

# Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

- County
- City of Cuyler
- Town
- Village

STATE OF NEW YORK  
DEPARTMENT OF STATE  
**FILED**  
AUG 22 2008

Local Law No. 2 of the year 20 08

MISCELLANEOUS  
& STATE RECORDS

A local law Creating the Board of Appeals  
*(Insert Title)*

Be it enacted by the \_\_\_\_\_ of the  
*(Name of Legislative Body)*

- County
- City of Cuyler
- Town
- Village

as follows:

## ARTICLE I. CREATION, COMPOSITION AND APPOINTMENT

(1) **Creation.** A Board of Appeals is hereby established in accordance with §267 of the Town Law.

(2) **Composition.** The Board of Appeals shall consist of five (5) members holding staggered terms in accordance with §267 of the Town Law.

(3) **Appointment.** The Town Board shall appoint the members of the Board of Appeals and the members of said Board shall designate its Chairperson. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.

(4) **Removal.** The Town Board shall have the power to remove any member of the Board for cause after public hearing.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(5) **Vacancies.** Vacancies shall be filled by the Town Board. If vacancies shall occur other than by the expiration of a term, they shall be filled by appointment for the balance of said unexpired term.

(6) **Compensation.** The Town Board may provide for compensation to be paid to Board members, experts, clerks, a secretary and for other such expenses as may be necessary and proper.

## **ARTICLE II. GENERAL PROCEDURES**

(1) **Meetings.** All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine, and a quorum of the Board's membership is required for any meeting. All meetings of such Board shall be open to the public.

(2) **Quorum.** The presence of three members shall constitute a quorum for the conduct of business before the board.

(3) **Oaths.** The Chairperson or, in his absence, the Acting Chairperson may administer oaths and compel the attendance of witnesses.

(4) **Minutes.** The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examination and other official actions. Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Town Clerk and shall be a public record.

(5) **Rules and regulations.** The Board of Appeals is hereby authorized to establish rules and regulations not inconsistent with this chapter or the statutes authorizing the same and may modify, amend or repeal such rules. Every such rule, regulation, amendment or repeal thereof shall be filed in the office of the Town Clerk and shall be a public record.

(6) **Filing fees.** Applicants are required to pay fees to cover a portion of the reasonable cost of administering this local law. At the time an applicant first submits an application for a variance, the applicant shall pay the appropriate fee as established by resolution of the Town Board.

## **ARTICLE III. DEFINITIONS**

(1) "Use variance" shall mean the authorization by the Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable regulations, if any, of the Town as established by local law or ordinance.

(2) "Area variance" shall mean the authorization by the Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable regulations, if any, of the Town as established by local law or ordinance.

## **ARTICLE IV. POWERS**

The Board of Appeals shall have the following powers:

(1) **Orders, requirements, decisions, interpretations and determinations.** The 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 such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

(2) **Use variances.**

(a) The Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that, for each and every permitted use under the regulations:

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

(c) The Board of Appeals, in the granting of use variances, 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.

(d) **Notifications.** At the time of submission of the application for an use variance, the applicant shall submit, in addition to otherwise required documentation, the following:

1. A reproduced copy of the Tax Map or excerpt of the Tax Map depicting the parcel(s) of land in question and all lands within 500 feet distance from the perimeter thereof.
2. A schedule of the names and addresses of the property owners within 500 feet distance from the perimeter of the parcel in question.
3. Satisfactory proof that the property owners within 500 feet of the perimeter of the parcel have been notified in writing by certified mail of the nature of the request for a use variance (include a brief narrative). The permit application will be filed with the Town Clerk.

4. In the event that the applicant or a related company or corporation owns lands adjacent to the parcel in question, then, in such event, the notice required herein shall be provided to property owners within 500 feet of the parcel adjacent to the parcel in question.

5. For purposes of this section only, the term "applicant" shall include owner, agent, or applicant.

**(3) Area variances.**

(a) The Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the 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 by such grant. In making such determination, the Board shall also consider:

1. 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;

2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

3. Whether the requested area variance is substantial;

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or, if applicable, district; and

5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(c) The Board of Appeals, in the granting of area variances, 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.

(d) Notifications. The formal notifications as required for use variances in Article III (2)(d) above will not normally be required in the case of a request for an area variance. However, if the situation warrants it, the Chairperson of the Board of Appeals may require the applicant to accomplish such notifications.

