

# Use Variance Application – Zoning Board of Appeals, Town of Ontario

Org. 3/2000; Rev. 5/2007, Rev. 4/2008

Applicant Information – Please type or print

I (We) \_\_\_\_\_ of \_\_\_\_\_  
(Name) (Mailing Address)

\_\_\_\_\_  
(Telephone) (Alternate contact number)

hereby appeal to the Zoning Board of Appeals of the Town of Ontario, NY a decision of the Code Enforcement Officer of the Town of Ontario, who did: **GRANT**  **DENY**  an official permit for **USE** , **OCCUPANCY** , **BUILDING PERMIT** . The affected property is located at:

\_\_\_\_\_  
(Specific Location) (Tax Account Number) (Zone)

Appeal of the Code Enforcement Officer of the Town of Ontario dated \_\_\_\_\_

Applicant Comments – General Description of Project (Please type or print)

Do ZBA members have permission to inspect your property? \_\_\_\_\_ YES \_\_\_\_\_ NO (Please Initial)

Does the Code Enforcement Officer have permission to inspect your property? \_\_\_\_\_ YES \_\_\_\_\_ NO (Please Initial)

Is property located within 500 feet of a municipal boundary or on a state or county road? \_\_\_\_\_ YES \_\_\_\_\_ NO

\*\*Application Fee is Non-refundable\*\* \*\*Application Fee is Non-refundable\*\* \*\*Application Fee is Non-refundable\*\*  
Notary Stamp Here

\_\_\_\_\_  
(Applicant's signature)

\_\_\_\_\_  
(Date)

State of New York, County of Wayne; sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary Public

**BUILDING DEPT. USE ONLY**

Fee Paid:

Rec. by:

MEETING DATE/TIME:

Meeting Location: Ontario Town Hall, 1850 Ridge Rd., Ontario, NY 14519

**USE VARIANCE TESTS:**

Address the following four (4) Use Variance tests, as they relate to your application. Use additional sheet, if necessary.

1. Under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.

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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.

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3. That the requested use variance, if granted, will not alter the essential character of the neighborhood.

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4. That the alleged hardship has not been self-created, but was caused by factors outside the applicant's control.

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**GUIDELINES AND INSTRUCTIONS FOR ALL APPLICANTS**

**SEEKING APPROVAL OF A**

**USE VARIANCE**

FROM THE

**TOWN OF ONTARIO ZONING BOARD OF APPEALS**

**COMPLIANCE WITH THE FOLLOWING RULES WILL IN NO WAY GUARANTEE APPROVAL OF AN APPLICATION. IT MAY BE NECESSARY FOR THE BOARD OF APPEALS TO REQUEST ADDITIONAL INFORMATION TO MAKE ITS DECISION.**

**Section 1 – General Information**

The Zoning Board of Appeals generally meets on the first Wednesday of each month at 7:00 P.M. local time at the Casey Park Office Building, 6551 Knickerbocker Road, Ontario, New York 14519. A schedule of meetings is adopted each year and is available upon request.

The burden of proof for all applications is on the applicant, who should be prepared at the time of the public hearing to describe the application, state the necessity for the application, and show compliance with the applicable tests for approval. The applicant, or the applicant's authorized agent, must appear at all public hearings held on the application.

The requirements set out in this packet for applications to the Zoning Board of Appeals are not to be considered all-inclusive. Depending on the nature and scope of a particular application, the Zoning Board may request more information of the applicant.

A complete package of application materials must be filed with the Clerk of the Zoning Board of Appeals of the Town of Ontario on or before the submission deadline for the required hearing date. A schedule of public hearing dates, including submission deadlines, is available from the Zoning Board of Appeal's Clerk. An application to the Zoning Board of Appeals will not be accepted unless all required materials have been submitted. All application materials will be available for public review.

Approximately seven (7) days prior to the public hearing, a sign will be posted, by a company hired by the Town, in a conspicuous location on the subject property indicating that an application is pending. This sign should be maintained on the property until the date of the hearing.

**Section 2 – Application Procedure**

A complete application consists of the following forms and documentation. Eight (8) copies of each form or document should be collated into packets no larger than 8 ½" by 11", with the exception of maps and/or plans.

