

# APPENDIX “E”

## Zoning Board of Appeals

*General Town Law Sections 267-a; 267-b & 267-c*

*Variance Application – Submittal Checklist*

**Town of Stuyvesant**  
**Application to the Zoning Board of Appeals**

***Applicant Information***

Name: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

(I) (We) do hereby appeal the decision or the determination made by the [Zoning Enforcement Officer (ZEO)] or the [Building Inspector (CEO)] dated \_\_\_\_\_ whereby an application was [denied] [approved] for a:

Zoning or Use Permit

Certificate of Occupancy or

A Notice of Violation was issued for the following parcel or premises

Location: \_\_\_\_\_

\_\_\_\_\_ Date Acquired \_\_\_\_\_

Tax Map No: \_\_\_\_\_ Zoning District \_\_\_\_\_

Type of Appeal:      Area Variance      Use Variance      Interpretation

**Complete the following if applying for an Area Variance**

Will an undesirable change of the community or a detriment to the community be created if the variance is granted?    Yes        No

If Yes – explain how: \_\_\_\_\_

\_\_\_\_\_

Can the benefit sought be achieved by some other feasible method?    Yes        No

If Yes – explain how: \_\_\_\_\_

\_\_\_\_\_

Is the variance requested, substantial in nature?    Yes      No

Explain: \_\_\_\_\_

\_\_\_\_\_

Will the variance, if granted, have an adverse impact on the physical or environmental conditions of the neighborhood?    Yes      No

Explain: \_\_\_\_\_

\_\_\_\_\_

Was the alleged difficulty self-created?    Yes        No

Explain: \_\_\_\_\_

\_\_\_\_\_

**Complete the following if applying for a Use Variance**

A reasonable return from the parcel cannot be realized because: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

*(Attach pertinent financial information i.e., tax bills, mortgage payments, renovation costs, etc.)*

Show what unique features are present on/in the parcel or structure that are not present on other similarly zoned parcels or lots. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Show how, if granted, that the use variance will not alter the essential character of the neighborhood.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Show why the alleged hardship was no self-created. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Complete the following if applying for an Interpretation**

Section of the Ordinance which you believe was misinterpreted by the Z.E.O. \_\_\_\_\_

Explain why you believe the decision or determination of the Z.E.O. was incorrect: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**For Z.B.A. Use Only**

Date Received \_\_\_\_\_ Hearing Date \_\_\_\_\_ Decision \_\_\_\_\_

Conditions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**TOWN OF STUYVESANT**  
**Variance Application Submitted Checklist**

- { } Completed Zoning Board of Appeals application obtainable from the Zoning Enforcement Officer
  
- { } Copy of the Zoning, Use or Building Permit that was denied. This must contain the Zoning Enforcement Officer's reason for denial and signature.
  
- { } A plot plan drawn to scale showing the following:
  1. All boundary lines and dimensions.
  2. All structures, whether existing or proposed, including dimensions
  3. Driveway location.
  4. Well & Septic Field location.
  5. Setbacks of all structures, existing & proposed, driveways, wells, septic Fields, sign locations and off-street parking areas.
  6. The names of all abutting landowners.
  
- { } A copy of the deed and survey map for the parcel in question.
  
- { } A list of the names and addresses of all property owners within 300' of the parcel's boundaries.
  
- { } A completed short/long form Environmental Assessment Form available from the Zoning Enforcement Officer.
  
- { } Any information deemed necessary by the applicant to justify the issuance of the variance. (See the next page for the statutory Standards for the Issuance of Use and Area Variances).

Applicant's Name: \_\_\_\_\_

Address: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Statutory Standards for the Issuance of Use & Area Variances**

Section 267-b of the General Town Law permits the local Zoning Board of Appeals to grant waivers from the strict application of the Zoning Ordinance provisions. However, this relief by law can only be issued under hardship or practical difficulty situations. The following information outlines the tests that must be met before you, as an applicant, would be eligible for a variance. Supporting documentation to these tests ***must*** be included in your application submittal.

### **If a use variance is being requested:**

The applicant must demonstrate to the Z.B.A. that each and every permitted use under the zoning regulations for the particular District in which the parcel is located, that:

- ✧ The applicant cannot realize a reasonable return, provided that this lack of return is substantially demonstrated by competent financial evidence;
- ✧ The alleged hardship relating to the property in question is unique and does not apply to the substantial portion of the district or neighborhood;
- ✧ The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- ✧ The alleged hardship has not been self-created.

