



Town of Esopus Zoning Board of Appeals
Mailing Address: PO Box 700, Port Ewen, NY 12466
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(845) 339-1811 Ext. 126
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VARIANCE/APPEAL APPLICATION MATERIALS

Contents:

- Application (including list of documents to submit)
- Notice of Appeal
- Agent Authorization (if applicant is not owner)
- Affidavit of Applicant/Owner
- Applicable Town Code

To be placed on the monthly meeting Agenda, complete applications must be submitted to the ZBA Secretary two (2) weeks prior to the regularly scheduled monthly meeting.

**PLEASE NOTE: GRANTING OF A ZBA VARIANCE IS A 3-MONTH
PROCEDURE - INFORMATIONAL, PUBLIC HEARING & DECISIONAL
MEETINGS**

Area/Use Variance Application

This application must be filed within 20 days of the Notice of Disapproval from the Building Department

Date: _____

Applicant: Name _____
Mailing Address _____
Telephone No. _____ E-mail Address: _____

Owner: Name _____
Mailing Address _____
Telephone No. _____ E-mail Address: _____

Site Location: _____
SBL: _____ Zoning District: _____ Total acreage _____

TO THE ZONING BOARD OF APPEALS OF THE TOWN OF ESOPUS:

Application is request for: (check one)

- A variance from Article _____ Section _____ of the Zoning Ordinance
- A special permit pursuant to Article ___ Section _____ of the Zoning Ordinance
- An interpretation of the Zoning Ordinance or Zoning Map
- An Appeal from the Order of the Building Inspector denying the issuance of a Building permit
- An Appeal from the Order of the Building Inspector to correct a violation of the Housing Code
- Other _____

Attached hereto and made a part of the application are the following:

- Copy of the decision or order of administrative official upon which application is based (will be provided by Town Zoning Officer/Building Inspector)
- Statement of the principal points upon which the application is based with a clear description of proposed work, if any, and including a statement relative to the character of the neighborhood
- Drawings, surveys and/or building plans (including floor plans and building elevations with measurements, if applicable).
- 8 physical copies of all materials as well as digital copy required.

NOTICE OF APPEAL

To the Building Inspector and the Zoning Board of Appeals of the Town of Esopus,
Ulster County, New York

PLEASE TAKE NOTICE that I, _____
(print name)

hereby appeal to the Zoning Board of appeals from the decision of the Building
Inspector of the Town of Esopus.

Date:

Signature

Signature

Address

Telephone #

E-mail

(Appeal to be completed if interpretation of Zoning Enforcement Officer is disputed)

AFFIDAVIT OF APPLICANT

I hereby depose and say that all of the statements contained in the papers submitted herewith are true to the best of my knowledge.

(Signature of applicant if different than owner)

AFFIDAVIT OF OWNER

State of New York

ss:

County of _____

_____, being duly sworn deposes and says that he/she resides at _____ in the Town of Esopus, County of Ulster, State of New York, and that he/she is the owner in fact of all that certain lot, piece or parcel of land situated, lying and being in the Town of Esopus, New York, designated as Tax Map No. _____ and that statements of facts contained in said application are true.

(Signature of owner)

Sworn to me

this ___ day of

_____, 20__

Notary Public

*Town of Esopus, NY
Thursday, August 8, 2024*

Chapter 123. Zoning

Article VIII. Board of Appeals

§ 123-39. Establishment; appointments; organization.

- A. Pursuant to the provisions of § 267 of New York State Town Law, the Town Board has appointed a Board of Appeals and shall designate its Chairman. No member of the Board of Appeals shall be a member of the Town Board or the Planning Board. Members of the Board of Appeals may receive compensation for their services as provided by the Town Board.
- B. A vacancy occurring for reason other than by expiration of a term shall be filled by the Town Board by appointment for the unexpired term only.
- C. The Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, bylaws and forms as it may deem necessary for the proper execution of its duties and to secure the intent of this chapter. Such rules, bylaws and forms shall not be in conflict with nor have the effect of waiving any provision of this chapter or any other law of the Town of Esopus.
- D. Alternate members. The Town Board may appoint up to two alternate members, with each such position having a term of one year, for purposes of substituting for a member(s) in the event such member(s) is absent or unable to participate because of a conflict of interest. All provisions relating to members of Board of Appeals, including training, continuing education, attendance and compensation apply to alternative members. The Chairman shall determine when an alternate member shall substitute for a member on any particular application or matter before the Board. Once designated, the alternate member shall possess all the powers and responsibilities of the member being substituted for to make determinations. The minutes of the Board of Appeals shall reflect the meeting at which the substitution is made.

