



TOWN *of* NEW HARTFORD

Oneida County, NY

New Hartford Town Hall
8635 Clinton Street, The Orchard, New Hartford, NY 13413

Planning, Zoning & Codes
Phone: 315-733-7500 ext:2423
www.townofnewhartfordny.gov

TOWN OF NEW HARTFORD **NEW HARTFORD, NEW YORK**

INFORMATION FOR APPEALS AND PROCEDURES FOR USE VARIANCES OF THE ZONING LAW

**NOTE: IF THE FOLLOWING INSTRUCTIONS ARE NOT COMPLETED, YOUR
PAPERWORK FOR A VARIANCE WILL NOT BE PROCESSED**

INSTRUCTIONS FOR A USE VARIANCE

- 1) Complete "Notice of Appeal"
- 2) Complete "Use Variance Application"
- 3) Complete "Application for Building and Zoning Permit"
- 4) Complete "Environmental Assessment"
- 5) Submit two (2) copies of plot plan showing all dimensions of buildings, yard (front, side and rear) setbacks, buildings (proposed and existing), lot size, area, Tax Map number and street. Show all zoning district boundary lines within 500' of location. Submit floor plans of building when this is in reference to variance. Submit any information that may be of value to the Zoning Board of Appeals in making a decision of your appeal.
- 6) Submit variance fee for processing, check payable to Town of New Hartford.

Use Variance (all uses): \$300.00

- 7) 8635 Clinton Street (At The Orchards), New Hartford, New York 13413 – email:
Lgell@townofnewhartfordny.gov or call to schedule an appointment.

The Zoning Board of Appeals holds Public Hearings on the third Monday of every month at 6:00 P.M. at the Town Offices, 8636 Clinton Street, New Hartford, New York 13413; (315-733-7500 Ext. 2423). Usually your appeal for the variance meeting will be held from four (4) to six (6) weeks after complete paperwork and fee is submitted.

APPLICANT MUST APPEAR AT THE PUBLIC HEARING

Applicants appearing before the Zoning Board of Appeals, upon payment of the designated fee, are entitled to only one (1) "no-show" at a Zoning Board of Appeals meeting, unless otherwise adjourned by said Zoning Board of Appeals; and after that, the applicant must reapply and pay the designated fee.

Note: If variance is granted, Building Permit must be obtained before the start of work.

NOTICE OF APPEAL
USE VARIANCE REQUEST

ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD, NEW HARTFORD, NEW YORK

TO THE ZONING BOARD OF APPEALS (PLEASE PRINT):

(This section to be completed by Codes Officer).

PERMIT APPLICATION NO. _____
DATE OF APPLICATION _____
DATE APPLICATION DISAPPROVED _____

The undersigned, representing the owner/lessee of (identify property by lot and block or otherwise)
_____ located at _____, hereby gives Notice of Appeal from the decision of
the Codes Enforcement Officer made on _____ day of _____ 20 _____. In refusing to issue a Building Permit on the
grounds that the same would be in violation of the Provisions of Chapter _____, Sub-section _____, of the Code of the
Town of New Hartford, for the following stated reasons(s):

(This section is to be completed by Applicant):

and the same having been disapproved, the following specified conditions and facts are hereby declared to the basis of an
appeal from the order, requirement, decision or determination of the Building/Codes Department of the Town of New
Hartford. Give specific reasons and facts why you feel the relief should be granted:

I hereby certify that the above statements and the accompanying data are true to the best of my knowledge and belief.

Date: _____

Signed: _____

Printed: _____

Address: _____

Additional information and/or diagram may be shown on the reverse side.

Application Fee Use Variance:

\$300.00

Checks are to be made payable to the TOWN OF NEW HARTFORD

*APPLICANT OR AUTHORIZED REPRESENTATIVE (WITH WRITTEN PERMISSION)
IS TO APPEAR AT THE PUBLIC HEARING.

Use Variance Application

Statement of Unnecessary Hardship

In order for the Zoning Board of Appeals to grant a use variance, an applicant must show documentation in the record that the restrictions of the Zoning Ordinance has caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the Zoning Ordinance for the particular district where the property is located, that all four (4) requirements as per §267-b of the General Town Law have been proven. Additional documentation may be included. If any one of these requirements have not been proven, the Zoning Board of Appeals must deny the variance, as per §267-b of the General Town Law.

Explain **how** the request conforms to EACH of the following requirements (additional pages may be attached):

1. **Reasonable Return.** The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by specific fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

“The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence”

(Please provide / attach competent financial evidence)

2. **Unique Hardship.** The inability to yield a reasonable return results from a unique circumstance peculiar to the subject property which does not apply to or affect other properties in the immediate vicinity that are subject to the same regulations. The personal situation of the owner shall not be considered unique.

“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 Neighborhood. The granting of the variance will not be materially detrimental to the public health, safety, and welfare or injurious to the enjoyment, use or development of neighboring properties or the community. Applicant must demonstrate that the proposed use will not change the essential character of the neighborhood with regard to such physical and environmental elements such as parking, traffic, signage, landscape, architectural and structural features, location and dimensions of buildings, any by-products of proposed use such as noise or smoke, and any other impacts upon adjacent or neighboring lands.

