

TOWN OF NEW HARTFORD
NEW HARTFORD, NEW YORK

**INFORMATION FOR APPEALS AND PROCEDURES FOR
USE VARIANCES OF THE ZONING LAW**

**NOTE: IF THE FOLLOWING INSTRUCTIONS ARE NOT COMPLETED, YOUR
PAPERWORK FOR A VARIANCE WILL NOT BE PROCESSED**

INSTRUCTIONS FOR A USE VARIANCE, BUSINESS OR SIGN:

- 1) Complete "Notice of Appeal"
- 1) Complete "Use Variance Application"
- 2) Complete "Application for Building and Zoning Permit"
- 3) Complete "Environmental Assessment"
- 4) Submit two (2) copies of plot plan showing all dimensions of buildings, yard (front, side and rear) setbacks, buildings (proposed and existing), lot size, area, Tax Map number, and streets. Show all zoning district boundary lines within 500' of location. Submit floor plans of building when this is in reference to variance. Submit any information that may be of value to the Zoning Board of Appeals in making a decision of your appeal.
- 5) Submit variance fee for processing, check payable to Town of New Hartford

Use Variance (all uses): \$300

- 6) Submit complete paperwork to Mr. Joseph A. Booth, Codes Enforcement Officer, 111 New Hartford street, New Hartford, New York 13413 –
APPOINTMENT REQUESTED

The Zoning Board of Appeals holds Public Hearings on the third Monday of every month at 6:30 P.M. (check with ZBA Secretary Dory Shaw for location, 724-4300 Ext. 2). Usually your appeal for the variance meeting will be held from four (4) to six (6) weeks after complete paperwork and fee is submitted.

APPLICANT MUST APPEAR AT THE PUBLIC HEARING

Applicants appearing before the Zoning Board of Appeals, upon payment of the designated fee, are entitled to only one (1) "no-show" at a Zoning Board of Appeals' meeting, unless otherwise adjourned by said Zoning Board; and after that, the applicant must reapply and pay the designated fee.

Note: If variance is granted, Building Permit must be obtained before the start of work.

INTERPRETATION

To file for an interpretation before the Zoning Board of Appeals, application fee is \$40.00.

NOTICE OF APPEAL
USE VARIANCE REQUEST

ZONING BOARD OF APPEALS
TOWN OF NEW HARTFORD, NEW HARTFORD, NEW YORK

TO THE ZONING BOARD OF APPEALS (PLEASE PRINT):

(This section to be completed by Codes Office):

PERMIT APPLICATION NO. _____
DATE OF APPLICATION _____
DATE APPLICATION DISAPPROVED _____

The undersigned, representing the owner/lessee of (identify property by lot and block or otherwise) _____ located at _____, hereby gives Notice of Appeal from the decision of the Codes Enforcement Officer made on _____ day of _____ 20____. In refusing to issue a Building Permit on the grounds that the same would be in violation of the provisions of Chapter _____, Sub-section _____, of the Codes of the Town of New Hartford, for the following stated reason(s):

(This section to be completed by Applicant):

and the same having been disapproved, the following specified conditions and facts are hereby declared to the basis of an appeal from the order, requirement, decision or determination of the Building/Codes Department of the Town of New Hartford. Give specific reasons and facts why you feel the relief should be granted:

I hereby certify that the above statements and the accompanying data are true to the best of my knowledge and belief.

Date: _____ **Signed:** _____
Printed: _____
Address: _____

Additional information and/or diagram may be shown on the reverse side.

Application Fee Use Variance (all uses):	\$300.00
Interpretations:	\$ 40.00

Checks are to be made payable to the TOWN OF NEW HARTFORD

APPLICANT OR AUTHORIZED REPRESENTATIVE (WITH WRITTEN PERMISSION) IS TO APPEAR AT THE PUBLIC HEARING



TOWN of NEW HARTFORD

COUNTY of ONEIDA

ZONING BOARD OF APPEALS

111 NEW HARTFORD STREET, NEW HARTFORD, NEW YORK 13413

OFFICE: (315) 724-4300 ext 2

FAX: (315) 724-4323

Use Variance Application

Statement of Unnecessary Hardship

In order for the Zoning Board of Appeals to grant a use variance, an applicant must show documentation in the record that the restrictions of the Zoning Ordinance has caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the Zoning Ordinance for the particular district where the property is located, that all four (4) requirements as per §267-b of the General Town Law have been proven. Additional documentation may be included. If any one of these requirements have not been proven, the Zoning Board of Appeals must deny the variance, as per §267-b of the General Town Law.

