

Training Packet for Zoning Board of Appeals



**NYS Tug Hill Commission
21 May 2015**

Key laws and regulations affecting ZBA activities

- Open meetings law (Public Officers Law Article 7)
- SEQRA regulations (6 NYCRR Part 617)
- Core ZBA enabling legislation (Town Law Section 267, 267-a, 267-b and Village Law Section 7-712, 7-712-a, 7-712-b)
- Agricultural data statement (Town Law Section 283-a and Village Law Section 7-739)
- Planning board recommendation on subdivision area variance (Town Law Section 277 (6) and Village Law Section 7-730 (6))
- County referral (General Municipal Law Section 239-m)
- Hearing notification to adjacent municipalities (General Municipal Law Section 239-nn)

Primary Zoning Functions of the ZBA

- Statutory appellate functions: Area variance, use variance, interpretation of the zoning law
- Nonappellate functions: As assigned by the town/village board (site plan review, special use permit)

Nonzoning Function of ZBA

- Town Law Section 280-a and Village Law Section 7-736 area variance
- Official map/airport hazard area statute variances

Typical actions that trigger ZBA review

- ZEO denies permit, applicant requests a use variance or area variance.
- ZEO denies permit, applicant wishes to contest ZEO interpretation of law.
- ZEO approves a permit, neighbor wishes to contest ZEO interpretation of law.
- Planning board review of subdivision, site plan or special use permit triggers request for an area variance.

Model Zoning Board of Appeals Bylaws

Section 1. General

- 1.1 The term *board* as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Town/Village of _____.
- 1.2 The standards in any applicable local law or state statute shall take precedence over the standards of these bylaws whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

Section 2. Board Organization

- 2.1 **Officers.** The officers of the board shall consist of a chairman and vice-chairman and any other officers as deemed necessary by the board.
- 2.2 **Chairman.** The chairman shall be designated by the town/village board and preside at all meetings of the board. In the absence of designation by the town/village board, the chairman shall be designated by the zoning board of appeals. The chairman shall call all meetings of the board in accordance with NYS Public Officers Law and these bylaws. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the board. The chairman shall appoint any committees found necessary to carry out the business of the board. The chairman may administer oaths and compel the attendance of witnesses as necessary to carry out the business of the board. The chairman's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.
- 2.3 **Vice-Chairman.** A vice-chairman shall be designated by the board to serve in the absence of the chairman and shall have all the powers of the chairman during the chairman's absence, disability, or disqualification.
- 2.4 **Alternate Members.** The chairman may designate an alternate member to substitute for a board member when such board member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial board meeting at which the substitution is made.
- 2.5 **Training.** Each member shall complete, at a minimum, four hours of training each year. Training received in excess of four hours may be carried over into succeeding years. Such training shall be approved by the town/village board.
- 2.6 **Vacancies.** Should any vacancy on the board occur for any reason, the chairman shall give immediate notice thereof to the town/village clerk, and the town/village board shall make appointment to fill the vacancy for the remainder of the unexpired term. Should such a vacancy occur among the officers of the board subject to election by the board, such office shall be filled by election, for the unexpired term, at the next meeting of the board.
- 2.7 **Resignations.** Resignations from the board shall be in writing and filed with the town/village clerk.

Section 3. Meetings

- 3.1 The regular meeting of the board shall be held on _____.
- 3.2 Special meetings of the board may be called by the chairman with the following requirements:
- (a) If the meeting is scheduled one week in advance, notice shall be given to the public and the news media not less than 72 hours prior to the meeting. Notice to the public shall be accomplished by posting in one or more designated public locations.
 - (b) When a meeting is scheduled less than a week in advance, notice shall be given to the public and the news media to the extent practicable at a reasonable time prior to the meeting. Notice to the public shall be given by means of posting.
- 3.3 The chairman shall call a meeting within ten days of receipt of a written request from a majority of the entire membership of the board, which request shall specify the matters to be considered at such meeting.
- 3.4 The order of business at meetings shall be as follows:
- (a) Roll call and establishment of quorum
 - (b) Public hearing (when scheduled)
 - (c) General public comments
 - (d) Old business
 - (e) Reading and approval of the minutes of the preceding meeting
 - (f) Correspondence
 - (g) New business
 - (h) Adjournment
- 3.5 The board shall keep minutes of its proceedings, showing the vote of each member upon every question, and shall also keep records of its examinations and other official acts. Every rule, regulation, decision or determination of the board shall be filed within five business days in the office of the town/village clerk, which shall be made part of the official record of the town/village and be kept at the town/village offices.
- 3.6 All Freedom of Information Law (FOIL) requests for any rule regulation, decision or determination of the board shall be made to the official FOIL officer of the town/village. All FOIL requests shall be in writing.

Section 4. Voting

- 4.1 A quorum shall consist of a majority of the constituted membership of the board. No hearing or meeting of the board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairman to call a meeting for a subsequent date.
- 4.2 All matters shall be decided by a roll call vote.
- 4.3 Decisions on any matter before the board shall require the affirmative vote of a majority of the entire membership of the board unless otherwise specified herein. A vote of a majority plus one of the entire membership is required to act contrary to the recommendation of the county planning board, as referred to in Section 5.6 below.
- 4.4 In deciding appeals, an affirmative vote of the majority of the entire membership of the board is required within 62 days of the public hearing to reverse the determination of the zoning officer. Failure to act within 62 days of the public hearing will result in the denial of the appeal. In deciding

appeals, the board may amend a failed motion or resolution within 62 days of the public hearing without being subject to the rehearing process as referred to in Section 8 below.

- 4.5 No member of the board shall sit in hearing or vote on any matter in which he is personally or financially interested. Said member shall not be counted by the board in establishing the quorum for such matter.
- 4.6 No member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing thereon, or familiarized himself with such matter by reading the record.

