



INCORPORATED VILLAGE OF PORT JEFFERSON

Department of Building & Planning

121 West Broadway, Port Jefferson, NY 11777

Ph (631) 473-4793 www.portjeffny.gov

ZONING BOARD OF APPEALS APPLICATION

What is Zoning Board of Appeals?

The Zoning Board of Appeals is a governing board responsible for reviewing and interpreting zoning regulations. They balance community interests, review applications, while comparing these ideas to the Village Code. The appointed members usually assess variances that are asked for projects that cannot meet the criteria presented within the Village Code.

How do I submit a Zoning Board of Appeals application?

Submit your completed Zoning Board of Appeals Application to the Port Jefferson Department of Building and Planning at 121 West Broadway, Port Jefferson, NY 11777

All applications must include:

- **2 hard copies** of the application and all supporting documents, AND
- One (1) electronic copy submitted via USB flash drive.

 **Please note:** Applications that do not include both hard copy and digital submissions will not be accepted for review.

Upon receipt of a complete application, the zoning board will consider scheduling for a public hearing.

What supporting documents are necessary?

Please refer to the checklist on the next page for the required submission materials. These may include surveys, site plans, architectural drawings, photographs, written statements, or any additional information required by the Village Code or staff.

 **Please note:** the completeness of your submission directly affects the timeliness of Board consideration. Incomplete or inaccurate applications will result in delays of Board consideration/ scheduling.



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INFORMATION REQUIRED FOR ZONING BOARD OF APPEALS APPLICATION

Submission Checklist:

☐	One (1) original and two (2) copies of the APPLICATION FORM plus one (1) electronic copy – completed, signed and notarized.
☐	FEES payable by check made out to The Incorporated Village of Port Jefferson. <u>Certificate of Existing Use (CEU):</u> Other than Single Family Home, \$250 other, \$500 plus \$100 per additional use. <u>Area Variance:</u> Residential, \$300 per variance Commercial, \$300 per variance. <u>Commercial Use Variance:</u> \$1500 <u>Interpretation:</u> Residential \$500, Commercial \$500
☐	One (1) copy of DEED or CONTRACT of SALE – Applicant must be the owner of the property (submit deed) or contract vendee (submit contract of sale). A lease is not acceptable.
☐	One (1) copy of CERTIFICATE of OCCUPANCY, CERTIFICATE of COMPLIANCE or CERTIFICATE of EXISTING USE – May be obtained by submitting an “Application for Public Access to Records” (FOIL).
☐	One (1) copy of SURVEY – Certified by a New York State Licensed Land Surveyor showing bearings/distances and reflecting the current conditions of the property. All existing setbacks as well as those for new construction shall be indicated by the surveyor and not added by the applicant.
☐	One (1) copy of DENIAL LETTER from the Building Inspector or REFERRAL LETTER from Planning Board, relating to the work/proposal for which relief is sought if applicable (see below).

An application to the Zoning Board of Appeals is not complete and may not be scheduled until the submission checklist and all the following information has been provided:

- ZBA Application must be filed within 60 days of the date of denial from the Building Inspector or Referral Letter from Planning Board.

This is not required for an application made for Determination of a Non-Conforming Use (Certificate of Existing Use (CEU) application).

Important Note on Scheduling:

All applications will be reviewed by the Department of Building and Planning for completeness prior to being scheduled for board review. If the submission is incomplete, staff will issue a written correspondence identifying missing or deficient materials.

PLEASE SUBMIT AN ELECTRONIC COPY OF THE COMPLETE APPLICATION.



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INSTRUCTIONS

After you submit a **complete application**, Staff will review it and schedule it for a public hearing. The Clerk of the Zoning Board will notify the applicant of the date of the public hearing. Then the procedures below must be followed:

PUBLIC MAILINGS

1. An applicant is required to notify the surrounding property owners ten (10) days prior to the hearing. A list of all property owners within a 200 feet radius must be prepared and submitted by the date of the hearing.

This list may be obtained from the current tax records of the Town of Brookhaven.

