



# Village of New Paltz

## *Zoning Board of Appeals*

### Information and Application Packet

Zoning Board of Appeals  
Building Department  
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*The Village of New Paltz Building Department and Zoning Board of Appeals (ZBA) has put together this document to assist all Persons or Corporations applying for a Variance and/or Interpretation/Appeal. Contained within are simple explanations to the following topics:*

- What types of relief the ZBA can grant.
- What an applicant can expect from the ZBA.
- Obligations of an applicant.
- What the ZBA requires, and what is required of the ZBA, regarding the decision making process.

#### **The Role of the Zoning Board of Appeals**

*The Board of Appeals has the power to hear and decide appeals brought by persons who allege some harm (negative impact) to them as a result of a decision by any local official who interprets and enforces the Zoning laws of the Village of New Paltz. The ZBA hears the appeals and is empowered to grant relief and/or interpret the Zoning Laws of the Village of New Paltz.*

#### **Disclaimer**

*This informational document has been prepared as a resource to familiarize applicants with ZBA procedures. It is intended to complement, not replace the advice of professionals, such as attorneys, architects, civil engineers or other advisors. If, as a result of reading the information contained in this packet, you have additional questions or need clarification, please contact the Building Inspector at (845) 255-3055.*

**PLEASE NOTE: The explanations, examples and guidelines contained in this document are not in any way intended to function as a promise or guarantee of any type to an applicant. Each case is judged on its own merits. Procedures and case law may change at any time; it is the responsibility of each applicant to be familiar with the current laws and precedents.**

# INDEX

Page 2:	<i><b>Index</b></i>
Pages 3-7:	<i><b><u>Instructional Guidelines</u></b></i>
Page 3:	General
Page 4:	Area Variance
Page 5:	Use Variance
Pages 6:	Burden of Proof for Area or Use Variance
Page 7:	Appeal of an Action/Interpretation by the Building Inspector
Page 8:	<i><b><u>Submission Deadlines and Meeting Schedule</u></b></i>
Page 9:	<i><b><u>Schedule of Fees</u></b></i>
Page 10:	<i><b><u>Schedule of Escrow Deposits</u></b></i>
Pages 11-13:	<i><b><u>Short Environmental Assessment Form (SEAF)</u></b></i> Instructions for filling out the SEAF can be found at: <a href="http://www.dec.ny.gov/permits/90156.html">http://www.dec.ny.gov/permits/90156.html</a>

## ***Applications***

Area Variance

Use Variance

Appeal of an Action/Interpretation by the Building Inspector

## ***Forms Packet***

*Notarized* Interest Disclosure

*Notarized* Escrow Deposit

*Notarized* Proxy Statement

***Administrative Intake Form*** - for office use only

## **APPLYING TO THE ZBA**

Applicants appear before the ZBA for one of the following three reasons:

- 1) Requesting an Area Variance from the Zoning Law.
- 2) Requesting a Use Variance from the Zoning Law.
- 3) Appeal of and Action or Interpretation by the Building Inspector.

## **WHAT IS REQUIRED OF APPLICANTS?**

In order to initiate the process, applicant must submit a completed application with prescribed forms to the Zoning Board, pay an application fee and pay an escrow deposit to cover the costs incurred by the Village of New Paltz in having its attorney, engineer or other professional review and advise the ZBA with respect to your application.

The applicant may be represented by or assisted by attorneys, architects, or engineers, etc.), and may submit affidavits from interested parties (neighbors, business associates, etc.) and utilize experts (contractors, real estate professionals, appraisers, etc.).

## **THERE ARE TWO TYPES OF VARIANCES**

1. An Area Variance allows the applicant a use of land in a manner which is not allowed by the dimensional or physical restrictions of the Zoning Law and to construct and/or maintain a structure, accessory building or condition on an otherwise restricted portion of a property.

For example, (a) you wish to locate an accessory use (pool, shed, etc.) on the side or front yard of your house when the Zoning Law requires them to be located in the rear yard or (b) you wish to build an addition which, when completed, will encroach into the mandated distance between the structure and the boundaries of your property.

2. A Use Variance allows the applicant to establish a use on their property for a purpose not permitted by the Zoning Law.

