



TOWN of RIDGEWAY
COUNTY of ORLEANS
410 West Ave
MEDINA, NEW YORK 14103

OFFICE OF TOWN CLERK - (585) 798-0730, SUPT. HIGHWAYS - (585) 798-3680, ASSESSOR - (585) 798-0730
CODE ENFORCEMENT (585) 798-0730 **TIP SHEET**

VARIANCES EXPLAINED

“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.

“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. This applies to the land itself.

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 to the Planning Board 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.

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.

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.

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 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.

*This information was sourced from NYS Department of State publications and Town Law §267-b.