

Requirements for Filing Zoning Board of Appeals Application

1. One (1) original and nine (9) copies of all material requested below, and the requisite application fee of one hundred dollars (\$100) for projects with an entire cost of less than \$5000 or a fee of (\$500) for projects with an entire cost of (\$5000) or more which must be submitted either by mail, at P.O. Box 970, Shelter Island, NY 11964, or to the office of the Zoning Board of Appeals, 38 North Ferry Road, Shelter Island, NY 11964.
Each application should be in separate packets consisting of the following in each packet:
 - A. Letter of Denial from the Building Inspector
 - B. Property Deed from the Assessors Office
 - C. Certificate of Occupancy, Certificate of Compliance, and Open Building Permits for all buildings, structures, and all improvements on site requiring same.
 - D. Up-to-date original survey prepared by a licensed surveyor showing:
 - i. All existing and, proposed buildings and structures with setback dimensions shown from all property lines; **including steps, decks, bilco doors, patios, AC equipment, pool equipment and requisite slabs.**
 - ii. The location of all known easements, right-of-way on or over the site;
 - iii. The location of existing and proposed wells and septic systems;
 - iv. The identification, size and location of all natural features such as wetlands bluffs, bodies of fresh and tidal waters, watercourses and the mean high water mark with setback dimensions to all existing and proposed buildings and structures, all trees with a trunk diameter of 6” or greater;
 - v. Existing topography of the site at 2-foot contour intervals, (if requested).
 - E. Certified Abstract of Single and Separate Ownership going back to 1957 for applications on nonconforming lots.
 - F. Short Form Environmental Assessment Form.
 - G. In the case of an appeal from a determination of the Building Inspector/Zoning Officer, a copy of the written determination.
 - H. **Four (4) sets** of Building Plans, if applicable. **Plans must indicate fireplaces, chimneys, bilco doors, porches, decks, etc. If working drawings are submitted, they must be to scale.**
 - I. Permits or approvals from other agencies.
 - J. Any other information as may be required by the Zoning Board.
2. When the Public Hearing has been scheduled, you are required to send by Certified Return Receipt Mail, **at least ten days prior to the hearing**, the “Notices to All Property Owners” form, to all owners of record of all properties within two hundred (200) feet of the applicant’s property. You will be notified when this step is to be carried out. A copy of the Notice and Certified mail receipts must be given to the Clerk of the Zoning Board at least one day before the commencement of the hearing, or the hearing date will be postponed.

GUIDELINES FOR APPLICANTS TO THE ZONING BOARD OF APPEALS

This publication has been written to aid potential applicants in understanding and appreciating the appeals process, and to provide an explanation of the rules and standards under which appeals and variance decisions must be made. Applicants and their representatives should be guided in advance by the standards in deciding whether an appeal would be appropriate. These standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals.

Why might you consider an appeal to the Zoning Board of Appeals?

A person may want to appeal to the Zoning Board of Appeals (ZBA) for two basic reasons. First, he or she may disagree with a decision the enforcement officer has made or an action he or she has taken. Second, the appealing party may believe that an exception (variance) to the zoning laws should be made for his or her property.

How is the appeals process initiated?

Either the applicant or the applicant's representative must file a Notice of Appeal with the ZBA within 60 days after the enforcement officer has filed his or her decision or action. The enforcement officer's decision is filed in his or her office, unless the municipal governing board has authorized it to be filed instead in the municipal clerk's office. A copy of the Notice of Appeal must also be filed with the enforcement officer.

Under what circumstances may an appeal be made to the Zoning Board of Appeals?

Except in certain instances, an applicant must be "aggrieved" by an actual decision or action taken by the enforcement officer. The exceptions occur where an applicant has already submitted an application for subdivision, site plan, or special use permit approval which requires an area variance in connection with that approval. In those instances, no decision of the enforcement officer is necessary. The applicant may simply file a Notice of Appeal directly with the ZBA.

Who may apply to the ZBA for relief?

Anyone who could be "aggrieved" by the decision or action of the enforcement officer, has standing to take an appeal before the ZBA. A person is "aggrieved" if his or her property value is affected negatively by the enforcement officer's action. Commonly, a property owner who either has been refused a permit or has been served with an enforcement action, is the "aggrieved party". Also note, as stated above, that a landowner who has submitted an application for subdivision, site plan, or special use permit approval, may apply to the ZBA for an area variance without a decision of the

enforcement officer. A neighboring landowner may also be an “aggrieved party”, if he or she believes the enforcement officer’s decision in issuing a permit was improper, and will negatively affect their property value. In addition, any officer, board or commission of the municipality may appeal a decision of the enforcement officer, whether or not that officer, board or commission is aggrieved.

What decisions or actions are appealable?

