

Village of Woodbury

Zoning Board of Appeals

Information Packet

For Persons or Corporations Applying for Variance(s) or Special Permit(s)

The Woodbury Zoning Board of Appeals (hereinafter known as the "ZBA") has put together this document to assist all persons appearing before this Board. Contained within are simple explanations to the following topics:

- (1) Purpose of the ZBA and how the process works.
- (2) What types of relief the ZBA can grant.
- (3) What an applicant can expect from the ZBA.
- (4) Your obligations as an applicant.
- (5) What the ZBA requires and what is required of the ZBA regarding the decision making process.

(1) The purpose of the Zoning Board of Appeals:

Section 712 of the New York Village Law provides for the creation of a ZBA by the Village Board. The Woodbury 5 member ZBA 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 Woodbury (most likely the Building Inspector). The ZBA hears the appeals and is empowered to grant relief and/or interpret the Zoning Laws of the Village of Woodbury.

(2) Who may appeal:

Anyone who believes that they have been "harmed" by a decision of the Village Building Inspector may appeal that decision to the ZBA. This includes property owners, neighbors, etc. Additionally, any Woodbury official, Board of Commission member may appeal a decision of the Building Inspector.

(3) Reasons for Appeal/Petition:

In most cases, the applicant has come before the ZBA for one of the following three reasons:

- (1) You are requesting the granting, extension or modification of a **Special Permit** where specifically required by the Zoning Law (for example, you wish to modify your house to a "*Mother/Daughter*" design with separate entrance, kitchen and bath facilities which requires a Special Permit.
- (2) You were denied a building permit by the Building Inspector since your request did not meet the requirements of the Woodbury Zoning Laws.
- (3) You were issued a notice of violation by the Building Inspector who alleges that you are constructing or maintaining a structure or condition which does not meet the requirements of the Zoning Law (for example, you have converted a residence into a business, or you have constructed an accessory building on your property which, due to location or use, requires approval by the ZBA).

(4) Types of Variance:

In the case of (2) and (3) above, you may apply for what is called a "**variance**" from the Zoning Law which, if granted, will allow you to obtain a building permit to construct or maintain said structure, condition or accessory building.

There are two categories of Variance. (1) an **area** variance:

An **area variance**, if granted, allows the applicant a use of land in a manner which is not allowed by the dimensional or physical requirements 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 said accessory use to be located in the rear yard or (b) you wish to add an addition to your house which, when completed, will increase the total area of the structure and therefore violates the Zoning Law setback requirements (mandated distance between the structure and the boundaries of your property).

and (2) a **use** variance.

A **use variance**, if granted, allows the applicant permission to use their property (or a portion thereof) for a purpose not otherwise permitted by the Zoning Law. Examples include; (a) you wish to purchase a house and convert it into a small business in a District zoned for residential use only, (b) you wish to construct a warehouse or small factory on property zoned for banks and professional office buildings or (c) you wish to construct or convert a building to a multi-family dwelling on property zoned for single-family residence.

What is Required of Applicants

In order to initiate the process, applicant must submit a completed application form to the Woodbury Building Department and pay a non-refundable fee (please make checks payable to the *Village of Woodbury*).

Whether the request is for a **use** or an **area** variance, the applicant is required to provide appropriate documentation that will allow the ZBA to decide the merits of the case. Examples of such documentation includes, but is not limited to SEQRA assessment and/or environmental impact statements (if applicable: consult Building Inspector or your professional advisor), plans, blueprints, survey map(s) of property in question 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 Depts., etc.), corroborating documentation from Real Estate Professionals, banks, appraisers, mortgage companies, etc. and any other documentation required by the ZBA.

Additionally, the applicant may make use of reasonable resources available such as professional representation (attorney, architect, engineer, etc.), affidavits from interested parties (neighbors, business associates, etc.) and the use of experts (contractors, real estate professionals, appraisers, etc.).

The Burden of Proof by the Architect

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 community". The Law requires the ZBA to consider 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, if required, at the hearing:

(1) If the area variance is granted, will an undesirable change be produced in the neighborhood

or a detriment to nearby properties be created?

(2) Could the implementation of a feasible alternative provide 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 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?

In the case of a use variance, New York Village Law requires the applicant prove "*unnecessary hardship*". To prove this, the applicant must show all of the following: that

(1) 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 planning on using (1) above as their primary reason for requesting a variance should be aware of the following:

(a) 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. (b) Be aware that a reduction in the value of a property because of the Zoning Law or 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.

(2) The property is being affected by unique or at least highly uncommon circumstances;

Applicants must show that the hardship is totally unique to this property and is not shared by other properties in the applicants district or neighborhood.