2. POSTERS – The applicant is required to post PUBLIC NOTICE POSTERS on the subject parcel within ten (10) feet of the street or curb at least ten (10) days prior to the hearing. There is a \$25 fee for each sign required. These signs shall be removed immediately after the close of the public hearing. Please refer to the Incorporated Village of Port Jefferson Public Hearing Requirements for information on POSTER DETAILS.
3. AFFIDAVIT – After the applicant has mailed the notification letters and posted the PUBLIC NOTICE signs on the property, the applicant shall submit an Affidavit of Notification and Posting with attached photograph of posted sign and proof of mailing to the clerk of the Zoning Board. A copy of this Affidavit is enclosed within this package



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INSTRUCTIONS

Incorporated Village of Port Jefferson Public Hearing Requirements

A public hearing will be held before the Planning/Zoning Board at a specified date, time and place regarding the proposed application

Village Code Section:
250-50(C)

Public hearing; notification; posters.

- (1) The Board of Appeals shall not decide upon any appeal from a variance or interpretation of an ordinance or application for a certificate of existing use without first holding a public hearing. At least 10 days prior to such meeting, the applicant or appellant shall notify all property owners within 200 feet of the subject property, by certified mail, return receipt requested. The names of adjacent property owners shall be taken as they appear on the latest completed tax roll of the Village. At or before the hearing, the applicant or appellant shall submit to the Board the certified mail receipts.
- (2) Posters required.
 - (a) Posters, not more than 200 feet apart along the street line of the property which is the subject of the application, not less than 24 inches by 36 inches in size, must be conspicuously posted along the entire length of each street frontage of the property which is the subject of the appeal at least 10 days prior to the date set for the public hearing before the Board of Appeals. Such poster shall contain the following information:

Village Code Section:
250-51.1

- (b) The applicant shall be required to file an affidavit of posting with the Secretary or Clerk of the body before whom the public hearing shall be held not later than the date specified for the public hearing.
- (c) The applicant shall pay a fee as set forth in the Table of Fees for each poster required to be displayed pursuant to this section in connection with any application.



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INSTRUCTIONS

SUGGESTED GUIDELINES FOR 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 in cases where the benefit to the applicant outweighs the benefit to the neighborhood.

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 the 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 property 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 others share the difficulty, 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 in 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 an Appeals Board may grant relief. A use variance should not be granted if the applicant created the “unnecessary hardship”. 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.



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INSTRUCTIONS

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.

Village Law § 7-712(1) provide as follows:

“‘area variance’ shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations”

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

1. The granting of the area variance will create whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties.
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 an area variance.

THE APPLICANT IS ADVISED TO CAREFULLY CONSIDER THE TESTS LISTED AND BE PREPARED ON THE HEARING DATE TO OFFER TESTIMONY BASED ON AN UNDERSTANDING OF THE ABOVE CRITERIA.

The Village Law continues that the Appeals Board should grant the minimum relief necessary to allow reasonable use of the property 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 the 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 that is prohibited by the zoning ordinance and the zoning map.



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ZONING BOARD OF APPEALS APPLICATION

TAX MAP NUMBER: _____

(Refer to tax bill)

ADDRESS OF SUBJECT PROPERTY:

This appeal is taken from:

1) Building Inspector denial letter dated: _____

2) Planning Board referral letter dated : _____

Concerning Village Code Section: _____

An application is hereby made for:

() Area variance

() Use variance

() Interpretation of § 250 - _____

() Confirmation of a non-conforming use (CEU Application)

APPLICANT – Applicant must be the party in interest

NAME: _____

COMPANY NAME (if applicable): _____

ADDRESS _____

PHONE: _____ EMAIL: _____

OWNER(S) – All property owners on the current deed.

NAME _____

ADDRESS _____

NAME _____

ADDRESS _____

All communications with regard to this application shall be addressed to the following until further notice: (if different from applicant)

NAME _____

ADDRESS _____

PHONE: _____ EMAIL: _____

For Office Use

Received: _____ Appeal No. _____ Payment: _____



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Are there any **Violations** or **Notices of Violations** outstanding on this property? YES or NO (Circle)

If YES, attach copies.

Is the property within 500 feet of the following?

