

ZONING BOARD OF APPEALS

Application for a Use Variance

Submit to Development Services, 137 Main Street, Penn Yan, NY 14527
(315) 531-8042 | Fax: (315) 536-9760 | codeofficer@townofmilo.com | townofmilony.gov

Request permission to use land for a purpose otherwise prohibited by the applicable zoning regulations. Complete all applicable sections; attach labeled continuation sheets as needed.

1 Owner, representative and property

Owner / legal entity

Name

Mailing address, including city, state and ZIP

Telephone

Email

Project street address

Tax map parcel identification number(s)

Authorized representative, if any

Name

Mailing address, including city, state and ZIP

Telephone

Email

Zoning district

2 Existing use and requested use variance

Describe the existing use(s) and improvements on the property.

Describe the proposed prohibited use, its scale, hours of operation, activities and associated work. Attach an operational narrative if needed.

Zoning provision(s) from which relief is requested

Coordinate filing requirements and any applicable appeal deadline with Development Services. A request for permission to conduct a prohibited use must establish unnecessary hardship; disagreement with a zoning interpretation is a separate issue.

Read Appendix A before preparing your supporting evidence. Number each exhibit and refer to it in your responses. Keep all entries visible when printed; use labeled continuation sheets for longer answers.

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Evidence of unnecessary hardship

3 Address all four statutory requirements

The applicant must establish every requirement below under Town Law § 267-b(2). For each and every permitted use, a substantial lack of reasonable return must be supported by competent financial evidence. Greater profit from the proposed use is insufficient. The ZBA cannot grant a use variance unless all four requirements are established.

Town Code § 350-198(B) requires written testimony and competent evidence prepared and attested by qualified professionals. These responses summarize the attached professional evidence; they do not replace it. See Appendix A for preparation guidance.

1 Substantial lack of reasonable return

Identify every permitted use and summarize why none can yield a reasonable return. Cite the financial schedules, appraisal, costs, income and rate-of-return analysis for each use.

2 Unique property hardship

Identify property-specific conditions and explain why they do not affect a substantial portion of the district or neighborhood. Cite maps, site studies and comparisons.

3 Essential character of the neighborhood

Explain why the proposed use will not alter neighborhood character. Address scale, traffic, access, noise, lighting, views, operating hours and proposed controls.

4 Hardship not self-created

Explain when and how the hardship arose. State the acquisition date, zoning restrictions then in effect, prior approvals and owner actions; attach supporting records.

The ZBA may grant only the minimum relief necessary and adequate to address the proven hardship while protecting neighborhood character and community health, safety and welfare. Identify any narrower use or operating limits that would address the hardship in your attachments.

LAND USE APPLICATION

Plans and required application materials

4 Professional evidence and site plan

Submit a site plan prepared and sealed by a land surveyor or registered design professional under Town Code § 350-198(C). Show boundaries, existing and proposed uses and improvements, roads, access, easements, dimensions and relevant site features. Identify the preparer, scale, date and revisions. Informal sketches and tax maps do not replace the required plan.

Attach written testimony prepared and attested by qualified professionals addressing all four hardship requirements, including financial evidence for every permitted use. Identify each professional, qualifications, report date, assumptions, data sources and exhibits.

Plan / survey preparer and firm _____

Drawing / certification date _____ Sheet numbers / revision _____

5 Submission checklist

- ☐ Completed application, signed owner affirmation and continuation sheets
- ☐ Current application fee and required review deposit
- ☐ Required sealed professional site plan and supporting construction plans, as applicable
- ☐ Attested professional testimony, financial schedules and evidence for all four requirements
- ☐ Short or full Environmental Assessment Form, if SEQRA review is required
- ☐ Agricultural data statement, if required under Town Law § 283-a
- ☐ Supporting photographs, prior approvals and other information requested by the ZBA

If required information is missing, the application will be deemed incomplete and will not proceed with approval. Explain inapplicable items in an attachment. Confirm current filing deadlines with Development Services.

