



Planning Department

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Zoning Variance

When applying for a Zoning Variance, it is important to clearly establish the grounds for relief from the requirements of the zoning ordinance.

You should keep in mind that there are (2) types of variance requests.

- 1). Allowed land use in a Zoning District. See requirements attached.
- 2). Area requirements such as setbacks or other such location problems. See requirements attached.

The Zoning Board of Appeals meets on the FIRST Tuesday of each month at 7:00 PM. ALL supporting documents shall be filed with the **Town Zoning Officer, David Sprout**. All applications **MUST be filed not less than 30 Days prior to the desired hearing date.** Once a hearing date and time have been established, you'll be notified by mail when to appear. Applicants or Agent must appear at the public hearing. Non-appearance will result in an automatic denial of the appeal.

All property owners within 500' and all others as prescribed by NYS law of the affected property must be notified by mail of the public hearing date and time, who is applying and the basic nature of the request. The Town completes this notification.

A Notice of Hearing must be posted in the Town of Dryden Official Newspaper, which is The Ithaca Journal. Said posting must be posted no later than five (5) days prior to the hearing date. Done by the Town.

General procedure for filing an application for a variance request:

- 1.) **Complete Zoning Variance application**
- 2.) **Use or Area Variance form**
- 3.) **Zoning Permit application**
- 4.) **Agricultural Data Statement**
- 5.) **Short Environmental Assessment form**
- 6.) **Fee, residential area variance appeal, use variance appeal, interpretation request, and all other ZBA reviews required in the Zoning Ordinance \$165.**

If you have any questions or concerns, please feel free to call this office at 844-8888 ext. 216 between 8:00 AM and 4:30 PM Monday-Friday.

New York Consolidated Laws

Chapter 62 of the Consolidated Laws - Town Law Article 16 Zoning and Planning

267-a Town. Board of appeals procedure.

1. Meetings, minutes, records. Meetings of such board of appeals shall be open to the public to the extent provided in article seven of the public officers law. Such board of appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.
2. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the town clerk within five business days and shall be public record.
3. Assistance to board of appeals. Such board shall have the authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee may be reimbursed for any expenses incurred as a result of such assistance.
4. Hearing appeals. Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by an officer, department, board or bureau of the town.
5. Filing of administrative decision and time of appeal.

(a) Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official, within five business days from the day it is rendered, and shall be a public record. Alternately, the town board may, by resolution, require that such filings instead be made in the town clerk's office.

(b) An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

6. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been

filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

7. Hearing on appeal. The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the town at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

8. Time of decision. The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.

9. Filing of decision and notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

10. Notice to park commission and county planning board or agency or regional planning council. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county planning board or agency or regional planning council, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law.

11. Compliance with state environmental quality review act. The board of appeals shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

12. Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

13. Voting requirements. (a) Decision of the board. Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences.

Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

(b) Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement official within the time allowed by subdivision eight of this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision twelve of this section.

(As amended by Laws 1999, ch 476, Sec. 2, eff. Jan. 1, 2000; Laws 2002, ch. **662**, Sec. 7, eff. July 1, 2003.)

New York Consolidated Laws

Chapter 62 of the Consolidated Laws - Town Law Article 16 Zoning and Planning

267-b Town. Permitted action by board of appeals.

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; (2) 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) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(c) The 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. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) 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) 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, 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; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The 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.

4. Imposition of conditions. The 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. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

APPEAL TO

**ZONING BOARD OF APPEALS
TOWN OF DRYDEN
(Use Variance)**

Having been denied permission to _____

At _____ Dryden, N.Y. as shown on the accompanying Application and/or plans or other supporting documents, for the stated reason that the issuance of such permit would be in violation of

Section or Section (s) _____
of the Town of Dryden Zoning Ordinance

the UNDERSIGNED respectfully submits this appeal from such denial and in support of the appeal, affirms that strict observance with these requirements of the Ordinance would cause UNNECESSARY HARDSHIP as follows:

If you have additional supporting details of information, please attach such details to this application and make reference to such attachment.

Applicant Signature: _____

Applicant address: _____

Phone Number: _____ Date: _____

APPEAL TO

**ZONING BOARD OF APPEALS
TOWN OF DRYDEN
(Area Variance)**

Having been denied permission to _____

At _____ Dryden, N.Y. as shown on the accompanying Application and/or plans or other supporting documents, for the stated reason that the issuance of such permit would be in violation of

Section or Section (s) _____
of the Town of Dryden Zoning Ordinance

the UNDERSIGNED affirms that the benefit to the undersigned if the variance is granted outweighs the detriment to the health, safety and welfare of the neighborhood or community by such grant in that:

If you have additional supporting details of information, please attach such details to this application and make reference to such attachment.

Applicant Signature: _____

Applicant address: _____

Phone Number: _____ Date: _____