

**Town of Norfolk
Zoning Board of Appeals
Special Meeting
Norfolk Town Hall
March 5, 2026 at 5:00 PM**



Present: Mary Reeve, Co-Chair, Dan Green, Go-Chair, Ron Bombero Jr., Leo Colwell, Jr., Chris Peterson, Alternate, Walter Godlewski, Alternate, Philip Carr-Harris, Alternate

Special Guest: Board Attorney Michael Ziska

Absent: Alan Boucher, Alternate

1. The Meeting was called to order by Dan Green at 5:04 p.m.
2. The Roll was called.
3. **Old Business**

The 2026 Regular Meeting schedule was proposed: June 4, September 3, and December 3. Special Meetings are called as needed.

MOTION L. Colwell, second M. Reeve to adopt the 2026 Regular Meeting Schedule as written; unanimously approved.

4. New Business

Attorney Michael Zizka, the Norfolk Board Attorney, of Halloran and Sage, led the ZBA in a Training session based on the key legal statutes governing the Zoning Boards of Appeals. The six-page document is appended to these minutes. Attorney Zizka noted that the use of co-chairs instead of chair and vice-chair was not typical of most Zoning Boards of Appeal in CT. He strongly suggested the development of by-laws for the Board that at minimum clearly laid out the duties and responsibilities of elected officers.

Some of the issues presented and discussed with the Board were constitution, powers and duties of the ZBA, handling the appeal process (hearings, timelines, and decisions) and the following 'key or summary points' of the workshop are found on page five. These are:

1. Hardship must be based on the unique characteristics of the property itself- not on the personal circumstances of the owners.
- 2 The economic concept of "highest and best use" is not appropriate for variance analysis; The proper question is whether the regulations allow a reasonable use, not the most valuable or lucrative use.
3. The property owner may not create the property condition he or she later claims to cause the hardship. *Ward v. Zoning board of Appeals*, 153 Conn. 141, 143 [1965]
- 4 Variances may sometimes be allowed if they will reduce the extent or intensity of a non- conforming use without increasing any other non-conforming aspect of the use. *Turek v. Zoning Board of Appeals*, 196 Conn. App. 122, cert. denied, 335 Conn. 915 [2020].

Philip Carr-Harris left the meeting at 6:25PM and minutes were continued by S. Sefcik.

5. Approval of Minutes

A. December 5, 2024 Regular Meeting Minutes

MOTION L. Colwell, second C. Peterson to approve the minutes of the December 5, 2024 regular meeting as presented; unanimously approved.

B. January 8, 2026 Regular Meeting Minutes

Members discussed the draft minutes and agreed that the entire italicized section of the minutes in item 4 should be removed as that excerpt was not specifically mentioned at the meeting. W. Godlewski also said that "State Civil Statutes" in the third paragraph of item 4 should be corrected to "CT case law holdings."

MOTION M. Reeve, second C. Peterson, to approve the minutes of the January 8, 2026 special meeting as amended; unanimously approved.

6. Bills & Correspondence

S. Sefcik updated the Board that she had submitted a budget request on the Board's behalf to the First Selectman, which included an additional \$500 for annual training for board members.

7. ZEO Report

S. Sefcik gave the Board a brief update on recent discussions at the Planning & Zoning Commission, which includes consideration of some possible text amendments to the Zoning Regulations.

8. Adjournment.

MOTION C. Peterson, second M. Reeve, to adjourn the meeting at 6:45PM; unanimously approved.

