

APPLICATION TO APPEAR BEFORE THE BOARD OF APPEALS

USE VARIANCE

All the forms included with this packet must be completed in their entirety in order to be scheduled to meet with the Board of Appeals. Failure to complete any form may cause a delay in the applicant's schedule.

Check with the Code Enforcement Officer on scheduled dates of meetings.

This request must have the following action (s):

	<u>YES</u>	<u>NO</u>
1. New York State		
a) D.E.C.	_____	_____
b) D.O.T.	_____	_____
2. Clinton County		
a) Health Department	_____	_____
b) Planning Board	_____	_____
3. Town of Plattsburgh		
a) Highway	_____	_____
b) Planning Board	_____	_____
c) Town Board	_____	_____
4. Other		
_____	_____	_____
_____	_____	_____

STANDARDS OF PROOF – USE VARIANCE: “UNNECESSARY HARDSHIP STANDARD”

For an applicant to be entitled to a Use Variance, he must satisfy the ‘unnecessary hardship standard’. The courts of New York hold that, to satisfy this standard, the applicant must establish by competent proof of the following:

1. The land in question cannot yield a reasonable return if used only for a purpose allowed in that zone.
2. The use to be authorized by the variance will not alter the essential character of the locality.
3. The hardship is unique as to this parcel and is not general throughout the zoning district.

A. REASONABLE RETURN: As to proof of “no reasonable return”, the New York Court of Appeals held in the case of Crossroads Recreation v. Broz 4 N.Y. 2nd 39 – that the issue of “reasonable return” cannot be satisfied except by a showing of dollars and cents proof in which the following is established by competent evidence:

1. The amount paid for the land in question,
2. It’s 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).

Whether any of the permitted uses would generate a reasonable return requires proof, which can be determined by the rate of return earned by similar or like property in the community, in dollars and cents from the owners investment in the property as well as the return that the property will produce from the various uses permissible under the existing classification.

The burden of proof is always on the applicant on the issue of establishing unnecessary hardship. This does not, however, bar the municipality from going forward with proof to the contrary because as the Court of Appeals said in Professional Park v. Town of Bedford:

“When the proponent presents proof sufficient to permit the trier of fact to decide in his or her favor, the opponent must counter that proof or risk an adverse determination. Only in that general sense can it be said that there is no obligation on the municipality to go forward with the proof.”

“Unnecessary Hardship Standard” Continued

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 no reasonable return can be derived from any of the permitted uses, then the applicant has proven the first part of the necessary hardship standard.

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.

C. UNIQUENESS: The applicant must prove that the hardship is 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.

If the ZBA determines that the applicant has not furnished competent evidence meeting and satisfying both of the above standards, then the ZBA must deny the use variance.

D. OTHER FACTORS TO BE CONSIDERED BY ZBA: SELF-CREATED HARDSHIP: If the hardship complained of is self-imposed, then the variance will 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.

PERSONAL PROBLEMS: Is the situation of the owner due to personal problems as opposed to use of the land or buildings. If personal problems, then the use variance must be denied.

IMPORTANT

Section 8.4 Board of Appeals A Board of Appeals of five (5) members is hereby established in accordance with the provisions of Section 267 of the Town Law, which Section is hereby incorporated in this ordinance by reference. The Board of Appeals shall, consistent with the Town Law, determine its own rules and procedures and shall have the power and duties granted to it in the Town Law and as specified in this ordinance. The Board of Appeals shall, in accordance with the provisions hereinafter set forth in this Section, hear and determine appeals from and refusal of a building permit or certificate of occupancy by the Zoning Enforcement Officer, or review any order or decision is based upon the requirements of this ordinance. The Board of Appeals shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Board of Appeals shall also hear and decide all matters referred to it or upon which it is required to pass by the terms of this ordinance.

