

TOWN OF SOUTHAMPTON

Department of Land Management
Zoning Board of Appeals
116 HAMPTON ROAD
SOUTHAMPTON, NY 11968

Phone: (631) 287-5700



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TOWN OF SOUTHAMPTON **ZONING BOARD OF APPEALS INSTRUCTIONS**

Filing Fee, payable to the Town of Southampton, must be presented with the application. Fees will be doubled for an application requesting relief for any building, structure or use existing without the benefit a Building Permit, Certificate of Occupancy or Certificate of Compliance issued by the Town of Southampton Building and Zoning Division.

Filing fees are NON-REFUNDABLE
(See Zoning Board of Appeals Application Fee Schedule for all other fees)
<https://southamptontownny.gov/337/Zoning-Applications-Forms>

APPLICATIONS ALONG WITH RELATED DOCUMENTS MUST BE **COLLATED INTO PACKETS**

1. Original and eleven (11) copies of application. (pages 1-5)
2. Original and eleven (11) copies of an owner's endorsement and Open Government disclosure affidavit signed by the owner **(the original copy (only) of the Owner's Endorsement must have original signatures and original notary stamps).**

Note: If the owner is a Corporation or Company, submit two (2) copies of Corporation/Company documentation or an original + one (1) copy of an attorney opinion letter to verify the authorization of the person(s) signing this application.

3. Original and eleven (11) copies of an Open Government disclosure affidavit signed by the applicant (if not the owner), agent, attorney or any other representative for the owner.
4. Twelve (12) copies of the deed, lease or contract, and/or other information.
5. Original and eleven (11) copies of a certified abstract of single and separate ownerships for variances regarding undersized lots (dated within 6 months - 1 year). Undersized lots must also submit information required by Southampton Town Code §330-167(H) and (I), where applicable.
6. If property has any improvements, twelve (12) copies of the Certificate of Occupancy, Certificate of Compliance and copies of any open Building Permits for all on site structures will be required.

7. If any previous Variance applications or appeals have been made with the respect to this property, please provide twelve (12) copies of determination/decision.
8. Two (2) original, and ten (10) photocopies of up-to-date surveys (dated within 6 months – 1 year) showing all buildings, structures (including, but not limited to roof overhangs) that currently exist and/or are proposed on the property, and setbacks from all property line of the same. The survey must also include the following as may be applicable: flood zone elevations, clearing calculations, wetlands boundaries, percentage of existing and proposed rear yard coverage, existing and proposed total lot coverage, percentage of proposed lot coverage and the 3/10th – 4/10th calculations. These coverages must be calculated by your surveyor and must appear on the current survey. Survey must also show setbacks for all existing and proposed structures and additions. If relief is requested for additional parking spaces, all parking areas must be depicted on the survey with dimensions for each space. (If you are inclined to submit a site-plan from an architect (rather than submit a survey), the site-plan must indicate the name and last revision date of the survey used to create the site plan. Copies of said survey must also be submitted with the application. Two (2) original, and ten (10) photocopies of the site-plan (dated within 6 months – 1 year) is required and must indicate the same information as stated above.
9. If you are seeking a variance for height/pyramid relief please include two (2) (full-size, to-scale) original and ten (10) copies (11" x 17") vertical cross-section diagrams of the building/structure showing areas exceeding the Pyramid Law requirements. (See information below) **Please have a licensed architect calculate the amount of square footage (existing and proposed (as may be applicable)) penetrating the pyramid, as well as a volume (cubic feet) calculation. Diagrams must be sealed, signed and dated by the licensed architect.**

**Pyramid Law formula for buildings and structures located in the “X” Flood Zone
or “0.2% Chance” Flood Zone**

The volume of pyramid encroachment shall be provided using the accepted method of determining compliance as follows: As directed by the Chief Building Inspector, the method of determining both the height of a building or structure and the method of delineating the sky plane from each lot line is as follows: a) Determine the average natural grade elevation prior to disturbance (using NAVD 1988), by indicating spot elevations taken at the corners along the side of the facade wall of the (Building/Structure) adjacent to the nearest street on the survey and, b) The architect (or NYS licensed design professional) shall calculate the average using the spot elevations as stated and draw the pyramid line from all property lines (N, S, E, & W) using the grade plane as applied to the subject structure(s) on the lot and shall also indicate the overall height of the (Building/Structure) using said averages. This method will establish a grade plane and form the basis for calculating the volume of encroachment and height. This information shall be submitted in order to verify the accuracy of the diagram and pyramid calculations. (**Note:** The average elevation, the setbacks from the property line, the amount of encroachment (cubic feet and square feet), the height of the building/structure and all cardinal points must be indicated on the elevation drawings.)