Explain how the request conforms to EACH of the following requirements (additional pages may be attached):

1. Reasonable Return. The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by specific fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

"The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence"

(Please provide / attach competent financial evidence)

2. Unique Hardship. The inability to yield a reasonable return results from a unique circumstance peculiar to the subject property which does not apply to or affect other properties in the immediate vicinity that are subject to the same regulations. The personal situation of the owner shall not be considered unique.

"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. Essential Character of the Neighborhood. The granting of the variance will not be materially detrimental to the public health, safety, and welfare or injurious to the enjoyment, use or development of neighboring properties or the community. Applicant must demonstrate that the proposed use will not change the essential character of the neighborhood with regard to such physical and environmental elements such as parking, traffic, signage, landscape, architectural and structural features, location and dimensions of buildings, any by-products of proposed use such as noise or smoke, and any other impacts upon adjacent or neighboring lands.

“The requested use variance, if granted, will not alter the essential character of the neighborhood”

4. Not Self-Created. The inability to yield a reasonable return is not the result of any action by the owner or predecessors in title. The applicant must show that when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or that some other change or factor has occurred that has resulted in an inability to yield a reasonable return. Otherwise, the hardship is self-created.

“The alleged hardship has not been self-created”

Applicant's Signature Date
Provider of Financial Evidence Date

USE VARIANCE

Statement of Income and Expense

*All Entries Must be Completed and Documented for at Least Two (2) Calendar Years
or From the Date of Purchase Whichever is Less*

PROPERTY ADDRESS: _____

A. PROPERTY DATA

1. Date property was purchased by current owner _____

2. Was a Certificate of Occupancy issued? _____
Date of Issuance? _____
If so, for what use(s)? _____
If not, why? _____

3. Cost of Purchase _____

4. a) Amount of Mortgage _____ Interest Rate _____
Mortgage Holder _____ Duration _____
Address _____

b) Amount of Mortgage _____ Interest Rate _____
Mortgage Holder _____ Duration _____
Address _____

c) Amount of Mortgage _____ Interest Rate _____
Mortgage Holder _____ Duration _____
Address _____

5. Is the property for sale? _____
If so, for how long _____
asking price _____
for what use(s) _____
Have any offers been received _____
If so, for what amount(s) _____

Summarize any attempts to sell the property _____

6. Present value of property _____
Source(s) _____

B. GROSS ANNUAL INCOME [BASED ON PERMITTED USE(S)]

USE	INCOME
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____
10. _____	_____

TOTAL RENTAL INCOME _____
LESS VACANCY FACTOR _____
(Attach explanation if greater than 8%)
TOTAL GROSS INCOME _____

C. ANNUAL EXPENSES

1. Annual Fixed Charges

Real Estate Taxes (City & County) _____
Insurance..... _____
Average Annual Interest (over next 5 years) _____

2. Operating Expenses

Electric..... _____
Fuel..... _____
Water..... _____
Advertising..... _____
Miscellaneous (attach explanation) _____

3. Maintenance Expenses (attach list)

Repairs..... _____
General Building Maintenance..... _____
Yard and Ground Care..... _____
Miscellaneous..... _____

TOTAL ANNUAL EXPENSES _____

Profit or Loss _____

D. TOTAL INVESTMENT

1. Down payment..... _____
2. Capital Improvements (attach list) _____
3. Principal Paid to date (original mortgage less
current principal balance)..... _____

TOTAL INVESTMENT _____
(Sum of D1, D2, & D3)

E. RATE OF RETURN = Profit or Loss

TOTAL INVESTMENT _____

Signature of Preparer

Date

Profession of Preparer

USE VARIANCE – “UNNECESSARY HARDSHIP STANDARD”

The New York State Legislature has recently amended Town Law, Section 267 to specify more particularly the proof required to be furnished by a Use Variance applicant before a Use Variance can be granted by the Zoning Board of Appeals (ZBA) which reads as follows:

“Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the local law. “(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 (1) under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established 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 proved 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.”

