

THE AREA VARIANCE

QUESTIONS THE ZBA WILL CONSIDER

1. What is the benefit to applicant, if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community?
2. Will an undesirable change be produced in the character of neighborhood or a detriment to nearby properties created by the granting of the variance?
3. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
4. Is the requested variance substantial when compared to the requirements of the ordinance or Local Law?
5. Will the proposed variance have an adverse impact or effect on the physical or environmental conditions in the neighborhood or district?
6. Is the alleged hardship self-created? If so, the Board may consider this factor, but it will not by itself prevent the Board from granting a variance.
7. Is this the minimum variance needed in this case, while at the same time, preserving and protecting the character of the neighborhood and the health, safety and welfare of the community?
8. Does the Board wish to impose reasonable conditions directly related to the proposed use of the premises for the purpose of minimizing any adverse impact which the variance may have on the neighborhood or community?

ZONING BOARD OF APPEALS
○○○○○○ AREA VARIANCE FINDINGS & DECISION ○○○○○○

Applicant: _____
Applicant: _____
Address: _____

Variance No.: _____
Variance No.: _____
Zoning District _____
Notice Published: - - -
Notice to County: - - -
Hearing Held on: - - -

Property Location: _____
Applicable Section of the Zoning Law: _____

Balancing Test: The Zoning Board of Appeals shall balance BENEFIT to applicant with DETRIMENT to health, safety and welfare of the community.

FACTORS CONSIDERED:

[Town Law §267-b(3) / Village Law §7-712-b(3)]

1. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance? YES NO

Reasons: _____

2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? YES NO

Reasons: _____

3. Is the requested area variance substantial? YES NO

Reasons: _____

4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? YES NO

Reasons: _____

5. Was the alleged difficulty self-created? (This consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance) YES NO

Reasons: _____

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five (5) factors, finds that:

- The benefit to the applicant **DOES NOT** outweigh the detriment to the neighborhood or community and therefore the variance request is denied.
- The Benefit to the applicant **DOES** outweigh the detriment to the neighborhood or community and therefore the variance request is approved.

The ZBA further finds that a variance of _____ from Section _____ of the Zoning Law is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

[Town Law §267-b(3)(c) / Village Law §7-712-b(3)(c)]

CONDITIONS:

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the following reasons:

Condition No. 1: _____

Adverse Impact to be Minimized: _____

Condition No. 2: _____

Adverse Impact to be Minimized: _____

Dated: _____

Chairman, Zoning Board of Appeals

○○○○○ **RECORD OF VOTE** ○○○○○

	Member Name:	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Chair:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member:	_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THE USE VARIANCE

○○○○○ QUESTIONS THE ZBA WILL CONSIDER ○○○○○

1. If the variance is not granted, will the applicant be deprived of all economic use or benefit from the property in question?
2. Has the applicant shown that he/she will suffer economic deprivation by competent financial evidence?
3. Is the alleged hardship unique to the property in question and has the applicant shown that it does not apply to a substantial portion of the district or neighborhood?
4. Has the applicant shown that if the use variance is granted, it will not alter the essential character of the neighborhood?
5. Is the alleged hardship self-created?
6. Is the variance, which may be granted, the minimum variance needed to address the unnecessary hardship proven by the applicant, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community?
7. Does the Board wish to impose reasonable conditions directly related to the proposed use of the premises for the purpose of minimizing any adverse impact which the variance may have on the neighborhood or community?

ZONING BOARD OF APPEALS
○○○○○ **USE VARIANCE FINDINGS & DECISION** ○○○○○

Applicant: _____
Applicant: _____
Address: _____

Variance No.: _____
Variance No.: _____
Zoning District _____
Notice Published: - - -
Notice to County: - - -
Hearing Held on: - - -

Property Location: _____
Applicable Section of the Zoning Law: _____

Balancing Test: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for EACH and EVERY use allowed by zoning on the property, including uses allowed by special use permit.

1. Has the applicant proved that he/she cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence? YES NO

Proof: _____

ILLUSTRATIONS OF FINANCIAL EVIDENCE
*Bill of sale for the property, present value of property, expenses for maintenance.
*Leases, rental agreements.
*Tax bills
*Conversion costs (for a permitted use)
Realtor's statement of inability to rent/sell

2. Has the applicant proved 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?
 YES NO

Proof: _____

ILLUSTRATIONS OF UNIQUENESS
*Topographic or physical features preventing development for a permitted use.
*Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
*Board member observations of the property and surrounding area.

3. Has the applicant proved that the requested use variance, if granted, will not alter the essential character of the neighborhood? YES NO

Proof: _____

**ILLUSTRATIVE
NEIGHBORHOOD CHARACTER FACTORS**

- *Board members' observations of neighborhood.
- *Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. Has the applicant proved that the alleged hardship was not self-created?
 YES NO

Proof: _____

SELF-CREATED HARDSHIP

- *What were the permitted uses at the time the property was purchased by the applicant?
- *Were substantial sums spent on remodeling for a use not permitted by zoning?
- *Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED UPON THE ABOVE FACTORS:

The ZBA, after reviewing the above four (4) proofs, finds:

- That the applicant has failed to prove unnecessary hardship through the application of the four (4) tests required by the state statutes.
- That the applicant has proven unnecessary hardship through the application of the four (4) tests required by the state statutes. In finding such hardship, the ZBA shall grant a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

USE: _____

CONDITIONS:

The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the following reasons:

Condition No. 1:

Adverse impact to be minimized:

Condition No. 2:

Adverse impact to be minimized:

Condition No. 3:

Adverse impact to be minimized:

Dated: _____

Chairman, Zoning Board of Appeals

RECORD OF VOTE

Member Name:	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Chair: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Member: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>