Section 5. Appeals and Procedures

- 5.1 ***Jurisdiction.*** The board shall hear and decide appeals from and review any order, requirement, decision, interpretation or determination made by the zoning officer. Such appeal may be taken by any person aggrieved, or by any officer or board of the town/village.
- 5.2 ***Filing of Appeal.*** An appeal shall be made within 60 days of the filing of an action of the zoning officer. The applicant shall file a notice of appeal with the zoning officer or with the chairman. Such notice shall be made on the form provided for that purpose. The zoning officer and town/village clerk shall be responsible for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing such forms. All information required thereon shall be complete before an appeal is considered. Three copies, minimum, of the proper appeal form shall be filed with the board. Extra copies as may be deemed necessary may be required by the board.
- 5.3 ***State Environmental Quality Review (SEQR).*** The board shall comply with the provisions of the State Environmental Quality Review Act and its implementing regulations as codified in 6 NYCRR Part 617. The following actions have been specifically exempted from SEQR review:
 - (a) the granting of individual setback and lot line variances;
 - (b) the granting of area variances for a single-family, two-family or three-family residences;
 - (c) the interpretation of an existing code, rule or regulation.
- 5.4 ***Agricultural Data Statement.*** The board shall send an agricultural data statement to affected property owners for any use variance application that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the NYS Agriculture and Markets Law.
- 5.5 ***Town/Village Planning Board Referral.*** Where the application is for an area variance for a subdivision being reviewed by the planning board, the ZBA shall request that the planning board provide a written recommendation concerning the proposed area variance.
- 5.6 ***County Planning Board Referral.*** Applications for area or use variances as specified in Section 6 below, and notice of the hearing, shall be referred to the county planning agency at least five days prior to the public hearing. Matters requiring referral include any proposed action applying to real property within 500 feet of the following:
 - (a) the boundary of any city, village or town; or
 - (b) the boundary of any existing or proposed county or state park or any other recreation area; or
 - (c) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
 - (d) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or

- (e) the existing or proposed boundary of any county or state owned land on which a public building or institution is situated; or
- (f) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the NYS Agriculture and Markets Law, except this subparagraph shall not apply to the granting of area variances.

If within 30 days after receipt of a full statement of such referred matter, the planning agency to which referral is made disapproves the proposal or recommends modification thereof, the board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of the entire membership thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. If such a planning agency fails to report within such period of 30 days or such longer period as may have been agreed upon by it and the referring agency, the board may act without such report. However, if the county planning board report is received after such 30 days, but two or more days prior to final action by the referring body, then the board shall not act contrary to such recommendation except by a vote of a majority plus one of the entire membership.

- 5.7 ***Time of Hearing.*** The board shall schedule a hearing on all appeals or applications within a reasonable time of the filing of the appeal or application.
- 5.8 ***Notice of Hearing.*** The board shall give notice of the hearing at least five days prior to the date thereof by publication in a paper of general circulation in the town/village. The board shall mail notices of the hearing to the parties and to the Regional State Park Commission having jurisdiction over any state park or parkways within 500 feet of the property affected by such appeal at least five days prior to the hearing. Notice of a use variance hearing shall be given to the clerk of any adjacent municipality within 500 feet of the application at least ten days before the hearing, and may be done by electronic transmission.
- 5.9 ***Form of Notice.*** Such notice shall state the location of the lot, site, building or structure, the general nature of the question involved, the time, date, and place of the hearing, and the nature of the appeal.
- 5.10 ***Representation of Parties.*** Any party making application to the board shall be present in person or through an agent or attorney at any public hearing held for the purpose of that application.

Section 6. Criteria for Variances

- 6.1 ***Use Variance.*** "Use variance" shall mean the authorization when granted by the board for the use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by the zoning law. No use variance shall be granted 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 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) that 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) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - (d) that the alleged hardship has not been self-created.
- 6.2 ***Area Variance.*** "Area variance" shall mean the authorization when granted by the board for the use of land in a manner which is not allowed by the dimensional or topographical requirements of the zoning law. In making its determination, the board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also 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 granting of the area variance;
- (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) whether the requested area 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; and
- (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

6.3 **Minimum Variance.** The board, in the granting of use and area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

6.4 **Conditions.** The board, in the granting of use and area variances, shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

Section 7. Decisions

7.1 **Time of Decisions.** Decisions by the board shall be made not later than 62 days after the close of the public hearing. Such time may be extended by mutual consent of the applicant and the board.

7.2 **Form of Decisions.** The final decision on any matter before the board shall be made by written order signed by the chairman. Such decision shall state the findings of fact which were the basis for the board's determination. After such determination, the board may reverse or affirm, wholly or partly, or may modify the order or requirement of the zoning officer. The decision shall also state any conditions and safeguards necessary to protect the public interest.

7.3 **Basis for Decisions.** The board, in reaching said decision, shall be guided by standards specified in NYS law; the zoning law; community goals and policies as specified in the comprehensive plan; and by the findings of the board in each case.

7.4 **Findings.** The findings of the board and the supporting facts shall be spelled out in detail regardless of whether it is based on evidence submitted or on the personal knowledge of the board. The board should show that:

- (a) it has made an intelligent review of the question;
- (b) it has considered all of the information or evidence;
- (c) it has heard all parties in question;
- (d) any intimate knowledge it has of the subject under question has been taken into account;
- (e) it has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

7.5 **Filing of Decisions.** Decisions of the board shall be filed with the town/village clerk within five business days after the day such decision is rendered, and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the board.

- 7.6 ***Notice of Decision.*** Copies of the decision shall be mailed to the applicant. Final action on any matter referred to the county planning agency shall be reported within 30 days to the county planning agency, including reasons for contrary action.
- 7.7 ***Certification of Decision.*** A certified copy of the board's decision, including all terms and conditions, shall be transmitted to the zoning officer.