§ 123-40. Powers and duties.

- A. The Board of Appeals is governed by and shall act in strict accordance with the procedures specified by Town Law, this chapter and its own duly adopted rules, bylaws and forms. Upon proper request made in the form and manner prescribed by the Board and accompanied by a fee in accord with a schedule adopted by the Town Board, the Zoning Board of Appeals shall perform the following functions:
 - (1) Hear and decide any question properly brought before it involving the interpretation of any provision of this chapter.
 - (2) Hear and decide appeals from any decision, determination, act or failure to act of the Enforcement Officer and all matters properly referred to it by the Zoning Enforcement Officer/Building Inspector.
 - (3) Hear and decide applications for variances to provisions of this chapter in accordance with § 123-44.

- B. In exercising the above-mentioned powers and duties, the Board of Appeals may, in conformity with Town Law, reverse, affirm or modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as ought to be made in the case referred to it. To that end, the Board shall have all the powers of the Enforcement Officer from whom the appeal is made. The concurring vote of a majority of the Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Enforcement Officer or to decide in favor of the applicant any matter upon which such Board is required to pass.

§ 123-41. Public hearings.

The Board of Appeals, on due notice, shall hold a public hearing on every appeal and application for a variance referred to said Board or upon which it is required to pass under this chapter.

A. Notice.

- (1) Notice of each public hearing shall be published in a newspaper of general circulation in the Town of Esopus at least five days prior to such hearing. In addition, the Board of Appeals shall cause a notice of such hearing and an explanation of any change sought to be sent to the owners of all property adjacent to or directly across any street or right-of-way from the subject property. Such notices shall be sent to the last-known address as shown on the most recent Town tax records and mailed at least five days prior to such public hearing.
- (2) At least five days before such hearing, the Board of Appeals shall mail notices thereof to the regional state park commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal; and to the county, metropolitan or regional planning agency, if the property affected by such appeal is within 500 feet any of the features specified in § 123-51, as required by § 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in § 239-m, Subdivision 1, of the General Municipal Law.
- (3) The designated official for hearing notices for counties shall be the Clerk of the County Legislature. For cities, Towns and villages, the designated official shall be the clerk of the municipality. In the case of state parks or parkways, the designated office shall be the Palisades Interstate Park Commission.

- B. Findings and conclusions. Within 62 days after such public hearing and after considering the application, the Board of Appeals shall either grant or deny the request or appeal and make a written report on the findings and conclusions concerning the subject matter of such hearing, including the reasons for the grant or denial of the relief sought. The time within which the Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board. Such decision shall be filed in the office of the Town Clerk within five business days after the day such decision is rendered, and a copy thereof shall be mailed to the applicant.

§ 123-42. Interpretation of provisions.

The Board of Appeals shall, upon proper request, interpret any provision of this chapter about which there is uncertainty, lack of understanding or misunderstanding, ambiguity or disagreement, and shall determine the exact location of any zoning district boundary about which there may be uncertainty or disagreement.

§ 123-43. Appeals.

- A. Any person allegedly aggrieved by a decision, determination, act or refusal to act of the Enforcement Officer may, within 60 days of such decision, determination, act or failure to act, file an

appeal with the Board of Appeals. Such request shall clearly state the decision, determination, act or failure to act of the Enforcement Officer from which the appeal is taken.