Any decision or action issued in writing by the enforcement officer, which affects anyone’s rights, is appealable. These decisions include: the grant or denial of a permit, the issuance of an appearance ticket or summons, or any order which mandates certain action, such as a cease-and-desist or stop-work order.

I’m a resident who lives near the proposed project. What happens if I find out about the project more than 60 days after the permit is filed?

If you are a “third party”, such as a nearby resident, you may still bring an appeal more than 60 days after the permit is filed, if you file within 60 days after you’ve had a reasonable opportunity to find out about the planned project. For example, you would have 60 days from the time a sign is posted on the property announcing the future construction of a new business (whether or not you actually see the sign), if the sign is posted after the permit has been issued.

What types of relief can the ZBA grant?

The ZBA can grant (or deny) two types of relief: interpretive and variance. In either case, the ZBA will either affirm, reverse, or modify the enforcement officer’s decision. In so doing, it will either grant or deny the requested relief. If the appeal is for an interpretation, the ZBA’s decision will be based on the municipal zoning regulations. On the other hand, if the appeal is for a variance, the ZBA’s decision will be based on the standards of proof contained in the following state statutes: §267-b of the New York state Town Law, §7-712-b of the Village Law, or §81-b of the General City Law.

Because of the range of powers the ZBA has, it is essential that the applicant (or the applicant’s representative) know what type of relief to request when making application to the ZBA. If the applicant believes the enforcement officer’s decision is incorrect, the appropriate request is for an *interpretation* reversing the officer’s decision. If the applicant (in this case, the landowner) believes that the officer’s decision may be correct, but that he or she can show proof under that statutes that a variance is warranted, then the appropriate request is for a decision granting a *variance*. It is also possible for an applicant to make a request for an interpretation, and, in the same application, ask for a variance if a favorable interpretation is not granted.

After a Notice of Appeal has been filed, what must happen?

After a Notice of Appeal has been filed, the ZBA will take up the matter at a future meeting. The ZBA is required to schedule a hearing on the applicant’s appeal within a reasonable time, and give notice of the hearing to the applicant. If a variance is requested, the ZBA may be required to take some preliminary steps before it may hear the case.

First, the ZBA may have to make a determination of significance under the State's Environmental Quality Review Act (SEQRA). Based on this determination, an Environmental Impact Statement (EIS) may or may not be required. If an EIS is required, the case cannot be heard until the EIS has been completed and accepted by the ZBA. Environmental review is not necessary for interpretations of the zoning regulations or for area variances relating to setbacks and lot lines, or for area variances relating to one, two, or three family residences.

Second, depending on the location of the property, the ZBA may be required by State law to refer requests for variances to the county planning agency for a preliminary recommendation. If such a referral is required, the ZBA must give the county 30 days to respond. It is also possible that the county's recommendation could result in an increase in the number of votes needed for the ZBA to approve the variance. Appeals for interpretations need not be referred to the county.

What is the responsibility of the applicant at the hearing?

At the hearing, the applicant may submit written evidence and/or argument to support his or her case. Obviously, the sooner the written testimony or material is received, the more time ZBA members will have to consider the case and reach a proper decision. Therefore, it is a good idea to submit written material with the application, or as soon thereafter as possible, so that it can be sent to ZBA members prior to the hearing. (Please note that the applicant can present written evidence at any time up to the close of the hearing, or even after the hearing if the ZBA allows the record to remain open.)

At the hearing, the ZBA will offer the applicant and/or the applicant's representative the opportunity to present a case for relief. The applicant may personally testify, call witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case (the side which supports the enforcement officer's decision). Each side will be given an opportunity to question the other, or the other's witnesses. In addition, ZBA members may ask questions.

After the applicant and the municipality have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed.

Will the ZBA make a decision the night of the hearing?

Once the hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the hearing may be reopened at any time. Once the hearing has been finally closed, the ZBA must make its decision within 62 days.

What is the basis for the ZBA's decision on an interpretation?

If requesting a reversal on an interpretative basis, the applicant must prove that the enforcement officer's decision was incorrect, according to a proper reading of the municipality's zoning regulations. If the ZBA has heard a case in the past which involved an interpretation of the same provision, the ZBA's decision will be consistent with its prior ruling. If the ZBA has never interpreted the particular provision at issue, it will use its best judgment as to the municipal governing board's original intent in enacting the provision. Secondly, the ZBA will try to arrive at the best practical solution for future application by the enforcement officer.

Careful and thorough reference will be given to all definitions and other provisions of the regulations. If necessary, the ZBA will refer to authoritative publications on planning and zoning law. The applicant may, of course, use those resources in presenting his own case as well.

What must be proven in order to be granted a use variance?

If requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State law requires the applicant to show *all* of the following:

- (1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted)
- (2) that the property is being affected by unique, or a least highly uncommon circumstances
- (3) that the variance, if granted, will not alter the essential character of the neighborhood
- (4) that the hardship is self-created.

If *any one or more* of the above factors is not proven, State law requires that the ZBA must deny the variance.

What must be proven in order to be granted an area variance?

If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

- (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 method which will be feasible for the applicant to pursue but would not require a 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; and
- (5) whether an alleged difficulty is self-created.

Unlike the use variance test, the ZBA need not find in favor of the applicant on every one of the above questions. Rather, the ZBA must merely take each one of the factors into account. The ZBA may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance.

Must the variance, if granted, be exactly what was applied for by the applicant?

Whether the ZBA decides to grant a use or area variance, State Law requires the ZBA to grant the *minimum variance necessary* to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

If there is no opposition to my variance request, must the ZBA grant the request?

The above rules and standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals. If they are not followed, the municipality would be subject to costly lawsuits. The public is entitled to speak in favor of, or against, a proposed project, but opinions in and of themselves are not enough.

Applicants and their representatives should be guided in advance by the appropriate legal standards in deciding whether an appeal would be appropriate. If an appeal is taken, the applicant should present clear, definite facts showing that the standards have been met. The ZBA cannot grant relief where proper legal proof is not adequately presented.

NYS Department of State
41 State Street
Albany, New York 12231
(518)-473-3355 or (800)-367-8488
localgov@dos.state.ny.us
<http://www.dos.state.ny.us>

George E. Pataki,
Governor

December 1999



Town of Shelter Island Zoning Board of Appeals Application

TAX MAP NUMBER _____

Address of Subject Property: _____

1. APPLICANT - **Applicant must be a party in interest**

NAME: _____

COMPANY NAME (if applicable) _____

ADDRESS: _____

PHONE: _____

2. OWNER(S) - **All owners on the current deed.**

NAME: _____

NAME: _____

ADDRESS: _____

ADDRESS: _____

3. Are there any **Violations** or **Notices of Violation** outstanding on this property?

YES / NO (Circle)

If yes, attach copies.

NOTE: A Special Use Permit is NOT the same as a USE VARIANCE. Special Use applications must comply with the conditions of §133-34 of the Town Code of the Town of Shelter Island.

4. Property Description from the Letter of Denial from the Town of Shelter Island Building Department: (**Attach copy of the Letter of Denial**)

5. Is the property within one mile of a nuclear plant or airport or within 500 feet of: (a) the boundary of any existing or proposed county, state or federal park or other recreation area, (b) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, (c) 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, (d) the existing or proposed boundary of any other county, state or federally-owned land or (e) the boundary line of any village or town?

Yes _____ No _____

6. Located in Zone District designated as: _____
(This should be specified on your Building Department Letter of Denial)

7. Previous appeals. Please check one.

() A previous appeal has been made dated _____
ZBA#(s) _____

() A previous appeal has not been made with respect to this denial of the Building Inspector or with respect to this property.

8. Reason for Appeal to change present status: Please fill out and attach a VARIANCE answer sheet if you are seeking a VARIANCE, since it explains what you need to prove to the Zoning Board to get the variance. If you are filing an APPEAL or SPECIAL PERMIT application; please insert your reasons here:

9. Names and addresses of all owners of real property within a radius of 200 feet.
(ATTACH ON SEPARATE SHEET OF PAPER)

10. Indicate value of project requiring variance:
\$ _____

I hereby affirm that to the best of my knowledge the list of property owners presented with this application is accurate and that all statements herein are true. By signing this form I authorize town staff and Zoning Board members to enter onto my property to perform an on-site inspection of the changes I am applying for.

Signature(s) of Owner(s). Print name(s) below Signature of Applicant. Print name below.

FOR OFFICE USE ONLY

I, Clerk of the Zoning Board of Appeals, do hereby affirm that legal notices of the hearing have been published in the official Town Paper(s) on _____.

Date: _____ Clerk of the Zoning Board of Appeals

Fee: _____

Receipt #: _____

Zoning Board of Appeals
CERTIFICATION
To be Signed by Applicant(s)/Owner

STATE OF NEW YORK)
COUNTY OF SUFFOLK) SS.:

_____, being by me duly sworn, deposes and says:

1. I am interested in an application for a variance or special exception now pending before the Town of Shelter Island Zoning Board of Appeals, bearing Z.B. # _____.
2. I reside at _____.
3. The nature of my interest in the aforesaid application is as follows:
4. It is my understanding that the Shelter Island Town Board has determined that public policy requires a full, frank and complete disclosure of all persons having an interest, direct or indirect, in all applications to the Shelter Island Zoning Board of Appeals and other agencies of Town Government, to insure that no question of conflict of interest or favoritism may arise.
5. To the best of my knowledge, information and belief, there are no other persons, firms or corporations interested in this application, except as hereafter set forth (If either Corporation or Company, etc., list all officers):

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

Notary Public

Signature(s)

Please print name(s)

Zoning Board of Appeals Information for Applicants About the ZBA Process

THE FOLLOWING SEVEN PAGES ARE FOR YOUR INFORMATION
RELATIVE TO THE ZONING BOARD OF APPEALS PROCESS AND
CODE REQUIREMENTS.