## **AREA VARIANCE**

In the case of an Area Variance, New York Village Law requires the applicant to show that “the benefit received from the Variance outweighs any burden to health, safety and welfare that may be suffered by the neighborhood or the community”. The Law requires the ZBA to consider five (5) factors when making its determination. Thus, the ZBA requires that the applicant answer the following questions, in writing, on the application and be prepared to explain and support those answers at the hearing:

- 1) If the Area Variance is granted, will an undesirable change be produced in the neighborhood or will a detriment to nearby properties be created?
- 2) Could the implementation of a feasible alternative provide a similar benefit to the applicant, in place of granting the Area Variance?
- 3) Is the requested Area Variance substantial? (In a manner that could impact the character of the neighborhood and/or the surrounding properties.)
- 4) Will the proposed Area Variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
- 5) Is the alleged difficulty self-created?

Applicants should be aware that in considering an Area Variance, the ZBA is not bound by the particular answers to any of the five (5) statutory questions in reaching a decision. Rather, the ZBA must take each one of the factors into account. Further, in regards to the granting of relief, the Board may decide that:

- 1) The applicant has not submitted the required proof and therefore deny the Variance;
- 2) A lesser Variance (than the one requested by the applicant) is appropriate; or
- 3) There are remedies and alternatives available to the applicant that do not require granting of an Area Variance.

## **USE VARIANCE**

In the case of a Use Variance, New York Village Law requires the applicant prove unnecessary hardship. To prove this, the applicant must show that the property is incapable of earning a reasonable return on the initial investment if used for any of the uses allowed by the Zoning Law.

Applicants requesting a Use Variance should be aware that actual dollars and cents proof must be submitted. A mere showing of present loss is not enough; the applicant must demonstrate that the return from the property is not reasonable for each and every permitted use under the Zoning Law. Applicants for a use Variance must also be aware that the fact that a change in the permitted use may increase the selling price of the property, or permit a larger profit, does not in itself justify the granting of a Use Variance on the grounds of unnecessary hardship.

Applicants must show that:

- 1) The hardship is unique to this property; that it is not shared by other properties in the applicant's district or neighborhood;
- 2) The property is being affected by unique or at least highly uncommon circumstances;
- 3) The Use Variance will not alter the essential character of the neighborhood; and
- 4) That the hardship is not self-created.

*In the case of a Use Variance, the Village Law requires that the ZBA must deny the Variance if any one (or more) of the four (4) factors is not proven to be true.*

### **Burden of Proof for Use or Area Variance**

The applicant is required to provide appropriate documentation that will allow the ZBA to decide the merits of the case. Such documentation includes, but is not limited to State Environmental Quality Review Act (SEQRA) assessment and/or environmental impact statements; plans, blueprints, survey map(s) of the property in relation to adjoining properties; photographs of the property and/or structure from various angles; related and pertinent documents from Federal, State, County and Municipal agencies (DOT, DEC, Health Departments, etc.), and corroborating, documentation from Real Estate Professionals or appraisers; and such other documentation as may be required by the ZBA.

### **Maximum Variance Limited**

For both Use and Area Variances, New York State law requires the ZBA, if approving the request, to grant the minimum Variance necessary to provide relief. The ZBA is required to protect the character of the neighborhood and the health, safety and welfare of the community. As a result, the Board may impose reasonable conditions and restrictions on the Variance.

### **Appeal of an Action/Interpretation by the Building Inspector**

If there is a disagreement about how the zoning law is being enforced by the Building Inspector, then you may appeal for an Action/Interpretation. If you are not satisfied by the ZBA's interpretation, then you may either apply for a Variance or file an appeal in State Court.

Property owners, neighboring residents and others with standing may appeal the Building Inspector's Action/Interpretation. Additionally, any Village of New Paltz official, Board or Commission member may appeal a decision of the Building Inspector.

The ZBA essentially becomes the Building Inspector and their decision is binding on all parties involved in the appeal.

### **Revisiting Previous ZBA Decisions**

The ZBA must unanimously agree to reconsider previous decisions. Then, the ZBA must unanimously agree to change that decision.