

Applying for an Area Variance
Town of Rhinebeck Zoning Board of Appeals

General Information and Helpful Suggestions

When to use this Form

If you applied for a permit to the Building Department and were denied because you did not meet certain area and bulk regulations (e.g. minimum lot frontage, setbacks, minimum lot area, open space, number of accessory structures permitted on lot), you can apply to the Zoning Board of Appeals (“ZBA”) for an area variance.

This application allows you to request the permission to complete your project outside the physical or dimensional limitations that are stated in the Zoning Law. By applying for an area variance, you are seeking “relief” from the Zoning Law’s regulations to continue your proposed project, even though it does not meet the minimum or maximum criteria for your Property.

What is an Area Variance?

An area variance is the authorization and permission from the ZBA to use the land in a manner that is outside the stated physical dimensional requirements listed in the Town of Rhinebeck Zoning Law.

Area variances are permitted under both New York State law and the Town of Rhinebeck local law.

What Do You Need to Show?

As the Applicant, you have the burden of proof to demonstrate to the ZBA that an area variance should be granted to you. It is up to you to make your case to the ZBA by the written submissions and presentations that you provide to the ZBA.

The ZBA is looking for a balance between the benefits that you gain, as the Applicant, if the area variance is granted to you against any burdens or negative impacts the general community may face if the area variance were granted to you. Thus, you must show that the benefit gained by you outweighs any detrimental impact that could affect other people or the neighborhood.

The best way to show this is to provide the ZBA with as much detail about the project as possible. The ZBA also looks at specific factors to help them in deciding whether to grant the area variance or deny it. These five factors are based on New York State law, and also supported by the Town of Rhinebeck local zoning law. The five factors that you should focus on are:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties?
2. Whether the benefit you seek can be achieved by another, feasible method other than an area variance?
3. Whether the requested area variance is substantial?
4. Whether the requested area 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.

These factors are listed in the application. It is beneficial for your case to answer these questions fully and with as much detail as you can. The more information you provide, the more helpful it will be to the ZBA.

It is important to remember that the ZBA is looking at a balancing test. It is not necessary or required that you have to prove every element of the above-mentioned factors. However, the more factors that are in your favor, the greater you improve your chances of receiving the area variance from the ZBA

What are the ZBA's Duties and Obligations?

The ZBA will hear your case and make a decision based on the five factors listed above. Again, this is a balancing test. The ZBA will be deciding if the benefit you receive by having the area variance granted for your project will be outweighed by any detriment that may be faced by the general community and surrounding neighborhood. The ZBA is not required to do any outside investigation beyond the application and open meetings. This is why it will be important to provide the ZBA with as much information as you can in this application and in your presentation.

The ZBA will also consider the minimum variance necessary to accomplish your proposed project. For example, if you seek a 50 foot area variance from the front yard setback, the ZBA may find that only a 30 foot area variance is required. The ZBA has the authority to grant the lesser variance than what is requested.

The ZBA also has the authority to impose reasonable conditions to your variance if it is granted. The conditions would be directly related to and incidental to the use of the property. The purpose of these conditions is to minimize the adverse impacts the variance may have on the surrounding neighborhood and community.

More information about the ZBA and the process can be found in the Town of Rhinebeck Zoning Law, Article XI, "Zoning Board of Appeals".

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Application – Case # _____

Instructions: Please complete this form with as much detail as you can provide to the Zoning Board of Appeals. If you should require more space to write, please include any additional attachments and documents to this application.

Date Submitted: _____

1. Applicant(s): _____

2. Contact Person (if different from Applicant): _____

3. Mailing Address: _____

4. Phone: _____ E-Mail: _____

5. Property Address where variance is requested: _____

Tax Map #: _____ Zoning District: _____

6. Property Owner (if different from Applicant): _____

Please describe the changes you plan to make the premises:

*This will provide the ZBA with relevant information about what you hope to accomplish.

Please describe the requested area variance you are seeking:

*In this section, please list what the stated bulk regulations are in the Zoning Law, and how your project differs from those regulation

Note: In deciding to grant or deny an area variance, the ZBA conducts a balancing test between the benefit the applicant receives if the area variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community. The ZBA will consider the following factors. Please provide as much detail to help the ZBA better understand your application and how your request for an area variance impacts this overall balancing test.

