

# CRITERIA FOR OBTAINING AN AREA 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. An area variance is a request for relief from dimensional standards contained in the zoning ordinance, and it requires a demonstration of “practical difficulty.”

## AREA VARIANCE

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First the applicant must demonstrate that the application of the zoning ordinance to his personal property practical difficulty. The practical difficulty cannot be assessed until the applicant proves the matter of significant economic injury to his property if the permit is denied.

In the case of an area variance, the applicant is seeking modification of dimensional standards, such as yard requirements, set-back lines, lot coverage, frontage requirements or density regulations, so that the property may be utilized for one of the uses permitted by the zoning ordinance. The appeals board may grant relief in if the applicant can demonstrate that strict compliance with the regulations would cause practical difficulty.

The determination of practical difficulty is a three-step process.

1. First, the applicant must demonstrate that the application of the zoning ordinance to is property causes significant economic injury.
2. Can the applicant prove that there is not a potential affect on increased services by municipal or county and state facilities and services. An example of this would be the fire department services, school services and to include school bus service.
3. Last, assuming the municipality has met its burden of proof, the applicant must demonstrate that the restrictions, as strictly applied in his case, are unrelated to the public health, safety or welfare of the community and that granting the variance will not adversely affect the community.

In making a determination of practical difficulty, the appeals board may consider:

1. How substantial the variation is in relation to the requirement ;
2. The potential effect of increased density on available municipal, county and state facilities and services ;
3. Whether the variance will cause a substantial change in the character of the neighborhood ;
4. Whether the difficulty can feasibly be mitigated by some other method
5. Whether the interest of justice will be served in granting the variance; or
6. Whether the alleged difficulty is self created.

The appeals board should grant the minimum relief necessary to allow reasonable use of the land in question. Not every applicant for the area variance is automatically entitled to receive relief. Each application should be carefully considered against the requirement for proof of practical difficulty.

**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: \_\_\_\_\_ Residential Fee: \$75.00 Commercial Fee: \$150.00 PAID: \_\_\_\_\_  
**ALL APPLICABLE FEES ARE NON-REFUNDABLE**

**APPLICATION TO THE ZONING BOARD OF APPEALS**  
**TOWN OF MORRISTOWN**  
**REQUEST FOR *AREA* 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.

V. APPEAL REQUEST

This appeal takes the form of a request for:

(a) Area 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.*

(b) Original Jurisdiction

*If an Area Variance is required as part of a Special Use Permit or Site Plan application, no appeal is required; however, the application for a variance is to be submitted with your Planning Board application and the Zoning Administrator will forward it directly to the Zoning Board of Appeals.*

VI. AREA VARIANCE REQUEST

I/We, \_\_\_\_\_, hereby apply to the Zoning Board of Appeals for a variance of the following sections and requirements of the Code of the Town of Morristown, specifically as follows:

SECTION	CONCERNING	CHANGE FROM	CHANGE TO
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Reason for request:

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**(i) Will the granting of the variance produce an undesirable change in the character of the neighborhood or be a detriment to nearby properties? If not, please explain why.**

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**(ii) Explain if the granting of the variance is necessary, or whether the same result could be achieved by some other method not requiring a variance.**

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**(iii) Explain if the requested area variance(s) is substantial, and if not explain why it is not.**

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**(iv) Explain if the variance(s) will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. If not, please justify why it won't have an adverse effect.**

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(v) Explain if your need for an area variance(s) is the result of self-created difficulties on your part. If not, please explain how the difficulties are not self created.

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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:** \_\_\_\_\_

# **AREA 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 - \$75.00 PER 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)