

# **APPLICANT'S GUIDE**

## **“APPEALS TO THE ZONING BOARD OF APPEALS”**

### **READ FIRST**

#### **INTRODUCTION:**

Any person aggrieved by a decision of the Building Inspector or Code Enforcement Official may take an appeal to the Zoning Board of Appeals. The matter appealed from is most commonly a notice of refusal with respect to a permit application. There are two basic types of appeals to the Zoning Board: appeals for interpretation and appeals for a variance. In making an appeal, the burden of proof lies with the applicant and if the applicant does not prove his or her case, the appeal will be denied. You may be represented by an attorney on the appeal to the Zoning Board if you so desire.

#### **INTERPRETATIONS:**

An interpretation is a request to have the Zoning Board make a determination as to the meaning of a particular provision of the Zoning Code with respect to a particular set of facts and circumstances. If you are aggrieved because you believe the Building Inspector has misinterpreted the Zoning Code, you may make an appeal. You must clearly identify the Code provision upon which you wish to make an interpretation and must completely, clearly and accurately set forth the facts and circumstances to which the Code provision applies. The Zoning Board cannot make an interpretation in a vacuum and if you fail to properly state the matter and completely set forth the facts, it is unlikely that you will obtain the interpretation you desire.

#### **VARIANCES:**

Variations are a form of extraordinary relief, which allow a person to do something, which is not ordinarily or normally allowed by the Zoning Code. A variance will not be granted unless you prove all the elements necessary to entitle you to a variance. The two basic types of variances are **Use** variances and **Area** variances. A **Use** variance would allow you to conduct a particular type of activity in a zone where that activity is not normally permitted. An **Area** variance will afford relief from the three dimensional or “bulk” requirements such as lot sizes, set backs, etc. The basic elements, which must be proved, are set forth below:

## **Unnecessary Hardship or Practical Difficulties**

Unless the strict application of the Zoning Code will cause unnecessary hardship or practical difficulties regarding the utilization of the property, you are not entitled to a variance and a variance will not be granted. The unnecessary hardship or practical difficulties must concern the use of the property and does not relate to the personal circumstances of the property owner. Illness or lack of financial resources are not the kind of hardship or practical difficulty referred to.

“Unnecessary Hardship” is the standard for the granting of a **Use** variance. Showing must prove an Unnecessary Hardship that the land cannot yield a reasonable return if used for any of the purposes allowed in the zone. The proof submitted must be actual “dollars and cents” proof. The fact that the owner may obtain a better price or a higher profit by the use being requested is irrelevant to proof of this element. A **Use** variance will be denied if the hardship is self-created.

“Practical Difficulties” is the standard for the granting of an **Area** variance. The practical difficulties relate to the physical features of the lot, which inhibit the use of the lot within the dimensional standards of the Zoning Code. The applicant must show significant economic injury to prove practical difficulties. The relevant test is the difference in value of the parcel with and without a variance.

## **Uniqueness**

No variance will be granted unless the hardship or practical difficulty is particular to the specific parcel and is not common to all properties within the zoning district. You must show how your property is different from others in the district in relation to the hardship or practical difficulties.

## **Spirit of the Zoning Law**

The applicant must show that the granting of the variance will be within the general spirit of the Zoning Law. The variance requested must be the minimum necessary to grant the relief while conserving the essential character of the neighborhood and protecting the value of other properties in the zone. No variance will be granted where to do so will make a significant impact on the public health, safety and welfare purposes for which the Zoning Code was implemented.

## **CONCLUSION:**

The above is intended to be a general outline concerning appeals to the Zoning Board of Appeals. It is only a rough outline. The applicant must take responsibility for familiarization with both local code and State requirements.

Remember, the applicant must prove his or her case or the appeal will be denied. No hearings will be scheduled on incomplete applications.

**TOWN OF LIBERTY  
ZONING BOARD OF APPEALS**

**APPLICATION**

Appeal Of \_\_\_\_\_ Tel. No. \_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(ADDRESS)

\_\_\_\_\_  
(NAME / ADDRESS OF AGENT / ATTORNEY)

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Application No. \_\_\_\_\_ Date Application Received \_\_\_\_\_

Hearing Date \_\_\_\_\_ Decision Date \_\_\_\_\_

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**A. STATEMENT OF OWNERSHIP AND INTEREST**

1. The Applicant(s) is/are the owner(s)/agent of property known

\_\_\_\_\_ generally located  
(STREET ADDRESS)

\_\_\_\_\_  
(DESCRIBE BY REFERENCE TO STREET INTERSECITONS, PROPERTY OF OTHERS, ETC.)

