

APPLICATION TO APPEAR BEFORE THE BOARD OF APPEALS

USE VARIANCE

All the forms included with this packet must be completed in their entirety in order to be scheduled to meet with the Board of Appeals. Failure to complete any form may cause a delay in the applicant's schedule.

Check with the Code Enforcement Officer on scheduled dates of meetings.

This request must have the following action (s):

	<u>YES</u>	<u>NO</u>
1. New York State		
a) D.E.C.	___	___
b) D.O.T.	___	___
2. Clinton County		
a) Health Department	___	___
b) Planning Board	___	___
3. Town of Plattsburgh		
a) Highway	___	___
b) Planning Board	___	___
c) Town Board	___	___
4. Other		
_____	___	___
_____	___	___

STANDARDS OF PROOF – USE VARIANCE: “UNNECESSARY HARDSHIP STANDARD”

For an applicant to be entitled to a Use Variance, he must satisfy the ‘unnecessary hardship standard’. The courts of New York hold that, to satisfy this standard, the applicant must establish by competent proof of the following:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone.
2. The use to be authorized by the variance will not alter the essential character of the locality.
3. The hardship is unique as to this parcel and is not general throughout the zoning district.

A. REASONABLE RETURN: As to proof of “no reasonable return”, the New York Court of Appeals held in the case of Crossroads Recreation v. Broz 4 N.Y. 2nd 39 – that the issue of “reasonable return” cannot be satisfied except by a showing of dollars and cents proof in which the following is established by competent evidence:

1. The amount paid for the land in question,
2. It’s present market value,
3. Annual Maintenance expenses.
4. Annual land taxes and school taxes.
5. The unpaid balance of mortgages and other encumbrances.
6. The annual income from the land in question for each and every use permitted in this Zoning District.
7. Proof that this actual or estimated return for each permitted use is “not reasonable” under the circumstances.
8. If the subject premises are the subject of a contract of purchase contingent upon the grant of a use variance, then the applicant must establish the fair market value of the property independent of the purchase price, because in the absence of such proof, it will be presumed that the purchase price included a premium over fair market price at the time of purchase in expectation of favorable zoning relief. Professional Park v. Town of Bedford, 60 N.Y. 2D 492 (1983).

Whether any of the permitted uses would generate a reasonable return requires proof, which can be determined by the rate of return earned by similar or like property in the community, in dollars and cents from the owners investment in the property as well as the return that the property will produce from the various uses permissible under the existing classification.

The burden of proof is always on the applicant on the issue of establishing unnecessary hardship. This does not, however, bar the municipality from going forward with proof to the contrary because as the Court of Appeals said in Professional Park v. Town of Bedford:

“When the proponent presents proof sufficient to permit the trier of fact to decide in his or her favor, the opponent must counter that proof or risk an adverse determination. Only in that general sense can it be said that there is no obligation on the municipality to go forward with the proof.”

“Unnecessary Hardship Standard” Continued

Proof of present market value and annual income can be best established through the testimony of an expert witness, where more than one use is permitted in the zoning district. The applicant must prove the projected annual income from each and every permitted use and must prove that this annual return is not reasonable as compared to the return by like property in the community.

If, on the basis of this dollars and cents proof, the ZBA determines that no reasonable return can be derived from any of the permitted uses, then the applicant has proven the first part of the necessary hardship standard.

B. ESSENTIAL CHARACTER: In addition, the applicant must prove by competent evidence that the proposed use will not alter the essential character of the neighborhood.

C. UNIQUENESS: The applicant must prove that the hardship is not so general throughout the zoning district as to require the conclusion that if all parcels similarly situated were granted variances, the zoning of the district would be materially changed. In other words, if the hardship is common throughout the area, then perhaps legislative action by the Town Board in the nature of a zone change or zoning ordinance amendment may be in order.

If the ZBA determines that the applicant has not furnished competent evidence meeting and satisfying both of the above standards, then the ZBA must deny the use variance.