Respectfully submitted,

Philip M. Carr-Harris, Secretary & Stacey Sefcik, ZEO



Zoning Boards of Appeals

Key Statutes

Sec. 8-5. Zoning board of appeals. Alternate members. (a) In each municipality having a zoning commission there shall be a zoning board of appeals consisting of five regular members and three alternate members, unless otherwise provided by special act. Such alternate members, also referred to as "the panel of alternates", shall, when seated as herein provided, have all the powers and duties set forth in the general statutes relating to zoning boards of appeals and their members. The regular members and alternate members of such zoning board of appeals shall be electors and shall not be members of the zoning commission, any provision of any special act to the contrary notwithstanding. Such board and such panel of alternates shall, unless otherwise provided by special act, be elected or appointed in such manner and for such terms as is determined for each by ordinance adopted by the municipality. Any vacancy in such board, including any vacancy in the panel of alternates, unless otherwise provided by ordinance or special act, shall be filled for the unexpired portion of the term, by the board of selectmen of towns or the chief executive officer of cities and boroughs. Such board by vote of its regular members only shall elect a chairman from among its members, unless otherwise provided by special act, and all meetings of such board shall be held at the call of the chairman and at such other times as the board determines and shall be open to the public. Such chairman or in his absence the acting chairman may administer oaths and compel the attendance of witnesses. The board shall keep minutes of its proceedings showing the vote of each member and each alternate member when seated upon each question or, if absent or failing to vote, indicating such fact; and shall also keep records of its examinations and other official actions. Each rule or regulation and each amendment or repeal thereof and each order, requirement or decision of the board shall immediately be filed in the office of the board and shall be a public record.

Sec. 8-5a. Designation of alternate members to act. If a regular member of a zoning board of appeals is absent, he may designate an alternate from the panel of alternates to act in his place. If he fails to make such designation or if he is disqualified, the chairman of the board shall designate an alternate from such panel, choosing alternates in rotation so that they shall act as nearly equal a number of times as possible. If any alternate is not available in accordance with such rotation, such fact shall be recorded in the minutes of the meeting.

Sec. 8-6. Powers and duties of board of appeals. (a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for

conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. No such board shall be required to hear any application for the same variance or substantially the same variance for a period of six months after a decision by the board or by a court on an earlier such application.

(b) Any variance granted by a zoning board of appeals shall run with the land and shall not be personal in nature to the person who applied for and received the variance. A variance shall not be extinguished solely because of the transfer of title to the property or the invalidity of any condition attached to the variance that would affect the transfer of the property from the person who initially applied for and received the variance.

Sec. 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements. The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from

and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person who appeals to the board, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (A) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, and (B) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d.

Sec. 8-7d. Hearings and decisions. Time limits. Day of receipt. Notice to adjoining municipality. Public notice registry. (a) In all matters wherein a formal petition, application, request or appeal must be submitted to a zoning commission, planning and zoning commission or zoning board of appeals under this chapter, a planning commission under chapter 126 or an inland wetlands agency under chapter 440 or an aquifer protection agency under chapter 446i and a hearing is required or otherwise held on such petition, application, request or appeal, such hearing shall commence within sixty-five days after receipt of such petition, application, request or appeal and shall be completed within thirty-five days after such hearing commences, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. Notice of the hearing shall be published in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located at least twice, at intervals of not less than two days, the first not more than fifteen days or less than ten days and the last not less than two days before the date set for the hearing. In addition to such notice, such commission, board or agency may, by regulation, provide for additional notice. Such regulations shall include provisions that the notice be mailed to persons who own land that is adjacent to the land that is the subject of the hearing or be provided by posting a sign on the land that is the subject of the hearing, or both. For purposes of such additional notice, (1) proof of mailing shall be evidenced by a certificate of mailing, (2) the person who owns land shall be the owner indicated on the property tax map or on the last-completed grand list as of the date such notice is mailed, and (3) a title search or any other additional method of identifying persons who own land that is adjacent to the land that is the subject of the hearing shall not be required. All applications and maps and documents relating thereto shall be open

for public inspection. At such hearing, any person or persons may appear and be heard and may be represented by agent or by attorney. All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing, unless a shorter period of time is required under this chapter, chapter 126, chapter 440 or chapter 446i. The petitioner or applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.

....

