

# **CRITERIA FOR OBTAINING A USE VARIANCE**

One of the basic powers given by law to a zoning board of appeals is called the “variance” power. The board has the authority to “vary” or modify, the strict letter of a zoning ordinance or local law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for individual.

Appeals boards are frequently confronted with request for variances. A use variance is a request to utilize property for a use or activity which is not permitted by the zoning ordinance, and the applicant must demonstrate “unnecessary hardship.”

## **USE VARIANCE**

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An applicant for a use variance must demonstrate unnecessary hardship by satisfying EACH of the following four tests:

### **ALL THESE ITEMS MUST BE SATISFIED**

1. **Uniqueness**

The applicant must prove there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district; a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.

2. **Reasonable Return**

The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a “dollars and cents” proof of the applicant’s inability to realize reasonable return, speculation or qualitative assessment is inadequate. Failure to realize the highest return is not considered a hardship.

3. **Character**

The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the “spirit” of the ordinance or local law should be preserved.

4. **Creation**

A use variance should not be granted if the “unnecessary hardship” was created by the applicant.

The applicant for a use variance must meet all four test before the appeals board may grant relief. If the appeals board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative intent of the zoning ordinance.

**TOWN OF MORRISTOWN**  
**ZONING BOARD OF APPEALS**  
604 Main St. / P.O. Box 240 Morristown, NY 13664  
Phone (315) 375-8572 Fax (315) 375-4723

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DATE FILED: \_\_\_\_\_

Residential Fee: \$125.00 PAID: \_\_\_\_\_ ALL APPLICABLE FEES ARE NON-REFUNDABLE  
Commercial Fee: \$200.00

**APPLICATION TO THE ZONING BOARD OF APPEALS**  
**TOWN OF MORRISTOWN**  
**REQUEST FOR *USE* VARIANCE(S)**

I. **PROPERTY ADDRESS:** \_\_\_\_\_

TAX MAP # : \_\_\_\_\_

ZONING DISTRICT: \_\_\_\_\_

II. **PROPERTY OWNERSHIP:**

NAME OF OWNER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

Latest Deed Reference C Date, Book & Page; (submit copy): \_\_\_\_\_

II. **APPLICANT INFORMATION:**

APPLICANT NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_

**(IF THE APPLICANT IS NOT THE OWNER, WRITTEN PROOF THAT THE OWNER  
CONSENTS TO THE APPLICATION MUST BE SUBMITTED WITH THE APPLICATION.)**

IV. **SUBJECT TO APPEAL (If Applicable)**

Pursuant to the provisions of the Zoning Code of the Town of Morristown, this application,  
relative to the above referenced property, constitutes an appeal from the decision of the Zoning  
Chairman / Building Inspector \_\_\_\_\_.  
(Name)

A copy of this decision, dated \_\_\_\_\_, must be attached.

March 2018

V. APPEAL REQUEST

This appeal takes the form of a request for:

(a) Use Variance(s)

*Please be advised that all sections under this heading must be answered completely. Bear in mind that a variance is actually relief from the strict application of the requirements of the law (the Zoning Ordinance), and the Zoning Board of Appeals is required to give sound reasons, based on the criteria set forth in this application, for granting any such relief. It is incumbent upon the applicant to demonstrate to the Board that these criteria are satisfied. Additional sheets may be attached as necessary. Please also note carefully the list of required attachments on the last page of this application.*

VI. VARIANCE REQUEST

I/We, \_\_\_\_\_, hereby apply to the Zoning Board of Appeals for a variance to use the subject property as follows:

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- (1) **The granting of the variance is necessary in order for me to realize a reasonable return on the property and my lack of return is substantial, as demonstrated by the following competent financial evidence and attached documentation:** (You must show, for example, that the property cannot be used or sold or leased for any permitted use, how you have actively tried to use, sell or rent for each use permitted, ex. Ads, listings, and actual collars and cents proof, through documentation, of how much money you would lose if no variance is granted.)