- B. Any appeal from a decision of the Enforcement Officer, properly filed with the Board of Appeals, shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the Board of Appeals that, by reason of facts stated in the certification, a stay would, in his opinion, cause imminent peril to life and property.
- C. The Board of Appeals shall have the power to grant a restraining order to stay all proceedings in furtherance of the action appealed from, over any action by the Enforcement Officer from whom the appeal is taken, upon notice to the Enforcement Officer and on due cause shown.

§ 123-44. Variances.

Where strict application of any of the requirements of this chapter would result in practical difficulty or unnecessary hardship that would deprive the owner of the reasonable use of his land or building, but in no other case, the Board of Appeals shall have the power, in passing upon appeals, to grant a variance to any of the regulations or provisions of this chapter relating to the area, bulk, construction or alteration of building or structures, or the use of land and buildings, so that the spirit of this chapter shall be observed; public health, safety and welfare secured; and substantial justice done. Application for such variance shall clearly state the specific provisions of this chapter from which a variance is sought, the special circumstances which allegedly justify such variance and the interpretation or ruling which is desired.

- A. Criteria for granting variances. A variance to the provisions of this chapter shall be granted by the Board of Appeals only as set forth below:
 - (1) Use variance. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - (a) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
 - (b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.
 - (c) The requested use variance, if granted, will not alter the essential character of the neighborhood.
 - (d) The alleged hardship has not been self-created.
 - (2) Area variance. Prior to granting permission to waive the dimensional requirements applying to a parcel of land, the Board of Appeals shall consider the benefit to the applicant as weighed against the detriment to the health, safety and welfare of the neighborhood or community. The Board shall consider:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of the variance.
 - (b) Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.
 - (c) Whether the requested variance is substantial.
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

- (e) Whether the alleged difficulty was self-created (which consideration shall be relevant, but not necessarily preclude the granting of the area variance).
 - (3) For reasons fully set forth in the findings, the granting of the variance by the Board of Appeals shall be the minimum variance necessary.
- B. Conditions and compliance with law. In granting any variance, the Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The granting of a variance to any provisions of this chapter shall not obviate the necessity of complying in every other respect with the other provisions of this chapter.
- (1) All the provisions of this chapter relating to the Board of Appeals shall be strictly construed. Said Board, as a body of limited jurisdiction, shall act in full conformity with all provisions of law and of this chapter and in strict compliance with all limitations contained therein.
 - (2) Unless construction is commenced and diligently pursued within 12 months of the date of the granting of a variance, such variance shall become null and void.
 - (3) If an area variance has been granted for the purpose of subdivision and creation of a lot of nonconforming area, application for such subdivision must be made to the Planning Board within 12 months of the date the variance was granted, otherwise such variance shall become null and void.
 - (4) The granting of a variance shall not obviate the requirement that site plan approval be obtained from the Planning Board if such approval would normally be required.
 - (5) If the Zoning Enforcement Officer/Building Inspector refers an applicant to the Zoning Board of Appeals for a variance, no building permit fee shall be paid at that time. If the variance is granted, then the building permit fee must be paid when the building permit is issued. If the variance is denied, no building permit fee shall be paid.
- C. Referrals.
- (1) Referral to the Town Planning Board. At least 30 days before the date of a public hearing held in connection with any application for a variance submitted to the Board of Appeals, the Board of Appeals shall transmit to the Planning Board a copy of said application and shall request that the Planning Board submit to the Board of Appeals its advisory opinion on said application prior to the date of said hearing. Should the Planning Board fail to submit such report within the stipulated time, the Board of Appeals may proceed to make a determination.
 - (2) Referral to Ulster County Planning Board. Any application for a variance involving real property lying within 500 feet of any of the features listed under § 123-51 shall be referred to the Ulster County Planning Board prior to final action in accord with §§ 239-l and 239-m of the General Municipal Law. The Board of Appeals shall not take action on the application until it has received comment from the Ulster County Planning Board or until 30 days has elapsed.
- D. When the Board of Appeals finds the zoning classification of a particular property to be conducive to the deprivation of the reasonable use of the land or buildings and where said Board finds the same condition to apply generally to other land or buildings in the same neighborhood or zoning district, the Board of Appeals shall call this condition to the attention of the Town Board.