting, until the matter is concluded.
 - (b) When a regular Zoning Board of Appeals member is absent from a meeting, whether by reason of illness, vacation, seasonal or temporary relocation, work assignment, or other cause, the Zoning Board of Appeals Chair, or acting Chair, shall designate an alternate voting member to serve in the place of such regular Zoning Board of Appeals member until the regular Zoning Board of Appeals member returns to service on the Board.

- (5) The Zoning Board of Appeals Chair or Acting Chair shall designate alternate voting members to serve as needed. In situations where there is more than one eligible alternate voting member, the designation shall take place by lot. At the time of designation of an alternate voting member, the Chair, or acting Chair, shall specify the name of any application or matter for which the designated alternate voting member will serve. The Clerk of the Zoning Board of Appeals shall enter the designation of any alternate voting member or members into the minutes of the meeting at which the designation is made. Where an alternate voting member is designated to serve in the event of an absence under Subsection (4)(b), the Chair, or Acting Chair, may simply state that the alternate voting member is designated to sit on all matters on the agenda for the meeting, rather than naming each matter individually.
- (6) Upon appointment by the Town Board, any alternate voting member shall attend the regular and special Zoning Board of Appeals meetings, on the same basis as regular members, but shall participate in discussion, deliberation and voting on the Zoning Board of Appeals only upon being designated by the Zoning Board of Appeals Chair or Acting Chair to serve, as set forth in Subsection (5). Upon designation by the Chair or Acting Chair, the alternate voting member shall possess all the powers and responsibilities of a regular Zoning Board of Appeals member for the period of time for which such alternate voting member serves, with respect to any application or matter for which such alternate voting member has been designated.
- (7) Prior to deliberating or voting on a matter wherein the alternative voting member has not been present for all of the Zoning Board of Appeals meetings or hearings relating to such matter, the alternate voting member shall become familiar with the Zoning Board of Appeal's records relating to same, including the application, the environmental documents, and any other documents in the Zoning Board of Appeals files, such as minutes of meetings and hearings. Prior to voting on any such matter or application, the alternate voting member shall set forth on the record the manner in which such member has become familiar with the record before the Board.
- (8) This section shall not be deemed to require the appointment of alternate voting members by the Town Board, nor shall it be deemed to impair or restrict the authority of the Town Board to remove members of the Zoning Board of Appeal for cause.
- (9) It is the intention of this section that Zoning Board of Appeals members will recuse themselves at the earliest possible time when a conflict of interest or appearance of impropriety has arisen, and that the Zoning Board of Appeals Chair or Acting Chair will thereupon immediately notify the Town Board and designate an alternate voting member at the earliest possible time after a recusal has taken place. However, in the case of any pending applications or matters, where Zoning Board of Appeals members have already made recusals, and it has not previously been possible to designate alternate voting members because this section was not yet enacted, the Zoning Board of Appeals Chair, or Acting Chair, shall designate the alternative Zoning Board of Appeals member or members at the earliest possible time, so that the Zoning Board of

Appeals will be able to conduct its business with a full complement of members on all pending matters and applications.

P. Training and attendance requirements.

- (1) The Town Board finds that appropriate training and regular attendance of the Zoning Board of Appeals members is essential to the proper functioning of said Board.
- (2) The Legislature of the State of New York has recognized the importance of training and has established training and attendance requirements in its amendments to the ZBA statutes as contained in § 267 of the Town Law.
- (3) It is the purpose of this section to assist the ZBA members in obtaining appropriate training to enhance their ability to carry out their duties under applicable provisions of law and to pay the reasonable costs of such training as a Town charge.
- (4) It is also the purpose of this section to establish minimum training and continuing education course requirements for such members in accordance with § 267 of the Town Law.
- (5) It is the further purpose of this section to establish minimum attendance requirements for such members at meetings to assist in the proper functioning of the ZBA.

Q. Minimum training requirements.

- (1) All members and alternate members, if any (hereinafter referred to as "member" or "members") of the ZBA shall complete, in accordance with Town Law § 267, at a minimum, four hours of training each year designed to enable such members to more effectively carry out their duties.
- (2) Training received by a member in excess of four hours in any one year may be carried over by the member into succeeding years in order to meet these requirements.
- (3) Noncompliance with these minimum requirements relating to training shall result in the member's ineligibility for reappointment and shall also be deemed a proper cause for removal of a member from office by the Town Board.
- (4) The reasonable costs of such training courses, seminars, workshops or continuing education courses so designated shall be a Town charge. Members shall also be reimbursed for reasonable mileage expenses or other transportation expenses according to Town policies. Such training sessions shall be approved in advance by the Town Board.

R. Approved training courses. Training sessions which relate to the duties of members of the ZBA may include programs offered by the New York State Department of State, the New York State Association of Towns, the New York State Department of Environmental Conservation, the New York State Planning Federation, the Dutchess County Department of Planning and/or Economic

Development, the Dutchess County Cooperative Extension, and other such entities as approved by the Town Board, as well as in-house updates or training seminars or Municipal Law seminars conducted by the attorney(s) for the Town Board, or the attorney(s) for the ZBA, or by the law firms with which said attorneys are affiliated. Such training may be provided in a variety of formats, including but not limited to electronic media, video, distance learning, and traditional classroom training. The Town Board, after discussion with the Chairperson of the ZBA, shall annually designate such training courses, seminars, workshops, or continuing education courses which may be offered within a reasonable distance and which may be helpful to or of assistance to the ZBA members in carrying out their respective functions in a timely, fair and lawful manner.

