

VILLAGE OF FORT EDWARD USE VARIANCE INSTRUCTIONS & APPLICATION

ALL APPLICATIONS:

- Please complete the enclosed application for **use variance** with as much detail as possible.
- Make sure to answer all relevant questions. **Do not leave any blanks** unless the question is not applicable (please place N/A if not applicable).
- All applications must be accompanied by detailed diagrams showing lot size, adjoining roads, driveways, the location and dimensions of all buildings including building heights and the distance of all buildings from all lot boundaries.
- It is the sole responsibility of the applicant to provide the Zoning Board of Appeals (ZBA) with **one original and seven (7) copies** of the application and all necessary information and documentation concerning this application.
- The ZBA will make its determination solely on the basis of the information and material that it is provided; therefore, the burden of proof is on the applicant to prove the necessity of the request.
- There is **\$65.00** filing fee with the submission of each application. This fee is not refundable once presented to the ZBA and shall not be used to cover any other fee, permit, etc.
- Unless otherwise specified by the ZBA Board, a decision on any variance shall expire if the applicant fails to obtain any necessary permit or comply with the conditions of such permit or fails to file an extension request within 1 year from the date of authorization thereof.

Before work is started, please obtain a permit from the Code Enforcement Office. Please be advised that construction must comply with all regulations of the Village of Fort Edward Code and the New York State Uniform Fire Prevention and Building Code.

The ZBA meets the **third Wednesday** of every month (barring holidays) and all applications must be submitted, along with the fee, on or before the first business day of that month. Please confirm deadline dates with the Code Enforcement Office. The completed application and fee is submitted to the Village of Fort Edward, Building & Code Enforcement, 118 Broadway, P.O. Box 345, Fort Edward, NY 12828.

Example of items that may be enclosed in support of the application:

- (a) Property card (Assessor's records)
- (b) Tax records
- (c) Appraisal
- (d) Business records (Maintenance costs, tax records/returns, utility bills)
- (e) Renovation documents (*if applicable*)
- (f) Business proposal (*if applicable*)
- (g) Photos
- (h) Survey map of property
- (i) Neighborhood letter of support (*if applicable*)
- (j) Map/photos/layout of neighborhood
- (k) Purchase documents

1. USE VARIANCE

A use variance is a variance granted by the ZBA of the prohibitions against certain uses of real property in a zoning district. A variance, if granted, allows the property owner to use the property in a certain way even though the desired use is otherwise prohibited in the zoning district. A use variance may be granted upon a demonstration of unnecessary hardship to the property owner in the use of the land.

2. STANDARDS

Please make sure to answer all questions in detail. You must clearly demonstrate that:

- (a) The applicant will be deprived of all economic use or benefit from the property unless it can be used for the purpose requested, which deprivation must be established by competent financial evidence. Competent financial evidence may include records or documents of: the amount paid for the property, the present values of the property, the expenses attributable to the maintenance, the amount of taxes on the property, income from the property; etc.
- (b) The hardship created is unique and does not apply to a substantial portion of the district or neighborhood. To determine whether the conditions that make an applicant's land difficult to use are unique, the ZBA may, for example, consider proximity to a major highway or industry, or physical conditions of the site itself, such as steep slopes or wetlands;
- (c) The requested variance would not alter the essential character of the neighborhood. For example, the establishment of a commercial use that generated a lot of traffic or excessive noise could disrupt a residential neighborhood;
- (d) The hardship is not self-created. An example of a hardship that has been created by the applicant's own actions may be where the applicant purchases a residentially zoned land for a very high price, with the thought of subsequently obtaining a variance to use the land commercially. In this case, the applicant created the hardship by paying an inflated amount for the land and should not be granted a variance;
- (e) The variance is the minimum necessary to grant relief from hardship. The ZBA may grant the least relief, or the smallest variance, necessary to allow the applicant a reasonable return on the property;
- (f) The variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The neighborhood should not be disrupted by the proposed use, even if the applicant proved unnecessary hardship.