- A. **CEO Determination** – The Code Enforcement Officer must be shown the plans for any proposed changes to the property or for any proposed changes to the use on the property. The CEO will make a determination as to any and all variances that are needed and will provide a written "Notice of Decision" indicating the current zoning of the property and the required variances needed to allow the proposed changes.
  
- B. **Application** - The two (2) page Use Variance Application Form", filled out completely and accurately. The Application includes a section addressing the 4 "tests" required by law to be considered by the Board. The application must be either typed or clearly printed, attaching additional sheets if the space provided on the form is insufficient.
  
- C. **Authorization to Make Application** – If the applicant is not the owner of the property, the "Authorization to Make Application" form must be completed and signed by the owner and included as part of the application.

- D. **Survey Map** – A signed and/or sealed Survey Map, prepared by a professional engineer or licensed land surveyor, accurately showing the current status of the property, including the setbacks (the closest distance between the nearest property line and the structural wall closest to that property line) of all such existing structures.

All instrument surveys shall include the following information for the property:

1. Front, side and rear property lines with lengths indicated.
  2. All structures.
  3. Front, side and rear setbacks of all structures.
  4. Easements.
  5. Driveways.
  6. Any abutting roads, public and/or private.
  7. North arrow and scale.
  8. Distance of structural wall on most affected abutting property from common property line.
- E. **Sketch Drawing** - A Sketch, drawn to scale and signed, showing any proposed new structure or additions to an existing structure. This is best accomplished by having a licensed land surveyor add the information to an existing Survey Map.
- F. **Architectural Elevations** – If the variance requested concerns a new building or an addition to an existing building, architectural elevations, with scale indicated, should be submitted, to provide the Board an accurate visual representation of the applicant’s proposal.
- G. **SEORA Compliance** – All Use Variance applications are subject to special New York State environmental review procedures (SEQRA). As a result, you will need to complete and submit an “Environmental Assessment” form.
- H. **Sign Posting** – At least seven (7) prior to the hearing, a sign will be posted in a conspicuous place on the property. The sign will be provided by the Town and posted by a company hired by the Town. The sign will need to remain posted until the day on the hearing. The sign will be removed by the sign posting company. There is a \$25.00 sign posting fee.
- I. **Notification and Consent of Neighbors** – It is strongly recommended that you notify all neighbors that adjoin and/or might be affected by the Use Variance requested. This may be done by personally delivering or mailing a copy of the application materials to each neighbor. You may also request that neighbors sign a written “consent” to the application. You may use the “Samples” provided as a guide in sending the copies out, obtaining “consents” and confirming to the Board that you have notified neighbors.
- J. **Fee** - Submission of the appropriate application fee, in accordance with the current fee schedule. This fee covers the cost of the legal advertisement and part of the administrative costs involved. The check should be made payable to the “TOWN OF ONTARIO”.

### **Section 3 – State Law Requirements**

The State of New York requires that Zoning Boards review every Use Variance request by examining four (4) “Tests.” These tests are reflected in the Application form referred to in paragraph “B” in the prior Section of these instructions. You may wish to review the State Law requirements for Use Variances, which appear below.

#### **New York State Town Law Section 267-b**

- Power to Grant Use Variances* 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.
- Tests for Granting Use Variances* (b) No such use variance shall be granted by a Board of Appeals without a 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 (1) under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established 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 essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

*Minimum Variance Necessary* ( c ) The board of appeals, in the 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.

The State of New York also requires that any applicant for an Area Variance provide notification if the applicant (or an officer or employee of a corporate applicant) is connected with a municipality. The Application form referred to in paragraph "B" of the prior Section of these instructions includes a place to disclose this information, if it applies. You may wish to review the State Law requirements for this disclosure, set forth below.

