

Zoning Board of Appeals

Richard Onorati, Chairman
P.O. Box 106
Slate Hill, New York 10973

Applicants Procedure before the Zoning Board of Appeals

Important steps to KNOW and FOLLOW:

GENERAL INFORMATION

The Zoning Board of Appeals generally meets the second Thursday of each month at 7:00 p.m. unless otherwise notified.

1. PLEASE read the Town's Zoning Law.
2. Obtain a denial from the Building Inspector or referral / denial from the Planning Board or request an interpretation.
3. You can expect a MINIMUM of two (2) or three (3) months time frame encompassing two (2) or three (3) meetings to obtain a decision.
 - a.) Informal Meeting @ 7:00 p.m. - (first meeting)
 - b.) Public Hearing Meeting @ 7:00 p.m. - (second meeting) which may be adjourned or continued to a subsequent meeting.

INFORMAL MEETING:

1. Ten (10) days PRIOR to the Informal Meeting the following MUST be submitted to the Secretary of the ZBA.
 - a.) A COMPLETED application, nine (9) copies, with a copy of the tax map showing the property.
 - b.) Application fee of \$ 150.00 must be paid at this time.

NINE COPIES OF EACH OF THE FOLLOWING:

- c.) A letter briefly explaining the request.
- d.) Short Form EAF (Environmental Assessment Form).
- e.) Proof applicant(s) own the property or written permission from the owner.
- f.) Survey map or site plan, each plan folded.
- g.) Denial or referral of Building Inspector.

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2. You or your representative must appear at the Informal Hearing to present your request.
 3. A Public Hearing is scheduled or a second review meeting is scheduled.
 4. Revised plans may be requested. These **MUST** be submitted fourteen (14) days prior to the scheduled Public Hearing. If not submitted on time the Public Hearing will be postponed.
 5. ZBA Members may review the property prior to the Public Hearing.
 6. PRIOR TO THE PUBLIC HEARING:
 - a.) Ten (10) days before the date of the Public Hearing each owner appearing on the adjoining owner's list in compliance with the Town's Zoning Law must be forwarded a copy of the Public Notice by **certified mail. Receipts of the certified mailings must be delivered to the board at the Public Hearing.** The adjoining owner's list is the responsibility of the applicant. The Public Hearing Notice will be provided by the Secretary to the ZBA.
 - b.) The ZBA will place the Public Notice in the Legal section of the Times Herald Record as notification to the General Public.
 7. Public Hearing held at 7:00 p.m. (2nd Meeting)
 8. The ZBA, by State Law has 62 days from the close of the Public Hearing to render a decision.
 - a.) You or a representative presents your case.
 - b.) In order for the Zoning Board of Appeals to grant a variance you must show practical difficulties or unnecessary hardship. Please review the Zoning Law and Section 267b of the New York State Town Law.
 - c.) Section 267b of the Town Law of the State of New York as follows:

1. **Orders, requirements, decisions, interpretations and determinations.**

The Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to the end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. **Use Variances:**

(a) The board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such variance shall be granted by a Board of Appeals without 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 for each permitted use under the zoning regulations for the particular district where the property is located,

(1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated 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 he alleged hardship had not been self created.

(C) The Board of Appeals, in granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven 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.

3. **Area Variances:**

(a) The Zoning Board of Appeals shall have the power, upon an Appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- (1). Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance;
- (2) Whether the benefit can be achieved by some method feasible for the applicant to pursue, other than an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
- (5) Whether the alleged difficulty was 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.

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- (C) The Board of Appeals, in granting area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health and safety and welfare of the community.

9. **IMPOSITION OF CONDITIONS:**

The Board of Appeals shall, in granting of both use variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incident; to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local la, and shall be imposed for the purpose of minimizing and adverse impact such Varian may have on the neighborhood or community

10. Applicant may be required to go to the Planning Board after the granting of requested variance(s).
11. Applicant will be required to contact the Building Inspector for required permits of any.

Appearance Application
ZONING BOARD OF APPEALS
Town of Wawayanda, New York

Date _____ Telephone _____

Name _____

Address _____

Hereby Appeal from the decision of the _____
of the Town of Wawayanda, Wawayanda New York.

Dated _____ For _____

Signature of Official making decision _____

Applying For :

Variance () Special Permit () Interpretation ()

Location of Property : _____

Section _____ Block _____ Lot (s) _____ Zoned _____

**Is property within 500 feet of County or State Highway,
County or State property or boundary of another municipality:

YES _____ NO _____

If so, application will be subject to county review.

