



REQUEST FOR VARIANCE

Town of Newstead, New York

Date: _____
\$250.00 Received by: _____
Paid Check No. _____

Note: Action must be taken within one year on variance granted, and any necessary building permits must be applied for within six months from date of approval. Otherwise, variance will be automatically revoked.

Property Address: _____ SBL # _____

Applicant Name, Address, Phone No. _____

Variance Requested & Reason: _____

Newstead Town Code Section Varied _____

Signed: _____ Date: _____

Requests for action should be filled out completely in above spaces if practicable, otherwise attach detailed description. The complete request with all necessary plans, maps, signature and paid fee must be filed with the Clerk.

(Do not write below this line – Town use only)

Use Variance To allow a use not otherwise allowed in the zoning district, applicant must demonstrate unnecessary hardship, including all of the following, for each and every permitted use:

- _____ 1. Cannot realize reasonable return (include financial evidence)
- _____ 2. Alleged hardship is unique and does not apply to substantial portion of district or neighborhood
- _____ 3. Requested variance will not alter essential character of neighborhood
- _____ 4. Alleged hardship has not been self-created

Area Variance Benefit to applicant must be balanced with potential detriment to health, safety & welfare of the community:

- _____ 1. Can benefit be achieved by other means feasible to applicant?
- _____ 2. Could the variance cause undesirable change in neighborhood character or nearby properties?
- _____ 3. Is request substantial?
- _____ 4. Will request have adverse physical or environmental effects?
- _____ 5. Is alleged difficulty self-created?

Approved _____ Date _____ Rejected _____ Date _____

Conditions for Approval: _____

(see reverse side)

USE VARIANCE CRITERIA

A use variance allows landowners to use their land in a way not permitted under the zoning law. Use variances generally are more difficult to obtain than area variances. To obtain a use variance, the applicant must demonstrate that the applicable use provisions of the zoning laws cause an unnecessary hardship. To prove unnecessary hardship, the applicant must establish that the requested variance meets the following four statutory conditions:

1. Cannot realize a reasonable return on the property as zoned. The lack of return must be substantial and proven by competent financial evidence. It is insufficient for the applicant to show that the desired use would be more profitable than the use permitted under the zoning law;

2. Alleged hardship must be unique to the owner's property and not applicable to a substantial portion of district or neighborhood. If the hardship is common to the whole neighborhood, the remedy is to seek a change in the zoning from the local legislature, not to apply for a use variance from the Board;

3. Requested variance must not alter the essential character of the neighborhood. In making this determination, they should consider the intensity of the proposed development as compared with the intensity of the existing and permitted uses in the neighborhood. For example, a use variance to permit construction of an office building in a single family neighborhood would alter the essential character of the neighborhood;

4. Alleged hardship has not been self-created. For example, a developer cannot acquire land zoned for residential use and then successfully petition for a variance to construct office buildings. Whether the purchaser actually knew about applicable use restrictions is not relevant. Developer has a duty to discover the use restrictions.

AREA VARIANCE CRITERIA

For the Town to grant a variance from the dimensional and area requirements, it must find that the benefits of the requested variance to the applicant outweigh the detriment it will cause to the health, safety and welfare of the neighborhood.

The Board's job is to determine, based on the facts presented by the applicant, how significant the impact on the community will be and how beneficial the variance will be to the owner. The Board must weigh the benefits of the requested variance to the applicant against the potential negative impact on the neighborhood using the five factors set forth in the statute on the front of this form.

If approved, the minimum variance necessary will be granted, and the Zoning Board of Appeals may impose reasonable conditions.