Note: See Town Code §330-84D(2) for buildings and structures in any AE or VE Zone as shown on the applicable Floor Insurance Rate Map

10. Two (2) (full-size, to-scale) original and ten (10) copies (11" x 17") of building (floor) plans. Plans must include elevations (N, S, E, W) and the height of the buildings/structures. **Plans must be sealed, signed and dated by a licensed professional**.

***Note:** If you are requesting variances for an accessory apartment, the floor plans **must** include the following:

(For accessory apartments that are NOT "Efficiency Units")

The architect shall provide the following documentation/information in order to verify the percentage ratio of the total floor area (habitable living space) of the proposed accessory apartment in relation to the main dwelling: (i) a floor plan of the main dwelling which shall include the area of each habitable living space, (ii) a floor plan of the accessory apartment which shall include the area of each habitable living space, and (iii) a letter or notation on the plans indicating the total habitable living space of the main dwelling, the total habitable living space of the accessory apartment and the percentage ratio between the two. See Town Code §330-5 (Definitions) for the definition of "Habitable Living Space."

(For "Efficiency Units" (a.k.a. Studio Apartment))

The architect shall provide the following documentation/information in order to verify the percentage ratio of the total floor area (habitable living space) of the proposed accessory apartment in relation to the main dwelling: (i) a floor plan of the main dwelling which shall include the area of each habitable living space, (ii) a floor plan of the Efficiency Unit which shall include the habitable living space in accordance with Town Code Section §330-11.2G(3) (Accessory Apartment Special Standards – Minimum and Maximum Sizes) and (iii) a letter or notation on the plans indicating the total habitable living space of the main dwelling, the total habitable living space of the accessory apartment and the percentage ratio between the two.

With respect to the clear floor area of the "efficiency unit" (accessory apartment) calculation, the "kitchen area" also includes the clear working space of 30 inches in front of the sink, cooking appliances and refrigeration facilities as indicated in Section 404.6 (Efficiency Unit) in the International Property Maintenance Code.

Note: See Town Code §330-5 (Definitions) for the definition of "Habitable Living Space."

11. Twelve (12) copies of a signed/initialed "Request to Extinguish Town Owned Development Right for Accessory Apartment" form, if applicable. **Note: The ZBA application will not be processed without this form.**
12. If the property is located within 500 feet of water, or listed on the Town wetlands inventory, please submit the original and fourteen (14) copies of the entire application package.
13. If the property has a commercial use or you are requesting to subdivide a parcel, please submit the original and thirteen (13) copies of the entire application package
14. If the application is for relief from the Coastal Erosion Hazard Area (Chapter 138 of the Town Code), please submit the original and eighteen (18) copies of the entire application package. The application will be referred to the Town Board, the Coastal Erosion Administrator, Town Chief Environmental Analyst, Deputy Town Attorney, Suffolk County Planning Commission, and the NYS Department of Environmental Conservation.

15. If the application is for relief from Town Code §330-46 (Coastal erosion management permit required; effect on zoning regulations) please submit the original and thirteen (13) copies of the entire application package. The application will be referred to the (Coastal Erosion Administrator).

DIRECTIONS

Answer ALL questions on the enclosed application form excluding the application number.

1. Applications must be **typewritten or neatly printed in blue or black ink**, and submitted with one **(1) set of original documents and eleven (11) copies** (total of 11) (unless otherwise stated in the aforementioned instructions). Applications along with related documents **MUST BE COLLATED** into packets, attaching all applicable documents, including but not limited to:
 - I. Application, owners' endorsement form and Open Government Disclosure Form;
 - II. Property deed;
 - III. Surveys and/or Site Plan, showing all details in connection with this application and prepared by a licensed professional;
 - IV. Certificates of Occupancy/Compliance for all buildings and structures on the property; and
 - V. All other required documentation as applies (see instructions).