**Provisions of the Zoning Ordinance Appealed. State Article,
Section and Paragraph _____

**AN APPEAL IS MADE HEREWITH FOR:

- An interpretation of the Zone ordinance or Map.
 - A Special Permit in accordance with the provisions of the zoning ordinance.
 - A variance to the provisions of the Zoning Ordinance or Map.
 - An extension to a Special Permit
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** Signature of person making application : _____
_____ Date _____

** Signature of property owner: _____

(If applicant is not the property owner, owner's endorsement signature **MUST** be notarized)

Notary _____
Signature of Notary and Stamp/Date

Zoning Board of Appeals Chairman / Date



STATE OF NEW YORK
DEPARTMENT OF STATE
ALBANY, N.Y. 12231-0001

GAIL S. SHAFFER
SECRETARY OF STATE

LAND-USE RELATED ACTIONS OF THE 1991 LEGISLATIVE SESSION

A. Recodification Measures.

The following measures which were enacted at the 1991 Session were the result of the ongoing efforts of the Legislative Commission on Rural Resources to recodify the planning and zoning enabling statutes. The Department of State and others have been actively involved with the Commission in the preparation of these measures.

1. Zoning Boards of Appeals in Towns and Villages: Major statutory revision, including new rules for the granting of variances
(Chapter 692, Laws of 1991)

This measure repeals Town Law, section 267 and Village Law, section 7-712, which pertain to zoning boards of appeals, and in their stead enact a series of new sections dealing with the creation of boards of appeals (new Town Law, section 267 and Village Law, section 7-712), their procedures (new Town Law, section 267-a and Village Law, section 7-712-a), the issuance of interpretations and variances (new Town Law, section 267-b and Village Law, section 7-712-b), and judicial review (new Town Law, section 267-c and Village Law, section 7-712-c).

The most important change concerns variances. New Town Law, section 267-b(2) and Village Law, section 7-712-b(2) codify the case law that has developed in New York State starting with Otto v. Steinhilber, 282 N.Y. 71 (1939) to establish the tests for the granting of use variances. These new provisions set forth the well-settled rules that have been established by the courts during the past 50 years. The new statute requires an applicant for a use variance to demonstrate to the board of appeals that the zoning has caused unnecessary hardship, which is defined to require a showing:

1. that under the applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property, and
2. that the hardship is unique, and does not apply to a substantial portion of the district or neighborhood, and
3. that the variance will not alter the essential character of the neighborhood, and
4. that the hardship is not self-created.

The rules governing the issuance of area variances have not been as clearly established by the courts as those for use variances. New Town Law, section 267-b(3) and Village Law, section 7-712(b)(3) establish a new, statutory process for the granting of area variances. While there is no "test" as such for the granting of area variances, the new law requires the board of appeals to balance two elements: the benefit to the applicant from the variance, and the detriment to the health, safety and welfare of the community or neighborhood that would occur if the variance were to be granted. The provision sets forth five factors for the board to consider in balancing these interests:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.
2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
3. Whether the requested variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created (that it was will not necessarily preclude the granting of the area variance).

Among the other changes contained in the new statutes are the following:

- an express authorization for boards of appeals to impose conditions to minimize the impact of use or area variances.
- clarification of the power to interpret the zoning regulations.
- a specific cross-reference to the referral requirements of General Municipal Law, section 239-m.
- a specific cross-reference to the requirements of SEQR.
- provision is made for three-member or five-member boards of appeals.
- the time within which appeals must be taken to the board of appeals is prescribed in the statute (60 days) instead of leaving it to the rules of the board of appeals.

- zoning board of appeals hearings in both towns and villages must be preceded by at least five days notice published in a newspaper of general circulation in the municipality (instead of the official newspaper).

The new law will take effect July 1, 1992.

2. Specific Statutory Authority for Incentive Zoning (Chapter 629, Laws of 1991).

This measure enacts a new Village Law, section 7-703 and Town Law, section 261-b to provide specific statutory authority for village boards of trustees and town boards to establish systems for the granting of zoning incentives.

Zoning incentives (sometimes called bonuses) permit developers to exceed the otherwise applicable zoning requirements if in exchange certain specified community needs are met, or certain amenities are provided. Thus, for example, a zoning incentive provision might allow a developer to build to a greater density than the zoning allows for a particular tract of land if a specified percentage of the additional units are affordable housing, or if the developer provides public access on a portion of the site.

The new statutes authorize the village board of trustees or town board to provide, as part of the zoning regulations, a system of zoning incentives. The new statute requires the system to be a part of the zoning law or ordinance. There must be a designation of each zoning district in which incentives may be awarded; the designation must be incorporated in the zoning map. Guidance is provided in the new statute concerning selection of districts where the incentives may be provided, and a generic environmental impact statement is to be prepared for such districts.

The measure also requires the incentive system which is contained in the zoning law to set forth:

- the incentives, or bonuses, which may be granted to an applicant;
- the community benefits or amenities which may be accepted from the applicant;
- the criteria for approval, which would include the method for determining the adequacy of the community amenities to be accepted by the village or town in exchange for the particular bonus to be granted;
- the procedure for obtaining bonuses.

If the village board of trustees or town board determines that a suitable community amenity is not immediately feasible, or is not practical, the board may require a cash payment instead. The payment is to be placed in a trust fund to be used exclusively for specific community benefits authorized by the board.

The new measure takes effect July 1, 1992.

