



Town of Day Zoning Board of Appeals

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Application for an Area Variance

Introduction:

Zoning is the common term for local land use laws that define what may be done on a lot (permitted uses) and where structures may be built on the lot.

If property owners want to do something contrary to local land use law, they may apply to the Zoning Board of Appeals (ZBA) for relief from the constraints of existing law. If the ZBA grants the relief the property owner has applied for, that relief is called a “variance.”

The “Area” variance: Property owners apply for an Area Variance when they want to build something that doesn’t conform to local laws governing structures. Applications for area variances are common. Typically these are requests for relief from “property line set back” or “road frontage” requirements. Area Variance requests are judged by different legal standards than Use Variance requests. When considering an area variance, the ZBA is required to “balance” a number of issues in its decision.

The issues to be balanced are the:

1. benefit to the applicant if the variance is granted.
2. cost to the applicant of alternative solutions.
3. cost to the community at large if the variance is granted.

The relevant statute says:

“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 to the applicant to pursue, other than an area variance.
3. Whether the requested 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 the difficulty was self-created, which consideration shall be relevant shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

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.”

The ZBA’s decisions must be consistent with the Town of Day Comprehensive Plan

Based on the evidence presented, including evidence gathered at a Public Hearing, the ZBA may grant the variance requested, modify the request and grant the variance, or deny the request with no variance granted.

When a request for a variance is denied, applicants may re-apply with a substantially different proposal or they may wait 1 year to resubmit a variance application that was denied.

A variance granted by the ZBA will expire in one year if the Codes Enforcement Officer has not approved the building plans and issued a building permit. Once the building is completed, the variance remains in effect.

Area Variance Application Form:

This form is designed to help the applicant gather and communicate the information the ZBA will need to make a decision about the applicant's request for a variance. Applicants should address the factors the ZBA is required to consider.

Information required:

1. The letter of denial by the Code Enforcement Officer or the referral from the Planning Board.
 - a. This information tells the ZBA what was requested, and why it wasn't in compliance with existing Town of Day law.
2. Documentation that the applicant has the legal standing to make the request for a variance. All owners of a property must apply for the variance.
 - a. Generally, this is a copy of the deed, or contract of sale.
3. A survey map drawn by a NYS licensed land surveyor. The map must show the location and precise dimensions of the property, and the location and dimensions of all existing structures, and the proposed structure(s), including the distances of structures from the property lines (the setbacks.)
4. The map must include the area, and the height from grade of the proposed structure. The map will show all significant landscape features. Landscape features include, but are not limited to, wetlands, water courses, wells, septic systems, and right of ways.
 - a. In order to assess the impact of granting an area variance, the ZBA must understand the area affected.

5. A completed Town of Day application form.
 - a. Under “Specific Description of the Requested Variance” applicants should describe the project, and indicate
 - i. the benefits they expect to achieve, and
 - ii. why they judge alternatives, including alternatives not requiring a variance, as not feasible.
 - b. All owners **MUST** sign the application form.

Note that when the applicants sign the application form, they agree to allow individual members of the ZBA to inspect the property on a site visit.

6. A completed applicant’s section (Part 1) of the “Short Environmental Assessment Form.”
 - a. This part of the application is required by New York State Law of all projects, and is known as a “SEQRA” review.
7. Payment of the required application fee.
 - a. Checks made payable to the Town of Day. The fees are \$75 for a commercial application, and \$75 for a residential application.

When the ZBA has accepted the application as complete, the Public Hearing will be scheduled. The applicant is obligated to notify all property owners and governments (i.e. Hudson River Black River Regulating District, Town of Hadley, Town of Edinburg, Saratoga County, etc.) within 500’ of each property boundary. Notification must be by certified mail at least 10 DAYS before the public hearing.

Applicants must fill out the items below.

Item 1: Identification of Property and Applicants

Tax Map Description of Property:

Section ____ Block ____ Lot ____ Zoning Classification ____

Owner(s): All owners listed on the deed must be listed. Attach a copy of the deed to this application.

Name: _____

Address: _____

Telephone Number _____

Email address: _____ (not required.)

If there are additional owners, attach the required information to this application.

If the applicant(s) are to be represented by someone else (a contractor, lawyer, family member, friend, etc.) all applicants must sign the authorization below.

I hereby authorize _____
to be my official representative for this application.

I authorize ZBA members to perform individual site visits.

Signature of applicant(s) _____

Date _____

Directions to the site: _____

Item 2: Description of project: In describing your project, please provide as much information as you can that is pertinent to the factors the ZBA must balance. If you require more space, just attach your additions to the application

Describe what it is you want to build.

What benefit will you achieve if you are allowed to proceed?

What alternatives have you considered?

If there are alternatives that wouldn't require a variance, why did you reject them?
