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Zoning Board of Appeals Overview

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Introduction

- Zoning
  - Zoning Board of Appeals (ZBA)
  - Zoning Enforcement Officer (ZEO)
  - Appellant
- Interpretations
- Use variances
  - Proof of unnecessary hardship
- Area variances
  - Individual benefit vs. community detriment considerations
- Procedures
  - SEQRA
  - Meetings & hearings
  - County referral
  - Rehearing
- Decisions, filing & findings

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Zoning

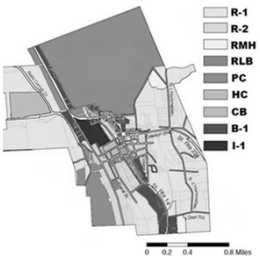
Divides municipality into districts

Goal: avoid incompatible land uses

Regulates:

- Land use
- Density
- Placement of structures on site

Optional



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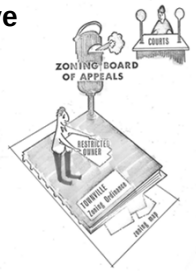
Zoning requires a safety valve

- Municipalities with zoning must have zoning board of appeals
- ZBA is a “buffer” for aggrieved applicants between decisions of zoning enforcement officer & State supreme court



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Zoning enforcement officer

Administrative official charged with enforcement of zoning code
- Renders initial decision regarding conformity with zoning
- Cites violations of zoning code

Municipal official solely designated as ZEO or an official with dual responsibilities
- Municipal planner
- Code enforcement officer
- Other

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Statutory authority

	Town Law	Village Law	General City Law
Membership	§ 267	§ 7-712	§ 81
Procedure	§ 267-a	§ 7-712-a	§ 81-a
Variances	§ 267-b	§ 7-712-b	§ 81-b

Copies of state statutes may be found online at:

public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS

Or in the DOS Publication:

Guide to Planning and Zoning Laws of New York State

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ZBA members are public officers

Term of office:

3 or 5 years

Qualifications:

age, citizenship, residency

Removal:

attendance, cause

"I do so solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the [Zoning Board of Appeals Member], according to the best of my ability."

Section 1, Article XIII – NY Constitution

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State training requirements

Minimum of four hours annually
- Excess hours may be carried over

Consequence is ineligibility for reappointment
- Failure to comply does not void decisions

Governing board approves training
- Variety of sources & formats

Requirements may be waived or modified
- Best interest of municipality
- Resolution of governing board

Tracked locally

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Powers and duties

All ZBAs have **APPELLATE JURISDICTION**

- Interpret zoning regulations
- Issue or deny appeals for variances

Some ZBAs have **ORIGINAL JURISDICTION** (if authorized by governing board):

- Special use permits
- Site plan review

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Appeals

ZEO must first have acted based on zoning regulations:

- Grant permit
- Deny permit
- Issue citation for violation or take another enforcement action

Exception

Direct appeal for area variance(s) within applications:

- Site plan review
- Subdivision review
- Special use permit

Appellant must have standing

One denied permit or cited for violation

Third party to be harmed by ZEO's decision

A municipal "officer, department, board or bureau"

When to file appeal

Within 60 days of ZEO filing action

Exception: Third parties must file within 60 days from date they should have known or could have knowledge of ZEO's action

File notice of appeal by letter if no ZBA form exists

File copies with ZEO & ZBA

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An appeal “stays” enforcement proceedings

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Interpretations

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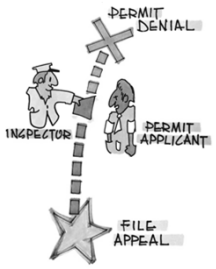
Appeal for interpretation



Appellant believes ZEO incorrectly applied the law

Common areas of interpretation:

- Definitions
- Method of taking measurements

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Basis for interpretations decisions

Without concise definitions, board must come to consensus on what they think term or regulation means

- Past decisions on same regulations or similar facts
- Minutes, hearing comments & other records which reveal governing board's intention when zoning was adopted or amendment made
- Ordinary meaning of terms, if term is undefined

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Cited, but no definition

- "Rave" style music events new to historic armory
- "Auditoria" principally permitted use in C-O District; no definition in zoning
- BZA: dictionary definition, fixed seating; use akin to "nightclub" in zoning
- Appellate Division ruled City must define "auditoria" in petitioner's favor

