

TOWN OF DELAWARE

104 Main Street, PO Box 129

Hortonville, New York 12745

Phone: 845/887-5250 FAX: 845/887-5228

ZONING BOARD OF APPEALS
Applicant Packet

SBL: _____

**APPLICATION TO
ZONING BOARD OF APPEALS
TOWN OF DELAWARE
SULLIVAN COUNTY, NEW YORK**

Re: Instructions for Submitting an Application to the Zoning Board of Appeals

Dear Applicant:

Attached to this instruction letter are the forms to be used in submitting an application to the Town of Delaware Zoning Board of Appeals.

The Town of Delaware ZBA meets on an “as needed” basis, on call by the Chairman of the Board after receiving an application for a variance.

A complete application must be submitted, consisting of all information listed in paragraph D (Documentation) of the application form. An application will not be placed on the agenda until all required information is submitted.

At the initial meeting, the ZBA will review the application to be certain that the applicant has set forth sufficient information upon which the granting of a variance (or a reversal) could be considered.

In the event the ZBA determines that a complete application with sufficient information has been made, a public hearing will be scheduled.

A decision must be made by the ZBA within 62 days of the public hearing.

**Town of Delaware
Zoning Board of Appeals
104 Main Street, PO Box 129
Hortonville, NY 12745
845/887-5250**

GUIDELINES FOR APPLICANTS

Anyone who seeks relief before the Town Zoning Board of Appeals should know what the procedure is for receiving a determination. First, an applicant must have received a formal decision or action by the Building Inspector before taking an appeal before the Board. Second, the applicant (or his representative) must present proof under the appropriate legal standards that is sufficient to allow the Board to grant relief.

The following questions and answers should help:

Q: Who may apply to the Board for relief?

A: Anyone who stands to be aggrieved (i.e., injured or harmed) by the decision of the Building Inspector. Commonly the “aggrieved” party is the property owner who has been refused a permit, but an “aggrieved” party could also be a neighboring landowner who believes the Inspector’s decision in issuing a permit was improper and will injure *him*. Also, anyone who has received an enforcement action (such as a cease-and-desist order) is eligible to take an appeal to the Board.

Q: What types of relief can the Board grant?

A: Basically, the Board can grant (or deny) two types of relief. First, the Board may affirm, modify or reverse the decision of the Building Inspector, based on the evidence and testimony placed before the Board. Second, the Board may grant or deny a variance, based on a specific showing of practical difficulty or unnecessary hardship. Because of this range of powers the Board has, it is essential that the applicant or his representative know what type of relief to request when making application to the Board. If the applicant (either the landowner or a third party) believes the inspector’s decision was incorrect, the appropriate request is for a reversal. If the applicant landowner believes that the inspector’s decision may have been correct, but that he (the landowner) can show either practical difficulty or unnecessary hardship in complying with the decision, then the appropriate request is for a variance. It is also possible for an applicant to make a request for a reversal, and, in the same application, ask for a variance if the reversal is not granted.

Q: What must the applicant be prepared to do?

A: When the application is filed, the Board will notify the applicant of a hearing date. At any time before or during the hearing, or after the hearing if decision is postponed, the applicant may submit written evidence and/or argument supporting his case. Obviously, the sooner that written testimony or material is received, the more time Board members will have to consider the case and reach a proper decision. Preferably, written material should be submitted with the application, or as soon thereafter as possible, so that it can be sent to Board members prior to the

hearing. Anyone else having an interest in the outcome of the case is also encouraged to submit written evidence as well.

At the hearing itself, the Board will offer the applicant and/or his representative the opportunity to present his case for relief. The applicant may testify himself, call his own witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the Board will offer the Town an equal opportunity to present its side of the case. Each side will be given the opportunity to question the other, or the other's witnesses. In addition, the Board members themselves may ask questions. After the applicant and the Town have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed. At this point, the Board may reach a decision, or may postpone a decision until a later meeting. If the Board deems it necessary, the hearing may be reopened, either at the same session or at a later date. Once the hearing is finally closed, the Board must issue its decision within sixty (60) days.

Burden of Proof

The applicant for relief should be prepared to make a case for relief under the rules established by the laws and the courts of New York State. If requesting a simple reversal, the applicant must prove that the Building Inspector's decision was incorrect, according to a proper interpretation of the Town Zoning Law.

