



Town of Maine

P.O. Box 336 Maine, N.Y. 13802

ZONING BOARD OF APPEALS
607/862-3334 Town Hall, Lewis Street
607/862-4057 Fax No.

Application to the Town of Maine Zoning Board of Appeals

For office use only

Case # _____

Tax Map # _____

Date Accepted: _____

Hearing Date/Time: _____

Date of Action: _____

Action Taken: Approved Denied

Fees Paid on Date: _____

Amount \$ _____

- Area Variance
- Use Variance
- Interpretation
- Flag Lot
- Other _____
- Special Extension of a Nonconforming Use
- Variance under Flood Damage Prevention Local Law

Section(s) of Zoning Ordinance, Flood Damage Prevention Local Law, or Local Law cited in Permit Denial:

Applicants are responsible for an application fee of \$60, the cost of a legal notice published in the paper, as well as the expense of mailing notifications to adjoining neighbors and municipalities. This amount must be paid prior to the hearing date and time.

Zoning District Current Zoning Classification (please check one):

- | | |
|--|--|
| <input type="checkbox"/> RR (Rural-Residential District) | <input type="checkbox"/> PMHD (Planned Mobile Home District) |
| <input type="checkbox"/> R1 (Residential District 1) | <input type="checkbox"/> PMFD (Planned Multifamily District) |
| <input type="checkbox"/> R2 (Residential District 2) | <input type="checkbox"/> PRD (Planned Recreation District) |
| <input type="checkbox"/> B1 (Business District 1) | <input type="checkbox"/> B2 (Business District 2) |
| <input type="checkbox"/> ID (Industrial District) | <input type="checkbox"/> AZ (Airport Zone District) |

Applicant:

Name _____

Address _____

Telephone _____

Plans Prepared By: (if different from applicant)

Name _____

Address _____

Telephone _____

Owner of Property: (if different from applicant)

Name _____

Address _____

Telephone _____

Name of proposed development: _____**Tax Map No(s). of Affected Property:** _____**Address of site:** _____**Ownership Intentions:** (ie: purchase options, renting, buying) _____**Total site area** (square feet or acres): _____**Current land use of site** (agriculture, commercial, undeveloped, etc.): _____**Current condition of site** (buildings, brush, etc.): _____**Does this property have special designation?** (flood zone, historic, agricultural, wetland, etc.): _____**Character of surrounding properties** (residential, agricultural, wetlands, historic, etc.): _____**Proposed use(s) of site** (store, dwelling, parking lot, etc.): _____**Is proposed use** **New** **Expansion** **Modification****List any goods, products, or services to be sold on or from the premises** (if applicable): _____**Anticipated construction time:** _____**Will development be staged?:** _____

State and Federal Permits needed for project/business (if applicable, list type and appropriate department):

Anticipated number of residents, shoppers, employees, etc. (as applicable): _____

Is the facility accessible by the physically handicapped? Yes No

Will any admission charge or fee be required to enter the premises or any of its facilities? Yes No

Describe proposed use, including primary and secondary uses; ground floor area; height; and number of stories for each building:

- for residential buildings, include number of dwelling units by size (efficiency, one-bedroom, two-bedroom, three- or more bedrooms) and number of parking spaces to be provided
 - for non-residential buildings, include total floor area and total sales area; number of automobile and truck parking spaces
 - other proposal structures
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

I/We _____,

(Name of Applicant)

of _____, hereby appeal to the Zoning Board of
(Address)

Appeals of the Town of Maine from the decision, determination, or interpretation of the Ordinance Administrator of the Town of Maine whereby the Ordinance Administrator did deny to the Applicant a _____ on _____, with reference to property at

(Type of Permit)

(Date)

(Address of Affected Property)

Broome, State of New York.

in the Town of Maine, County of

Instructions to the Applicant:

1. Please read these instructions and the application form carefully and completely so that you understand all of the requirements before submission. Please contact the Town of Maine Code Enforcement Officer at 607-862-3334 ext. 308 with any questions you may have.
2. Applicants are responsible for filling out this application completely and accurately. The Zoning Board of Appeals will not accept incomplete application packages.
3. A complete application package shall consist of the following:
 - a. One original application form, signed and dated;
 - b. One original New York State Environmental Assessment Form (EAF), signed and dated;
 - c. A completed plot plan, as per the included checklist, of the affected property.
4. Your application will be submitted by the ZBA to the Broome County Department of Planning for review. The ZBA must give the county 30 days to respond. (Appeals for interpretations need not be referred to the county.)

1. Please describe any structure you wish to construct and explain the proposed use or activity you wish to conduct on the property: _____

2. State in your own words why you feel a variance, interpretation, or special extension is needed and should be granted. (If necessary, use a separate piece of paper and submit it with this application):

3. Please list any existing structures currently on the property (ie: Barn, shed, house, etc.) _____

Applicants will be contacted by the ZBA in order to set up an appointment for the board members to view the affected property. Property owner must clearly mark property corners bordering the road.