Washington Avenue Armory v. City of Albany

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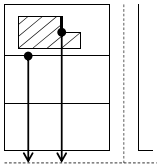
Measurement for adult use permit

- Minimum "500' radius from residential area" for adult uses
- Begin measurement from:
  - Property line; or
  - Building entrance
    - NYS Alcoholic Beverage Control Law
- Appellate Division ruled
  - No statutory requirement
  - ZBA entitled to deference

Cupid's Video Boutique v. Town of Babylon ZBA



Residential District

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Use Variance

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To use land for a purpose not allowed by zoning

Alternative:
rezone property

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Use variance test

The "burden of proof" is on the applicant

1. No reasonable return
2. Unique circumstances
3. No self-created hardship
4. No alteration to essential neighborhood character

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1. No reasonable return

Applicant must demonstrate the land is not capable of making a reasonable return with:

- any permitted use
- a current lawful nonconforming use
- any use currently allowed by previous use variance

ZBA must consider property as a whole, not just the portion which is the subject of the application

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Reasonable rate of return

No hard & fast numbers

Depends on particular facts of application

ZBA determines

They do not have to agree with expert's opinion

Petruzzelli v. Zoning Bd of Appeals of the Village of Dobbs Ferry, 181 A.D.2d 825 (2d Dept. 1992)

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2. Unique circumstances

Parcel is only, or one of very few, affected to the extent zoning would create a hardship

"Uniqueness of land" causing plight, not "uniqueness of the plight of the owner"

Other circumstances:
Physical features
Historic or architectural features
Adjacent uses

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3. Self-created hardship

Examples:

- Request relief from restrictions which existed at time of sale;
- Owner bound by zoning restrictions, even without knowledge of them;
- Spending money on project not allowed by zoning

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4. Neighborhood character

Is proposed use consistent with existing development?

Is there significant adverse impact on neighborhood or community?

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Nonconforming uses

- Legal, existed prior to current zoning; "grandfathered"
- Don't generally need use variances to continue
- For use variances on properties with nonconforming uses, applicants must prove no reasonable return on allowed uses & nonconforming uses
- "Grandfathered" isn't necessarily permanent: (abandonment, amortization)

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Area Variance

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Area variance

To vary from dimensional requirements of zoning regulations

Example:

Property needed area variance for relief from setback requirements to construct driveway so close to lot line

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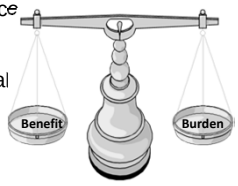
Area variance test

1. Change to neighborhood character
2. Alternatives not requiring a variance
3. Substantiality of the request
4. Effect on physical or environmental conditions
5. Is the situation self-created?



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1. Change to neighborhood character

Would undesirable changes be eliminated with conditions imposed?

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2. Alternatives not requiring variance

Consider placing addition in rear instead of side

Applicant should present reasons for choosing one alternative over another:

✓ **Better view**	✓ **Better internal pattern**
✓ **Cheaper construction**	✓ **Better overall aesthetics**

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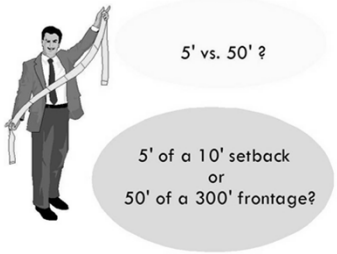
3. Substantiality of request

Amount of variance requested

Magnitude of variance requested



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4. Physical or environmental impacts

Examples:

- blocked views
- drainage problems
- impacted wetlands
- parking shortages

5. Is situation self-created?

If so, the owner is not necessarily precluded from being granted an area variance.

Examples:

Shed needs setback relief because of substandard sized lot

Addition begun in violation of height restrictions

Conditions

- Clearly specify conditions imposed
- Must be reasonably related to the impact of proposal being considered
- Nexus

"Such conditions might properly relate 'to fences, safety devices, landscaping, screening, and access roads related to period of use, screening outdoor lighting and noises…incidental to comfort, peace, enjoyment, health, or safety of the surrounding area."

St. Onge v. Donovan, 71NY2d 507, 516 (1998).

Grant minimum variance necessary

Board need not grant or deny variance request as submitted:

"The Board of appeals, in the granting of… 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."