- a. The boundary of any Village or Town? YES or NO (circle)
Specify _____
- b. The boundary of any existing or proposed county or state park or any other recreation area? YES or NO (circle)
Specify _____
- c. The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway? YES or NO (circle)
Specify _____
- d. 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? YES or NO (circle)
Specify _____
- e. The existing or proposed boundary of any county or state owned land on which a public building or institution is situated? YES or NO (circle)
Specify _____

Subject property is located in the _____-zoning district.

PREVIOUS APPEALS *Please check one.*

- () A previous appeal has been made dated _____ ZBA Appeal #(s) _____
- () A previous appeal has NOT been made with respect to this denial of the Building Inspector or with respect to this property.

() AREA VARIANCE:

This application is a request for an area variance from the provisions of § 250-_____ of the Code of the Village of Port Jefferson. 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. Attach additional 8 ½ x 11" sheets if necessary).



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	REQUESTED:	REQUIRED:
☐ Lot Area:	_____ sq. ft.	_____ sq. ft.
☐ Lot Depth:	_____ ft.	_____ ft.
☐ Lot Width:	_____ ft.	_____ ft.
☐ Front Yard Setback:	_____ ft.	_____ ft.
☐ Min. Side Yard Setback:	_____ ft.	_____ ft.
☐ Total Side Yard Setback:	_____ ft.	_____ ft.
☐ Rear Yard Setback:	_____ ft.	_____ ft.
☐ Parking:	_____	_____
☐ Lot Occupancy:	_____ %	_____ %
☐ Other:	_____	_____

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

Was the structure built without the benefit of a building permit? YES or NO (circle)

Are there any filed Covenants & Restrictions on the property? YES or NO (circle)

If yes, please provide a copy.

() USE VARIANCE

This application is a request for a use variance from the provisions of Chapter 250 - _____.

What is the proposed use? Please be specific. (Attach additional 8 ½ x 11" sheets if necessary)



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() **INTERPRETATION of § 250 - _____**

() **CONFIRMATION of a NONCONFORMING USE**

If you are filing for an INTERPRETATION or CONFIRMATION of a NONCONFORMING USE, please insert your reasons here:

The information stated on this application and on supporting documentation is accurate and true. Any changes to this information prior to a decision by the board will be indicated in writing to the board.

Preparer's Signature _____

Print Name _____

Date _____

Sworn to before me this _____ day of _____, 20 _____

Notary Public



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SHORT ENVIRONMENTAL ASSESSMENT FORM

These questions are to be answered by the applicant or a representative of the applicant.

1. Does the action involve a change in zoning, or a zoning variance, or a change in allowable use of a parcel of land?
YES or NO (circle one)
2. Does the action involve acquisition, sale, lease, or other transfer of land by a State, County, Town, or Village agency? YES or NO (circle one)

If yes, please describe _____

3. Is the project to subdivide land for housing? YES or NO (circle one)

If yes, describe subdivision: _____

4. Is its location on or adjacent to a beach, harbor, pond, stream, wetland, park, sanctuary, or other environmentally sensitive area designated by the Environmental Conservation Advisory Board, or a critical area of environmental concern, or a park, or a recreation area, or designated open space? YES or NO (circle one)

If yes, please describe _____

5. Are there nearby streets or properties whose scenic views could be affected by a project on the property involved? YES or NO (circle one)

If yes, please describe _____

6. Is a structure being proposed whose appearance differs markedly from those already in the neighborhood? YES or NO (circle one)

If yes, please explain _____



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7. Will proposed structure prevent sunlight from falling upon the adjacent lot? YES or NO (circle one)
8. Will project regularly cause odors, noise, glare, or electrical disturbance detectable from nearby properties? YES or No. (circle one)

If yes, please describe _____

9. Will more than one acre of land be cleared or changed? YES or NO. (circle one)
10. Does any of the land to be cleared have slope over 15%? YES or NO. (circle one)
11. During construction, could soil wash downhill onto adjacent lots and/or roadways? YES or NO. (circle one)
12. Does any of the land to be cleared or changed lie within 100 feet of an existing slope exceeding 30% or within 100 feet of an existing waterway? YES or NO. (circle one)
13. Will the project regularly use well water or surface water? YES or NO. (circle one)

