

CRITERIA FOR OBTAINING A USE VARIANCE

One of the basic powers given by law to a zoning board of appeals is called the “variance” power. The board has the authority to “vary” or modify, the strict letter of a zoning ordinance or local law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for individual.

Appeals boards are frequently confronted with request for variances. A use variance is a request to utilize property for a use or activity which is not permitted by the zoning ordinance, and the applicant must demonstrate “unnecessary hardship.”

USE VARIANCE

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An applicant for a use variance must demonstrate unnecessary hardship by satisfying EACH of the following four tests:

ALL THESE ITEMS MUST BE SATISFIED

1. Uniqueness
The applicant must prove there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district; a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.
2. Reasonable Return
The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a “dollars and cents” proof of the applicant’s inability to realize reasonable return, speculation or qualitative assessment is inadequate. Failure to realize the highest return is not considered a hardship.
3. Character
The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the “spirit” of the ordinance or local law should be preserved.
4. Creation
A use variance should not be granted if the “unnecessary hardship” was created by the applicant.

The applicant for a use variance must meet all four test before the appeals board may grant relief. If the appeals board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative intent of the zoning ordinance.

**TOWN OF HARRIETSTOWN
ZONING BOARD OF APPEALS**

39 Main St., Saranac Lake, NY 12983
Phone (518) 891-0202 Fax (518) 891-9020

DATE FILED: _____

REQUIRED FEE: \$210.00 PAID: _____ ALL APPLICABLE FEES ARE NON-REFUNDABLE

**APPLICATION TO THE ZONING BOARD OF APPEALS
TOWN OF HARRIETSTOWN
REQUEST FOR *USE* VARIANCE(S)**

(TYPE, OR PRINT IN DARK INK)

I. PROPERTY ADDRESS: _____

TAX MAP # : _____

ZONING DISTRICT: _____

II. PROPERTY OWNERSHIP:

NAME OF OWNER: _____

ADDRESS: _____

Latest Deed Reference C Date, Book & Page; (submit copy): _____

II. APPLICANT INFORMATION:

APPLICANT NAME: _____

ADDRESS: _____

PHONE NUMBER: _____

**(IF THE APPLICANT IS NOT THE OWNER, WRITTEN PROOF THAT THE OWNER
CONSENTS TO THE APPLICATION MUST BE SUBMITTED WITH THE APPLICATION.)**

IV. SUBJECT TO APPEAL (If Applicable)

Pursuant to the provisions of the Zoning Code of the Town of Harrietstown, this application, relative to the above referenced property, constitutes an appeal from the decision of the Zoning Administrator / Building Inspector _____.
(Name)

A copy of this decision, dated _____, must be attached.

V. APPEAL REQUEST

This appeal takes the form of a request for:

(a) Use Variance(s)

Please be advised that all sections under this heading must be answered completely. Bear in mind that a variance is actually relief from the strict application of the requirements of the law (the Zoning Ordinance), and the Zoning Board of Appeals is required to give sound reasons, based on the criteria set forth in this application, for granting any such relief. It is incumbent upon the applicant to demonstrate to the Board that these criteria are satisfied. Additional sheets may be attached as necessary. Please also note carefully the list of required attachments on the last page of this application.

VI. VARIANCE REQUEST

I/We, _____, hereby apply to the Zoning Board of Appeals for a variance to use the subject property as follows:

(1) **The granting of the variance is necessary in order for me to realize a reasonable return on the property and my lack of return is substantial, as demonstrated by the following competent financial evidence and attached documentation:** (You must show, for example, that the property cannot be used or sold or leased for any permitted use, how you have actively tried to use, sell or rent for each use permitted, ex. Ads, listings, and actual collars and cents proof, through documentation, of how much money you would lose if no variance is granted.)

- (2) **The alleged hardship relating to the property in question, and does not apply to a substantial portion of the district or neighborhood:** (You must show, for example, that the hardship applies only to your property and not to substantial portion of properties in district; that the hardship is not a general problem throughout district; that the hardship is unique to your property.)

- (3) **The requested use variance, if granted will not alter the essential character of the neighborhood:** (You must show, for example, that the parking or traffic patterns, noise levels and lighting will not change, that the outward appearance of property will not change; that the use will not be out of harmony with district.)