Town Law 267-b
Village Law 7-712-b
General City Law 81-b

Procedures

Board rules of procedure

To be binding, board rules of procedures must be adopted by governing board by local law or ordinance. They cover a variety of issues, including:

- Officer and committee duties
- Calling meetings, agendas, public input
- Referrals
- Minutes
- Official document signatures

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State Environmental Quality Review Act

- Board determines environmental impacts if variance were granted
- Evaluate potential environmental impacts prior to decision

Type II Actions examples (this classification ends SEQR)
- Interpretations
- Setback relief

SEQRA publication for local governments: www.dos.ny.gov/LG/seqr.html

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Open meetings

- Notice
  - Media
  - Posted in conspicuous place
  - Municipal website (5/12/09)
- Access
- Executive sessions
  - No meeting behind closed doors to discuss applications or board business
  - Only held for reasons defined in OML
  - Open Meetings Law—Article 7 Public Officer's Law §105

A "work session" or "site visit" is a meeting subject to OML if quorum gathers to discuss public business

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Open meetings – effective 2/2/12

Records scheduled for discussion at an open meeting must be available for public review on the agency's website in advance

- Website:
  - Routinely updated high speed internet connection
- Records include:

  Proposed resolution; law, rule or regulation; policy or amendment to a policy

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State hearing notice requirements

- Public meeting requirements
- Legal notice in official newspaper
  - 5 days prior to hearing date
- Mail notice to:
  - Parties to the appeal
  - Regional state park commission, if 500' from state park or parkway
  - Other agencies, if applicable
    - GML §239-m & GML §239-nn

- Content of notice:
  - Date, time & place
  - Nature of proposed action
  - Location of subject property, if applicable

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Local hearing notice requirements

- Municipalities may adopt additional local noticing requirements:
  - Signs on application property
    - best practice
  - Mailings to neighbors
  - Municipal ListServ

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Hearing notice

If decision on interpretation will dictate whether or not variance will be required…

…include language in notice for variance request in the event interpretation isn't in applicant's favor

LEGAL NOTICE (Excerpt)
NOTICE IS HEREBY GIVEN
……
The Applicant requests an interpretation whether the Applicant's proposed single family dwelling complies with the sixty(60) foot setback from Pearl River Road. The Applicant also requests a variance from the sixty(60) foot setback from Pearl River Road in the event the Zoning Board of Appeals determines that the proposed dwelling's location does not comply with the sixty foot setback.

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Notice to adjacent municipality

GML §239-nn

Special Use Permits or **Use Variances** within 500' of adjacent municipality require notifying neighboring clerk:

- by mail or electronic transmission
- at least 10 days prior to any hearing

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County referral

GML §239-m applies to applications within 500' of:

- Municipal boundaries
- State or county parks, highways, streams, or institutions
- Land on which a state or building is located
- Farm operations in State Agricultural Districts
- Area variances exempted

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Waiting to act

ZBA cannot take final action until:

- ZBA receives the county planning agency's report
  - **OR**
- 30-days after county receives full statement

Two day rule

Time period may be extended by mutual agreement

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Effect of county referral

If county recommends disapproval or approval with conditions, the local board may act contrary to the county's recommendations by a supermajority vote

– A majority vote plus one vote

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Taking action

- Motion/resolution only passes with the majority of ENTIRE board
- If motion fails:
  - Variance request or zoning interpretation request is denied*
  - No action on matters of original jurisdiction, such as site plan review

***Additional votes taken within statutory time frame won't trigger rehearing process**

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Rehearing

ZBA can vote to reconsider a matter it previously acted on if:

- Matter has not been previously reheard
- Motion to rehear matter receives unanimous vote of all present
- Change of original decision receives unanimous vote of all present

Remember: rehearing must comply with notice provisions

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Decisions, Findings, and Filing

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Decisions

- Must be made within 62 days after hearings close
- Minutes must contain record of each vote
- Should include language of motion & any conditions passed
- Send copy with findings to applicant, & county if applicable

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Findings

Findings should be able to support decision if it's challenged in court

- Analysis applying law to facts, leading to conclusions
- Describe denial or approval reasons
- May also support why conditions were imposed
- Should be approved by board, not simply drafted by attorney & filed

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Filing

- Begins when records are placed under municipal clerk's control
- File decisions within 5 business days after decision is rendered (or sooner)
- Start of 30 day appeals period for Article 78 proceeding is established

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New York Department of State

(518) 473-3355 Division of Local Government

(518) 474-6740 Counsel's Office

(800) 367-8488 Toll Free

Email: localgov@dos.ny.gov
Website: www.dos.ny.gov
www.dos.ny.gov/lg/index.html

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Town Law § 267
Zoning Board of Appeals

1. Definitions. As used in this section:

   (a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

   (b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

2. Appointment of members. Each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.

3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such board of appeals.