If yes, please describe _____

14. Will parking for 25 (or more) cars be provided? YES or NO. (circle one)
15. Is a building proposed with more than 10,000 square feet of gross square feet floor area? YES or NO. (circle one)

If yes, please describe _____

Preparer's Signature _____ Title _____

Representing _____ Date _____



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PROPERTY OWNER'S ENDORSEMENT

PROPERTYOWNER: This section must be completed for all applications. (Separate sheets may be used for multiple owners)

Be advised that I am the owner of record of the property referenced herein and hereby consent to this application. By this application, I hereby authorize employees or agents of the Incorporated Village of Port Jefferson, in conjunction with this application, to enter and inspect the project site as necessary.

Property Owners Name: _____

Address: _____

If property owner is a corporation, give the name and title of responsible officer:

Name: _____ Title: _____

IN WITNESS WHEREOF I have hereto set my hand this _____ day of _____ 20_____

(Owner Signature)

STATE OF NEW YORK)

) SS.:

COUNTY OF SUFFOLK)

On the _____ day of _____ in the year _____ before me the undersigned, personally appeared _____
_____ personally known to me or proved to me on the basis of satisfactory evidence to be the
individual(s) whose name(s) is (are) subscribed to be within instrument and acknowledged to me that he/she/they executed
the same in his/her/their capacity (ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person
upon behalf of which the individual(s) acted, executed the instrument.

(Notary Public)



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DISCLOSURE AFFIDAVIT

State of NEW YORK)

ss:

County of SUFFOLK)

_____ being by me duly sworn disposes and says:

1. I am an applicant for a project or an owner of the land which is the subject of a pending application before the Incorporated Village of Port Jefferson Zoning Board of Appeals, bearing number _____
2. The project name is: _____
3. I reside at _____
4. The officers of the applicant's corporation or owner corporation are as follows: (if applicable)

President _____ Secretary _____

Vice President _____ Treasurer _____
5. I make and complete this affidavit under the penalty of perjury and swear to the truth herein.
6. I am aware that General Municipal Law 809 requires this affidavit and that I shall be guilty of a misdemeanor should I knowingly or intentionally fail to make all disclosures herein.

For the purpose of this disclosure, an official of the State of New York or an official or employee of either the Village of Port Jefferson or the County of Suffolk shall be deemed to have an interest in the applicant or owner when that official or employee, their spouse, brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

1. is the applicant or owner,
2. is an officer, director, partner, or employee of the applicant or owner,
3. legally or beneficially owns or controls stock of a corporate applicant or owner, or is a member of a partnership or association applicant or owner, or
4. is a party to an agreement with the applicant or owner, express or implied, whereby said official or employee may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application.

Ownership of less than five per cent of the stock of a corporation whose stock is listed on the New York Stock or American Stock Exchanges shall not constitute an interest for the purposes of this disclosure.



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YOU MUST ANSWER THE FOLLOWING QUESTIONS EITHER YES or NO

Do any of the following individuals have an interest in the applicant or owner, as defined above?

1. Any official of New York State
2. Any official or employee of the Village of Port Jefferson or Suffolk County?

Being so informed and warned, my response to the above question is YES or NO (please circle)

If the answer above is yes, General Municipal Law Section 809 requires that you disclose the name and residence and the nature and extent of the interest of said individual(s) in the applicant owner:

NAME	RESIDENCE	NATURE OF INTEREST
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature _____

Print Name _____

Date _____

Sworn to before me this _____ day of _____, 20 _____

Notary Public



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AFFIDAVIT OF POSTING & MAILING (SEE PAGE 3, No.3)

This affidavit certifies that the subject property was posted in accordance with the Code of the Village of Port Jefferson ten days prior to the public hearing date and I have sent by certified mail – return receipt requested a letter and a copy of the Public Notice to all owners of property within 200 feet.

DATE POSTED: _____ **PUBLIC HEARING DATE:** _____

SUBJECT PROPERTY ADDRESS: _____

TAX MAP NUMBER: _____

Signature _____

Print Name _____

Date _____

Sworn to before me this _____ day of _____, 20 _____

Notary Public