For many applicants, a hearing by the Zoning Board of Appeals is a once-in-a-lifetime experience. Questions are frequently asked as to what the appropriate procedure is, what questions the Board may raise, and why, indeed, a hearing is even necessary. This information sheet has been prepared to assist all interested applicants and those who may wish to oppose a particular application.

The Zoning Board of Appeals of the Town of Shelter Island consists of five (5) members, all fellow residents of yours. Although state and local laws give the Board specific responsibilities, most applications deal with matters where strict application of the terms of the Zoning Ordinance and literal enforcement would result in lack of reasonable benefit or unnecessary hardship. In making its decision, the Board is limited by the powers the Ordinance grants it as well as by prior legal decisions on similar cases.

The question frequently arises as to whether an applicant should retain an attorney to present his case. Any citizen is permitted to present his or her own case or, for that matter, for anyone else, and as such a case will be just as carefully considered as if presented by a lawyer. In most relatively simple matters applicants present their own cases. On the other hand, more complicated cases are frequently presented by attorneys. Since two cases are seldom exactly alike, the decision of whether to retain a lawyer (as well as which one) is left exclusively in the hands of the applicant.

Applicants are granted as much time as they feel is necessary to properly present their cases, but are encouraged to be reasonably concise in their presentations. The Board is interested in why the variance is needed, a brief description of the neighboring properties and any other information that will help it reach a sound decision. In short, the Board is interested in obtaining as much factual material as possible concerning the requested variance, both from proponents as well as opponents of the application. In this manner the Board can reach an equitable decision which will fairly balance the rights of the applicant and the community at large. However, opinions regardless of how strongly one might feel about them are not factual and therefore the Board requests that the time spent on opinions be limited.

Zoning Board of Appeals

Answer Sheet for Applicants

Seeking a Use Variance

New York State TOWN LAW §267-1(a) states:

“Use variance” shall mean the authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.’

New York State TOWN LAW §267-b(2)b states that the Zoning Board must answer the following questions in order to give you your variance. Help convince them by answering the following questions if you are seeking an USE VARIANCE. (A USE VARIANCE is hard to get. In order to get a USE VARIANCE the answer to each question must be Yes):

(1) Can you show that you cannot realize a reasonable return for each and every permitted use under the zoning regulations, and show that the lack of return is substantial as demonstrated by competent financial evidence?

(2) Can you show 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) Can you show that the requested use variance, if granted, will not alter the essential character of the neighborhood?

(4) Can you show that the alleged hardship has not been self-created.

Zoning Board of Appeals

Answer Sheet for Applicants Seeking an Area Variance

New York State TOWN LAW §267-1(b) states:

“‘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.”

New York State TOWN LAW §267-b(3)b states that the Zoning Board must answer the following questions in order to give you your variance. Help convince them by answering the following questions if you are seeking an AREA VARIANCE:

(1) Will giving you a variance cause an undesirable change in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance? Why not?

(2) Can the benefit you seek from this variance be achieved by some other method? What other methods have you considered and why won't they work?

(3) How substantial is the variance you request from what the law allows?

(4) Will the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Why or why not?

(5) How did you get yourself into a situation where you need a variance? Was it a self-created problem? (This consideration is relevant to the decision of the board of appeals, but does not necessarily preclude the granting of the area variance).

It would be beneficial to your case to secure a letter in support from neighbors of adjoining properties.

If the variance request is substantial or unusual, please be prepared to present examples of similar situations in your neighborhood in the form of photos and/or prior ZBA decisions.

Zoning Board of Appeals
INFORMATION FOR APPLICANTS
ABOUT THE
“NOTIFICATION BY MAIL”
REQUIREMENTS

Town of Shelter Island Code §133-34 states:

“at least ten days prior to the hearing, the applicant shall mail notice of the time, date, place and nature of the hearing to the owners of record of every property which abuts and every property which is within 200 feet of the property involved in the application. Such notice shall be made by certified mail and addressed to the owners at the addresses listed for them on the local assessment roll. On or before the commencement of the public hearing, the applicant shall file an affidavit with postal receipts annexed thereto confirming mailing of said notices.”

Failure to mail the notices and/or provide the affidavit and/or the Certificates of Mailing to the Zoning Board of Appeals office may result in postponement of the public hearing.

