

**ZONING BOARD OF APPEALS  
Application and Procedures For A Variance**

Case No.	_____
Date Rece'd BA	_____
Date Hearing	_____
Date Action	_____
Ref.P.B.	_____ Date _____
Ref. County	_____ Date _____

**TO: ZONING BOARD OF APPEALS**

**FROM:** \_\_\_\_\_

**RE: Property at** \_\_\_\_\_

**Section** \_\_\_\_\_ **Block** \_\_\_\_\_ **Lot** \_\_\_\_\_

I, \_\_\_\_\_, the (owner) (agent of the owner) of the property located at \_\_\_\_\_ in the Town of Niskayuna, New York, hereby petition the Zoning Board of Appeals to review the decision of the Zoning Enforcement Officer on the above-referenced application and to grant a variance from Section(s) of the Zoning Ordinance in order to permit the proposed construction shown on the accompanying drawings.

I, also certify that I have provided the items listed below as required documents in my application for a variance before the Zoning Board of Appeals. I further acknowledge that omission of any of these items may result in delay in the Board's hearing of my application.

**CHECKLIST OF REQUIRED ITEMS**

\_\_\_\_\_ Fifteen (15) copies of plot plans

\_\_\_\_\_ Two (2) copies of construction plans, if applicable

\_\_\_\_\_ Appeal fee (see application procedures for details)

\_\_\_\_\_ Appeal statement (see application procedures for details)

\_\_\_\_\_ Short Environmental Assessment Form, Project Information, as applicable for use variance

\_\_\_\_\_ Additional information as specified by the Zoning Enforcement Officer

Signature of Agent: \_\_\_\_\_ Date \_\_\_\_\_

Signature of Owner (if different from Agent) \_\_\_\_\_

Telephone Number: \_\_\_\_\_

# TOWN OF NISKAYUNA ZONING BOARD OF APPEALS

## Application Procedures

The following procedures are hereby adopted as the policy of the Building Department and the Zoning Board of Appeals of the Town of Niskayuna relative to the processing of appeals under the provisions of Article XI, Section 220-69 of the Zoning Ordinance of the Town of Niskayuna.

1. The Zoning Enforcement Officer or the Deputy Zoning Enforcement Officer will review all applications for development within the Town of Niskayuna for conformance with the Zoning Ordinance and will furnish the applicant with a report of such review. In the event that the proposed activity does not conform with the requirements of the Zoning Ordinance, the Zoning Enforcement Officer or the Deputy Zoning Enforcement Officer will issue a denial of application. This denial will include notice of the applicant's right to appeal the decision of the Zoning Enforcement Officer to the Zoning Board of Appeals (ZBA).

In addition, any aggrieved person, that is, a person not an applicant for development, may appeal a determination of the Zoning Enforcement Officer or Deputy Zoning Enforcement Officer concerning conformance with the zoning ordinance, (for example, issuance of a building permit without a need for a variance). Such appeal to the ZBA must be commenced within sixty (60) days of the determination of the Zoning Enforcement Officer or Deputy Zoning Enforcement Officer.

2. Application for appeal must be made on standard forms, available from the Town Building Department. This application must be filed with the Zoning Enforcement Officer and must be accompanied by the following information when applicable:
  - (a) **Cover Sheet Checklist.**
  - (b) **Fifteen (15) copies of the plot plans. Additional copies may be required if the plans can not be easily reproduced.**
  - (c) **Two (2) copies of construction plans, if applicable.**
  - (d) **The appeal fee of one hundred dollars (\$100.00) for area variances for single-family residential premises or a fee of two hundred (\$200.00) for use variances or variances involving other than**

**single-family dwellings. The fee for an appeal brought by an aggrieved person shall be one hundred dollars (\$100.00).**

**(e) If an adjournment or delay of a hearing is requested by the applicant, an additional fee will be charged. For appeals in which the notice of public hearing is mailed to owners of property within 100 feet of the parcel in question, an additional fee of fifty dollars (\$50.00) shall be charged. For appeals in which the notice of public hearing is mailed to owners of property within 200 feet or 500 feet of the parcel in question, an additional fee of one hundred dollars (\$100.00) shall be charged.**