Environmental and agricultural review: Submit a short or full EAF when SEQRA review is required. An agricultural data statement is required for a use-variance proposal on property in an agricultural district containing a farm operation, or with boundaries within 500 feet of a farm operation in an agricultural district. Include the information required by Town Law § 283-a.

6 Owner affirmation under penalties of perjury

The signing owner affirms ownership of the property identified in this application, or authority to sign for the entity that owns it. The owner authorizes the filing of this application, has reviewed the entire application and attachments, and affirms that the information is accurate and complete to the best of their knowledge and belief.

The owner has read and agrees to the application terms on page 4, including the fee-reimbursement obligations, and remains responsible for compliance with applicable law. The representative identified on page 1, if any, is authorized to present this application and receive related information on the owner's behalf. Revocation of that authority must be provided to the Town in writing.

I affirm on the date entered beside my signature, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters stated on information and belief, and as to those matters I believe them to be true. I understand that this document may be filed in an action or proceeding in a court of law.

Printed name _____ Date _____

Owner signature _____ Entity title, if any _____

LAND USE APPLICATION

Application terms and required disclosures

7 Owner responsibilities and application terms

1 Required permits. A use variance grants only the relief stated in the written decision. Obtain all required building permits, certificates of zoning compliance and other agency approvals before starting work that requires them. Approval does not resolve easements, covenants or other private property rights.

2 Required separation distances: no Town waiver. The Town of Milo, including the ZBA, cannot waive separation-distance requirements of the New York State Uniform Fire Prevention and Building Code. Zoning relief does not authorize noncompliance with the Uniform Code or other applicable laws. Required fire, building, well and septic separation standards remain applicable. Any relief from a State requirement must be obtained separately from the agency or body legally empowered to grant it. Uniform Code variance requests follow 19 NYCRR Part 1205.

3 Disclosure of interests. To the extent known, disclose the name, residence, and nature and extent of any interest covered by General Municipal Law Â§ 809 held by a State officer or an officer or employee of the Town or a municipality of which the Town is a part. Covered interests include those through a spouse or specified relatives, employment, ownership or an approval-contingent benefit. The statute excludes holdings below 5% in corporations listed on the New York or American Stock Exchanges. Attach full particulars of reportable interests. A knowing and intentional violation is a misdemeanor.

4 Accuracy and responsibility. The owner is responsible for the application and supporting documents. Town review or inspection does not guarantee detection of every hazard, design defect or violation. Owners remain responsible for legal compliance regardless of agreements with representatives, contractors or others.

5 Indemnification and hold harmless. To the extent permitted by law, the owner agrees to indemnify and hold harmless the Town and its agents, servants and employees from claims, liability, loss or damage arising from review of this application; defend covered claims at the owner's expense, whether rightfully or wrongfully brought; and reimburse reasonable enforcement expenses, including attorney fees. This provision does not expand any obligation beyond what applicable law permits.

6 Property inspections. The owner authorizes Town officers, employees and duly authorized representatives to inspect the subject property as reasonably necessary to review this application, subject to applicable law. Inspections may include measurements, examination of soils and vegetation, samples, drawings and photographs.

7 Fees and reimbursement. Applicants are jointly and severally obligated to reimburse the Town for administrative costs and fees incurred consistent with Chapter 191 and other applicable Code provisions, including reasonably necessary professional fees. The owner acknowledges this obligation by signing page 3. The Town may require initial and additional review deposits. Funds must be used for services connected with the project; unused deposits are returned after review, with a final accounting available on request.

8 Invoice review and nonpayment. Under Â§ 191-13(E), an applicant has 20 business days after receiving a reimbursement request to submit a written request to the Town Clerk to review the supporting invoices at Town Hall; that review right is waived if not timely requested. Nonpayment may result in collection, lawful penalties, reasonable collection costs and assessment against the property under applicable Code provisions. Application fees and incurred administrative costs are nonrefundable; unused deposits are treated as described above.