4. Terms of members first appointed. In the creation of a new board of appeals, or the reestablishment of terms of an existing board, the appointment of members to the board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term which shall be equal in years to the number of members of the board.

5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a 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.

6. Increasing membership. Any town board may, by local law or ordinance, increase a three member board of appeals to five members. Additional members shall be first appointed for single terms as provided by resolution in order that the terms of members shall expire in each of five successive years and their successors shall thereafter be appointed for full terms of five years. No such additional member shall take part in the consideration of any matter for which an application was on file with the board of appeals at the time of his or her appointment.

7. Decreasing membership. A town board which has increased the number of members of the board of appeals to five may, by local law or ordinance, decrease the number of members of the board of appeals to three to take effect upon the next two expirations of terms. Any board of appeals which, upon the effective date of this section has seven members, may continue to act as a duly constituted zoning board of appeals until the town board, by local law or ordinance, reduces such membership to three or five. However, no incumbent shall be removed from office except upon the expiration of his or her term.

7-A. Training and attendance requirements.

(a) Each member of the board of appeals shall complete, at a minimum, four 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 hours in any one year may be carried over by the member into succeeding years in order to meet the requirements of this subdivision. Such training shall be approved by the town board and may include, but not be 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 to such board, such member shall have completed the training promoted by the town pursuant to this subdivision.

(c) The training required by this subdivision may be waived or modified by resolution of the town board when, in the judgment of the town board, it is in the best interest of the town to do so.

(d) No decision of a zoning board of appeals shall be voided or declared invalid because of a failure to comply with this subdivision.

8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.

9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the zoning board of appeals for cause. Any zoning board of appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the board of appeals shall be held at he call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chair person, may administer oaths and compel the attendance of witnesses.

11. Alternate members.

(a) A town board may, by local law or ordinance, or as a part of the local law or ordinance creating the zoning board of appeals, establish alternate zoning board of appeals member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the zoning board of appeals shall be appointed by resolution of the town board, for terms established by the town board.

(b) The chairperson of the zoning board of appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial zoning board of appeals meeting at which the substitution is made.

(c) All provisions of this section relating to zoning board of appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy

in office, removal, and service on other boards, shall also apply to alternate members.

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§ 267-a. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such 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 examinations and other official actions.

2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.

3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.

4. 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 town.

5. Filing of administrative decision and time of appeal.

   (a) 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 town board may, by resolution, require that such filings instead be made in the town clerk`s office.

   (b) 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.

6. 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, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the 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 town at least five days prior to the date thereof. The cost of

sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. 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.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board 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.

13. Voting requirements.

a. Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

NOTIFICATION BY MAIL REQUIREMENT

This mailing is not performed until after submission of your APPLICATION
and receipt of the NOTICE OF HEARING from the ZBA office.

Town of Huntington TOWN CODE §198-112(E) states:

"The applicant shall mail notices, post marked no less that thirty (30) days nor more that thirty five (35) days before the hearing, to the owners as well as the occupants of all adjoining properties within five hundred (500) feet of the exterior limits of the applicant's total property holding, as shown on the current tax roll; with the exception of applications in the R-15, R-10 and R-5 zoning districts where notification to adjoining property owners and occupants shall be to those within two hundred (200) feet of the exterior limits of the applicants total property holding, as shown on the current tax roll."

"In addition the applicant shall provide a "Certificate of Mailing" for each recipient, which legibly indicates the name and address of the person, including the occupant, to which the notice was mailed, and is duly certified by the post office."
"The applicant shall also file an affidavit of mailing together with the duly certified "Certificates of Mailing" to the Zoning Board of Appeals office, in no less than five (5) working days before the hearing. Said affidavit shall include the name of the person that actually mailed the notices and the names and addresses of the property owners and the addresses of the occupants that were notified."
"Failure to mail the notices and/or provide the affidavit and/or the Certificates of Mailing to the Zoning Board of Appeals office may result in postponement of the public hearing. . . ."