2. The property is identified on the most recent Tax Roll of the  
Town of Liberty as **Section** \_\_\_\_\_ **Block** \_\_\_\_\_ **Lot** \_\_\_\_\_

3. The above-described property was acquired by the Applicant on  
\_\_\_\_\_, \_\_\_\_\_. Attached is a copy of Deed.

4. Attached is a photocopy of the Tax Map on which my  
property has been outlined in **Red**.

5. Zoning District of the property is \_\_\_\_\_.

B. RELIEF REQUESTED

1. The Applicant requests: (check one or both)

(a) A USE variance ( ) An AREA variance ( )

(b) An Interpretation of ( )

Zoning Code Section

Subject Matter of Section

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Reasons for request:

(a) State briefly your reason(s) for requesting a Variance or Interpretation:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) State briefly how the strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Code:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) Purpose of Request:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Change Requirement:

From:

To:

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(d) State briefly how the granting of the requested relief will not be a substantial detriment to the health, safety and welfare of the neighborhood or community and will not materially undermine the purposes of the Town of Liberty Zoning Code:

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(e) State briefly how the practical difficulties or unnecessary hardships are particular to your property and are not shared by other properties in your neighborhood or the same Zoning District:\_\_\_\_\_

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C. APPEAL FROM

1. This appeal is made from Notice **of Disapproval** from the Building Inspector/Zoning Officer dated \_\_\_\_\_, \_\_\_\_.
2. This property **has / has not** been the subject of a previous appeal. If applicable, I have attached a copy of the decision in that previous matter.

D. DOCUMENTATION:

1. I have attached to this application copies of the following documents which I understand **must** be fully submitted in order for my application to be acted upon:

- (a) My Deed to my property. ( )
- (b) A portion of the Tax Map in which my property has been outlined in red. ( )
- (c) The Notice of Approval from the Building Inspector / Zoning Officer from which this appeal is taken. ( )
- (d) Drawing to scale or survey showing present and proposed conditions if relief is granted. ( )
- (e) Environmental Assessment Form Part I. ( )
- (f) General Municipal Law Section 809 Affidavit. ( )
- (g) List of Names and addresses with corresponding Tax Map numbers of all property owners within 500 feet of my property entitled to a Notice of Public Hearing on my application. ( )

E. FEE

1. Enclosed is my nonrefundable fee of **\$100.00** (not including postage fees), which I realize must be paid at the time my application is submitted or the application will not be processed.

\_\_\_\_\_  
(SIGNATURE OF APPLICANT OR AGENT)

State of New York)  
County of Sullivan)

Sworn to before me this \_\_\_\_\_ day

Of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(NOTARY PUBLIC)

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2. Fee received on \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_

**PROPERTY OWNER'S AUTHORIZATION**

Dated: \_\_\_\_\_

(I, WE) \_\_\_\_\_ Owner, Owners of  
the property identified as Tax Map **Section** \_\_\_\_\_ **Block** \_\_\_\_\_ **Lot** \_\_\_\_\_  
described in this application filed with the Town of Liberty Zoning Board  
of Appeals for a **Variance** (  ) **Interpretation** (  ) for said property do  
hereby authorize the applicant to file said application with my full  
knowledge and acceptance.

\_\_\_\_\_  
(SIGNATURE OF OWNER / OWNERS)

State of New York)  
County of Sullivan)

Sworn to before me this \_\_\_\_\_ day

Of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(NOTARY PUBLIC)

# GENERAL MUNICIPAL LAW OF THE STATE OF NEW YORK

## READ FIRST

### **Section 809.** Disclosure in Certain Applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of 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, expressed 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 (5%) of the stock of a corporation whose stock is listed on the New York or American Stock Exchange shall not constitute an interest for the purpose of this section.

4. A person knowingly and intentionally violates this section shall be guilty of a misdemeanor.

**AFFIDAVIT**

DISCLOSURE ADDENDUM STATEMENT TO APPLICATION

Mindful of the provisions of **Section 809** of the General Municipal Law of the State of New York, and of the Penal provisions thereof as well, the undersigned applicant states that **no** State Officer, Officer, or Employee of the municipality, or of the Town or County of which is a part, has any interest, financial or otherwise, in this application or with, or in the applicant as defined in said Statute, except the following person or persons who is or are represented to have only the following type of interest in the nature and to the extent hereinafter indicated:

None

Name / Address

Relationship or interest (financial or otherwise):

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This disclosure addendum statement is annexed to and made part of the application made by the undersigned applicant to the following Board of Officer of the Town of Liberty.

Zoning Board of Appeals

Other: \_\_\_\_\_ Officer

Dated: \_\_\_\_\_

\_\_\_\_\_  
(INDIVIDUAL APPLICANT)

\_\_\_\_\_  
(CORPORATE / PARTNERSHIP APPLICANT)

\_\_\_\_\_  
(OTHER, SECRETARY, TREASURER, ETC.)