(3) The variance, if granted, will not alter the essential character of the neighborhood; and

(4) That the hardship is not self-created.

A use variance cannot be granted if the applicant knows of the hardship condition before purchasing the property, purchases it anyway and then complains to the ZBA about the hardship.

Flexibility of the Decision(s) Allowed a ZBA

Applicants should be aware that in considering an area variance, the ZBA is not bound by the particular answers to any of the 5 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 (1) that the applicant has not submitted the required proof and therefore deny the variance; (2) that a lesser variance (than the one requested by the applicant) is appropriate or (3) that there are remedies and alternatives available to the applicant that do not require the granting of an area variance.

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 4 factors is not proven.

Whether you are applying for a **use** or an **area** variance, New York State law requires the ZBA to grant the *minimum variance necessary* to provide you with relief. You should be aware that 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.

A Final Word

This informational document has been prepared as a resource to those applicants who are unfamiliar with ZBA procedures. It is intended to complement, not replace the advice of professionals (such as attorneys, architects, civil engineers) and advisors.

If, as a result of reading the information contained in this packet, you have additional questions or need clarification, please contact the Woodbury Building Department.

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, precedents and protocol.

Village of Woodbury

Zoning Board of Appeals

Instructions for application forms:

- (1) Application form(s) must be filled out entirely.
- (2) Applicants must submit ten (10) copies of all information (plans, blueprints, surveys, application forms, etc.)
- (3) As explained in the information packet, in order for the Board to be able to consider all aspects of the application, applicant should provide photographs of property and all adjoining properties.
- (4) If applying for a use variance, fill out page 2 of the application. If additional space is needed, attach paper.
- (5) If applying for an area variance, fill out page 3 of the application. If additional space is needed, attach paper.
- (6) Applicant must submit with application payment of fees in accordance with fee schedule below (made payable to the Village of Woodbury)
- (7) Applications shall be submitted two weeks prior to the 4th Wednesday of each month in order to be placed on agenda.

ZONING BOARD OF APPEALS - FEE SCHEDULE

Special Permit-----	\$150.00
Residential Area Variance-----	\$250.00
Residential Use Variance-----	\$250.00
Commercial Area Variance-----	\$500.00
Commercial Use Variance-----	\$750.00
ZBA Interpretation of Code-----	\$250.00
Review of Ruling by Building Inspector-----	\$250.00

Statement of Ownership and Interest

- 1. *Name of Applicant* _____

- 2. *Owner of property (if different from Applicant)* _____

- 3. *Owners Address* _____

- 4. *Location of Property* _____

- 5. *Tax map: Section* _____ *Block* _____ *Lot* _____ *Zoning District:*
- 6. *Present use of property: Residential (single-fmly)* _____ *(multi-fmly)* _____ *Comm.*

- 7. *Such use has continued without change since (year) :* _____

- 8. *Proposed use of property:* _____

- 9. *Type of relief requested: Use variance* _____ *Area variance* _____ *Special permit*

- 10. *List sections of the Woodbury Zoning Law from which variance(s) or permit are requested:*

- 11. *Give directions to property from Police Headquarters on Route 32:*

Date filed: _____ *Applicants Signature:* _____
Applicants address: _____
Telephone numbers: (daytime) _____ *(evening)* _____

If Owner is different from applicant, complete the following:

Owners signature: _____
Owners address: _____
Telephone numbers: (daytime) _____ *(evening)* _____

Statement of Ownership and Interest

This questionnaire to be completed by persons applying for an USE variance (if unsure, see instructional pamphlet attached or contact the building department):

**PLEASE ANSWER ALL QUESTIONS YES OR NO AND THEN GIVE
DETAILED EXPLANATION**

(ATTACH ADDITIONAL PAGES IF NECESSARY)

USE VARIANCE

1. Explain how, based on the current applicable zoning regulations applicant is incapable of earning a "reasonable" financial return on his/her initial investment if used for any of the uses allowed by the zoning code. Applicant must demonstrate using financial evidence:

2. Explain how the alleged hardship that relates to the property in question is unique and does not apply to a substantial portion of the district or neighborhood:

3. Explain how the requested variance, if granted, will not alter the essential character of the neighborhood:

4. Explain how the hardship is not self-created:

Statement of Ownership and Interest

This questionnaire to be completed by persons applying for an AREA variance (if unsure, see instructional pamphlet attached or contact the building department):

**PLEASE ANSWER ALL QUESTIONS YES OR NO AND THEN GIVE
DETAILED EXPLANATION**

(ATTACH ADDITIONAL PAGES IF NECESSARY)

AREA VARIANCE

1. Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?

2. Can the benefit you seek be achieved by some other feasible method other than variance?

3. How substantial is the variance that you are requesting?

4. Will the granting of the 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?