9 Conditions and revisions. Comply with the approved plans and written conditions. Under Town Law Â§ 267-b(4), conditions must be reasonable, directly related and incidental to the proposed use, consistent with zoning intent, and aimed at reducing adverse effects. Submit material changes to the Code Enforcement Officer before work; further ZBA review may be required.

10 Validity, expiration and revocation. Under Town Code §§ 350-200 and 350-202, observe the one-year commencement and operation/completion deadlines. A continuous one-year cessation of the authorized use also voids the variance unless extended as allowed by the Code. Request extensions in writing from the Code Enforcement Officer with justifiable cause before the deadline; each written extension may not exceed one year. The variance runs with the land. Grounds for revocation are stated in § 350-204.

Agricultural assessment: conversion to nonagricultural use

Converting land receiving an agricultural assessment to a nonagricultural use may trigger a conversion payment under Agriculture and Markets Law §§ 305 or 306, plus interest. Notify the assessor within 90 days of conversion; failure to notify may result in an additional penalty. ZBA approval does not waive these obligations. Consult the assessor before conversion. See the [NYS agricultural conversion guidance](#).

Review and references: The ZBA conducts a public hearing and decides the application after required environmental review and referrals. [Town Law § 267-b](#); [Milo §§ 350-196 through 350-204](#); [Chapter 191](#); General Municipal Law §§ 809 and 239-m. Additional evidence guidance appears in Appendix A.

APPENDIX A | APPLICANT GUIDANCE

Evidentiary standards for a use variance

This appendix incorporates and updates the explanation in the Betensky Law article, “The Evidentiary Standard for Obtaining a Use Variance in New York,” and consolidates the original application guide. It explains the ordinary unnecessary-hardship standard; it does not replace applicable law or the ZBA’s findings.

A1 What the applicant must prove

A use variance permits a use prohibited by the zoning regulations. The applicant bears the burden of establishing all four requirements in Town Law § 267-b(2)(b): substantial inability to realize a reasonable return from every permitted use; a hardship unique to the property; no alteration of essential neighborhood character; and a hardship that was not self-created.

These are mandatory requirements, not a balancing test. Neighborhood support, an attractive proposal, personal financial need or a more profitable proposed use does not substitute for the required proof. A complete application does not guarantee approval. The ZBA evaluates the evidence and credibility of witnesses and must base its determination on the record.

A2 Financial evidence: a documented analysis of every permitted use

Prepare a separate schedule for each use permitted in the district, including uses allowed by special permit where applicable. Identify the governing use provisions. Evaluate the property as a whole and any existing lawful use relevant to the request. If a permitted use is physically or legally infeasible, explain why and support that conclusion with competent evidence rather than omitting it.

Acquisition and investment. Document purchase date and price, ownership history, capital improvements, financing and outstanding encumbrances. Distinguish actual investment from assumptions dependent on obtaining zoning relief.

Current value and market evidence. Provide a supported valuation, comparable properties, market rents or sales, vacancy assumptions and relevant marketing history. Explain adjustments and the dates and sources of the data.

Income, expenses and development costs. Show actual or projected annual income, property taxes, insurance, maintenance, operating expenses, vacancy and required construction or rehabilitation costs for each permitted use. Support estimates with records, bids, studies or market data.

Return calculation and comparison. State the investment or valuation basis, projected net income, calculated return and supported benchmark for a reasonable return. Explain why the lack of return is substantial for every permitted use. Avoid unsupported percentages and double-counted expenses.

Professional attestation and exhibits. Identify the qualified professionals responsible for each analysis. Submit their signed attestations, qualifications, calculations, supporting records and explanations of assumptions. Town Code § 350-198(B) requires professionally prepared and attested written evidence.

