

PARISH JOINT ZONING BOARD OF APPEALS

APPLICATION FORM INSTRUCTION SHEET

The Parish Joint Zoning Board of Appeals (ZBA) meets to hear and decide appeals to the town/village's zoning law, variance requests and/or requests for zoning law interpretations. Where strict adherence to the zoning law will create a hardship for a landowner, the ZBA has the power to vary the regulations and assist them.

Applicants seeking variances or interpretations must be appealing:

1. A decision of The Zoning Enforcement Officer (ZEO)
 - NYS Town Law Section 267(2)
 - NYS Village Law Section 7-712(2)]
2. The strict regulation of the zoning law and be referred to the ZBA by the Planning Board during the course of a subdivision review
 - NYS Town Law Section 277(6)
 - NYS Village Law Section 7-730(6)] or
3. A special use permit review
 - NYS Town Law Section 274-b(3)
 - NYS Village Law Section 7-725-b] or
4. A site plan review
 - NYS Town Law Section 274-a(3)
 - NYS Village Law Section 7-725-a(3)

The Applicant or the Applicant's representative must file a Notice of Appeal with the ZBA within 60 days after the Zoning Enforcement Officer has filed their decision or action. After a Notice of Appeal has been filed, the ZBA will take up the matter at a future meeting. For variances, the ZBA may have to make a determination of significance under the State's Environmental Quality Review Act (SEQRA). Based on this determination, an Environmental Impact Statement (EIS) may or may not be required. If an EIS is required, the case cannot be heard until the EIS has been completed and accepted by the ZBA. The Applicant should plan on their appeal to the ZBA taking about 2 months.

Appeals to the ZBA may request:

1. An interpretation of a section of the zoning law (Section A of the attached form)
2. An area variance (Sections B & D of the attached form)
3. A use variance (Sections C & D of the attached form)

In the appropriate section of the application form the Applicant should describe, in detail, what they would like to do to the property that is presently not permitted under the town/village zoning law and state their reasons for wanting the change. If seeking a variance, the Applicant should also answer the applicable criteria questions. These criteria are central to any decision made by the ZBA to grant a variance.

The definitions on the following page should help in determining what type of remedy the Applicant should seek on appeal to the ZBA.

Interpretation:

A formal interpretation of any order, requirement, decision, interpretation, or determination made by the Zoning Enforcement Officer (ZEO) where the Applicant believes the ZEO has misapplied or misinterpreted a specific section of the zoning law. If the ZEO denies a permit on the basis of their interpretation of the zoning law, and the Applicant disagrees, the Applicant may appeal to the ZBA for a “second opinion” or interpretation of a particular section of the law. Where the ZBA makes a decision, that decision shall be final.

Area Variance:

An authorization by the ZBA for the use of the property in a manner which is not allowed by the dimensional or physical requirements of the zoning law. Typically, this form of relief is sought where the front, side, back, or height requirements of the zoning law do not permit the building, or building change desired. In making its’ decision, the ZBA must consider two factors in determining whether to grant the area variance:

1. The overall benefit to the Applicant should the requested variance be granted.
2. The detriment to the neighborhood or community’s health, safety and general welfare should the requested variance be granted.

Additionally, the following five (5) factors must be considered in weighing the interests of the Applicant and the neighborhood or community:

1. No undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties by the granting of the variance;
2. The benefit sought by the Applicant cannot be achieved by some method, feasible for the Applicant to pursue, other than through an area variance;
3. The area variance is not substantial in nature;
4. The area variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood; and,
5. The alleged difficulty, requiring the requested area variance, was not self-created (This factor shall be relevant to the decision of the ZB, but will not necessarily preclude the granting of an area variance.

Use Variance:

An authorization by the ZBA for the use of the property in a manner which is not allowed by the requirements of the zoning law. Typically, this form of relief is sought where the Applicant wants to use the property differently than permitted, such as to operate a commercial establishment in a residential district. In making its determination the ZBA must find that the applicable zoning regulations have caused “unnecessary hardship” to the Applicant. The following criteria must be satisfied by the Applicant in order for the ZBA to find “unnecessary hardship” and grant a use variance:

1. Under current zoning regulations, the Applicant is deprived of all economic use or benefit from the property in question. This deprivation must be established by competent financial evidence;
2. The alleged hardship is unique to the property and does not apply to a substantial portion of the district or neighborhood;
3. The requested use variance, if granted, will not alter the essential character of the neighborhood; and,
4. The alleged hardship was not self-created