

# **State Guidelines for Applicants To the Zoning Board of Appeals**

(Information provided by the James A. Coon Local Government Technical Series 12/99)

## **What must be proven in order to grant a Use Variance?**

If the applicant is requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State Law requires the applicant to show the following:

1. That the property is incapable of earning a reasonable return of initial investment if used for any of the allowed uses in the district (actual "dollars and cents proof" must be submitted); and
2. That the property is being affected by unique, or at least highly uncommon circumstances; and
3. That the variance, will not alter the essential character of the neighborhood; and
4. That the hardship is not self created.

If any one of the above factors is not proven, State Law requires that the ZBA must deny the variance.

## **What must be proven in order to be granted an Area variance?**

If the applicant is requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front yard, side or rear yards, or above the building height, or in excess of the lot coverage regulations), then State Law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State Law requires the ZBA to take the following factors into consideration in making its determination: whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance:

1. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance.
2. Whether the requested area variance will produce an undesirable change in the character of the neighborhood.
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 an alleged difficulty is self-created.

Unlike the use variance test, the ZBA need not find in favor of the applicant on every one of the above questions. Rather, the ZBA must merely take each one of the factors into account, The ZBA may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance.

***PLEASE NOTE:***

***The above rules and standards have been set forth in law and by the courts of the State and cannot be modified by the Zoning Board of Appeals. The public is entitled to speak in favor of, or against a proposed project, but opinions in and of themselves are not enough. The ZBA cannot grant relief where proper legal proof is not adequately presented by the applicant.***

***ATTENTION APPLICANTS:***

***When you appear before the Zoning Board of Appeals to discuss your project you will be questioned by the Board as to how your project fits into your requested variance. Please be prepared to answer questions regarding your project and how it fits into your requested variance. Therefore, prior to your appearance it may be helpful for you to fully review the Town Codes which apply to your project, so you are properly prepared to answer the Board's questions.***



## **TOWN OF LEWISTON**

1375 Ridge Road

Lewiston, New York 14092

(716) 754-8213

[www.townoflewiston.us](http://www.townoflewiston.us)

### **PROCEDURE TO APPLY FOR A ZONING VARIANCE**

Complete application and submit with application fee \$ \_\_\_\_\_.

**NO APPLICATION WILL BE PROCESSED WITHOUT FULL PAYMENT  
OF APPLICATION FEE**

The zoning board usually meets on the 2<sup>nd</sup> Thursday of the month.

The zoning board will address the application at the next meeting following  
your submittal.

The board will schedule a public hearing. You will be notified by the zoning  
board of your public hearing date.

### **Attention Applicant:**

**If this variance request involves the construction of a new structure  
such as a fence, addition, shed or garage; stakes must be used to  
indicate the exact location of the new structure. Stakes must be in  
place at least five days prior to the hearing. If the stakes are not in  
place prior to this time, the zoning board will postpone the hearing  
and reschedule it for a future date.**



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Fee \_\_\_\_\_ Date Paid \_\_\_\_\_ Hearing Date \_\_\_\_\_ Approved \_\_\_\_\_ Denied \_\_\_\_\_

### **Appeal to the Zoning Board Area Variance, Use Variance and/or Interpretation**

Applicant

Owner(s) (If not applicant)

Attorney/ Agent

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax \_\_\_\_\_

Email \_\_\_\_\_

### **Property Information**

Property Address \_\_\_\_\_ Side of street (north, east, etc.) \_\_\_\_\_

Tax Parcel No \_\_\_\_\_

Date acquired by owner \_\_\_\_\_ Zoning District when purchased \_\_\_\_\_

Present use of property \_\_\_\_\_ Current Zoning District: \_\_\_\_\_

Has previous ZBA applicant/appeal been filed with property? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, when? \_\_\_\_\_

For what \_\_\_\_\_

Is property located within a 500' of a State Park, town or city boundary or county/state highway? \_\_\_\_\_

Brief description of the proposed action \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is there a written violation for this parcel that is not the subject of this application? Yes \_\_\_\_\_ No \_\_\_\_\_

Has the work, use or occupancy to which the appeal relates already begun? Yes \_\_\_\_\_ No \_\_\_\_\_

Identify the type of appeal you are requesting \_\_\_\_\_ Area Variance \_\_\_\_\_ Use Variance \_\_\_\_\_ Interpretation

**Use Variance - Please answer the following (add additional information as necessary)**

A use variance is requested to permit the following \_\_\_\_\_

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

For the Zoning Board to grant a request for a Use Variance, an applicant **MUST** prove that the zoning regulations create an **UNNECESSARY HARDSHIP** in relation to that property. In seeking a use variance, New York State law **REQUIRES** an applicant to prove **ALL FOUR** of the following "tests".