A3 Evidence addressing the remaining requirements

Unique hardship: Compare the parcel with nearby and similarly zoned land. Use surveys, topography, soil or engineering studies and photographs to connect the claimed limitation to this property. A condition broadly affecting the district may call for a zoning amendment rather than an individual variance.

Neighborhood character: Document surrounding uses and the proposed operation. Address traffic, access, hours, lighting, noise, screening, visibility and environmental effects. Support proposed controls with plans or analysis that the ZBA can evaluate and, where lawful, make conditions of approval.

No self-created hardship: Provide the acquisition and zoning chronology, prior approvals and owner actions affecting the property. Acquiring land subject to known restrictions can create a serious obstacle. Explain the actual circumstances; the facts and applicable law control.

APPENDIX A | APPLICANT GUIDANCE, CONTINUED

How the evidence is evaluated

A4 Case example: financial and property evidence

Matter of Jones v. Zoning Board of Appeals of the Town of Oneonta, 90 A.D.3d 1280 (3d Dept. 2011). The article discusses a use variance allowing a long-inactive sand and gravel mine. The court upheld the determination based on the specific evidentiary record. The example illustrates the level of factual support needed; it does not assure approval of another project.

Financial return. The record included an appraiser's residential market analysis and an engineering report on septic limitations. Evidence also addressed limited agricultural income, poor soils, steep slopes, brush and stone piles, connecting the property's constraints to the permitted alternatives.

Unique conditions. The ZBA had evidence of conditions peculiar to the parcel in comparison with other properties in the zoning district. A general assertion that land is difficult to develop would not provide the same factual foundation.

Neighborhood character. The record addressed the distance to nearby residences, visibility, traffic and noise controls. These details supported the finding about neighborhood character; the result did not depend simply on a lack of objections.

Self-created hardship. A use variance running with the land existed when the purchaser acquired the property, although litigation was pending. The court accepted the ZBA's assessment of those circumstances. This is a fact-specific example, not an exception for every purchaser aware of restrictions.

A5 Present a clear, traceable evidentiary record

Organize attachments by the four requirements. Use an exhibit index showing the exhibit number, title, preparer, date and requirement addressed. Tie each conclusion to a record, calculation or professional opinion. Resolve inconsistencies between the application, plans, financial schedules and testimony. Explain missing information and the limits of estimates.

Statements that the proposed use is preferable, the property is difficult to sell or neighbors favor the project do not establish unnecessary hardship on their own. Evidence that one permitted use is unprofitable does not establish the financial requirement for all permitted uses. An unsupported conclusion from a professional is not a substitute for the underlying analysis.

A6 Scope of relief and special circumstances

The ZBA must limit relief to what is necessary and adequate to address the proven hardship and may impose reasonable conditions related to the use and its effects. Approval remains subject to the written decision, other permits, State requirements and the Town's commencement, discontinuance and expiration rules.

The article notes that qualifying public utilities may be governed by a different standard, citing *Cellular Telephone Co. v. Rosenberg*, 82 N.Y.2d 364 (1993). An applicant claiming that treatment must identify the legal basis and supporting facts; it should not assume the ordinary hardship requirements are inapplicable.

The article also discusses expansion of a use previously authorized by variance, citing *Scarsdale Shopping Center Associates, LLC v. Board of Appeals*, 64 A.D.3d 604 (2d Dept. 2009). Milo § 350-200(B) treats an authorized use as permitted. Before expanding, confirm the scope and conditions of the existing approval and all remaining zoning, site-plan, permit and other requirements. The article is not blanket authorization to expand.

Sources

Primary provisions: [New York Town Law § 267-b\(2\), \(4\)](#); [Town of Milo Code, Article XXIII](#). Supplemental source: Betensky Law, "The Evidentiary Standard for Obtaining a Use Variance in New York," two-page printout dated May 9, 2022. Case examples above summarize that article; each application requires its own evidence and findings.