POSTING A SIGN REQUIREMENT

Town of Huntington TOWN CODE §198-112(F) states:

As well as the notification provision in Subsection E above, the applicant or his/her authorized agent shall also post a sign on each frontage of the subject property giving notice that an application is pending before the Zoning Board of Appeals and the nature of that application as well as the date, time and place at which the public hearing will take place.
(1) The sign(s) shall be 20 inches by 30 inches and shall be supplied to the applicant by the Town Planning Department for a fee. Said sign shall be located at the center of the frontage of the property, not more than 10 feet back from the property line. It shall be nailed to a tree, pole or post not less that two feet nor more that six feet above grade and it must be clearly visible from the street. On or before the date and time of the public hearing the applicant or his/her agent shall certify, in writing, in a notarized affidavit to the Board, that he/she has erected the sign as described herein. At the discretion of the Board, failure to erect the sign or submit the affidavit may mean cancellation of the hearing.
(2) Such sign or signs shall be displayed for a period of not less than five days immediately preceding the public hearing and shall be removed by the applicant or his/her agent within three days after the hearing has taken place.

Village of Pittsford
Village Code, Excerpt

§ 210-111 Notice of public hearing.

[Added 3-14-2000 by L.L. No. 4-2000]

A. All applicants to the Board of Appeals, Planning Board or Board of Trustees for variances, site plan approval, special exception uses, special permits, temporary permits or any other application or appeal shall be required to give notice of such application and public hearing in the following manner not less than 10 days immediately preceding the public hearing date or any adjourned date. Said notice(s) shall contain the type of application being made and the date, time and place of the public hearing.

B. The applicant shall be required to erect a sign provided by the Village Clerk on the premises of the subject property or properties facing each public street on which the property abuts. The sign shall be erected not more than 10 feet from the property line facing the public street and not less than two feet nor more than six feet above the grade at the property line. The sign shall be securely attached to durable material and protected from the elements. The applicant shall take reasonable care that the sign is visible to the public at all times during the prescribed time period.

C. The Village Clerk shall notify, by regular mail, all property owners within 300 feet of the subject property or properties. A copy of the notice, the list of property owners and their mailing addresses shall be provided to the appropriate Board by the Village Clerk prior to the public hearing.

D. The applicant shall provide, prior to the public hearing, an affidavit of compliance with the provisions of this section.

CITY OF UTICA, NEW YORK
ZONING BOARD OF APPEALS APPLICATION

USE VARIANCE

It is the responsibility of the applicant to complete this form in its entirety, including all required attachments, and as precisely as possible. Failure to submit a complete application may result in a delay in being placed on a Zoning Board of Appeals agenda or a delayed decision from the Zoning Board.

PROPERTY ADDRESS:_____

COUNTY TAX MAP IDENTIFICATION NUMBER:_____

APPLICANT INFORMATION

NAME _____ ADDRESS _____

PHONE _____ _____

City State ZIP

FAX _____ E-MAIL _____

OWNER INFORMATION *(complete **only** if applicant is not the owner of the property)*

NAME _____ ADDRESS _____

PHONE _____ _____

City State ZIP

FAX _____ E-MAIL _____

RELATIONSHIP OF APPLICANT TO PROPERTY:

- ❑ CONTRACT PURCHASER
- ❑ CONTRACTOR
- ❑ ARCHITECT/ENGINEER
- ❑ LESSEE

OFFICE USE ONLY

RECEIVED BY: _____ DATE/TIME RECEIVED: _____

FEE AMOUNT: _____ CHECK/MONEY ORDER #: _____

ZONING: _____ FEE TRANSMITTAL DATE: _____

AGENDA DATE: _____ DEADLINE DATE: _____

BRIEF HISTORY OF PROPERTY *(historic use of property, ownership history, etc.)*

DESCRIPTION OF PROPOSED ACTION *(include specific use proposed, hours, # of employees, etc.)*

VARIANCE STANDARDS *(§ 2-29-67(d)(2))*

Applications for use variances must be based on alleviating a clearly demonstrable hardship, as opposed to a special privilege of convenience sought by the owner. Furthermore, the hardship must be peculiar to the land or building and must not generally apply to land throughout the neighborhood. An example of a property that may potentially have a valid case for a use variance is a corner store in a predominantly residential neighborhood. If the building has large plate glass storefront windows, a parking lot and loading docks in the rear, it would be extremely costly to convert the building to residential uses to comply with existing zoning regulations.