NOTES:

- Upon notification of a hearing date, you will be required to mail all abutting neighbors a copy of pages 1-5 of your application (including addendum, memo of support, etc. – if applicable) and survey. Please retain a copy of each.
- All additional documentation/submittals (pictures, correspondence, copy of tax maps, etc. - including those being submitted during the public hearing) **MUST indicate the owner(s) name and SCTM# of the subject application.**

VARIANCES

One of the basic powers given by law to a Zoning Board of Appeals is called the "Variance" power. The Board has the authority to "vary" or modify the strict letter of a zoning ordinance or local law under certain circumstances. Appeals Boards are frequently confronted with requests for variances. There are two types of requests that come before the Board and the standards by which they are judged differ. A use variance is a request to utilize property for a use or activity which is not permitted by the zoning ordinance and the applicant must demonstrate "unnecessary hardship". An area variance is a request for relief from dimensional standards contained in the zoning ordinance and takes into consideration the benefit to the applicant weighed against the detriment to the health, safety, and welfare of the neighborhood.

USE VARIANCE

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An application for a use variance must demonstrate unnecessary hardship by satisfying each of the following four tests:

1. **Uniqueness** - The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone *and* that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district a variance should not be granted. In those situations, where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.
2. **Reasonable Return** – The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a “dollar and cents” proof of the applicant’s inability to realize reasonable return; speculation of qualitative assessment is inadequate. Failure to realize the highest return is not considered a hardship.
3. **Character** – The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the “spirit” of the ordinance or local law should be preserved.
4. **Self-Created Hardship** – The applicant must prove that the alleged hardship is not self-created.

The applicant for a use variance must meet all four tests before the Appeals Board may grant relief. A use variance should not be granted if the “unnecessary hardship” was created by the applicant. If the Appeals Board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative intent of the zoning ordinance.

SINGLE AND SEPARATE DETERMINATION

Town Code §330-115D (Continuance) provides relief to nonconforming lots so long as the subject property has been held in single and separate ownership as demonstrated by an abstract of title showing the changes of title to subject lot. If such an abstract indicates a period of common ownership, the Zoning Board of Appeals has the power to determine single and separate status of the subject property based upon evidence provided at a public hearing.

AREA VARIANCE

The Zoning Board of Appeals shall have the power, upon an appeal from a decision of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, welfare

of the neighborhood or community by such grant. In making such determination the Board shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not preclude the granting of the area variance.

The Appeals Board should grant the minimum relief necessary to allow reasonable use of the land in question. An applicant is not automatically entitled to receive relief.

SUMMARY

The major difference between a use variance and an area variance involves the use of the property. An area variance results in a modification of physical restrictions so that an allowable use may be established on the property. By contrast, a use variance permits the establishment of a use which is prohibited by the zoning ordinance and the zoning map. It is for this reason that the standards established for an area variance.

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ZONING BOARD OF APPEALS APPLICATION Town of Southampton, New York

Application Number _____

SCTM# 473689 (900) - _____ . _____ - _____ - _____ . _____

Parcel Location:

House Number _____ Street _____ Hamlet _____

1. _____
Applicant _____

Address _____ Telephone Number _____

E-Mail Address _____

NOTE: If applicant is not the owner, state whether applicant is owners' attorney, agent, architect, builder, consultant, general contractor etc.

2. _____
Owner _____

Address _____ Telephone Number _____

E-Mail Address _____

3. _____
Attorney (If Applicable) _____

Address _____ Telephone Number _____

E-Mail Address _____

4. _____
Surveyor _____

Address _____ Telephone Number _____

Please specify whom you wish correspondence to be mailed to from the above names listed.

☐ Applicant ☐ Owner ☐ Attorney ☐ Surveyor

5. C.O. Number _____ Flood Zone _____
Current Zoning District _____ Parcel Size _____ square feet
Subdivision Name, Date and Lot No.