Section 8. Rehearing

- 8.1 ***Initiation of Rehearing.*** Upon motion initiated by any member, and adopted by unanimous vote of the members present, the board may review at a rehearing any order, decision, or determination of the board not previously reviewed. An application for a rehearing may be made in the same manner as provided for the original hearing. The application for rehearing may be denied by the board if from the record it shall appear that there has been no substantial change in facts, evidence, or conditions.
- 8.2 ***Decision on Rehearing.*** Upon such hearing (and provided that it shall appear that no vested rights due to reliance on the original order, decision, or determination will be prejudiced thereby) the board may, upon concurrence of all the members present, reverse, modify, or annul its original order, decision, or determination.

Section 9. Adoption and Amendment of Bylaws

- 9.1 ***Adoption.*** Upon adoption of these rules by the board, the chairman shall file a copy of these rules with the town/village clerk and they shall be a public record.
- 9.2 ***Amendment.*** These rules may be amended by an affirmative vote of not less than a vote of a majority plus one of the entire membership of the board, provided that such amendment be presented in written form at a meeting at which the vote was taken. All amendments adopted shall be filed in the same manner as provided for in Section 9.1 above.

Somewhat Plain English Zoning Board of Appeals Process

1. Determination of Type of SEQR Action

The board must make a determination of what type of action the application is:

- Type 2 - exempt actions requiring no SEQR review.
- Unlisted - requires only a short EAF. Board allowed to make its own independent SEQR determination, and a lead agency and coordinated review is not necessary.
- Type 1 - professional assistance with the SEQR process should be sought. Requires a long EAF, the designation of a lead agency, and a coordinated review.

2. Preliminary Acceptance of Application

The board must accept applications which are submitted within 60 days of the filing of a determination by the zoning officer. The board should formally make a determination that the application package is complete EXCEPT FOR SEQR, and that anything not included is waived by the board. Consulting a technical checklist of submission requirements is helpful.

3. Agricultural Data Statement

Where the location of a use variance appeal makes it necessary, the agricultural data statement must be sent to affected property owners.

4. Request for Planning Board Recommendation

Where the application is for an area variance for lots within a subdivision being reviewed by the planning board, a request for a written recommendation from the planning board must be made.

5. Completion of SEQR

Complete EAF – If the action is not a “type 2” exempt action, the board must review part 1 of the EAF which has been completed by the applicant, and then complete part 2 and part 3.

Determine significance of action – The board must make a determination of significance by motion or resolution. In most cases this will be a “negative declaration.” If a “positive declaration” is made, the board should immediately consult professional assistance with the next steps in the SEQR process.

Filings – In the case of a negative declaration, the EAF and negative declaration document should be entered into the record of the board. In the rare case that the action is “type 1,” then the positive or negative declaration must be sent to the ENB for publication.

6. Acceptance of Complete Application

The board should make a formal motion to accept the application as complete upon making a negative declaration, accepting a draft environmental impact statement, or finding the application exempt from SEQR.

7. Notice of Hearing

The board must establish a hearing date by motion of the board. A notice of the hearing must be published in a newspaper of general circulation in the municipality at least five days before the hearing. Notice must be mailed to the parties at least five days before the hearing. Where the location of the appeal requires, notice must be given to the regional state parks commission at least five days before the hearing. Where the location of a use variance appeal requires, notice by mail or electronic transmission must be made to the clerk of adjacent municipalities at least ten days before the hearing.

8. County Referral

Where the location of a use or area variance appeal makes it necessary, notice of the hearing and a full statement of the action must be referred to the county planning board at least five days before the hearing. Only part 1 of the EAF is necessary to refer.

9. Hearing

The hearing must be held within a reasonable time of the acceptance of a completed application. The board must act by motion to close the hearing.

10. Action on Proposal

Within 62 days of the closing of the hearing, the board must decide upon the appeal. A resolution addressing county referral comments should accompany final action of the board.

11. Notifications and Filings

Applicant – A copy of decision must be mailed to applicant.

Municipal clerk – The decision must be filed within five business days with the municipal clerk.

County planning board – Final action of any matter referred must be reported within 30 days to the county planning board, including any reasons for contrary action.

ZBA Quick Check

	Interpretation	Area variance	Use variance
SEQR Environmental Assessment Form	Not required.	Not required for: <ul style="list-style-type: none"> granting of individual setback and lot line variances. granting of an area variance(s) for a single-family, two-family or three-family residence. 	Required.
Agricultural Data Statement	Not required.	Not required.	Required if site within 500 feet of a farm operation in agricultural district.
County referral	Not required.	<i>Jefferson, Oneida and Oswego Counties:</i> Required if within 500 feet of GML §239-m list. <i>Lewis County:</i> Not required through intermunicipal agreement.	Required if site within 500 feet of GML §239-m list. <i>Lewis County Exception:</i> The following required if site within 250 feet of GML §239-m list through intermunicipal agreement: <ul style="list-style-type: none"> Signs; Home Occupations; Extensions to preexisting nonconforming buildings when the nonconformity involves extension of an existing building line; The placement of single-family and two-family dwellings (including mobile homes and manufactured housing); Docks, moorings and related waterfront structures which are on parcels utilized for a single- or two-family residences; The expansion of existing uses in existing buildings on existing lots.
Town planning board recommendation	Not required.	Required for applications connected to subdivision approvals.	Not required.
Hearing notice to adjacent clerk	Not required.	Not required.	Required if site within 500 feet of municipal boundary.