(c) For purposes of subsection (a) or (b) of this section and section 7-246a, the date of receipt of a petition, application, request or appeal shall be the day of the next regularly scheduled meeting of such commission, board or agency, immediately following the day of submission to such commission, board or agency or its agent of such petition, application, request or appeal or thirty-five days after such submission, whichever is sooner. If the commission, board or agency does not maintain an office with regular office hours, the office of the clerk of the municipality shall act as the agent of such commission, board or agency for the receipt of any petition, application, request or appeal.

Sec. 8-11. Disqualification of members of zoning authorities. No member of any zoning commission or board and no member of any zoning board of appeals or of any municipal agency exercising the powers of any zoning commission or board of appeals, whether existing under the general statutes or under any special act, shall appear for or represent any person, firm, corporation or other entity in any matter pending before the planning or zoning commission or board or said board of appeals or any agency exercising the powers of any such commission or board in the same municipality, whether or not he is a member of the board or commission hearing such matter. No member of any zoning commission or board and no member of any zoning board of appeals shall participate in the hearing or decision of the board or commission of which he is a member upon any matter in which he is directly or indirectly interested in a personal or financial sense. In the event of such disqualification, such fact shall be entered on the records of the commission or board and, unless otherwise provided by special act, any municipality may provide by ordinance that an elector may be chosen, in a manner specified in the ordinance, to act as a member of such commission or board in the hearing and determination of such matter, except that replacement shall first be made from alternate members pursuant to the provisions of sections 8-1b and 8-5a.

Sec. 8-11a. Disqualification of board member as enforcement officer. No person may serve as zoning enforcement officer in any municipality wherein he is a member of the zoning board of appeals.

Case Law

"[T]he granting of a variance must be reserved for unusual or exceptional circumstances.... An applicant for a variance must show that, because of some peculiar characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone.... Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance.... A mere economic hardship or a hardship that was self-created, however, is insufficient to justify a variance ... and neither financial loss nor the potential for financial gain is the proper basis for granting a variance." *Moon v. Zoning Board of Appeals*, 291 Conn. 16, 24-25 (2009).

Key Points

1. Hardship must be based on the unique characteristics of *the property itself* – not on the personal circumstances of the owners.
2. The economic concept of "highest and best use" is not appropriate for variance analysis; the proper question is whether the regulations allow a reasonable use, not the most valuable or lucrative use
3. The property owner may not create the property condition he or she later claims to cause the hardship. *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 143 (1965)
4. Variances may sometimes be allowed if they will reduce the extent or intensity of a nonconforming use without increasing any other nonconforming aspect of the use. *Turek v. Zoning Bd. of Appeals*, 196 Conn. App. 122, *cert. denied*, 335 Conn. 915 (2020).

Bias and Prejudgment

"Bias" generally refers to a personal feeling either of favoritism or antipathy toward a particular person or position. "Predetermination" or "prejudgment," in contrast, is a predilection to vote for or against a particular application. If a court finds that a ZBA member has made remarks indicating bias, or that a member has made up his or her mind about an application before the hearing has been closed, the court may reverse the ZBA's decision and order a new hearing without that member's participation.

Ex Parte Contacts

When an application is pending before a ZBA, all comments and discussion by Board members about the application is required to take place during the Board's public meetings and hearings. If a court learns that a Board member had discussions with any

other person about the application outside of a public meeting, the court can reverse the Board's decision.

Evidence the Board May Consider

When a ZBA is deciding on an application, the only evidence it may properly consider is evidence that was presented or otherwise available to the public during the public hearing process. Once the public hearing has been closed, no further evidence can be provided to the Board and no further comments from the public (including the applicant and any opponents) may be considered.

Role of Alternates

Any alternate member may participate fully in the discussion in any public hearing even if that member has not been seated in place of a regular member. However, once the hearing is closed, alternates may not participate in any discussion unless they are seated in place of a regular member.