In order to qualify for a use variance, the applicant must show by "dollars and cents" proof that the property cannot yield a reasonable return for each and every allowed use in the zoning district, if its use is limited to only those uses permitted in the zoning district. To determine whether the property can yield a reasonable return, the ZBA may consider whether the applicant would lose the practical use of the land if made to conform to the use requirements of the zoning regulations. It may be to the applicant's benefit to have an appraisal performed to support any claims

3. SELF-CREATED HARDSHIP

The ZBA may not grant a use variance to relieve a hardship created by the applicant, such as the purchase of land with actual or constructive (should have known-presumed to know the law) knowledge that the desired use is prohibited by the zoning ordinance, even if the landowner does not have actual knowledge of the applicable ordinance prohibiting the desired use.

The applicant should keep in mind that a use variance, if granted, runs with the land; in other words, the variance is granted to benefit the use of the property regardless of who owns the property. The variance is not granted for the personal benefit of the property owner; rather, it will continue to benefit the property for subsequent owners of the property as well.

The Village of Fort Edward will meet with the property owner, if desired, to help prepare/explain the application process. Should you require assistance, please contact:

Dave Armando, Code Enforcement Officer
118 Broadway, P.O. Box 345
Fort Edward, NY 12828
(518) 502-4146
code@villageoffortedward.com

USE VARIANCE APPLICATION

Date

Applicant (s)

Address

Phone (Mobile)

Phone (Home)

Location of property where variance is requested

Property Owner * *(if different than applicant)*

** If Applicant is not the property owner a Letter of Authorization must be submitted with application.*

Date Property Acquired by Applicant

Tax Map No.

Current Use	Residential	# of Dwelling Units
	Commercial	Type
	Industrial	Type
	Accessory Building	Describe
	Other	Describe

Proposed Use

If area variance is granted, will applicant perform the work

Yes

No

If not, provide the name, address & phone of contractor(s).

Please describe in detail, the changes you plan to make on the premises.

Please explain how the variance will affect the character of and the health, safety and welfare of the neighborhood.

Please explain how the hardship is *not* self-created.

Please explain how the hardship created is unique and does not apply to a substantial portion of the neighborhood.

Please explain why the requested variance will not alter the essential character of the neighborhood.

Please explain how the variance is the minimum necessary to grant relief from the hardship.

Please explain how you will be deprived of **all** economic use or benefit from your property unless it can be used for the purpose you request, which deprivation must be established by competent financial evidence.

Please provide the following information to support how you will suffer a significant injury.

- (a) Amount paid for the property in question
- (b) Date of purchase of the property
- (c) Current market value of the property *(or any part thereof)*
- (d) Basis upon which the present market value of the property *(from (c) above)* was obtained
- (e) Projected market value of property if variance is/is not granted
Basis upon which the present market value of the property *(from (e) above)* was obtained
- (f) *(e) above* was obtained
- (g) Provide a breakdown of expenses attributable to maintenance since acquiring the property *(you may wish to include receipts, if applicable)*
- (h) Assessment & amount of taxes on the property *(if applicable)*
- (i) Amount of mortgages & other encumbrances *(if applicable)*
- (j) Income from the land *(if applicable)*
- (k) Any other relevant facts particular to request

Please use an attached sheet of paper if you require further space and clearly indicate the question(s) you are answering.

Remember that it is the sole responsibility of the applicant to provide sufficient information and documentation concerning this application. Because the determination is made solely on the basis of information provided to the ZBA, it is to the applicant's benefit to include as much supporting information as possible.

I/We hereby consent to allow members of the Zoning Board of Appeals, upon reasonable notice to me/us, the right of access to my/our property for the purpose of viewing and inspecting the proposed area variance, which is a subject matter of the proceeding herein before the Zoning Board of Appeals.

I/We certify the information submitted with this application for area variance is true to the best of my/our knowledge and belief.

Signature/Date of Applicant(s)

Signature/Date of Applicant(s)

State of New York

ss:

County of

Sworn to before me this

day of

Notary Public Signature

PLEASE READ CAREFULLY

Please use the attached sheet of paper if you require further space clearly indicating which question you are answering. Remember that it is the sole responsibility of the applicant to provide sufficient information and documentation concerning this application. Because the determination is made solely on the basis of information provided to the ZBA, it is to the applicant's benefit to include as much supporting information as possible.

Additional Information