Tax Parcel Number: Section: _____ Block: _____ Lot: _____
 Log No.: _____

TOWN OF _____ ZBA APPEALS RECORDS CHECKLIST

Property

Location: _____

Date of Action

Application for appeal received. _____

Description mailed pursuant to agricultural data statement. *(if applicable, use variance only)* _____

Request for local planning board recommendation. *(area variance for subdivision only)* _____

Type of SEQRA action determined to be: _____

☐ type I ☐ unlisted ☐ type II ☐ covered by generic EIS _____

Environmental Assessment Form (EAF) filed. *(if applicable)* _____

Resolution of environmental significance determined by: _____

☐ positive declaration ☐ negative declaration ☐ conditional negative declaration _____

(Note: positive declaration will require records not on this checklist) _____

Type I action filed with Environmental Notice Bulletin. *(if applicable)* _____

Application accepted as complete. _____

Motion to hold public hearing. _____

Notice of hearing published in paper. _____

Notice of hearing to parties. _____

Notice of hearing to adjacent municipalities. *(if applicable, use variance only)* _____

Notice of hearing to regional state park commission. *(if applicable)* _____

Application and notice of hearing to county planning agency. *(if applicable, variance only)* _____

County planning agency response received. *(if applicable)* _____

Local planning board recommendation received. *(area variance for subdivision only)* _____

Public hearing held. _____

Public hearing closed. _____

Decision resolution to: _____

☐ approve ☐ conditionally approve ☐ disapprove _____

Resolution addressing county planning agency review. *(if applicable, variance only)* _____

Decision filed with municipal clerk. _____

Decision mailed to applicant. _____

Report filed with county planning agency. *(if applicable, variance only)* _____

Motion to hold rehearing. *(if applicable)* _____

APPLICATION FOR AN INTERPRETATION

OFFICE USE ONLY

Application No. I- _____
Date of Appeal: _____
(Postmark or Hand Delivered)
Date of Receipt by Board: _____
Date of Public Hearing: _____
Date of Final Action: _____
Date of Filing of Decision with
the Municipal Clerk: _____

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot: _____

The applicant's appeal concerns property (choose one):

_____ Owned by the Applicant or the Applicant as Agent for the Owner

_____ Which is Adjacent to or Nearby Property owned by the Applicant

(Indicate the Tax Map Parcel No. of Such Property _____)

Zoning Officer Decision Being Appealed: _____

Relevant Section(s) of Zoning Code: _____

Date of Zoning Enforcement Officer's Decision: _____

Reason for Appeal: _____

Applicant: _____ *Telephone:* _____

Mailing Address: _____

Signature: _____ *Date:* _____

APPLICATION FOR AN AREA VARIANCE

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot: _____

Zoning District Classification: _____

Date Applicant Acquired Property: _____

(If property is not owned by the applicant, the applicant must submit a statement by the property owner authorizing the applicant to appeal on his/her behalf.)

OFFICE USE ONLY

Application No. V- _____

Date of Appeal: _____

(Postmark or Hand Delivered)

Date of Receipt by Board: _____

Date of Public Hearing: _____

Date of Final Action: _____

Date of Filing of Decision with the Municipal Clerk: _____

The applicant's appeal from a decision of the Zoning Enforcement Officer, or on direct appeal from the planning board as permitted by State Law, concerns the following:

_____ Denial of an Application for a Building Permit (Attach to Application)

_____ Denial of an Application for a Certificate of Occupancy (Attach to Application)

For the Proposed Activity: _____

Denial was made because of a violation or conflict with the Zoning Code(s): _____

Date of Zoning Enforcement Officer's Decision: _____

State what type and size of an area variance you are requesting, ex. 3 foot side yard variance:

State the reason you are applying for the area variance: _____

Describe the character of the neighborhood: _____

Applicant: _____ Telephone: _____

Mailing Address: _____

Signature: _____ Date: _____

**ZONING BOARD OF APPEALS
AREA VARIANCE FINDINGS & DECISION**

Applicant: _____

Appeal Concerns Property at the following address: _____

County Tax Map Section: _____ Block _____ Lot _____

Zoning District Classification: _____

Requirement for which Variance is Requested: _____

Applicable Section(s) of Zoning Code: _____

TEST: No area variance will be granted without a consideration by the board of the following factors:

1. Whether undesirable change would be produced in character of neighborhood or a detriment to nearby properties: Yes___No___

Reasons: _____

2. Whether benefit sought by applicant can be achieved by a feasible alternative to the variance: Yes___No___

Reasons: _____

3. Whether the requested variance is substantial: Yes___No___

Reasons: _____

4. Would the variance have an adverse impact on the physical or environmental conditions in the neighborhood: Yes___No___

Reasons: _____

5. Whether the alleged difficulty was self-created: Yes___No___

Reasons: _____

OFFICE USE ONLY

Application No. AV- _____

Date of Application: _____

(Postmarked or Hand Delivered)

Date of Public Hearing: _____

Date Notice Published: _____

Date of County Referral: _____

Date of Final Action: _____

Date of Filing of Decision with the

Municipal Clerk: _____

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after taking into consideration the above five factors, finds that:

- ☐ the Benefit to the Applicant DOES NOT Outweigh the Detriment to the Neighborhood or Community and therefore the variance request is denied.
- ☐ the Benefit to the Applicant DOES outweigh the Detriment to the Neighborhood or Community.

Reasons: _____

The ZBA further finds that a variance of _____ from Section _____ of the Zoning Code is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community because:

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____

Adverse impact to be minimized: _____

Condition No. 2: _____

Adverse impact to be minimized: _____

Chairman, Zoning Board of Appeals Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

APPLICATION FOR A USE VARIANCE

OFFICE USE ONLY

Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the
Municipal Clerk: _____

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot _____

Zoning District Classification: _____

Date Applicant Acquired _____

Property: _____

(If property is not owned by the applicant, the applicant must submit a statement by the property owner authorizing the applicant to appeal on his/her behalf.)

The applicant's appeal from a decision of the Zoning Enforcement Officer concerns the following:

_____ Denial of an Application for a Building Permit (Attach to Application)

_____ Denial of an Application for a Certificate of Occupancy (Attach to Application)

For the Proposed Activity: _____

Denial was made based on the following sections of the Zoning Code: _____

Date of Zoning Enforcement Officer's Decision: _____

State what type of use variance you are requesting: _____

(OVER)

TEST: No use variance will be granted without showing by you (the applicant) that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit. Below please briefly describe how each of the four variance tests are met. Attach all supporting materials.