3. State law requires that a public hearing be held on all appeals made to the ZBA. These hearings will be held at the regular meeting of the ZBA, which generally takes place on the **third Wednesday of each month**. The ZBA may, at its discretion, conduct public hearings at such other times, as it deems necessary.
4. **In order for an appeal to be heard at a regular meeting of the ZBA, all materials relating to the appeal must be submitted to the Building Department on or before the fifteenth (15<sup>th</sup>) day of the month proceeding the month in which the appeal is to be heard.** (For example, if an appeal is to be heard in the month of March, all material is to be submitted by February 15<sup>th</sup>.) If it appears that more appeals have been filed by the designated deadline than the ZBA can reasonably act upon, the ZBA may, at its discretion, schedule some of those appeals for a later meeting. Please note however if an appeal involves reviews by other bodies such as the Conservation Advisory Council, Planning Board or the Schenectady County Planning Department, the recommendations of these bodies must be received by the ZBA before it can act on the appeal. (See paragraph 9.)
5. **An appeal must be able to stand on its own merits as submitted in writing.** However, as the ZBA generally raises particular questions about appeals, the applicant or a representative should be present at the public hearing.
6. An appeal should not be limited to a summary or statement of the request. Justifications for the request should be fully outlined in the appeal. State Law defines certain standards for the granting of a variance and an application for any variance should specifically address the relevant standards as listed below.

## 7. Referral

### A. Conservation Advisory Council

Applications for a use variance will be referred to the Niskayuna Conservation Advisory Council for recommendation with respect to environmental significance prior to action by the ZBA.

### B. Planning Board

Applications for a use variance, applications involving a non-conforming use, or applications that will result in a subdivision review, site plan review or special use permit procedure will be referred to the Planning Board for a recommendation prior to action by the ZBA.

### C. Schenectady County Department of Planning

In accordance with the provisions of Section 239-1 and 239-m of the NYS General Municipal Law, applications shall be referred to the Schenectady County Department of Planning for its recommendation if the subject real property is located within 500 feet of a:

- Municipal boundary
- Boundary of any existing or proposed county or state parkway, thruway, Expressway, road or highway.
- Existing or proposed right of way of any stream or drainage channel owned by the county or for which the county has established channel lines.
- Existing or proposed boundary of any county or state owned land on which a public building or institution is situated.

## 8. Decisions

Decisions of the ZBA are made by vote of the members at a public hearing, and such decisions are also sent in writing to the applicant.

- (a) A variance is granted by the ZBA when a majority, that is four members of the ZBA, votes in favor of an applicant's request. An exception to this requirement arises when the Schenectady County Planning Department recommends to the ZBA that it deny the variance. In such a case, a**

**“super majority” equal to five members of the ZBA must vote in favor of the applicant’s request in order for the variance to be granted.**

- (b) In the event that the ZBA votes to grant the requested variance, a building permit based on a complete application will be issued within seven (7) calendar days of such favorable decision unless further action is required by the Planning Board. In such a case, the decision to grant the variance will be transmitted to the Planning Board at the next regular meeting of that body.**
- (c) In the event the ZBA votes to deny the requested variance, an applicant who has paid a building permit fee is entitled to a refund in the amount of one half (1/2) of the Building Permit Application Fee provided that no construction has commenced. Such refund will be made by the Town of Niskayuna within forty-five (45) days decision to deny the variance. No action on the part of the applicant is necessary to receive this refund.**
- (d) The appeal fee in non-refundable.**

- 9. A building permit issued pursuant to a written order or decision of the ZBA will expire twelve (12) months from the date of the issuance of said written order or decision. An extension of a permit so granted must be by order of the ZBA.
- 10. Any zoning and building permit issued under written order of the Zoning Board of Appeals shall expire 12 months from the date of issuance of said written order, unless the permit is also governed by the requirements of Article VIII (Site Plan Approval). If Article VIII applies to the application, the zoning and building permit issued under written order of the Zoning Board of Appeals shall expire Two years after the date of final written approval of the site plan by the Planning Board. [Amended 10/3/2000 by L.L. No. 6-2000]

**For an area variance:** Before an area variance can be granted, State Law requires that the ZBA take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

To grant an area variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the following:

- 1. Whether the benefit sought by the applicant can be achieved by other feasible means. Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

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- 2. Whether the granting the variance will produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

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3. Whether the variance is substantial. The requested variance is not substantial for the following reasons:

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4. Whether the variance will have adverse physical or environmental effects on the neighborhood or district. The requested variance will not have an adverse physical or environmental effect on the neighborhood or district for the following reasons:

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5. Whether the alleged difficulty was self-created (although this does not necessarily preclude the granting of an area variance.) Explain whether the alleged difficulty was or was not self-created:

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**USE VARIANCE** - Before the ZBA can grant a use variance, State Law requires that, the applicant must demonstrate “unnecessary hardship”. Mere inconvenience and the fact that the land in question could be put to a more profitable use are insufficient reasons for granting a use variance. To prove unnecessary hardship, the applicant shall demonstrate to the ZBA that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

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- (b) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

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(c) The requested use variance, if granted, will not alter the essential character of the neighborhood.

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(d) The alleged hardship has not been self-created.

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