## **New York State General Municipal Law - Section 809**

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality or of a municipality of which such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.
2. For the purpose of this section an officer or employee shall be deemed to have an interest in the applicant when he, his spouse or their brothers, sisters, parents, children, grandchildren or the spouse of any of them
  - (a) Is the applicant, or
  - (b) is an officer, director, partner or employee of the applicant, or
  - (c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
  - (d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.
3. Ownership of less than five percent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.
4. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

# **NOTICE OF DECISION**

TOWN OF ONTARIO  
CODE ENFORCEMENT OFFICE

PROPERTY OWNER:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_ Zoning District \_\_\_\_\_

Description of Proposed Improvements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The request for a Permit to perform the above proposed improvements is denied, as a result of non-conformance with the following Sections of the Ontario Town Code:

Code Section: \_\_\_\_\_ Description of Non-conformance: \_\_\_\_\_

\_\_\_\_\_

Code Section: \_\_\_\_\_ Description of Non-conformance: \_\_\_\_\_

\_\_\_\_\_

Code Section: \_\_\_\_\_ Description of Non-conformance: \_\_\_\_\_

\_\_\_\_\_

Code Section: \_\_\_\_\_ Description of Non-conformance: \_\_\_\_\_

\_\_\_\_\_

A request may be made, by the owner or an authorized agent on behalf of the owner, for a Variance to allow the proposed improvements to be made. Any such request is made to the Town of Ontario Zoning Board of Appeals.

Forms and instructions for an Area and/or Use Variance request will be supplied, together with a copy of this Determination. Completed Area and/or Use Variance applications are processed through Donna Burolla, Clerk for the Zoning Board of Appeals.

Date: \_\_\_\_\_

Edward Collins, Code Enforcement Officer

# **OWNER AUTHORIZATION**

## **VARIANCE APPLICATION TOWN OF ONTARIO ZONING BOARD OF APPEALS**

The undersigned, as property owner, hereby gives authorization to the following applicant to make application to the Town of Ontario Zoning Board of Appeals for the following Variance request(s):

Applicant Name: \_\_\_\_\_

Property Address: \_\_\_\_\_

Tax Parcel Number: \_\_\_\_\_

Variance(s) Requested: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Owner Signature

# SAMPLE LETTER TO NEIGHBORS

Mr. & Mrs. Applicant  
123 Main Street  
Ontario, New York 14519

Date: \_\_\_\_\_

Mr. & Mrs. Neighbor  
125 Main Street  
Ontario, New York 14519

Dear Mr. & Mrs. Neighbor:

We are proposing to make improvements to our property located at 123 Main Street, as follows:

\_\_\_\_\_.

As you will note from the attached "Notice of Decision" we received from the Code Enforcement Officer, the proposed improvements are not in compliance with Town Code and we will need to receive "Variance" approval from the Zoning Board of Appeals.

Since your property is close to ours, we wanted to let you know of our application and so you can provide the Zoning Board with any comments, should you so desire.

Enclosed is a copy of our application materials, which we submitted to the Zoning Board, for you to review. Our request is on the Zoning Board calendar, for their meeting on \_\_\_\_\_ ..

If you do not have any objection to our request, we would appreciate your signing the "consent" at the bottom of this letter and returning it to us.

Naturally, in the event that you have any questions, please feel free to get in touch with us.

Very truly yours,

Mr. & Mrs. Applicant

We consent to the application  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Mr. & Mrs. Neighbor

SAMPLE CONFIRMATION OF DELIVERY TO NEIGHBORS

To: Ontario Zoning Board of Appeals  
From: Mr. & Mrs. Applicant  
Re: Variance Application for 123 Main Street, Ontario, New York 14519  
Date: \_\_\_\_\_

This will confirm that we have delivered copies of our Variance Application to neighbors of our property.

We personally delivered copies of our application to the following neighbors, who have signed this document, acknowledging receipt:

_____ Signature of Neighbor	_____ Address of Neighbor
_____ Signature of Neighbor	_____ Address of Neighbor
_____ Signature of Neighbor	_____ Address of Neighbor

We sent a copy of the Variance Application to the following neighbors, by mail. If sent "certified mail", receipts received are attached.

_____ Name of Neighbor	_____ Address of Neighbor
_____ Name of Neighbor	_____ Address of Neighbor
_____ Name of Neighbor	_____ Address of Neighbor

Dated: \_\_\_\_\_  
\_\_\_\_\_  
Signature of Applicant