1. The applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial:

Proof: _____

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.):

Proof: _____

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

Proof: _____

4. The alleged hardship has not been self-created:

Proof: _____

Applicant: _____ **Telephone:** _____

Mailing Address: _____

Signature: _____ **Date:** _____

USE VARIANCE FINDINGS & DECISION

OFFICE USE ONLY

Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the
Municipal Clerk: _____

Applicant: _____

Appeal Concerns Property at the following address:

County Tax Map Section: _____ Block _____ Lot _____
Zoning District Classification: _____

Use for which Variance is Requested: _____

Applicable Section of Zoning Code: _____

Permitted Uses of Property: _____

TEST: No use variance will be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. The following tests must be met for each and every use allowed by zoning on the property, including uses allowed by special use permit.

1. The Applicant cannot realize a reasonable return, as shown by competent financial evidence. The lack of return must be substantial.: Yes ___ No ___

Proof: _____

ILLUSTRATIONS OF FINANCIAL EVIDENCE

- Bill of sale for the property, present value of property, expenses for maintenance
- Leases, rental agreements
- Tax bills
- Conversion costs (for a permitted use)
- Realtor's statement of inability to rent/sell

2. The alleged hardship relating to the property is unique. (The hardship may not apply to a substantial portion of the zoning district or neighborhood.): Yes ___ No ___

Proofs: _____

ILLUSTRATIONS OF UNIQUENESS

- Topographic or physical features preventing development for a permitted use
- Why would it be possible to construct the applicant's proposal and not any of the permitted uses?
- Board member observations of the property and surrounding area.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood.: Yes___No___

Proof: _____

ILLUSTRATIVE
NEIGHBORHOOD
CHARACTER FACTORS
• Board members' observations of neighborhood.
• Expected effect of proposal on neighborhood, for example, change in parking patterns, noise levels, lighting, traffic.

4. The alleged hardship has been self-created. : Yes___No___

Proof: _____

SELF-CREATED
• What were the permitted uses at the time the property was purchased by the applicant?
• Were substantial sums spent on remodeling for a use not permitted by zoning?
• Was the property received through inheritance, court order, divorce?

DETERMINATION OF ZBA BASED ON THE ABOVE FACTORS:

The ZBA, after reviewing the above four proofs, finds:

- ☐ That the applicant has failed to prove unnecessary hardship through the application of the four tests required by the state statutes.
- ☐ That the applicant has proven unnecessary hardship through the application of the four tests required by the state statutes. In finding such hardship, the ZBA shall grants a variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community:

(USE) _____

CONDITIONS: The ZBA finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following:

Condition No. 1: _____

Adverse impact to be minimized: _____

Condition No. 2: _____

Adverse impact to be minimized: _____

Condition No .3: _____

Adverse impact to be minimized: _____

Condition No. 4: _____

Adverse impact to be minimized: _____

Chairman, Zoning Board of Appeals Date

RECORD OF VOTE

	MEMBER NAME	AYE	NAY
Chair	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____
Member	_____	_____	_____

RESOLUTION GIVING INTERPRETATION

For Town/Village Use Only

Zoning Board of Appeals

Town / Village of _____, NY

OFFICE USE ONLY

Application No. UV- _____

Date of Application: _____

(Postmarked or Hand Delivered)

Date of Public Hearing: _____

Date Notice Published: _____

Date of County Referral: _____

Date of Final Action: _____

Date of Filing of Decision with the
Municipal Clerk: _____

WHEN TO USE THIS FORM: This form is used by the ZBA to express its opinion on Applications for Interpretation.

The Town/Village of _____ Zoning Board of Appeals at a meeting duly convened on
____ / ____ / ____ reviewed the facts in an application for an interpretation Town / Village Zoning Ordinance,
Application No. _____, described as follows: _____

_____ and

WHEREAS, said application requests an interpretation of zoning ordinance relevant to section no. _____, and

WHEREAS, the Board held a public hearing, duly published and posted, on ____ / ____ / ____, and

WHEREAS, at said hearing all who were desired to be heard were heard and their testimony recorded, and

WHEREAS, all testimony has been carefully considered and the following pertinent facts noted: _____

NOW, THEREFORE BE IT RESOLVED, by the Zoning Board of Appeals that Application No. _____,
an application for an interpretation by the applicant (name) _____
is hereby interpreted to be defined as follows: _____

Signature of appropriate ZBA officer

Date of Final Action ____ / ____ / ____

Date of Filing with
Town/Village Clerk ____ / ____ / ____

cc. Zoning Enforcement Officer

617.4 TYPE I ACTIONS.

The following actions are Type I if they are to be directly undertaken, funded or approved by an agency:

- (1) the adoption of a municipality's land use plan, the adoption by any agency of a comprehensive resource management plan or the initial adoption of a municipality's comprehensive zoning regulations;
- (2) the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district;
- (3) the granting of a zoning change, at the request of an applicant, for an action that meets or exceeds one or more of the thresholds given elsewhere in this list;
- (4) the acquisition, sale, lease, annexation or other transfer of 100 or more contiguous acres of land by a state or local agency;
- (5) construction of new residential units that meet or exceed the following thresholds:
 - (i) 10 units in municipalities that have not adopted zoning or subdivision regulations;
 - (ii) 50 units not to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
 - (iii) in a city, town or village having a population of less than 150,000, 250 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
 - (iv) in a city, town or village having a population of greater than 150,000 but less than 1,000,000, 1,000 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
 - (v) in a city or town having a population of greater than 1,000,000, 2,500 units to be connected (at the commencement of habitation) to existing community or public water and sewerage systems including sewage treatment works;
- (6) activities, other than the construction of residential facilities, that meet or exceed any of the following thresholds; or the expansion of existing nonresidential facilities by more than 50 percent of any of the following thresholds:
 - (i) a project or action that involves the physical alteration of 10 acres;
 - (ii) a project or action that would use ground or surface water in excess of 2,000,000 gallons per day;
 - (iii) parking for 1,000 vehicles;
 - (iv) in a city, town or village having a population of 150,000 persons or less, a facility with more than 100,000 square feet of gross floor area;
 - (v) in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area;
- (7) any structure exceeding 100 feet above original ground level in a locality without any zoning regulation pertaining to height;
- (8) any Unlisted action that includes a nonagricultural use occurring wholly or partially within an agricultural district (certified pursuant to Agriculture and Markets Law, article 25-AA, sections 303 and 304) and exceeds 25 percent of any threshold established in this section;
- (9) any Unlisted action (unless the action is designed for the preservation of the facility or site) occurring wholly or partially within, or substantially contiguous to, any historic building, structure, facility, site or district or prehistoric site that is listed on the National Register of Historic Places, or that has been proposed by the New York State Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register, or that is listed on the State Register of Historic Places (The National Register of Historic Places is established by 36 Code of Federal Regulation (CFR) Parts 60 and 63, 1994 (see section 617.18 of this Part));
- (10) any Unlisted action, that exceeds 25 percent of any threshold in this section, occurring wholly or partially within or substantially contiguous to any publicly owned or operated parkland, recreation area or designated open space, including any site on the Register of National Natural Landmarks pursuant to 36 CFR Part 62, 1994 (see section 617.18 of this Part); or
- (11) any Unlisted action that exceeds a Type I threshold established by an involved agency pursuant to section 617.14 of this Part.

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation?			NO
If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			YES
			<input type="checkbox"/>
			<input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency?			NO
If Yes, list agency(s) name and permit or approval:			YES
			<input type="checkbox"/>
			<input type="checkbox"/>
3.a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action,	NO	YES	N/A
a. A permitted use under the zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO	YES	
b. Is the proposed action located in an archeological sensitive area?	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO	YES	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO	YES	
	<input type="checkbox"/>	<input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO	YES	
a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES	<input type="checkbox"/>	<input type="checkbox"/>	
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES			

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
_____	<input type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
_____	<input type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
_____	<input type="checkbox"/>	<input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing:	<input type="checkbox"/>	<input type="checkbox"/>
a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
<hr/> <div style="display: flex; justify-content: space-between;"> Name of Lead Agency Date </div>	
<hr/> <div style="display: flex; justify-content: space-between;"> Print or Type Name of Responsible Officer in Lead Agency Title of Responsible Officer </div>	
<hr/> <div style="display: flex; justify-content: space-between;"> Signature of Responsible Officer in Lead Agency Signature of Preparer (if different from Responsible Officer) </div>	

PRINT

AGRICULTURAL DATA STATEMENT

Per § 305-a of the New York State Agriculture and Markets Law, any application for a special use permit, site plan approval, use variance, or subdivision approval requiring municipal review and approval that would occur on property within a New York State Certified Agricultural District containing a farm operation or property with boundaries within 500 feet of a farm operation located in an Agricultural District shall include an Agricultural Data Statement.

A. Name of applicant: _____

Mailing address: _____

B. Description of the proposed project: _____

C. Project site address: _____ Town: _____

D. Project site tax map number: _____

E. The project is located on property:

☐ within an Agricultural District containing a farm operation, or

☐ with boundaries within 500 feet of a farm operation located in an Agricultural District.

F. Number of acres affected by project: _____

G. Is any portion of the project site currently being farmed?

☐ Yes. If yes, how many acres _____ or square feet _____ ?

☐ No.

H. Name and address of any owner of land containing farm operations within the Agricultural District and is located within 500 feet of the boundary of the property upon which the project is proposed.

I. Attach a copy of the current tax map showing the site of the proposed project relative to the location of farm operations identified in Item H above.

~~~~~

### FARM NOTE

Prospective residents should be aware that farm operations may generate dust, odor, smoke, noise, vibration and other conditions that may be objectionable to nearby properties. Local governments shall not unreasonably restrict or regulate farm operations within State Certified Agricultural Districts unless it can be shown that the public health or safety is threatened.

~~~~~

Name and Title of Person Completing Form

Date

Farm Operation Definition
Agriculture and Markets Law Section 301

11. "Farm operation" means the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in subdivision thirteen of this section, a "timber operation" as defined in subdivision fourteen of this section, "compost, mulch or other biomass crops" as defined in subdivision sixteen of this section and "commercial equine operation" as defined in subdivision seventeen of this section. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

13. "Commercial horse boarding operation" means an agricultural enterprise, consisting of at least seven acres and boarding at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated either through the boarding of horses or through the production for sale of crops, livestock, and livestock products, or through both such boarding and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, a commercial horse boarding operation that is proposed or in its first or second year of operation may qualify as a farm operation if it is an agricultural enterprise, consisting of at least seven acres, and boarding at least ten horses, regardless of ownership, by the end of the first year of operation.

14. "Timber operation" means the on-farm production, management, harvesting, processing and marketing of timber grown on the farm operation into woodland products, including but not limited to logs, lumber, posts and firewood, provided that such farm operation consists of at least seven acres and produces for sale crops, livestock or livestock products of an annual gross sales value of ten thousand dollars or more and that the annual gross sales value of such processed woodland products does not exceed the annual gross sales value of such crops, livestock or livestock products.