6. An Application is hereby made for:

- ☐ An appeal from the Building Inspectors determination (330-165 A & B)
- ☐ An area variance
- ☐ A use variance
- ☐ Other _____

7. The applicable provisions of the Zoning Ordinance from which relief is sought are:

Article § 330 - _____	Article § 330 - _____
Article § 330 - _____	Article § 330 - _____
Article § 330 - _____	Article § 330 - _____
Article § 330 - _____	Article § 330 - _____

Chapter 138- _____ (if relief is requested from this Chapter, applicant must address the criteria for variances set forth in Town Code §138-22).

8. Have any previous Variance applications or appeals been made with the respect to this property? If so, give date and name of each application.

9. Is the property in separate ownership from all adjoining properties?

- ☐ Conforming Lot
- ☐ Yes If yes, since what date? _____
- ☐ No If no, which adjoining property is held by the same owner?

10. Pursuant to the State Environmental Quality Review Act ("SEQRA"), 6 NYCRR 617 et seq., is the proposed action a Type I, Type II, or unlisted? (SEQRA classifications listed in the instructions)

Note: Part I of an Environmental Assessment Long Form must be submitted for all Type I Actions and an Environmental Assessment Short Form Part I must be submitted for all Unlisted Actions.

11. Is the property located within the Suffolk County Pine Barrens Zone or within one mile of a nuclear power plant? _____

12. Is the property located within five hundred feet (500) of:

- The boundary of any village or town _____
- The boundary of any existing or proposed County, State or Federal park or other recreation area _____
- The right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway _____
- The 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

- The existing or proposed boundary of any other County, State or Federally owned land held or to be held for governmental use _____
- The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water _____
- The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the New York State Agricultural and Markets Law

AREA VARIANCE

13. Is this request a “Minor Variance” pursuant to Town Code §330-5, Definitions, (Variance, Minor)? YES ☐ NO ☐

14. This application is a request for an area variance from the provisions of Section(s) 330-_____ of the Town Code. This variance is for: (state in factual terms each variance requested., exact amount of each variance in feet or square feet, and whether variance is for existing or proposed structures).

[illegible]

15. Will the grant of the variance(s) cause an undesirable change in the character of the neighborhood or will it create a detriment to nearby properties? If not, please explain.

16. Can the benefits sought be feasibly achieved by some method other than an area variance? Please explain.

17. Will the variance(s) sought be substantial and if not, why not?

18. Will the grant of the variance(s) have an adverse effect or impact on the physical or environmental conditions in the neighborhood or in the affected area of the Town? Please explain.

19. What reasons lead you to the request of this variance rather than to comply with the Town Code?

20. Were all permits and/or Certificates acquired from the Building Department for this building, structure and/or use for which variance relief is being sought? (State whether it is **Proposed** or an **As-Built/Legalization**)

21. Are there any filed Covenants & Restrictions on the property? _____
(If so, please provide a copy)

APPEAL ☐ Not Applicable

22. This appeal is taking from the determination of the Building Inspector dated _____
Concerning Section(s) _____ of the Town Code. The contested
determination is incorrect in that:

SINGLE AND SEPARATE DETERMINATION ☐ Not Applicable

23. This is a request for a determination that the subject property identified as
SCTM# _____ has been held in separate ownership from the adjoining
property/properties identified as SCTM# _____.

Note: Please submit any documentation to substantiate this including, but not limited to, tax bills,
aerial photographs, proof of addresses, etc., **during the time period of common ownership.**

USE VARIANCE ☐ Not Applicable
(Please submit an Environmental Assessment Short Form Part I)

This application is a request for a use variance from the provisions of Chapter §330-10, §330-33 or
§330-67.

24. What is the proposed use and how has the applicant met the four tests to demonstrate
unnecessary hardship as outlined on page 4? Please be specific.

DETERMINATION OF PRE-EXISTING NONCONFORMING USE

☐ Not Applicable

25. This is a request to confirm the legal existence and continuation of a preexisting nonconforming use, subject to the provisions set forth in Town Code §330-118, prior to the Building Department's issuance of a certificate for such use, where no certificate exists.

Note: Please submit a Rider and any documentation to substantiate this, including but not limited to, affidavits, aerial photographs, surveys, etc.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.