In deciding such matters referred to it by the terms of this ordinance, the Board of Appeals shall give consideration to the health, safety, morals and general welfare of the community. In harmony with the general purpose and intent of this ordinance, the Board of Appeals shall determine that a need for the use in questions exists, and that the convenience and prosperity of the community will be served, and that neighboring persons and property will not be adversely affected.

NOTE: IF YOUR FORM IS INCOMPLETE, YOU MAY BE DENIED OR DELAYED.
IT IS IMPORTANT THAT YOU ADDRESS ALL REQUIRED CRITERIA.

ANY VARIANCES THAT ARE GRANTED, UNLESS OTHERWISE CONDITIONED BY THE BOARD OF APPEALS, WILL EXPIRE ONE HUNDRED EIGHTY (180) DAYS FROM DATE OF FILING IN THE TOWN CLERK'S OFFICE. IF THE APPLICANT FEELS THIS CRITERIA IS TOO STRINGENT FOR THEIR NEEDS, THEY MUST BE PREPARED TO DEMONSTRATE THAT REASONING TO THE BOARD.

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:		Telephone:		
		E-Mail:		
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO	YES
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO	YES
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action. ☐ Urban ☐ Rural (non-agriculture) ☐ Industrial ☐ Commercial ☐ Residential (suburban) ☐ Forest ☐ Agriculture ☐ Aquatic ☐ Other (specify): _____ ☐ Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO	YES	N/A
b. Consistent with the adopted comprehensive plan?			
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
b. Are public transportation service(s) available at or near the site of the proposed action?			
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?			
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? ☐ NO ☐ YES] If No, describe method for providing potable water: _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? ☐ NO ☐ YES] If No, describe method for providing wastewater treatment: _____	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
b. Is the proposed action located in an archeological sensitive area?			
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____			
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: ☐ Shoreline ☐ Forest ☐ Agricultural/grasslands ☐ Early mid-successional ☐ Wetland ☐ Urban ☐ Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? ☐ NO ☐ YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: ☐ NO ☐ YES _____ _____	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing:		
a. public / private water supplies?		
b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
- ☐ Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency	Date
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

TOWN OF PLATTSBURGH
CODES DEPARTMENT
151 BANKER ROAD
PLATTSBURGH, NEW YORK 12901

PHONE: (518) 562-6840
FAX: (518) 562-6844 or 563-8396

Application Fee: _____ Appeal No. _____

Date Paid: _____ Parcel Number _____

APPLICATION TO BOARD OF APPEALS

Name _____ Telephone Number _____

Address _____ Date _____

I (We) hereby appeal to the Zoning Board of Appeals to review the decision of the Code Enforcement Officer on our application for a Building Permit, dated _____, 20____.

1. Location of Property _____

2. Provisions of the Zoning Ordinance appealed, (indicate the ARTICLE, Section and Subsection of the Zoning Ordinance being appealed, by number. Do not quote the Ordinance.

3. Appeal is made herewith for:

- () An interpretation of the Zoning Ordinance or Zoning Map
- () A special permit under the Zoning Ordinance.
- () A variance to the Zoning Ordinance.
- () Use Variance () Area Variance
- () Sign - Also check Use or Area Variance

4. A previous appeal () has () has not been made with respect to the decision of the Code Enforcement Officer or with respect to the property. Such appeal was in the form of () a requested interpretation () a request for a Variance () a request for a special permit and was made in Appeal No. _____, dated _____.

5. REASON FOR APPEAL. COMPLETE ONLY THE BLANKS BELOW THAT ARE RELEVANT TO YOUR REQUEST. USE EXTRA SHEET IF NECESSARY.

INTERPRETATION OF THE ZONING ORDINANCE IS REQUESTED BECAUSE:

[illegible]

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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 of Local Law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for an individual.

Appeals boards are frequently confronted with requests for variances. There are two types of request 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 "reasonable return/lack of economic use or benefit". An Area Variance is a request for relief from dimensional standards contained in the Zoning Ordinance and the applicant must demonstrate to the Board of Appeals the benefit to the applicant if the variance is granted and the detriment to the health, safety and general welfare of the neighborhood or community.