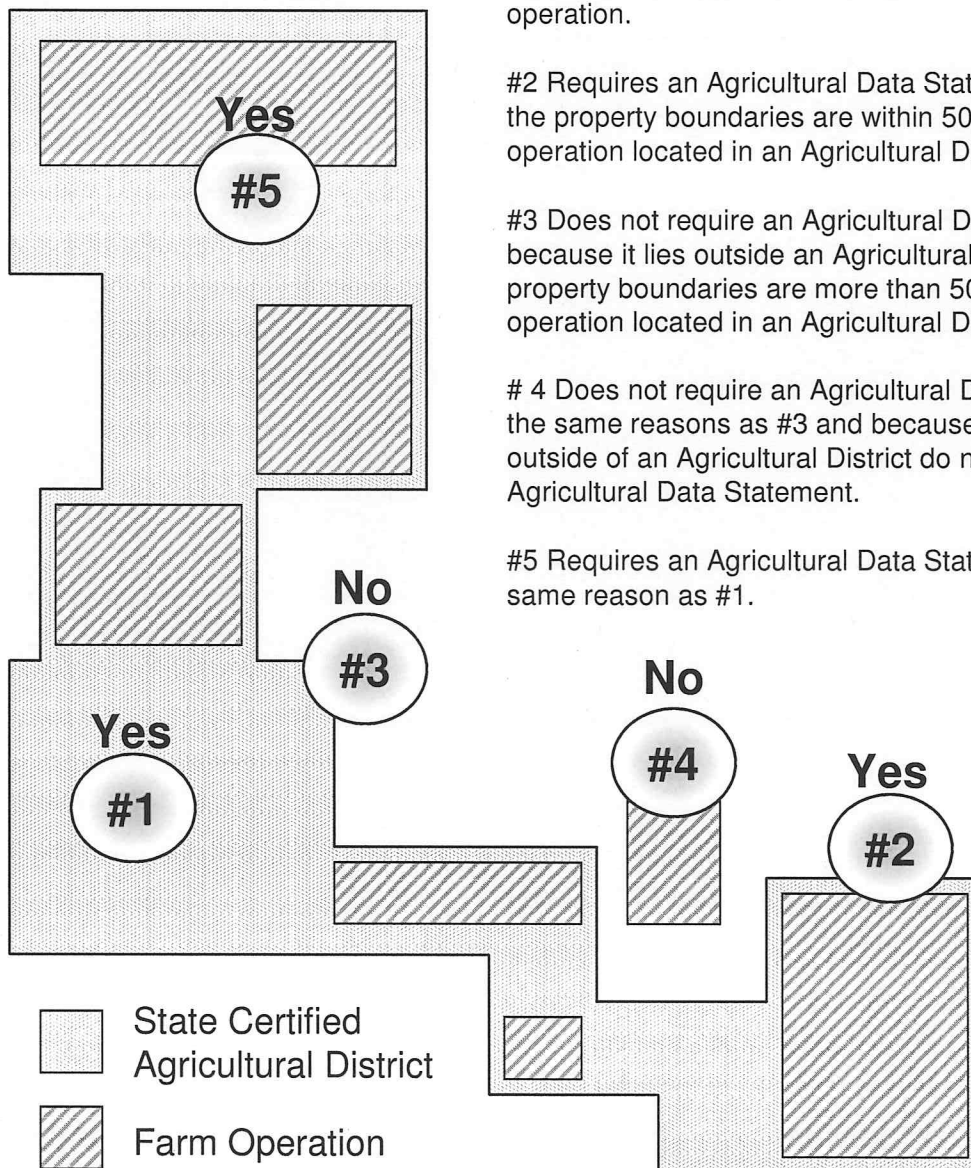
16. "Compost, mulch or other organic biomass crops" means the on-farm processing, mixing, handling or marketing of organic matter that is grown or produced by such farm operation to rid such farm operation of its excess agricultural waste; and the on-farm processing, mixing or handling of off-farm generated organic matter that is transported to such farm operation and is necessary to facilitate the composting of such farm operation's agricultural waste. This shall also include the on-farm processing, mixing or handling of off-farm generated organic matter for use only on that farm operation. Such organic matter shall include, but not be limited to, manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation. The resulting products shall be converted into compost, mulch or other organic biomass crops that can be used as fertilizers, soil enhancers or supplements, or bedding materials. For purposes of this section, "compost" shall be processed by the aerobic, thermophilic decomposition of solid organic constituents of solid waste to produce a stable, humus-like material.

17. "Commercial equine operation" means an agricultural enterprise, consisting of at least seven acres and stabling at least ten horses, regardless of ownership, that receives ten thousand dollars or more in gross receipts annually from fees generated through the provision of commercial equine activities including, but not limited to riding lessons, trail riding activities or training of horses or through the production for sale of crops, livestock, and livestock products, or through both the provision of such commercial equine activities and such production. Under no circumstances shall this subdivision be construed to include operations whose primary on site function is horse racing. Notwithstanding any other provision of this subdivision, an agricultural enterprise that is proposed or in its first or second year of operation may qualify as a commercial equine operation if it consists of at least seven acres and stables at least ten horses, regardless of ownership, by the end of the first year of operation.

When to Submit an Agricultural Data Statement

There are two criteria pursuant to Agriculture and Markets Law § 305-a to determine if a proposed project requires an Agricultural Data Statement:

- 1- the project is located on property within an Agricultural District containing a farm operation, or
- 2- the project is located on property with boundaries within 500 feet of a farm operation located in an Agricultural District.



#1 Requires an Agricultural Data Statement because it lies within an Agricultural District containing a farm operation.

#2 Requires an Agricultural Data Statement because the property boundaries are within 500 feet of a farm operation located in an Agricultural District.

#3 Does not require an Agricultural Data Statement because it lies outside an Agricultural District and the property boundaries are more than 500 feet from a farm operation located in an Agricultural District.

#4 Does not require an Agricultural Data Statement for the same reasons as #3 and because farm operations outside of an Agricultural District do not require an Agricultural Data Statement.

#5 Requires an Agricultural Data Statement for the same reason as #1.

NOTICE OF HEARING
For Town / Village Use Only
Zoning Board of Appeals

Town / Village of _____, NY

OFFICE USE ONLY

Application No. UV- _____
Date of Application: _____
(Postmarked or Hand Delivered)
Date of Public Hearing: _____
Date Notice Published: _____
Date of County Referral: _____
Date of Final Action: _____
Date of Filing of Decision with the
Municipal Clerk: _____

WHEN TO USE THIS FORM: This form is used by the ZBA to notify the official newspaper and interested parties of a scheduled public hearing.

