

Date:	_____
Fee: \$	_____
<input type="checkbox"/> Cash	<input type="checkbox"/> Check # _____

AREA/USE VARIANCE APPLICATION - \$50/\$100

(See Instructions and Procedures Attached)

Town of North Harmony Code Enforcement Department

5350 Stow Rd
Ashville, NY 14710



Bradley N. Lawson

Office: (716) 789-3445 ext. 3
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Area Variance Defined- Persons seeking Area Variances request relief usually from a minimal measured distance requirement established in the Zoning Law such as minimum total square foot lot size, width and depth of lot, yard requirements, building setback distances from boundary lines, maximum building and other improvements square footage of total lot coverage, minimum frontage distance requirements and density regulations.

When to use this form – A person who disagrees with a denial by the Zoning Officer or Building Inspector of a building permit or other type of permit application may appeal that denial by requesting an Area Variance from the Zoning Board of Appeals. All area variance applications are reviewed by the Zoning Board of Appeals pursuant to the provisions of **Sections 902, 903 and 904** of the Town of North Harmony Zoning Law, a copy attached. Applicants should familiarize themselves with the requirements of that law prior to their appearance and presentation at the required public hearing.

OFFICE USE ONLY: Reason for Building Permit Denial _____
 Dimension requested (specify): _____
 Does not conform with Zoning Ordinance Section _____ requirements (specify): _____
 Date Building Permit Submitted: _____ Date of Building Permit Denial: _____

1. I (we) hereby apply to the Zoning Board of Appeals to grant:
 _____ an area variance _____ a use variance
 _____ other (describe): _____

2. LOCATION:
 Property identification # (Tax Map #) _____ Zoning District: _____
 Property Address: _____
 Mailing Address: _____

3. OWNER: _____ Telephone: _____
 Address: _____ Zip _____

APPLICANT: _____ Telephone: _____
 Address: _____ Zip _____

If the applicant is not the owner or if there is an applicant/agent, please explain:

4. DESCRIBE BRIEFLY THE DETAILS OF THIS REQUEST: _____

5. **CONSIDERATIONS:** The burden of proof that the variance requested is necessary and should be allowed is upon the applicant, not the Zoning Board of Appeals. The following are some considerations which will guide the Zoning Board in its decision. **(Please check yes / no)**
- a. **Yes** **No** Does the Area Variance request differ substantially (a mathematical % Calculation) in relation to the existing zoning requirements?
 - b. **Yes** **No** If the Area Variance is allowed, will there be an increased population density creating new burdens on available public facilities and services (i.e. fire, water, sewer, roads, etc.)?
 - c. **Yes** **No** If the Area Variance is allowed, will the resultant change in character of the neighborhood create a substantial detriment to the adjoining properties?
 - d. **Yes** **No** Do other feasible methods exist that the applicant can pursue to achieve similar results to those sought in the Area Variance request?
 - e. **Yes** **No** Is the Area Variance request based on a difficulty created by the applicant?

NOTICE TO APPLICANT

HEARING: The Zoning Board of Appeals hearing dates is the 4th Wednesday of each month at 7:00 p.m. Building permit requests requiring any type of Variance Application to be heard by the Zoning Board of Appeals must be **submitted to the Zoning Officer or Zoning Clerk at least 14 days prior to hearing date** and must include the following documents:

- 10 Copies of Fully Completed, Signed & **Notarized** Application for **Building Permit**
- 10 Copies of Fully Completed, Signed & **Notarized** Application for **Area/Use Variance**
- 10 Copies of **Building Plans** and/or other supporting documents (i.e. photos, maps, etc.)

By signing this declaration, you agree to the following:

- Allow the Zoning Board of Appeals to enter the property listed on this application for a site review upon request.
- That you have received a copy of the Town of North Harmony Sections 902, 903 and 904 for your review.
- That you have received a denial letter from the Code Enforcement Officer for the permit that was submitted.

DECLARATION

Under penalty of perjury, I swear that to the best of my knowledge and belief the statements contained in this application are a true and complete statement of all proposed work to be completed on the described premises and that all provisions of the NYS Building Codes and the Town of North Harmony Zoning Codes and all other law pertaining to the proposed work shall be complied with, whether specified or information relating to the applicant's zoning district has been reviewed.

Signature of Owner: _____ Date: _____

The foregoing statement was acknowledged before me
 this _____ day of _____, 20____
 by _____

 Notary Public

Town of North Harmony Zoning Ordinance

SECTION 902 - General Procedures (Duties)

- A. Duties** - The Zoning Board of Appeals shall act in strict accordance with procedures specified by law and this Zoning Law. The major duties of the Board shall be to hear and decide on variance requests as well as to interpret the meaning of the Zoning Law as requested. Additionally, except as otherwise specifically provided by another provision of this zoning law, it shall hear requests for special use permits, whether or not a variance is also requested, as provided in SECTION 905.
- B. Format for Requests** - All requests shall be in writing on forms prescribed by the Zoning Board of Appeals. Specific provisions of the Zoning Law shall be referred to and as a minimum, the following information shall be provided by the person requesting the variance or interpretation.
1. property identification;
 2. project description;
 3. a drawing of sufficient detail to provide needed information sufficient to decide on the request;
 4. reasons for permit denial;
 5. proof of unnecessary hardship or practical difficulties; and
 6. hearing information.
- C. Referral to Planning Board** - On an optional basis, the Zoning Board of Appeals may request in writing a recommendation by the Planning Board. The failure of the Planning Board to submit said report shall be deemed to be an approval of the appeal or interpretation in favor of the applicant.
- D. Hearings** - All hearing procedures shall be in accordance with appropriate laws with respect to notices, timeliness, etc
- E. Decisions** - Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings. Decisions shall be made in a timely manner in accordance with state law. As per state law, a majority of the membership are needed to pass or reject any request.
- F. Time Requirements** - All appeals to the Zoning Board of Appeals for an interpretation or a variance shall be submitted to the Zoning Board of Appeals within 30 days of the date of denial of the application.

SECTION 903 - Interpretation

The Zoning Board of Appeals shall have the power to interpret the meaning of this Zoning Law whenever called upon by the Municipal Board, Zoning or Code Enforcement Officer, or an aggrieved party. This shall include the power to reverse any order, requirement, decision, or determination of an administrative official or Board. This interpretive power shall include the determination of the location of district boundary lines.

SECTION 904 - Use and Area Variances

- A. Reasons for Variances** - The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Law where a literal interpretation would cause practical difficulties (Area Variances) or unnecessary hardships (Use Variance).
- B. Applicability & Limitations** -
1. The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Enforcement Officer.
 2. The Zoning Board of Appeals may reverse, affirm, or modify the decision made by the Municipal Board.
 3. The Zoning Board of Appeals has absolutely no power to amend the Zoning Law and must exercise great care to ensure that its rulings do not, in effect, amend the Zoning Law.
- C. Area Variances** -
1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this law, to grant area variances as defined herein.
 2. 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 of Appeals shall also consider

- (a) 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;
- (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) whether the requested area variance is substantial;
- (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (f) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

D. Use Variances -

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
2. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
3. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under this Local Law for the district in which the applicant's property is located:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - c. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. The alleged hardship has not been self-created.

Failure to demonstrate any one of the requirements in Subsections 1(a) through 1(d) above is sufficient to justify the denial of a use variance.

E. Conditions and Restrictions - The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

F. Temporary Variances - The Zoning Board of Appeals may issue, for uses which are of a temporary nature, a Variance. Said Variance shall clearly state the conditions of the variance to include, when it shall terminate, the possibility of renewal, and other conditions deemed necessary.