



VARIANCES
&
SPECIAL USE PERMITS

EXPLANATION AND PROCEDURE

APPLICATION FORM

Variations – Explanation

A zoning variance is essentially a waiver of the application of specific zoning requirements to a specific parcel of land, and may be authorized if certain conditions exist. Each person seeking a variance has the legal burden of showing that these conditions are met. The Zoning Board of Appeals grants variances.

There are two distinct kinds of variances: Use Variance and Area Variance, which are statutorily defined:

USE VARIANCE – is defined as “authorization by the Zoning Board of Appeals for the use of land in a manner or for a purpose, which is otherwise not allowed or is prohibited by the applicable zoning regulations.” No use variance shall be granted unless the Board shall find that applicable zoning regulations impose unnecessary hardship. The Board, in granting a variance, shall endeavor to grant the minimum variance necessary to alleviate the proven hardship and to protect and preserve the character of the neighborhood and the health, safety and welfare of the community. NO finding of unnecessary hardship shall be made unless:

The applicable regulations deprive the applicant of all economic use and benefit of the property, which deprivation must be proved by competent financial evidence.

The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.

The requested variance if granted will not alter the essential character of the neighborhood.

The alleged hardship has not been self-created.

Apply directly to the Zoning Board of Appeals. The Zoning Board, in issuing the use variance, may require successful completion of site plan approval as a condition to the variance.

AREA VARIANCE – is defined as “authorization by the Zoning Board of Appeals for the use of land in a manner, which is not allowed by the dimensional or topographical requirements of the applicable zoning regulations. Specifically, the Board shall consider whether:

An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the requested area variance.

The benefit sought by the applicant can be achieved in some feasible manner other than an area variance.

The proposed area variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

The alleged difficulty was self-created.

SPECIAL USE PERMIT

Apply directly to the Zoning Board. The Zoning Board, in issuing a special use permit, may require successful completion of site plan approval as a condition to the special use permit.

The application enclosed in this package has been designed to help you in applying for the kind of variance you need, and to help you organize evidence and arguments in support of your case. Every application for a variance must be presented to the Zoning Board of Appeals at a Public Hearing at which all interested persons have the right to be heard. Your cooperation in filling out the application form and attaching all requested information and maps will enable the Zoning Board to schedule your Public Hearing at the earliest possible date.

The following is an outline of the procedure for the processing of an application for a variance from the Zoning Ordinance of the Village of Fairport.

Complete the information requested on the application. Certain data regarding lot size and present zoning may be obtained from the Building Department. It is your responsibility to file a completed application; an application with missing or erroneous data is not a completed application.

Assemble supporting material for the application. Copies of maps, scaled drawings, and estimates should be attached to it. When an area variance is requested and the cost of construction exceeds \$1,000.00 an instrument survey map must be provided. If the instrument survey map tendered is more than six months old, it shall be accompanied by a sworn statement of the owner that no surface improvements have been added to the premises since the date the map was made.

File **fifteen copies (15)** of all documents with the Building Department. A filing fee of fifty dollars (\$50.00) for residential and seventy-five dollars (\$75.00) for all others: plus all consulting and engineering fees incurred by the Village.

Administrative review: Applications are checked for clarity, completeness and a determination will be made whether other boards or agencies will be involved. Applications affecting land lying within five hundred feet of a municipal boundary line or state or county highway or right-of-way must be referred to the Monroe County Department of Planning for comment, pursuant to state law. The Zoning Board may take no final action until thirty days have elapsed from the date of the reference, or the Monroe County Department of Planning makes its recommendation, whichever is first.

Some projects will eventually require direct action by both the Planning and the Zoning Boards; that is, variance relief may be only one of several kinds of municipal permits or approvals required, such as Site Plan or Subdivision Approvals. In these cases, in general, if you are seeking an area variance, you should go to the Planning Board for site plan approval first.

If site plan approval is required, obtain action on request for preliminary site plan approval from the Planning Board prior to variance application. If subdivision is required, obtain final subdivision approval from the Planning Board prior to variance application.

If neither site plan nor subdivision approval will be required for your project, the Building Department should accept your application for a variance for immediate processing. If site plan approval is required, the Building Department will accept an application for a related variance, but the public hearing before the Zoning Board will be delayed until the Planning Board has acted.

A Public Hearing before the Zoning Board is your opportunity to present your case. You will want to satisfy each of the legal requirements, which must be met before a variance may be granted. The Public Hearing is also an opportunity for other interested persons to appear and speak for or against your application. You should be prepared to answer questions from the Zoning Board as well as from others in attendance. The Zoning Board has sixty days following the Public Hearing in which to reach a decision. In most cases, however, action is taken the same evening. Zoning Board meetings are open to the public and you are welcome to remain and listen to Board deliberations or you may call the Building Department the following day to learn what action was taken on your matter.

After the decision: If your variance request is granted, proceed to obtain necessary permits. (See Quick Reference List)

If your variance request is denied, and if you feel that the Board's decision was not fairly supported by the evidence before it, consider court review pursuant to Article 78 of the Civil Practice Law and Rules.

QUICK REFERENCE LIST

VILLAGE OF FAIRPORT PERMIT REQUIREMENTS

1. BUILDING PERMIT REQUIRED: Any addition or alteration, other than normal maintenance, to the exterior or interior of any premises.
2. BUILDING PERMIT REQUIRED: Any structure, which requires the support of the ground or is attached to the building (decks, etc.).
3. BUILDING PERMIT REQUIRED: Any roof, supported by columns, piers or walls used for the shelter of persons, animals or chattels. This includes porches, carports any storage building, etc. either attached or detached.
4. BUILDING PERMIT REQUIRED: Any plumbing change, or rearrangement of any waste lines in any premises, including kitchen or bath remodeling where lines are changed.
5. BUILDING PERMIT REQUIRED: wood burning stove installations, gas fireplaces and related equipment, including flues and chimneys.
6. FENCE PERMIT REQUIRED: Any fence erected or replaced.
7. SWIMMING POOL, SPA OR HOT TUB PERMIT REQUIRED: Any swimming pool, spa or hot tub installed.
8. SIGN PERMIT REQUIRED: Any sign erected.

ALL OF THE ABOVE PERMITS MUST BE ISSUED BEFORE WORK IS ACTUALLY STARTED. A CIVIL PENALTY, INCLUDING A FINE MAY BE LEVIED IF SUCH PERMITS ARE NOT OBTAINED.

APPLICATION TO VILLAGE OF FAIRPORT ZONING BOARD OF APPEALS

Application for:

- Variance from Section _____ Area Use
- Special Use Permit under Section _____
- Interpretation of Zoning Ordinance

Applicant: _____ Phone _____

Address: _____

ADDRESS OF PROPERTY INVOLVED _____

Owner of Property involved (if different from applicant) _____

Zoning: _____ Tax map no. _____ Corner lot ___ Yes ___ No

Request: _____

Cost of Project: \$ _____

Area Variance: Application must show why a building conforming to the regulations cannot be built

Area Variance – My situation is unique and is not shared by all properties alike in the immediate vicinity of this property because:

The requested Area/Use variance would not change the character of the neighborhood because:

Use Variance – show why the property cannot yield a reasonable return if used only for a purpose allowed in that zone.

SIGNATURE OF APPLICANT _____ **DATE** _____