Signature of Applicant

Date

Printed Name of Applicant

I have read and agree to the guidelines for Applicants

Signature of Property Owner

Date

Printed Name of Property Owner

I have read and agree to the guidelines for Applicants

STATE ENVIRONMENTAL QUALITY REVIEW
SHORT ENVIRONMENTAL ASSESSMENT FORM
 for UNLISTED ACTIONS Only

PART 1 - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT / SPONSOR	2. PROJECT NAME
3. PROJECT LOCATION:	
Municipality	County
4. PRECISE LOCATION: Street Address and Road Intersections, Prominent landmarks etc - or provide map	
5. IS PROPOSED ACTION: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification / alteration	
6. DESCRIBE PROJECT BRIEFLY:	
7. AMOUNT OF LAND AFFECTED: Initially acres Ultimately acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, describe briefly:	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? (Choose as many as apply.) <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park / Forest / Open Space <input type="checkbox"/> Other (describe)	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (Federal, State or Local) <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit / approval:	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, list agency name and permit / approval:	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT / APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant / Sponsor Name	Date:
Signature	

If the action is a Coastal Area, and you are a state agency,
 complete the Coastal Assessment Form before proceeding with this assessment

PART II - IMPACT ASSESSMENT (To be completed by Lead Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, coordinate the review process and use the FULL EAF.
B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency. <input type="checkbox"/> Yes <input type="checkbox"/> No	
C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)	
C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:	
<input type="text"/>	
C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:	
<input type="text"/>	
C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:	
<input type="text"/>	
C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:	
<input type="text"/>	
C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:	
<input type="text"/>	
C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:	
<input type="text"/>	
C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly:	
<input type="text"/>	
D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)? (If yes, explain briefly.) <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="text"/>	
E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? If yes explain: <input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="text"/>	

PART III - DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question d of part ii was checked yes, the determination of significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which **MAY** occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

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 **AND** provide, on attachments as necessary, the reasons supporting this determination.

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)

Plot Plan Checklist

Please include the following details on your plot plan. A sheet of graph paper and a sample plot plan are included for your convenience. If the plot plan is incomplete, your application will not be accepted for processing.

- Title block including name of project, name of person/firm preparing plot plan, address, and tax map number of affected property
- Survey information, including acreage
- North arrow
- Scale
- Date map was prepared
- Names of adjacent property owners, if known
- Existing and/or proposed structures and uses
- Boundaries, including lengths, sizes, and relationships between property lines
- Setbacks (distances) from property lines including front, sides, and rear of property
- Current and/or proposed access to any streets or nearest intersections
- All roads labeled
- Current and/or proposed access to adjacent properties
- Highway right-of-way
- Current and/or proposed parking spaces
- Number of parking spaces required, number of spaces provided, and designated handicap spaces (if applicable)
- Location and dimensions of loading/stacking facilities, and access point for motor vehicles and pedestrians.
- Proposed wall, freestanding, or ground sign locations. Provide sign detail showing size and placement.
- Existing and proposed site improvements
- Grading and drainage plan showing existing and proposed contours on site and extending 50 feet into adjoining properties, including storm drainage, sewer system, and proposed improvements
- Existing and proposed utilities, including well, septic, electric, and gas. NOTE: If a private sewage system is proposed, please note that the system must be approved by Broome County Health Department prior to issuance of a building permit.
- Existing and/or proposed easements (right-of-way) for utilities and/or access to property
- Location of existing and proposed walkways
- Location of existing vegetation, watercourses, floodplain, wetlands, and other natural features
- Proposed landscaping plan, including location, type, and number of plants for perimeter strips
- Location of existing/proposed exterior lighting

For Office Use Only:

Code Enforcement: Initials _____ Date _____

Secretary: Initials _____ Date _____

Chairman: Initials _____ Date _____

Assigned ZBA Member(s): Initials _____ Date _____ Initials _____ Date _____

APPLICANT RETAINS THIS SHEET

USE VARIANCE ONLY

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 the 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 at least highly uncommon, circumstances;
3. That the variance, if granted, will not alter the essential character of the neighborhood;
4. That the hardship is not self-created.

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

Other factors the ZBA will consider for a use variance:

1. That the variance, which may be granted, is the minimum variance needed to address the unnecessary hardship proven by the applicant, while at the same time preserving and protecting the character of the neighborhood, and the health, safety, and welfare of the community;
2. That the ZBA may impose reasonable conditions and restrictions which are directly related to, and incidental to, the proposed use of the premises.

APPLICANT RETAINS THIS SHEET

AREA VARIANCE ONLY

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;
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.

Other factors that the ZBA will consider for an area variance:

1. Whether the minimum variance which the ZBA deems necessary is adequate in this case, while at the same time preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community;
2. Whether the board may impose reasonable conditions and restrictions which are directly related to, and incidental to, the proposed use of the premises.

APPLICANT RETAINS THIS BOOKLET

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

1

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

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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 the 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.

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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 that 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. Secondarily, 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 at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the hardship is not self-created.

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

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

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.

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

5 NYS Department of State
One Commerce Plaza
99 Washington Ave
10th Floor, Suite 1015
Albany, New York 12231-0001
(518) 473-3355 or
(800) 367-8488
localgov@dos.state.ny.us
www.dos.state.ny.us

Andrew M. Cuomo, Governor
Department of State
Division of Local Government
January 2008