D. OTHER FACTORS TO BE CONSIDERED BY ZBA: SELF-CREATED HARDSHIP: If the hardship complained of is self-imposed, then the variance will be denied. The cases hold that a party who knowingly acquires land for a use prohibited by the Zoning Ordinance creates his own hardship. Even if he did not actually learn of the prohibition at the time of the purchase he is nevertheless chargeable with knowing the restrictions on use.

PERSONAL PROBLEMS: Is the situation of the owner due to personal problems as opposed to use of the land or buildings. If personal problems, then the use variance must be denied.

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)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
 Yes No

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.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

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:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

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:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly:

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?
 Yes No If Yes, explain briefly:

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly:

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.

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.

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.

 Name of Lead Agency

 Date

 Print or Type Name of Responsible Officer in Lead Agency

 Title of Responsible Officer

 Signature of Responsible Officer in Lead Agency

 Signature of Preparer (If different from responsible officer)

IMPORTANT

Section 8.4 Board of Appeals A Board of Appeals of seven (7) members is hereby established in accordance with the provisions of **Section 267 of the Town Law**, which Section is hereby incorporated in this ordinance by reference. The Board of Appeals shall, consistent with the Town Law, determine its own rules and procedures and shall have the power and duties granted to it in the Town Law and as specified in this ordinance. The Board of Appeals shall, in accordance with the provisions hereinafter set forth in this Section, hear and determine appeals from and refusal of a building permit or certificate of occupancy by the Zoning Enforcement Officer, or review any order or decision is based upon the requirements of this ordinance. The Board of Appeals shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass by the terms of this ordinance.

In deciding such matters referred to it by the terms of this ordinance, the Board of Appeals shall give consideration to the health, safety, morals and general welfare of the community. In harmony with the general purpose and intent of this ordinance, the Board of Appeals shall determine that a need for the use in questions exists, and that the convenience and prosperity of the community will be served, and that neighboring persons and property will not be adversely affected.

**NOTE: IF YOUR FORM IS INCOMPLETE, YOU MAY BE DENIED OR DELAYED.
IT IS IMPORTANT THAT YOU ADDRESS ALL REQUIRED CRITERIA.**

ANY VARIANCES THAT ARE GRANTED, UNLESS OTHERWISE CONDITIONED BY THE BOARD OF APPEALS, WILL EXPIRE ONE HUNDRED EIGHTY (180) DAYS FROM DATE OF FILING IN THE TOWN CLERK'S OFFICE. IF THE APPLICANT FEELS THIS CRITERIA IS TOO STRINGENT FOR THEIR NEEDS, THEY MSUT BE PREPARED TO DEMONSTRATE THAT REASONING TO THE BOARD.

TOWN OF PLATTSBURGH
CODES DEPARTMENT
151 BANKER ROAD
PLATTSBURGH, NEW YORK 12901

PHONE: (518) 562-6840
FAX: (518) 563-3896

Application Fee: _____ Appeal No. _____

Date Paid: _____ Parcel Number _____

APPLICATION TO BOARD OF APPEALS

Name _____ Telephone Number _____

Address _____ Date _____

I (We) hereby appeal to the Zoning Board of Appeals to review the decision of the Code Enforcement Officer on our application for a Building Permit, dated _____, 20____.

1. Location of Property _____

2. Provisions of the Zoning Ordinance appealed, (indicate the ARTICLE, Section and Subsection of the Zoning Ordinance being appealed, by number. Do not quote the Ordinance.

3. Appeal is made herewith for:

- () An interpretation of the Zoning Ordinance or Zoning Map
- () A special permit under the Zoning Ordinance.
- () A variance to the Zoning Ordinance.
- () Use Variance () Area Variance
- () Sign - Also check Use or Area Variance

4. A previous appeal () has () has not been made with respect to the decision of the Code Enforcement Officer or with respect to the property. Such appeal was in the form of () a requested interpretation () a request for a Variance () a request for a special permit and was made in Appeal No. _____, dated _____.