Your attention is especially invited to Standard No. 1 set out in (b) above:

“The applicant must demonstrate that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.”

What is meant by “deprivation of all economic use or benefit”? This involves the purchase price and current market value of the property. It must also involve “rate of return.”

WHAT YOU MUST PROVE

- A. In order to satisfy the “deprivation of all economic use or benefit standard”, the applicant must furnish competent financial evidence to the ZBA establishing:
1. The amount paid for the land in question.
 2. Its present market value.
 3. Annual maintenance expenses.
 4. Annual land taxes and school taxes.
 5. The unpaid balance of mortgages and other encumbrances.

6. The annual income from the land in question for each and every use permitted in this Zoning District.
7. Proof that this actual or estimated return for each permitted use is not reasonable under the circumstances.
8. If the subject premises are the subject of a contract of purchase contingent upon the grant of a use variance, then the applicant must establish the fair market value of the property independent of the purchase price, because in the absence of such proof, it will be presumed that the purchase price included a premium over fair market price at the time of purchase in expectation of favorable zoning relief. Professional Park v. Town of Bedford, 60 N.Y. 2d 492 (1983).
9. The rate of return for the current use and all other uses permitted in the zoning district.
10. The rate of return deemed necessary by applicant in order to gain a return equal to comparables in the neighborhood.

Proof of present market value and annual income can be best established through the testimony of an expert witness.

Where more than one use is permitted in the zoning district, the applicant must prove the projected annual income from each and every permitted use, and must prove that this annual return is not reasonable as compared to the return by like property in the community.

If, on the basis of this dollars and cents proof, the ZBA determines that the applicant will be deprived of all economic use or benefit of the property, then the applicant has proven the first part of the unnecessary hardship standard.

How can an applicant best prepare such proof for his case? By engaging a professional such as a licensed real estate appraiser (not a real estate salesman or broker) whose sole profession is appraising.

- B. ESSENTIAL CHARACTER: In addition, the applicant must prove by competent evidence that the proposed use will not alter the essential character of the neighborhood. Describe accurately and fully the entire neighborhood. Use of tax maps, aerial photographs or ground level photographs may help.
- C. UNIQUENESS: The applicant must prove that the hardship not so general throughout the zoning district as to require the conclusion that if all parcels similarly situated were granted variances, the zoning of the district would be materially changed. In other words, if the hardship is common throughout the area, then perhaps legislative action by the Town Board in the nature of a zone change or zoning ordinance amendment may be in order.
- D. SELF-CREATED HARDSHIP: If the hardship complained of is self-imposed, then the variance must be denied. The cases hold that a party who knowingly acquires land for a use prohibited by the Zoning Ordinance creates his own hardship. Even if he did not actually learn of the

prohibition at the time of the purchase he is nevertheless chargeable with knowing the restrictions on use.

- B. PERSONAL PROBLEMS: Is the plight of the owner due to personal problems as opposed to use of the land or buildings? If due to personal problems, then the use variance must be denied.

Your attention is especially invited to the new law which states:

“Which deprivation must be established by competent financial evidence.”

The bottom line in Use Variances is that the burden of proof is on the applicant. If the applicant does not satisfy each of those above standards, then the variance must be denied.

Application for Building, Zoning, and Demolition Permit

Codes Department
(315) 724-4300, Ext. 2
FAX (315) 724-4323

TOWN OF NEW HARTFORD
111 New Hartford Street • New Hartford, NY 13413

C/O No. _____
CPR No. _____
Plumbing No. _____
Septic No. _____

Date _____ 20 _____

Bldg. Permit No. _____

Application is hereby made to the Codes Department for the issuance of a Building and Zoning Permit pursuant to the NYS Uniform Fire Prevention & Building Code for the construction, addition or alterations, as herein described. The applicant/owner agrees to comply with all applicable laws, ordinances, regulations and all conditions expressed on the back of this application which are part of these requirements, and also will allow all inspectors to enter the premises for the required inspections. Work must be completed within one (1) year of issuance date. NOTE: The issuance of this Building Permit does not preclude any other approvals that may be required by county, state or federal agencies.