- (4) **The alleged hardship was not self created:** (You must show, for example, that you purchased the property subject to restrictive zoning and that the zoning was adopted subsequent to your purchase property.)

VII. LIST OF ATTACHMENTS

1. **Site or Plot Plan: Six (6) copies**
2. **Letter or communication, which resulted in application to the ZBA (if applicable.)**
3. **List of abutting property owners, by name, address and Tax Map Number.**
4. **Letter of owner consenting to application (if applicable).**
5. **Type 1 Action Only – Original and five (5) copies of the SEQRA FULL ENVIRONMENTAL ASSESSMENT FORM, with Part I completed.**
6. **Unlisted Actions Only – Original and five (5) copies of the SEQRA SHORT ENVIRONMENTAL ASSESSMENT FORM, with Part I completed.**
7. **Other attachments deemed pertinent by the applicant (please list):**
 - (a) _____
 - (b) _____
 - (c) _____
 - (d) _____
 - (e) _____

VIII. SIGNATURE AND VERIFICATION

Please be advised that no application can be deemed complete unless signed below.

I hereby certify that the information enclosed herewith and on the application is accurate and factual:

Signature of Owner: _____ Date: _____

**I the record owner do hereby authorize _____
to represent me before the Zoning Board of Appeals during the area variance process:**

Signature of Applicant: _____ Date: _____

SUBSCRIBED AND SWORN TO BEFORE ME

THIS _____ DAY OF _____ 20____. _____ COUNTY

NOTARY PUBLIC: _____

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR	2. PROJECT NAME
3. PROJECT LOCATION: Municipality _____ County _____	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY:	
7. AMOUNT OF LAND AFFECTED: Initially _____ acres Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: _____	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: _____	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: _____	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

<p>A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>If yes, coordinate the review process and use the FULL EAF.</p>
<p>B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency. <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)</p> <p>C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:</p> <p>C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:</p> <p>C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:</p> <p>C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:</p> <p>C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:</p> <p>C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:</p> <p>C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:</p>	
<p>D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain briefly:</p>	
<p>E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain briefly:</p>	

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

<p><input type="checkbox"/> Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.</p>	<p><input type="checkbox"/> Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide, on attachments as necessary, the reasons supporting this determination.</p>
<p>_____ Name of Lead Agency</p>	<p>_____ Date</p>
<p>_____ Print or Type Name of Responsible Officer in Lead Agency</p>	<p>_____ Title of Responsible Officer</p>
<p>_____ Signature of Responsible Officer in Lead Agency</p>	<p>_____ Signature of Preparer (If different from responsible officer)</p>

USE VARIANCE APPLICATION CHECKLIST

- APPLICATION COMPLETED AND SIGNED BY PROPERTY OWNER
(6 COPIES)
- MAPS AND DESCRIPTION INCLUDED (6 COPIES)
- DIAGRAMS – INCLUDE LAYOUT, SIDE AND FRONT ELEVATIONS
(6 COPIES)
- OTHER ATTACHMENTS

- SEQR FORM COMPLETED (6 COPIES)
- LETTER OR COMMUNICATION, WHICH RESULTED IN APPLICATION
TO THE ZONING BOARD OF APPEALS (IF APPLICABLE, 6 COPIES)
- LIST OF CONTIGUOUS PROPERTY OWNERS CONTAINING NAMES,
TAX ID NUMBERS, PHYSICAL AND MAILING ADDRESSES
- FEE PAID - \$160.00 PER SINGLE PROJECT
- ORIGINAL RECIEPT WITH APPLICANT, DUPLICATE WITH PAYMENT
- NOTICE OF PUBLIC HEARING PUBLISHED IN ADIRONDACK DAILY
ENTERPRISE 10 DAYS PRIOR TO THE HEARING DATE
- NOTICE APPLICANT AND ADJOINING PROPERTY OWNERS VIA
CERTIFIED MAIL WITH RETURN RECIEPT
- NOTICE AND APPLICATION DOCUMENTS TO ZONING BOARD OF
APPEALS MEMBERS
- HEARING DATE SET; PUT ON AGENDA FOR THAT MEETING
- NOTICE OF DECISION
- PERMIT ISSUED (IF APPROVED)