

A GUIDE TO  
VARIANCE  
APPLICATIONS

(A General Informational Guide  
In Plain Language  
For the Average Landowner)

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VARIANCES DEFINED. When you find yourself in a position where you may wish to use your real property in a manner not allowed by the Town's Zoning Laws, it is then you will have to ask the Zoning Board of Appeals to make an exception to the rules, that is, to grant a variance.

If you need a "use variance" it would be to allow you to use your land in a manner or for a purpose which the Town's Zoning regulations does not allow or in general, applies to the use which a parcel of land or structure thereon is put.

If you need an "area variance" it would be to allow you to use your land in a manner which does not meet the dimensional requirements of the Town's Zoning regulations or in general, applies to the land itself.

YOU MUST PROVE YOU MEET THE REQUIREMENTS. As an applicant for a variance, it is up to you to present relevant facts to prove your case and to present your situation in an orderly and logical manner. To do this you should come up with arguments in support of your case, and any supporting documents you may have available.

You must meet the legal requirements in order for a variance to be granted. The rules for allowing the use and area variances are different. The basic requirements you must meet in each instance are set out as follows:

#### REQUIREMENTS FOR AN AREA VARIANCE:

(1) You need to demonstrate what, if any, benefit you will gain if the variance is granted, as weighed against the detriment to the health, safety and general welfare of the neighborhood or community by such grant.

(2a) You need to show that your variance, if granted, will not produce an undesirable change in the character of the neighborhood.

(2b) You also need to show that your variance, if granted, will not create a detriment to nearby properties.

(3) This point is very important. You need to show that the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue other than an area variance. In other words go through all the possible alternatives if you are not allowed a variance and show that they are all either impossible, cost too much to do, or provide some other reasonable reasoning why it would not work.

(4) You need to show that the requested area variance is not substantial.

(5) You need to show that the proposed area variance you are requesting will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

(6) You need to address whether the alleged difficulty is self-created or not. It is best to offer evidence to show that it was not, but it is not absolutely necessary. This is relevant to the Board's decision but does not necessarily preclude the granting of the variance.

REQUIREMENTS FOR A USE VARIANCE. You will need to present arguments, evidence, etc. to prove the following points:

(1) Under the applicable zoning regulations, you need to show that you as the applicant, would be deprived of all economic use or benefit from the property in question if the variance is not granted. You need to present evidence illustrating this.

(2a) You need to show that your alleged hardship relating to the property in question is unique.

(2b) Show that your hardship applies only to a minute portion of the district or neighborhood.

(3) Show that the requested use variance, if granted, will not alter the essential character of the neighborhood.

(4) Show that your alleged hardship has not been self-created.

PROCEDURE. You need to submit an appeal application and a \$75.00 filing fee to the Town Clerk. The case is first referred to the Planning Board for a recommendation only and then the Zoning Board of Appeals will proceed to set up a public hearing where people can speak for or against your application.

Neighboring property owners within five hundred (500) feet of the subject property will be notified, so it is in your best interest to talk to them and tell them what you're doing and maybe even get a letter of support from them.

The Zoning Board must then hold a meeting, which is open to the public, to make a decision on your application within 62 days. The usual practice has been to hold the Zoning Board meeting following the public hearing. At this meeting the Board will try to establish the facts. This is where it becomes

important that you have furnished the relevant evidence and supporting documentation to show that you are entitled to a variance. When the facts are known, to the Board's satisfaction, they will make their decision. You will also receive a written copy of their minutes which show the Board's decision.

**THE DECISION/YOUR APPEAL RIGHTS.** If it is the Board's decision to grant your variance, you will probably be able to proceed with your plans.

If the Board denies your request, then you have thirty (30) days to appeal from the date the written decision (usually the Board's minutes) is filed in the Town Clerk's Office and you are forwarded a copy. It would be an appeal to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules. Town Law Section 267.c sets forth the details concerning the appeal. A copy of that section of law follows.

#### TOWN LAW

##### **§267-c. Article seventy-eight proceeding**

1. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision of the board in the office of the town clerk.

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.

4. Power of court. If upon the hearing at the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

*(Eff. 6/30/92, Ch. 248, L. 1992)*

**QUESTIONS.** If you have any questions, feel free to call the Town Clerk or the Code Enforcement Officer at 527-8280.