NOTE - READ INSTRUCTIONS ON REVERSE SIDE

Applicant's Name: _____

Address: _____

Zip _____

Phone: _____

Property Owner's Name: _____

Address: _____

Zip _____

Phone: _____

Tax Map Number: _____

Property Location of Proposed Construction: _____

Existing Use of Property: _____

Explanation Proposed Use: _____

Contractor's Name: _____

Address: _____

Zip _____

Phone: _____

Worker' Compensation, Disability & General Liability
Carrier & Policy # _____

Zoning District _____

Lot Size _____ Area _____

Existing Building Size _____

New Building Size _____

NEW BUILDING YARDS: Zoning-Set Backs from property line. Fill-in plot diagram on back.

Front Yard Depth _____ Feet

Right Side Yard Width _____ Feet

Left Side Yard Width _____ Feet

Rear Yard Depth _____ Feet

Bldg. Height _____ Feet

Estimated Cost \$ _____

Floor Area _____ Sq.Ft.

Bldg. Permit Fee \$ _____

Commercial Plan Review Fee \$ _____

C/O Permit Fee \$ _____

Demolition Permit Fee \$ _____

Plumbing Permit Fee \$ _____

Septic Permit Fee \$ _____

TOTAL FEE \$ _____

NOTE: Inspections by Codes Department are required at the following schedule. (You must call 24 hrs. in advance for Inspections).

- | | |
|---|--|
| 1. Footings before pouring concrete. | 6. Insulation inspection. |
| 2. Poured walls need inspection before pouring. | 7. When all work is completed, final inspection is required by Sewer, Electrical, Plumbing, and the Codes Department. No occupancy of building is permitted without a Certificate of Occupancy issued by the Codes Department. |
| 3. Foundation inspection before backfill. | |
| 4. Concrete slabs before placing concrete. | |
| 5. Plumbing, Heating, Framing, and Electrical Inspections before any closing in of the framework. | |

Signature of Owner, Applicant or Agent

PRINTED OR TYPED COPY OF SIGNATURE

The application of _____ dated _____ 20 _____

is hereby approved (disapproved) and permission granted (refused) for the construction, reconstruction or alteration of a building and/or accessory structure as set forth above.

Reason for refusal of permit: _____

Dated _____ 20 _____

Codes Enforcement Officer

PROJECT ID NUMBER

617.20
APPENDIX C
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? If yes, coordinate the review process and use the FULL EAF.
 Yes No

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.
 Yes 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:

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:

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:

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly:

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly:

C7. Other impacts (including changes in use of either quantity or type of energy? Explain briefly:

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:
 Yes No

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS? If yes explain:
 Yes No

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)



TOWN *of* NEW HARTFORD

COUNTY *of* ONEIDA

OFFICE OF CODES ENFORCEMENT

111 NEW HARTFORD STREET, NEW HARTFORD, NEW YORK 13413

OFFICE: (315) 724-4300 ext 2

FAX: (315) 724-4323

Emails: JoeB@town.new-hartford.ny.us

TRowlands@town.new-hartford.ny.us

Codes Officers:
Joseph A. Booth
Thomas Rowlands

Town Supervisor
Patrick M. Tyksinski

INFORMATION FOR APPLICANTS APPEALING TO ZONING BOARD OF APPEALS TOWN OF NEW HARTFORD

**From: Joseph A. Booth
Codes Enforcement Officer**

- 1) On applications for variances, if the applicant is not the actual owner of the subject premises, the applicant is required to provide the Zoning Board of Appeals with evidence of a sufficient legal interest in the premises (such as purchase agreement, option or lease).
- 2) If the applicant intends to rely upon restrictions or provisions in any lease, contract or any other legal agreement as evidence of hardship, the applicant should provide any such documentation to the Zoning Board of Appeals at or before the Public Hearing.

BE SAFE

Secure Building Permit

Request Inspection

Obtain Certificate of Occupancy