1. Please explain 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.

*If the area variance is granted, will it cause a change in the neighborhood that is out of place from other neighboring properties?

2. Please explain whether the benefit sought by you (as the applicant) can be achieved by some other method, feasible to you (the applicant) to pursue, other than an area variance.

*Is there another feasible way you can achieve the same goal or project without needing an area variance?

3. Please describe whether the requested area variance is substantial.

*How much of a deviation from the stated regulation is this variance? This can be discussed both numerically and in terms of change of character from the neighborhood.

4. Please explain whether the proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

*Will there be any impacts to the environment caused by the granting of the area variance. Any impacts to drainage, traffic, noise, odor, etc.

5. Please explain whether the alleged difficulty is 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.

*Self-created difficulty means it is something that could have possibly been avoided. For example, if you purchased a substandard lot, it is considered a self-created difficulty because you purchased the lot knowing it was substandard. Please note that if there is a self-created difficulty, this is a relevant consideration but is not fatal to granting an area variance.

Please attach the following Required documents to this application and provide 8 copies and an electronic version, unless otherwise specified:

* All Required documents including the electronic version must be submitted by the Agenda Close date or will be put on the Agenda for the next meeting*

- The Letter of Determination by the Zoning Enforcement Officer, stating what variances are required;
- Any cover letter or narrative;
- Map showing the existing conditions or site plan, including site topography, existing development and significant natural features, such as wetlands and stream courses. This can be on an existing survey or obtained with help from the Clerk using ParcelAccess;
- Plot plan (drawn to scale), showing parcel with existing buildings and proposed new structures or additions;
- Photos showing a visual image of the existing property;
- Photo simulations of the completed project;
- Any technical reports (archaeology, traffic, wetlands, storm water management, etc), if available;
- Owner's Consent Note, if applicable; (Application Certification Authorization Form)
- Electronic copy of application and plans;
- One check for area variance fee - \$300 (first variance requested) + \$100 (each additional variance)
- One signed copy of the Escrow Agreement
- One check for initial escrow deposit = \$500 or more Per ZBA

Applicant Signature: _____

What happens next?

After you have received a determination letter from the Zoning Enforcement Officer and applied for an area variance, the next step will be to present your case to the ZBA.

- Υ **Scheduled Date the ZBA hears your application.** The Secretary to the ZBA will provide you with a date on which the ZBA will hear your application. At this meeting, the ZBA will ask that you make a brief presentation of your proposed project and why you are seeking an area variance.
- Υ **Application Accepted as Complete.** The ZBA will review your application and determine if it is complete to begin their review. The ZBA will also classify the action under the New York State Environmental Quality Review Act to determine if any additional environmental review is required for your proposed project. The ZBA may also require that certain referrals be made to other agencies. This is based on what the proposed project is and where the project is located. If your application is deemed complete and there is no environmental review required, the ZBA will schedule a public hearing.
- Υ **Schedule Public Hearing.** The public hearing allows members of the public to voice their support or opposition for the application. Comments made during the public hearing are added to the record and considered by the ZBA in their decision.
- Υ **Mail Public Notice.** Before the public hearing takes place, the Secretary to the ZBA will provide you with a public notice and a list of any adjoining properties and any landowner that is within 500 feet of the property's boundary line. The Public hearing notice will need to be placed in the local newspaper and circulated to the adjoining properties and landowners. The ZBA Secretary will place the Public hearing notice on the Town of Rhinebeck website and Town's Bulletin Board. This is to let the public know the date and time of the meeting, and afford them the opportunity to speak before the ZBA. ****The Applicant will be responsible for paying the cost of mailing the notices and the fee to be placed in the newspaper**.**
- Υ **Attend Public Hearing.** The ZBA will open the public hearing. They can either keep the public hearing open for further comments or close the public hearing.
- Υ **Decision.** Once the public hearing is closed, the ZBA will issue a decision within 62 days of the close of the public hearing. The ZBA, on occasion, may ask the Applicant to allow for an extension beyond those 62 days. If the Applicant agrees, then a new deadline will be set for the decision.