A public hearing before the Board of Appeals of the Town/Village of _____ will be held on the date of ____ / ____ / ____ at ____ PM at _____ (place) to consider the following application (check one):

() Application no. _____ for the property located at _____
_____,
NY, for a variance of Article _____ of the zoning ordinance to permit the following:

() Application no. _____ for the property located at _____
_____,
NY, for an interpretation of Article _____ of the zoning ordinance to
determine whether or not: _____

The above application is open to inspection at the office of the Board of Appeals located at _____
_____ (place) during the following times: _____.

Persons wishing to appear at such hearing may do so in person or by attorney or other representative.

Communications in writing in relation thereto may be filed with the Board, or at such hearing.

Signature of appropriate ZBA officer

____ / ____ / ____
Date

Reasonable Return Test

The courts have said that an applicant for a use variance must prove that his property cannot yield a reasonable return from each and every use permitted by the zoning law. What is a “reasonable return”? A way of looking at it is to determine if the applicant would lose the practical use of his land if he had to conform to the use requirements of the zoning law. This is a very strict test because land can almost always be used for something permitted by the zoning law, even if it's not the most profitable use.

Remember, the applicant is supposed to prove his “hardship,” or that he is “deprived of all economic use or benefit.” The board must ultimately decide what kind of proof is acceptable as “competent financial evidence.” However, there are some arguments that are not acceptable.

- *More Profit:* An applicant may argue that he could use the land much more profitably if he had a use variance. This argument does not prove unnecessary hardship.
- *Self-Inflicted Hardship:* An applicant may argue he has a hardship, even though that hardship was created by his own actions. For example, an applicant may buy some residentially zoned land for a very high price, thinking he will then get a variance and use the land commercially. This applicant now comes before the ZBA and argues that he cannot use the land for residences; the land cost too much to expect a reasonable return from residential development. Obviously he created his own hardship by paying an inflated price for the land, and he should not be granted a variance.

As to proof of “no reasonable return,” the NY Court of Appeals held that the issue of “reasonable return” cannot be satisfied except by a showing of dollars and cents proof in which the following is established by competent evidence:

- The amount paid for the land in question.
- Its present market value.
- Annual maintenance expenses.
- Annual land taxes and school taxes.
- The unpaid balance of mortgages and other encumbrances.
- The annual income from the land in question for each and every use permitted in the zoning district.
- Proof that this actual or estimated return for each permitted use is not reasonable under the circumstances [*Crossroads Recreation v. Broz*, 4 NY 2d 39 (1958)].

If the subject premises are the subject of a contract of purchase contingent upon the grant of a use variance, then the applicant must establish the fair market value of the property independent of the purchase price, because in the absence of such proof, it will be presumed that the purchase price included a premium over fair market price at the time of purchase in expectation of favorable zoning relief [*Professional Park v. Town of Bedford*, 60 NY 2d 492 (1983)].

Whether any of the permitted uses would generate a reasonable return requires proof from which can be determined the rate of return earned by similar or like property in the community, proof in dollars and cents form of the owner's investment in the property, as well as the estimated return that the property will produce from the various uses permissible under the existing classification.

The burden of proof is always on the applicant with regard to establishing reasonable return. This does not, however, bar the municipality from going forward with proof to the contrary. The NY Court of Appeals has said:

When the proponent presents proof sufficient to permit the trier of fact to decide in his or her favor, the opponent must counter that proof or risk an adverse determination. Only in that general sense can it be said that there is no obligation on the municipality to go forward with the proof. [Professional Park v. Town of Bedford]

Proof of present market value and annual income can be best established through the testimony of an expert witness. Where more than one use is permitted in the zoning district, the applicant must prove the projected annual income from each and every permitted use is not reasonable as compared to the return by like property in the community. If, on the basis of this dollars and cents proof, the ZBA determines that no reasonable return can be derived from any of the permitted uses, then the applicant has proved the first point of the four-test requirement.

Web Sites Useful to Planning and Zoning Officials in the Tug Hill Region

New York State Statutes

<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

Department of State Publications

<http://www.dos.ny.gov/lg/publications.html>

Committee on Open Government – Open Meetings Law

<http://www.dos.ny.gov/coog/#>

State Environmental Quality Review Act (SEQR)

6 NYCRR Part 617:

<http://www.dec.ny.gov/regs/4490.html>

SEQR Handbook:

<http://www.dec.ny.gov/permits/6188.html>

SEQR Publications:

<http://www.dec.ny.gov/permits/36860.html>

Downloadable SEQR forms and EAF Mapper Application:

<http://www.dec.ny.gov/permits/6191.html>

Environmental Notice Bulletin (ENB):

<http://www.dec.ny.gov/enb/enb.html>

Tug Hill Commission – Planning

<http://www.tughill.org/services/planning/>

Jefferson County

Agricultural district map (county wide):

<http://www.co.jefferson.ny.us/Modules/ShowDocument.aspx?documentid=5321>

Referral form:

<http://www.co.jefferson.ny.us/Modules/ShowDocument.aspx?documentid=5639>

Lewis County

Referral manual, referral form and agricultural data statement (links at bottom of page):

<http://lewiscountyny.org/content/Generic/View/115>

Agricultural districts map (county wide):

<http://lewiscountyny.org/content/Generic/View/58:field=documents;/content/Documents/File/995.pdf>

Oneida County

Referral forms and agricultural data statement:

<http://www.ocgov.net/planning/forms>

Agricultural district maps (by town):

<http://www.ocgov.net/planning/AgDistrictMaps>

Oswego County

Referral form:

<http://co.oswego.ny.us/planning/239%20lm%20review%20form.pdf>

Agricultural Data Statement:

<http://co.oswego.ny.us/planning/agricultural%20data%20statement.pdf>