5. REASON FOR APPEAL. COMPLETE ONLY THE BLANKS BELOW THAT ARE RELEVANT TO YOUR REQUEST. USE EXTRA SHEET IF NECESSARY.

INTERPRETATION OF THE ZONING ORDINANCE IS REQUESTED BECAUSE:

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 of Local Law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for an individual.

Appeals boards are frequently confronted with requests for variances. There are two types of request that come before the Board and the standards by which they are judged differ. 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 "reasonable return/lack of economic use or benefit". An Area Variance is a request for relief from dimensional standards contained in the Zoning Ordinance and the applicant must demonstrate to the Board of Appeals the benefit to the applicant if the variance is granted and the detriment to the health, safety and general welfare of the neighborhood or community.

The basic standards for determining unnecessary hardship and practical difficulty have been established and refined by the courts in numerous cases.

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 reasonable return/lack of economic use or benefit of his land. This and the following criteria must all be satisfied before a Use Variance can be granted:

1. **REASONABLE RETURN/LACK OF ECONOMIC USE OR BENEFIT:** That the applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence.
2. **UNIQUE CIRCUMSTANCES:** That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
3. **ESSENTIAL CHARACTER OF THE LOCALITY:** That the requested use variance, if granted, will not alter the essential character of the neighborhood.
4. **SELF-CREATED HARDSHIP:** That the alleged hardship has not been self-created.

A FINAL RULE ON VARIANCES

The rules, as outlined above, are now requirements for the granting of a variance. Prior to July 1, 1992, these were guidelines established by case law. However, since that date, these requirements are firm and the Board of Appeals **must** address each of these issues. You, the applicant must be prepared to answer each and all of these questions.

It is your responsibility to provide this data to the Board Members. Failure to present the proper documentation to the Board of Appeals could, at the least, delay you and perhaps result in your appeal being denied.

ARTICLE 78 PROCEEDINGS

Any person wishing information with regard to appealing the decision of the Board of Appeals may do so by contacting the Code Enforcement Official for initial guidance. It must be remembered that the Code Enforcement Official is not a legal person but can only get you started with the Article 78 procedure if you so desire.

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NOTICE

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On June 15, 1994, the Board of Appeals of the Town of Plattsburgh unanimously passed a resolution to adopt an amended copy of their Rules and Procedures. The Rules and Procedures are guidelines that are established as per Section 267 of the Town Law for the State of New York.

Section 8.9 of the Rules and Procedures establishes expirations of permits/variances. It is incumbent upon anyone filing for a variance within the Town of Plattsburgh to read Section 8.9 from the Town of Plattsburgh Board of Appeals Rules and Procedures, which follows:

8.9 EXPIRATION OF PERMITS. If a variance is granted which allows a building permit to be issued, that building permit must be obtained within six months of the date of the hearing. If the applicant has not obtained a building permit pursuant to the Board of Appeals approval within the six month period, prior to the issue of that permit, the applicant must then reapply to the Board of Appeals.

Once the applicant has obtained a building permit, it must be renewed in accordance with the Town Zoning Ordinance. If it is allowed to expire, the applicant would then have to reapply to the Board of Appeals for a review, prior to the reissuance of that building permit.

I, _____, applicant for a variance from the Town of Plattsburgh Board of Appeals, have read and understand the provisions of Section 8.9 from the Board of Appeals Rules and Procedures.

(Signature of Applicant)

(Date)

STATE OF NEW YORK)
COUNTY OF CLINTON)

Deponent being duly sworn, says that he (she) is the owner or authorized agent for which the foregoing work is proposed to be done, and that he (she) is duly authorized to perform such work, and that all workmen employed on this building are covered by contract or compensation insurance, and that all work will be performed in accordance with all existing state laws and local ordinances. I further state that all information is true and correct to the best of my knowledge.

Signature of Applicant

Print Name

Sworn to this _____ day of _____, _____.

Notary Public