“The requested use variance, if granted, will not alter the essential character of the neighborhood”

4. Not Self-Created. The inability to yield a reasonable return is not the result of any action by the owner or predecessors in title. The applicant must show that when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or that some other change or factor has occurred that has resulted in an inability to yield a reasonable return. Otherwise, the hardship is self-created.

“The alleged hardship has not been self-created”

Applicant's Signature Date
Provider of Financial Evidence Date

USE VARIANCE

Statement of Income and Expense

All Entries Must be Completed and Documented for at Least Two (2) Calendar Years
or From the Date of Purchase Whichever is Less

PROPERTY ADDRESS: _____

A. PROPERTY DATA

1. Date property was purchased by current owner _____

2. Was a Certificate of Occupancy issued? _____

 Date of Issuance? _____

 If so, for what use(s)? _____

 If not, why? _____

3. Cost of Purchase _____

4. a) Amount of Mortgage _____ Interest Rate _____
 Mortgage Holder _____ Duration _____
 Address _____

 b) Amount of Mortgage _____ Interest Rate _____
 Mortgage Holder _____ Duration _____
 Address _____

 c) Amount of Mortgage _____ Interest Rate _____
 Mortgage Holder _____ Duration _____
 Address _____

5. Is the property for sale? _____

 If so, for how long _____

 asking price _____

 for what use(s) _____

 Have any offers been received _____

 If so, for what amount(s) _____

 Summarize any attempts to sell the property _____

6. Present value of property _____

 Source(s) _____

B. GROSS ANNUAL INCOME [BASED ON PERMITTED USE(S)]

USE	INCOME
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____
TOTAL RENTAL INCOME _____	
LESS VACANCY FACTOR _____	
(Attach explanation if greater than 8%)	
TOTAL GROSS INCOME _____	

C. ANNUAL EXPENSES

1. Annual Fixed Charges

Real Estate Taxes (City & County) _____

Insurance..... _____

Average Annual Interest (over next 5 years) _____

2. Operating Expenses

Electric..... _____

Fuel..... _____

Water..... _____

Advertising..... _____

Miscellaneous (attach explanation) _____

.

3. Maintenance Expenses (attach list)

Repairs..... _____

General Building Maintenance..... _____

Yard and Ground Care..... _____

Miscellaneous..... _____

TOTAL ANNUAL EXPENSES _____

Profit or Loss _____

D. TOTAL INVESTMENT

1. Down payment..... _____

2. Capital Improvements (attach list) _____

3. Principal Paid to date (original mortgage less
current principal balance)..... _____

TOTAL INVESTMENT _____

(Sum of D1, D2, & D3)

E. RATE OF RETURN = Profit or Loss

TOTAL INVESTMENT _____

Signature of Preparer

Date

Profession of Preparer

USE VARIANCE – “UNNECESSARY HARDSHIP STANDARD”

The New York State Legislature has recently amended Town Law, Section 267 to specify more particularly the proof required to be furnished by a Use Variance applicant before a Use Variance can be granted by the Zoning Board of Appeals (ZBA), which reads as follows:

“Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the local law. “(b) No such use variance shall be granted by a 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 (1) under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence; (2) 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) that the requested use variance, if granted, will not alter the essential character of the neighborhood, and (4) that the alleged hardship has not been self-created. “(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 proved 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.”

Your attention is especially invited to Standard No. 1 set out in (b) above:

“The applicant must demonstrate that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.”

What is meant by “deprivation of all economic use or benefit”? This involves the purchase price and current market value of the property. It must also involve “rate of return.”

WHAT YOU MUST PROVE

- A. In order to satisfy the “deprivation of all economic use or benefit standard”; the applicant must furnish competent financial evidence to the ZBA establishing:
1. The amount paid for the land in question.
 2. Its 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).
9. The rate of return for the current use and all other uses permitted in the zoning district.
10. The rate of return deemed necessary by applicant in order to gain a return equal to comparables in the neighborhood.

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 the applicant will be deprived of all economic use or benefit of the property, then the applicant has proven the first part of the unnecessary hardship standard.

How can an applicant best prepare such proof for his case? By engaging a professional such as a licensed real estate appraiser (not a real estate salesman or broker) whose sole profession is appraising.

- 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. Describe accurately and fully the entire neighborhood. Use of tax maps, aerial photographs or ground level photographs may help.
- C. UNIQUENESS: The applicant must prove that the hardship 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.

- D. SELF-CREATED HARDSHIP: If the hardship complained of is self-imposed, then the variance must 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.
- E. PERSONAL PROBLEMS: Is the plight of the owner due to personal problems as opposed to use of the land or buildings? If due to personal problems, then the use variance must be denied.

Your attention is especially invited to the new law, which states:

“Which deprivation must be established by competent financial evidence.”

The bottom line in Use Variances is that the burden of proof is on the applicant. If the applicant does not satisfy each of those above standards, then the variance must be denied.