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(2) **The alleged hardship relating to the property in question, and does not apply to a substantial portion of the district or neighborhood:** (You must show, for example, that the hardship applies only to your property and not to substantial portion of properties in district; that the hardship is not a general problem throughout district; that the hardship is unique to your property.)

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(3) **The requested use variance, if granted will not alter the essential character of the neighborhood:** (You must show, for example, that the parking or traffic patterns, noise levels and lighting will not change, that the outward appearance of property will not change; that the use will not be out of harmony with district.)

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**(4) The alleged hardship was not self created:** (You must show, for example, that you purchased the property subject to restrictive zoning and that the zoning was adopted subsequent to your purchase property.)

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**VII. LIST OF ATTACHMENTS**

- 1. Site or Plot Plan: Six (6) copies**
- 2. Letter or communication, which resulted in application to the ZBA (if applicable.)**
- 3. List of abutting property owners, by name, address and Tax Map Number.**
- 4. Letter of owner consenting to application (if applicable).**
- 5. Type 1 Action Only – Original and five (5) copies of the SEQRA FULL ENVIRONMENTAL ASSESSMENT FORM, with Part I completed.**
- 6. Unlisted Actions Only – Original and five (5) copies of the SEQRA SHORT ENVIRONMENTAL ASSESSMENT FORM, with Part I completed.**
- 7. Other attachments deemed pertinent by the applicant (please list):**

- (a)** \_\_\_\_\_
- (b)** \_\_\_\_\_
- (c)** \_\_\_\_\_
- (d)** \_\_\_\_\_
- (e)** \_\_\_\_\_

**VIII. SIGNATURE AND VERIFICATION**

**Please be advised that no application can be deemed complete unless signed below.**

**I hereby certify that the information enclosed herewith and on the application is accurate and factual:**

**Signature of Owner:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**I the record owner do hereby authorize \_\_\_\_\_  
to represent me before the Zoning Board of Appeals during the area variance process:**

**Signature of Applicant:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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**SUBSCRIBED AND SWORN TO BEFORE ME**

**THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20 \_\_\_\_\_. \_\_\_\_\_ COUNTY**

**NOTARY PUBLIC:** \_\_\_\_\_

# **USE VARIANCE APPLICATION CHECKLIST**

- APPLICATION COMPLETED AND SIGNED BY PROPERTY OWNER  
(6 COPIES)
- MAPS AND DESCRIPTION INCLUDED (6 COPIES)
- DIAGRAMS – INCLUDE LAYOUT, SIDE AND FRONT ELEVATIONS  
(6 COPIES)
- OTHER ATTACHMENTS  

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- SEQR FORM COMPLETED (6 COPIES)
- LETTER OR COMMUNICATION, WHICH RESULTED IN APPLICATION  
TO THE ZONING BOARD OF APPEALS (IF APPLICABLE, 6 COPIES)
- LIST OF CONTIGUOUS PROPERTY OWNERS CONTAINING NAMES,  
TAX ID NUMBERS, PHYSICAL AND MAILING ADDRESSES
- FEE PAID - \$125.00 – Residential, \$200.00 – Commercial Single Project
- ORIGINAL RECIEPT WITH APPLICANT, DUPLICATE WITH PAYMENT
- NOTICE OF PUBLIC HEARING PUBLISHED IN WATERTOWN DAILY  
TIMES 5 DAYS PRIOR TO THE HEARING DATE
- NOTICE APPLICANT AND ADJOINING PROPERTY OWNERS VIA  
CERTIFIED MAIL WITH RETURN RECIEPT
- NOTICE AND APPLICATION DOCUMENTS TO ZONING BOARD OF  
APPEALS MEMBERS
- HEARING DATE SET; PUT ON AGENDA FOR THAT MEETING
- NOTICE OF DECISION
- PERMIT ISSUED (IF APPROVED)