I. That the applicant cannot realize a reasonable financial return on initial investment for any currently permitted use on the property. "Dollars and Cents" proof must be submitted as evidence. The property in question cannot yield a reasonable return for the following reasons.

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

A. Submit the following financial evidence relating to the property (attached additional evidence as needed):

1. Date of purchase \_\_\_\_\_ Purchase Amount \_\_\_\_\_

2. Indicate dates and costs of any Improvements made to property after purchase:

Date	Improvement	Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

3. Annual maintenance expenses \_\_\_\_\_ 4. Annual Taxes \_\_\_\_\_

5. Annual income generated from property \_\_\_\_\_

6. Town assessed value \_\_\_\_\_ 7. Estimated Market Value \_\_\_\_\_

8. Appraised Value \_\_\_\_\_ Appraiser \_\_\_\_\_ Date \_\_\_\_\_

**Appraisal Assumptions:**

B. Has property been listed for sale with the Multiple Listing Service (MLS) \_\_\_\_\_ Yes \_\_\_\_\_ No

If Yes, for how long? \_\_\_\_\_

1. Original listing date(s) \_\_\_\_\_ Original listing price \_\_\_\_\_

If listing price was reduced, describe when and to what extent \_\_\_\_\_

2. Has the property been advertised in the newspapers or other publications? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, describe frequency and name of publications \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3. Has the property had a "For Sale" sign posted on it? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, list dates when sign was posted \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4. How many times has the property been shown and with what results? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

II. That the financial hardship related to this property is unique and does not apply to a substantial portion of the neighborhood. Difficulties shared with numerous properties in the neighborhood or district would not satisfy) this requirement. This previously identified financial hardship is unique for the following reasons.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

III. That the variance, if granted will not alter the essential character of the neighborhood. Changes that alter the character of the neighborhood or district would be at odds with the purpose of the Zoning Ordinance. The requested variance will not alter the character of the neighborhood for the following reasons.

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IV. That the alleged hardship is not self-created. An applicant (whether a property owner or someone acting on behalf of the (property owner) cannot claim "unnecessary hardship" if that hardship was created by the applicant, or if the applicant acquired the property knowing (or was in the position to know) the condition for which the applicant was seeking relief. The hardship was not self-created for the following reasons.

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## **Applicant Signature**

I/We the property owner(s), or purchaser(s), lessee(s) under contract of the land in question, hereby request an appearance before the Zoning Board of Appeals.

By the signature attached hereto, I/We believe the information provided within this application and accompanying documentation to be true and accurate. I/We further understand that intentionally providing false or misleading information is grounds for immediate denial of this application.

Furthermore, I/We hereby authorize the members of the Zoning Board of Appeals to enter the property associated with this application for purposes of conducting any necessary site inspections related to the fact finding process with regard to this pending application.

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Signature

Signature

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Date

Date

**617.20**  
**Appendix B**  
**Short Environmental Assessment Form**

**Instructions for Completing**

**Part 1 - Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>				
Name of Action or Project:				
Project Location (describe, and attach a location map):				
Brief Description of Proposed Action:				
Name of Applicant or Sponsor:		Telephone:		
		E-Mail:		
Address:				
City/PO:		State:	Zip Code:	
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<b>NO</b>	<b>YES</b>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			<b>NO</b>	<b>YES</b>
3.a. Total acreage of the site of the proposed action? _____ acres				
b. Total acreage to be physically disturbed? _____ acres				
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres				
4. Check all land uses that occur on, adjoining and near the proposed action.				
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)				
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____				
<input type="checkbox"/> Parkland				

5. Is the proposed action, a. A permitted use under the zoning regulations?	<b>NO</b>	<b>YES</b>	<b>N/A</b>
b. Consistent with the adopted comprehensive plan?			
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	<b>NO</b>	<b>YES</b>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	<b>NO</b>	<b>YES</b>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	<b>NO</b>	<b>YES</b>	
b. Are public transportation service(s) available at or near the site of the proposed action?			
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?			
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	<b>NO</b>	<b>YES</b>	
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing potable water: _____ _____	<b>NO</b>	<b>YES</b>	
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____ _____	<b>NO</b>	<b>YES</b>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	<b>NO</b>	<b>YES</b>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	<b>NO</b>	<b>YES</b>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	<b>NO</b>	<b>YES</b>	
16. Is the project site located in the 100 year flood plain?	<b>NO</b>	<b>YES</b>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES  b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	<b>NO</b>	<b>YES</b>	

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: _____ _____ _____	<b>NO</b>	<b>YES</b>
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: _____ _____ _____	<b>NO</b>	<b>YES</b>
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: _____ _____ _____	<b>NO</b>	<b>YES</b>
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b> 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?”

	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
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?		
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?		
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	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?		
11. Will the proposed action create a hazard to environmental resources or human health?		

**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.

- 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.
- 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)