The basic standards for determining unnecessary hardship and practical difficulty have been established and refined by the courts in numerous cases.

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 applicant for a Use Variance must demonstrate reasonable return/lack of economic use or benefit of his land. This and the following criteria must all be satisfied before a Use Variance can be granted:

1. REASONABLE RETURN/LACK OF ECONOMIC USE OR BENEFIT: That the applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence.
2. UNIQUE CIRCUMSTANCES: 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. ESSENTIAL CHARACTER OF THE LOCALITY: That the requested use variance, if granted, will not alter the essential character of the neighborhood.
4. SELF-CREATED HARDSHIP: That the alleged hardship has not been self-created.

A FINAL RULE ON VARIANCES

The rules, as outlined above, are now requirements for the granting of a variance. Prior to July 1, 1992, these were guidelines established by case law. However, since that date, these requirements are firm and the Board of Appeals **must** address each of these issues. You, the applicant must be prepared to answer each and all of these questions.

It is your responsibility to provide this data to the Board Members. Failure to present the proper documentation to the Board of Appeals could, at the least, delay you and perhaps result in your appeal being denied.

ARTICLE 78 PROCEEDINGS

Any person wishing information with regard to appealing the decision of the Board of Appeals may do so by contacting the Code Enforcement Official for initial guidance. It must be remembered that the Code Enforcement Official is not a legal person but can only get you started with the Article 78 procedure if you so desire.

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NOTICE

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On June 15, 1994, the Board of Appeals of the Town of Plattsburgh unanimously passed a resolution to adopt an amended copy of their Rules and Procedures. The Rules and Procedures are guidelines that are established as per Section 267 of the Town Law for the State of New York.

Section 8.9 of the Rules and Procedures establishes expirations of permits/variances. It is incumbent upon anyone filing for a variance within the Town of Plattsburgh to read Section 8.9 from the Town of Plattsburgh Board of Appeals Rules and Procedures, which follows:

8.9 EXPIRATION OF PERMITS. If a variance is granted which allows a building permit to be issued, that building permit must be obtained within six months of the date of the hearing. If the applicant has not obtained a building permit pursuant to the Board of Appeals approval within the six month period, prior to the issue of that permit, the applicant must then reapply to the Board of Appeals.

Once the applicant has obtained a building permit, it must be renewed in accordance with the Town Zoning Ordinance. If it is allowed to expire, the applicant would then have to reapply to the Board of Appeals for a review, prior to the reissuance of that building permit.

I, _____, applicant for a variance from the Town of Plattsburgh Board of Appeals, have read and understand the provisions of Section 8.9 from the Board of Appeals Rules and Procedures.

(Signature of Applicant)

(Date)

STATE OF NEW YORK)
COUNTY OF CLINTON)

Deponent being duly sworn, says that he (she) is the owner or authorized agent for which the foregoing work is proposed to be done, and that he (she) is duly authorized to perform such work, and that all workmen employed on this building are covered by contract or compensation insurance, and that all work will be performed in accordance with all existing state laws and local ordinances. I further state that all information is true and correct to the best of my knowledge.

Signature of Applicant

Print Name

Sworn to this _____ day of _____, _____.

Notary Public

I am authorizing _____ to act as agent with regard to the above matter. This agent has been contracted by me to perform the work for which the application is being submitted. The agent, _____, being duly authorized to perform such work, has insured that all workmen employed at this site will be covered by contract or compensation insurance and that all work will be performed in accordance with all existing State Laws, Local Ordinances and all other Codes applicable to the installation of these tanks. Further, I state that all submitted information is true and correct to the best of my knowledge.

Signature of Applicant

Signature of Agent

Sworn to this _____ day of _____, _____.

Notary Public