

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
39 MAIN STREET
SARANAC LAKE, NY 12983
HARRIETSTOWN.ORG

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 PRNT IN DARK INK)

1. **PROPERTY ADDRESS:** _____

TAX MAP # _____

ZONING DISTRICT: _____

2. **PROPERTY OWNERSHIP:**

NAME OF OWNER: _____

ADDRESS: _____

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

3. **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.)

4. **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.

5. **APPEAL REOUEST**

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 carefully note the list of required attachments on the last page of this application.

6. **VARIANCE REOUEST**

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.)

7. **LIST OF ATTACHMENTS**

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

(a) _____

(b) _____

(c) _____

(d) _____

(e) _____

8. **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: _____

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)

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.		NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval, or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:		NO <input type="checkbox"/>	YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned, or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, are adjoining or near the proposed action:			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies:	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state, or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe:	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: _____ Date: _____ Signature: _____ Title _____		