S. Minimum attendance requirements at meetings. In addition to the minimum training requirements set forth above, if any member or alternate member, if any, of the ZBA shall be absent from three consecutive meetings or from a total of eight meetings of the Board on which such member sits in any given calendar year, said member shall be ineligible for reappointment and shall also be subject to removal for cause by the Town Board. Each member of the ZBA shall notify the Chairperson of the Board or the Secretary thereof as soon as practicable that such member will be absent from any meeting.

T. Lack of training or minimum attendance not to affect validity of member actions. Notwithstanding the foregoing, the failure of a member of the ZBA to obtain such minimum training or to maintain the foregoing minimum attendance at meetings shall not affect the validity of such member's actions or the validity of any decision, order or action of said ZBA.

U. Procedure for removal of member. The Chairperson of the ZBA shall notify the Town Board in writing on or about December 1 in any year of any member or alternate member, if any, who fails to comply with the minimum requirements for training in any calendar year. In the event a member or alternate member of the ZBA has failed to complete the minimum training requirements set forth in Q above, then the Town Board may remove such member for cause as hereinafter provided. The Chairperson of the ZBA shall also promptly notify the Town Board in writing at any time that a member of the Board shall fail to maintain the foregoing minimum attendance at meetings, upon which event the Town Board may remove such member for cause as hereinafter provided.

- (1) Notice. Such member shall be mailed a written notice specifying the nature of the failure of such member to meet the minimum requirements of Q and/or S above.
- (2) Public hearing. Such notice shall specify a date, not less than 20 nor more than 30 days from the date of mailing such notice, when the Town Board shall convene and hold a public hearing on whether or not such member should be removed from service on such board. Such notice shall specify the time, date and place of such hearing.
- (3) Public notice. Public notice of such hearing shall be published in the official newspaper of the Town, at least three days prior to the date of the public hearing.
- (4) Conduct of hearing. The public hearing on the charges shall be conducted before the Town Board. The member shall be given an opportunity, within the foregoing time constraints, to retain an attorney, present evidence, call witnesses to refute the charges,

and cross-examine witnesses. A record of such hearing shall be made. The decision of the Town Board shall be reduced to writing together with specific findings of the Town Board with respect to each charge against such member. A copy of such decision and such findings shall be filed in the Office of the Town Clerk and mailed to the member.

- (5) Action by the Town Board. Following the hearing and upon a finding that such member has not met the minimum training and/or attendance requirements established by this section, the Town Board may:
 - (a) Remove such member from the ZBA; or
 - (b) Issue a written reprimand to such member without removing such member from such Board; or
 - (c) If the Town Board shall find that the reasons for failing to meet the minimum training and/or attendance requirements are excusable because of illness, injury or other good and sufficient cause, the Town Board may elect to take no action or to impose a reasonable time for said member to complete the minimum training as herein set forth.

V. Removal for cause. Nothing contained herein shall be deemed to limit or restrict the Town Board's authority to remove a member from the ZBA for cause (i.e., for other than the reasons enumerated herein). The procedural provisions of U, Procedure for removal of member, of this section shall govern any hearing to remove a member for cause.

W. When effective; applicability.

- (1) This section shall take effect immediately upon filing with the New York State Secretary of State in accordance with § 27 of the Municipal Home Rule Law.
- (2) This section shall apply to all members and alternate members, if any, of the ZBA regardless of the dates of their appointment to such Boards.
- (3) Prospective members and alternate members, if any, of the ZBA shall be notified of the requirements of this section prior to their appointment to such Board."

Section-IV: SEVERABILITY.

A. If a court of competent jurisdiction finds any provision(s) of this law invalid, in whole or in part, the effect of such decision shall be limited to those provisions which are expressly stated in the decision to be invalid, and all other provisions of the law shall continue to be separately and fully effective.

B. If a court of competent jurisdiction finds the application of any provision of this law to any building, other structure or tract of land to be invalid, in whole or in part, the effect of such decisions shall be limited to the person, property or situation involved in the controversy, and the application of any such provision to any other person, property or situation shall not be affected.

C. The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity, or unconstitutionality, or inapplicability, shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their application to other persons or circumstances. It is hereby declared to be the legislative intent of the Town Board of the Town of Amenia that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part thereof is held inapplicable had been specifically exempt therefrom.

Section V: NUMBERING FOR CODIFICATION.

It is the intention of the Town of Amenia and it is hereby enacted that the provisions of this Local Law shall be included in the Code of the Town of Amenia, that the sections and sub-sections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; the Codifier shall make no substantive changes to this Local Law; the word “Local Law” shall be changed to “Chapter”, “Section” or other appropriate word as required for codification; and any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code effected thereby.

Section VI: EFFECTIVE DATE.

This Local Law shall take effect upon its adoption and filing with the Secretary of State in accordance with the provisions of Section 27 of the Municipal Home Rule Law.