If requesting a use variance, that is, permission to establish a use of his/her property not otherwise permitted in his/her zoning district, the applicant must prove "unnecessary hardship." That is, he must show:

- (a) That the property is incapable of earning a reasonable return on investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
- (b) That the property is being affected by unique or at least highly uncommon circumstances;
- (c) That the variance, if granted, will not alter the essential character of the neighborhood; and
- (d) That the spirit and intent of the Zoning Law will be preserved.

If requesting an area variance, that is, the permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then the applicant must prove "practical difficulty." "Practical difficulty" is proven when the applicant shows that the property stands to suffer economic injury if the variance is not granted, and that this economic injury is significant in relation to the public benefit served by the particular ordinance restriction which is at issue. The applicant must also be prepared to show, if required, that the variance will not adversely affect services and facilities, the character of the neighborhood, and the overall interest of justice. The Board may decide that a lesser variance than the one requested would be appropriate, or may decide that there are other means available to the applicant which would not require a variance.

It is highly important that the applicant understand the above standards under which appeals and variance decisions must be made by the Board of Appeals. These standards have been set forth in law and by the courts of the State, and if not followed, would subject the Town to costly lawsuits. Too often, an applicant will appear before the Board and offer only generalized conclusions that his or her proposed project will “look nice” and that it won’t bother his neighbors. This isn’t enough. It puts the Board in a position of having to guess what the relevant facts are, and whether the applicant is really presenting true hardship, difficulty, or a case for reversal. The Board therefore urges all applicants, or their representatives, to become familiar with the applicable standards, to be guided by them in deciding whether an appeal would be appropriate, and to present clear, definite facts showing that the standards have been met. While the Board will offer full assistance to applicants who may be unfamiliar with the procedure itself, the Board cannot grant relief where proper legal proof is not adequately presented.

(Adapted from NYS Dept. of State Guidelines for Town ZBA’s, prepared by Harry J. Willis, Local Government Counsel.)

**Town of Delaware
Zoning Board of Appeals
104 Main Street, PO Box 129
Hortonville, NY 12745
845/887-5250**

APPLICATION FOR VARIANCE OR REVERSAL

Appeal of: _____ Telephone: _____
(Name)

Address: _____

Name and Address of Agent/Attorney (if applicable): _____

Application #: _____ Date Application Received: _____

Date of Hearing: _____ Date of Decision: _____

A. STATEMENT OF OWNERSHIP AND INTEREST:

1. The applicant(s) is/are the owner(s)/agent of property known as _____
(Street Address)
_____, generally located _____

(Describe by reference to street intersections, property of others, etc.)

2. The property is identified on the most recent tax roll of the Town of Delaware as Section _____, Block _____, Lot _____.

3. The above described property was acquired by the applicant on _____, 20____. Attached is a copy of the deed.

4. Attached is a photocopy of the tax map on which the property which is the subject of this application has been outlined in red.

5. The premises are located in the _____ Zoning District.

B. RELIEF REQUESTED:

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

(a) An Area Variance []

(b) A Use Variance []

(c) Reversal of Building Inspector's Decision []

Zoning Law Section

Subject Matter of Section

_____	_____
_____	_____
_____	_____

Change Requirement

From

To

_____	_____
_____	_____
_____	_____

2. Reasons for Request (add additional sheets if necessary):

(a) State briefly your reason(s) for requesting a variance:

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

(c) Describe briefly the improvements, additions or changes intended to be made under this application:

(d) State briefly how the granting of the requested relief will not be a substantial detriment to the public interest, to the property and to surrounding properties, and will not materially undermine the purposes of the Town of Delaware Zoning Law:

(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 in the same Zoning District:

C. APPEAL FROM:

1. This appeal is made from a notice of disapproval from the Building Inspector dated _____, 20____, a copy of which is attached to this application.
2. This property (has/has not) been the subject of a previous appeal. If applicable, attach a copy of the decision in the 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:

- Most recent deed to the property.
- A portion of the tax map on which the property (which is the subject of this application) has been outlined in red.
- The notice of disapproval from the Building Inspector from which this appeal is taken (if applicable).
- Drawing to scale or survey showing the location and size of the existing and proposed improvements on the property which is the subject of this application.
- Environmental Assessment Form Part I (if applicable).

E. FEE:

Enclosed is my non-refundable fee of \$_____, which I realize must be paid at the time my application is submitted or it will not be processed.

Applicant Signature

Sworn to before me this _____
day of _____, 20_____.

Notary Public

Fee Received on _____, 20_____.

By: _____
Name/Title