3. Procedure for Enacting Ordinances (in Towns) and Zoning Laws (in Villages) (Chapter 657, Laws of 1991)

This measure amends the Town Law and Village Law to make a number of changes in the method for enacting ordinances (in towns) and zoning laws (in villages).

First, the measure amends Town Law, section 133 to authorize the publication of summaries or abstracts of town ordinances after they have been adopted, instead of publication of the full text of the ordinance.

Second, the measure amends Town Law, section 264 and Village Law, section 7-706(1), to authorize publication of summaries or abstracts of zoning ordinances (in towns) and zoning laws (in villages) after they have been adopted.

Third, Town Law, section 264 and Village Law, section 7-706, which are the sections dealing generally with the method of procedure for the adoption of zoning ordinances (in towns) and zoning laws (in villages), are amended to set forth the requirements for notification to other municipalities, housing authorities and the State in a more organized, easier to read format. No substantive change is made to these requirements.

Finally, the measure adds to Town Law, section 264 and Village Law, section 7-706 a cross-reference to the requirements of SEQOR and to the referral requirements of General Municipal Law, section 239-m.

This measure becomes effective July 1, 1992.

4. Local Planning Board Members may serve as County or Regional Planning Board Members (Chapter 185, Laws of 1991)

This measure amends General Municipal Law, Section 239-b (the basic section authorizing creation of county and regional planning boards) to specifically allow members of municipal boards (including legislative bodies, planning boards, zoning boards of appeals and others) to serve as members of county or regional planning boards. The new law permits a member of a municipal board who is also a member of a county or regional board to participate in the deliberations of the latter. However, such a member may not vote on a matter before the county or regional planning board where that matter is or has been the subject of a proposal, application or vote before the municipal board on which the individual serves.

The law became effective June 21, 1991.

B. Other Measures

1. Amendments to Mined Land Reclamation Law (Chapter 166, Laws of 1991, section 228)

Environmental Conservation Law, Article 23, Title 27 (the Mined Land Reclamation Law) provides a comprehensive system of State regulation of mining. This measure amends that portion of the Mined Land Reclamation Law which specifies the powers of local governments to regulate mining.

First, the measure reiterates the power of municipalities to provide for mining, or to prohibit mining, through the use regulations in the various zoning districts. Thus, where a zoning regulation prohibits mining operations from particular zoning districts, the Mined Land Reclamation Law does not preempt the zoning.

Second, if the zoning regulations allow mining as a use by special permit the new amendments to the law limit the special permit conditions that may be imposed by the municipality to the following:

- ingress and egress to locally controlled roads
- the routing of mineral transport vehicles on locally controlled roads
- enforcement of Department of Environmental Conservation permit requirements concerning:
 - setbacks from property boundaries and public rights-of-way
 - natural or man-made barriers to restrict access
 - dust control
 - hours of operation
- enforcement of Department of Environmental Conservation requirements for reclamation which the Department imposes as part of permit.

The measure clarifies that municipalities may, in addition, regulate any mining activity not subject to a permit under the Mined Land Reclamation Law.

The measure became effective September 1, 1991.

2. Amendments to General Municipal Law, sections 239-m and 239-n (Chapter 413, Laws of 1991, section 57 and 58)

General Municipal Law, section 239-m requires certain zoning actions to be referred to the county, regional or metropolitan planning agency before final action is taken by the city, town or village, agency having jurisdiction. General Municipal Law, section 239-n

requires a similar referral of subdivision plats, but only in those counties that have elected to use the procedure. The statutes describe the specific geographic areas within which all zoning actions and subdivision plats must be referred.

This measure allows the county, regional or metropolitan planning agency and the local agency to agree that certain zoning or subdivision matters which otherwise would have to be referred are of local, rather than intermunicipal or county-wide concern, thus excepting such matters from referral.

These amendments became effective July 19, 1991.

3. Judicial Review of Planning Board Decisions (Chapter 459, Laws of 1991)

This measure amends Town Law, section 282 to provide that the 30-day time period within which an Article 78 proceeding must be commenced to review a decision of a planning board on a subdivision plat begins when the planning board's decision is filed in the town clerk's office. Before this amendment, the time began when the Decision was filed in the office of the planning board itself.

This amendment became effective September 1, 1991.

SITE INSPECTION AUTHORIZATION

I hereby give permission to members of the Zoning Board of Appeals of the Town of Wawayanda, the Engineer for the Town or Wawayanda, the Attorney for the Town of Wawayanda, or any of their agents and/or assigns to enter upon my property, located at _____, Town _____, Town of Wawayanda, State of New York, County of Orange, designated upon the Tax Rolls of the Town of Wawayanda as Section _____, Block _____, Lot(s) _____, in order to personally inspect said premises in order to evaluate the application for _____ affecting the said premises.

Dated: _____, New York
_____, 2001

Signature of Owner of Property

Print Name of Owner of Property

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____	NO	YES
	<input type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE		
Applicant/sponsor name: _____		Date: _____
Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	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.
_____	_____
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)

PRINT