(4) **Majority Vote.** The concurring vote of a majority of the Board shall be necessary to grant either an area or use variance.

**ARTICLE V. SPECIAL PROCEDURES RELATIVE TO APPEAL**

(1) **Who may appeal.** An appeal to the Board of Appeals for administrative review or variance may be taken by any person, firm or corporation aggrieved or by any

government officer, department, board or bureau affected by any decision of the Code Enforcement Officer or other administrative officer based in whole or in part upon the provisions of this chapter. Such appeal shall be taken by filing with the Board of Appeals and the Code Enforcement Officer a notice of appeal specifying the grounds thereof. The Code Enforcement Officer shall forthwith transmit to the Board of Appeals all papers constituting the record upon which the action appealed from was taken.

**(2) Time of appeal.**

(a) In the case of the refusal of the Code Enforcement Officer to issue a building permit or a certificate of occupancy, said notice of appeal shall be filed within 60 days from the date upon which such notice of refusal of building, permit or certificate of occupancy is mailed by the Code Enforcement Officer. Failure to file such notice of appeal within 60 days shall constitute a waiver of the right of appeal.

(b) In the case of the granting, by the Code Enforcement Officer of a building permit or a certificate of occupancy, said notice of appeal shall be filed within 60 days from the date upon which such notice of granting of building permit or certificate of occupancy is mailed by the Code Enforcement Officer or within 30 days after construction is commenced under said building permit or occupancy is commenced under said certificate of occupancy. Failure to file such notice of appeal within the time limited above shall constitute a waiver of the right of appeal.

**(3) Stay of proceedings.** An appeal stays all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer from which the appeal is taken certifies to the Board of Appeals, 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 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, on notice to the Code Enforcement Officer and on due cause shown.

**ARTICLE VI. HEARING AND NOTICE**

(1) Hearing. The Board of Appeals shall fix a reasonable time for the hearing of any application for a variance, any appeal for administrative review, or any application for a special permit not to exceed 45 days from the time of filing of a completed application.

(2) Notice. The Board of Appeals shall give public notice of the hearing of any application for a variance or any appeal for administrative review in the official paper at least five days prior to the date thereof and shall, at least five days before such hearing, mail notice thereof to the applicant and shall decide the same within 62 days after the final hearing.

**ARTICLE VII. REHEARING**

Upon motion initiated by any member and adopted by the unanimous vote of the members present but not less than a majority of all the members, the Board of Appeals shall review at a rehearing, held upon notice given as upon an original rehearing, any order, decision or determination of the Board not previously reviewed. Upon such rehearing, and provided that it shall then appear that the rights vested prior thereto in persons acting in good faith in reliance upon the order, decision or determination reviewed will not be prejudiced thereby, the Board may, upon the concurring vote of all

of the members then present, reverse, modify or annul its original order, decision or determination.

**ARTICLE VIII. EFFECTIVE DATE**

This local law shall take effect immediately upon its filing, as required by law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 2 of 20 08 of the ~~(County)(City)~~(Town)(Village) of Cuyler was duly passed by the Town Board (Name of Legislative Body) on August 14, 20 08, in accordance with the applicable provisions of law.

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ (Name of Legislative Body) on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ (Elective Chief Executive Officer\*) and was deemed duly adopted on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ (Name of Legislative Body) on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20 \_\_\_\_\_.

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general) (special)(annual) election held on \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ (Name of Legislative Body) on \_\_\_\_\_ 20 \_\_\_\_\_, and was (approved)(not approved) (repassed after disapproval) by the \_\_\_\_\_ (Elective Chief Executive Officer\*) on \_\_\_\_\_ 20 \_\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 20 \_\_\_\_\_, in accordance with the applicable provisions of law.

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

**5. (City local law concerning Charter revision proposed by petition.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 20\_\_\_\_\_, became operative.

**6. (County local law concerning adoption of Charter.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 20 \_\_\_\_\_ of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 20\_\_\_\_\_, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

**(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)**

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Wendy J. Custer  
Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: August 19, 2008

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

STATE OF NEW YORK  
COUNTY OF CORTLAND

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

[Signature]  
Signature  
Town Attorney  
Title

~~XXXXXX~~  
~~NY~~ of Cuyler  
Town  
~~Village~~

Date: August 19, 2008