DESCRIPTION OF HARDSHIP *(describe the features or conditions of the property that restrict reasonable use of the property under current zoning regulations)*

COMPATIBILITY WITH NEIGHBORHOOD *(describe the manner by which the proposed use will be consistent with adjoining development and will not cause substantial injury to neighboring properties)*

APPLICATION ATTACHMENTS

To ensure appropriate and timely review of the application, please provide the following additional documentation in support of the application. Failure to provide all of the applicable materials listed below may result in a delay in scheduling the application for review by the Zoning Board of Appeals.

- ❑ $150.00 application fee (check or money order only payable to City of Utica)
- ❑ Detailed site plan (see sample on following page)
- ❑ Detailed drawings for parking layout, landscaping and signage
- ❑ Photographs of existing conditions

APPLICANT/OWNER AFFIRMATION

I, THE UNDERSIGNED, DO HEREBY AFFIRM THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE TO THE BEST OF MY KNOWLEDGE AND I FURTHER UNDERSTAND THAT INTENTIONALLY PROVIDING FALSE OR MISLEADING INFORMATION IS GROUNDS FOR IMMEDIATE DENIAL OF MY APPLICATION.

FURTHERMORE, I UNDERSTAND THAT I (OR A DESIGNATED REPRESENTATIVE) MUST BE PRESENT AT THE MEETING TO REPRESENT THE APPLICATION AND RESPOND TO ANY QUESTIONS FROM THE ZONING BOARD OF APPEALS MEMBERS.

_____ _____

Signature (Applicant) DATE

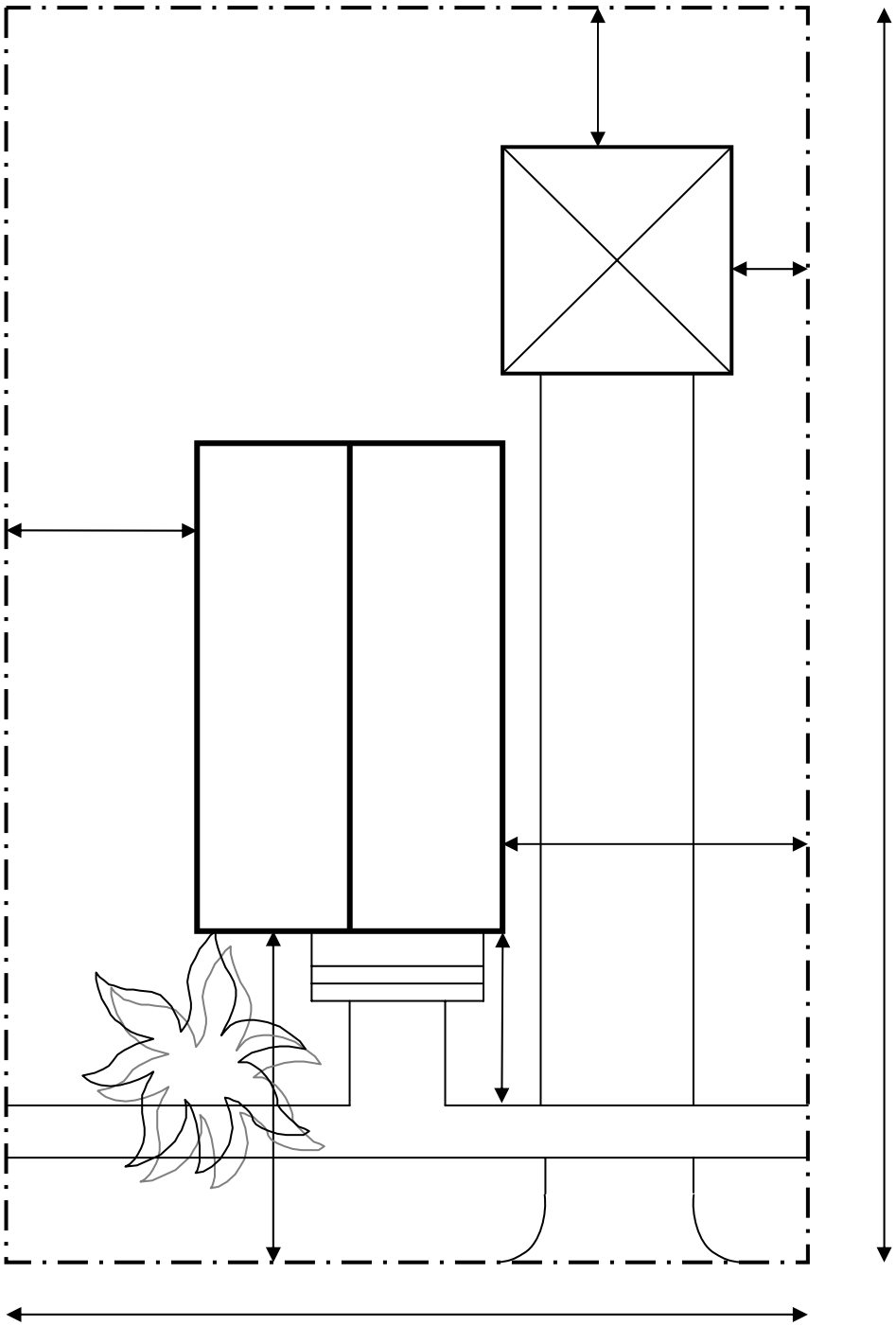
IF APPLICANT IS NOT THE OWNER OF RECORD FOR SUBJECT PARCEL:

I, THE UNDERSIGNED, HEREBY AFFIRM THAT I AM THE OWNER OF RECORD FOR THE SUBJECT PARCEL AT THE TIME OF APPLICATION. FURTHERMORE, I AM FAMILIAR WITH THE REQUEST BY THE APPLICANT AND AUTHORIZE SAID APPLICANT TO REPRESENT THE INTEREST OF THE OWNER(S) IN FURTHERANCE OF THE REQUEST.

_____ _____

Signature (Owner) DATE

DETAILED SITE PLAN (SAMPLE)



USE VARIANCE FINDINGS & DECISION

(Dept. of State Example)

OFFICE USE ONLY
Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the Municipal Clerk: _____

Applicant: _____

Appeal Concerns Property at the following address:
_____
County Tax Map Section: _____ Block_____Lot_____
Zoning District Classification:_____

Use for which Variance is Requested:_____
_____
_____

Applicable Section of Zoning Code:_____
Permitted Uses of Property: _____
_____

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1.The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes___No___

Proof:_____
_____
_____
_____
_____

ILLUSTRATIONS OF FINANCIAL EVIDENCE
- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes___No___

Proofs:_____
_____
_____
_____

ILLUSTRATIONS OF UNIQUENESS
- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes___No__

Proof:_____

_____

_____

_____

_____

ILLUSTRATIVE NEIGHBORHOOD CHARACTER FACTORS
• Board members' observations of neighborhood.
• Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes___No___

Proof:_____

_____

_____

_____

_____

_____

SELF-CREATED
• What were the permitted uses at the time the property was purchased by the applicant?
• Were substantial sums spent on remodeling for a use not permitted by zoning?
• Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing the above four proofs, finds:

☐ That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.

☐ That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE)_____

_____

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____

_____

Adverse impact to be minimized:_____

_____

_____

Condition No. 2:_____

_____

Adverse impact to be minimized:_____

_____

_____

Condition No .3: _____

_____

Adverse impact to be minimized:_____

_____

_____

Condition No. 4:_____

_____

Adverse impact to be minimized:_____

_____

_____

_____ _____

Chairman, Zoning Board of Appeals Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	____	____
Member	_____	____	____
Member	_____	____	____
Member	_____	____	____
Member	_____	____	____

ZONING BOARD OF APPEALS

AREA VARIANCE FINDINGS & DECISION

OFFICE USE ONLY
Application No. AV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the Municipal Clerk: _____

Applicant: _____

Appeal Concerns Property at the following address:
_____
County Tax Map Section: _____ Block_____Lot_____
Zoning District Classification:_____

Requirement for which Variance is Requested:_____
_____
_____

Applicable Section(s) of Zoning Code:_____

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes___No___

Reasons: _____
_____
_____

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes___No___

Reasons:_____
_____
_____

3. Whether the requested variance is substantial: Yes___No__

Reasons:_____
_____

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes___No___

Reasons:_____
_____
_____

5. Whether the alleged difficulty was self-created: Yes__No_

Reasons:_____
_____
_____

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, finds that:

☐ the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.

☐ the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

Reasons:_____
_____
_____

The ZBA further finds that a variance of_____from Section _____of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:
_____
_____
_____

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____
_____
Adverse impact to be minimized:_____
_____
_____

Condition No. 2:_____
_____

Adverse impact to be minimized:_____
_____
_____

_____ _____
Chairman, Zoning Board of Appeals Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	____	____
Member	_____	____	____
Member	_____	____	____
Member	_____	____	____
Member	_____	____	____