### **If an area variance is being requested:**

The Z.B.A., in making its determination shall take into consideration the benefit to the applicant if the variance is granted, as weighed against any identified detriment to the health, safety and welfare of the community. It shall also consider:

- ✧ Whether an undesirable change will be produced in the character of the community or a detriment to nearby properties will be created;
- ✧ Whether the benefit sought can be achieved by some other feasible method;
- ✧ Whether the variance is substantial in nature;
- ✧ Whether the variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district; and
- ✧ Whether the alleged practical difficulty was self-created.

## TOWN LAW

### §267-a. Board of Appeals Procedure

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|---|---|
| <i>Keeping of minutes, records</i>  | 1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.   |
| <i>Filings</i>  | 2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be a public record.   |
| <i>Authority of the board to seek assistance</i>  | 3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.   |
| <i>The appellate nature of the board</i>  | 4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. The concurring vote of a majority of the members of the board of appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town. |
| <i>Appeal taken within sixty days after filing by administrative enforcement official</i> | 5. Time of appeal. Such appeal shall be taken within sixty days after the filing in the town clerk's office of any order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of such ordinance or local law by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.  |
| <i>Stay upon appeal</i>   | 6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.          |
| <i>Hearing on appeal; notice, publication</i>   | 7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.   |
| <i>Appeal to be decided by board within 62 days after conduct of hearing</i>              | 8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.   |

*Decision to be filed within five business days after rendered*

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision s rendered, and a copy thereof mailed to the applicant.

*Notice to park commission or planning agency mailed five days prior to hearing*

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commissioner having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

*(1997: Changed phrasing to reflect legislation which amended General Municipal Law regarding the "county planning board or agency" and "regional planning council").*

*(1997: Change "the matter under consideration" to "such proposed action"*

*Compliance with SEQRA*

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

*Rehearing*

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hear. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

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**§267-b. Permitted action by board of appeals.**

*Authority of the board regarding orders, requirements, decisions, interpretations, determinations*

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or party, or may modify the order, requirements, decision, interpretation or determination appealed from as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
2. Use variances.

*Test for granting use variances*

(a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

*Unnecessary hardship must be shown*

(b) No such use variance shall be granted by the board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located.

*Reasonable return*

(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

<i>Unique hardship</i>	(2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion fo the district or neighborhood;
<i>Essential character of neighborhood</i>	(3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
<i>Not self-created</i>	(4) that the alleged hardship has not been self-created.
<i>Board must grant minimum variance necessary</i>	(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
<i>Area variances</i>	3. Area variances
<i>Test for granting area variances</i>	(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
<i>Individual benefit vs. community detriment considerations</i>	(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:
<i>Undesirable change in neighborhood character</i>	(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to the nearby properties will be created by the granting of the area variance;
<i>Alternative cure sought</i>	(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
<i>Substantiality</i>	(3) whether the requested area variance is substantial;
<i>Adverse effect or impact</i>	(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
<i>Not self-created</i>	(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.
<i>Board must grant minimum variance necessary</i>	(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
<i>Power to impose conditions</i>	4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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**§267-c. Article seventy-eight proceeding.**

*Application for proceeding must be filed within 30 days after decision by board*

1. Application to supreme court by aggrieved persons. Any person or persons jointly or severally aggrieved by any decision of the board of appeals or any officer, department, board or bureau of the town, may apply to the supreme court for a review by a proceeding under article seventy-eight by the civil practice law and rules. Such proceeding shall be instituted within thirty days after the filing of a decision by the board in the office of the town clerk.

*Costs of appeal*

2. Costs of appeal. Costs shall not be allowed against the board of appeals unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

*Preference of appeal over other court actions*

3. Preference of appeal to court. All issues in any proceeding under this section shall have preference over all other civil actions and proceedings.
4. Power of court. If upon the hearing at the supreme court, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his or her findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review determining all questions which may be presented for determination.

**NOTE:**

***Sections 267-a, 267-b and 267-c are excerpts from the “Guide to Planning & Zoning Law of New York State” published by the New York State Department of State in August 1998. From time to time the New York State Legislature may amend these sections of General Town Law.***