



Zoning Board of Appeals  
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## **General Information**

The five-member Zoning Board of Appeals (“ZBA”) hears and decides appeals from, and reviews decisions, interpretations, and determinations made by, the Town Code Enforcement Officer. When the Code Enforcement Officer receives an application for a building permit, the officer determines whether the plans comply with the Town’s zoning requirements. Anyone who stands to be “aggrieved” (that is, injured or harmed) by decisions of the Code Enforcement Officer may apply to the ZBA for relief. Most commonly, the “aggrieved” party is the property owner who has been refused a permit, but an “aggrieved” party could also be a neighboring landowner who believes the officer’s decision in issuing a permit was improper.

### **Kinds of Relief That May Be Requested**

The ZBA may be presented with a request for an **interpretation** – that is, a request to reverse or modify the Code Enforcement Officer’s interpretation of a code provision. However, requests for **variances** are much more common. The power to grant variances gives the ZBA the power to modify the strict requirements of the Town’s zoning law, adding flexibility to land use regulations through the exercise of administrative discretion concerning the unique aspects of a given lot, home location, or project.

The most frequent request before the ZBA is for an “**area variance**” – a request to modify the zoning code’s requirement for minimum setbacks from lot lines, maximum lot coverage, minimum lot area or lot frontages, maximum fence height, maximum sign size, etc. Less frequent are applications for “**use variances**” – requests for a use of land that is not permitted by the zoning code. An example could be a request to conduct a business in a residential zone.

### **Powers and Duties of the ZBA, And Procedures**

The powers, duties and procedures of the ZBA are prescribed by New York State Town Law and the Union Vale Code. Importantly, the Union Vale Code provides that the ZBA must act in “strict accordance” with the procedure specified in § 267 of Town Law and chapter 210 of the Union Vale Code. Accordingly, all applicants (or representatives of applicants) for relief before the ZBA should be aware of the procedure involved in applying for and receiving a determination. Three important things should be kept in mind:

1. As a prerequisite to taking an appeal before the ZBA, an applicant must have received either notice of a formal decision or action by the Code Enforcement Officer, or a referral from the Planning Board of the Town of Union Vale.

2. All applications made to the ZBA must be **in writing**, on forms prescribed by the ZBA. An application must be filed within **60 calendar days** of the action appealed from. To be accepted, the application must be accompanied by the **applicable fee**; the fee schedule is annually reviewed and established by the Town Board, and is available on the Town's website under "Policies & Procedures."

3. **The burden of proof is on the applicant** to demonstrate at a public hearing that a variance should be granted. In order to obtain a variance, the applicant must present proof that is sufficient to allow the ZBA under the applicable legal standards to grant relief; the ZBA is not required to do any outside investigation beyond the application and open meetings. For these reasons, it is important to provide the ZBA with as much information and as much detail as you can. Just saying, "I want to do this," or "it will look nice," is not enough.

The requirements for an application to the ZBA are spelled out in a separate document, "REQUIREMENTS FOR APPEAL TO UNION VALE ZONING BOARD OF APPEALS."

### Meetings Of The ZBA

The ZBA meets monthly at the Town Hall, generally on the first Tuesday of each month starting at 7:30 p.m.

Special meetings may be called by the Chairman and will be noticed pursuant to the Open Meetings Law.

If the date of any meeting is cancelled due to inclement weather, lack of quorum, or other conflict, the meeting will be scheduled for another night and the new meeting day and time will be posted and made public pursuant to the Open Meetings Law.

In order for an application to be placed on the ZBA's agenda, the required number of copies of the application packet and the applicable fee must be received by the Office of Planning and Zoning at least **14 days** before the ZBA meeting.

Generally, an applicant for relief from the ZBA will be required to attend at least two meetings. At the first, the ZBA will review the application to make sure it is complete. The ZBA will also classify the action under the New York State Environmental Quality Review Act to determine if any additional environmental review is required for the proposed project. The ZBA may also require that certain referrals be made to other agencies; this is based on the nature of the proposed project and its location. If the application is deemed complete and there is no environmental review required, it will accept the application and schedule a public hearing for the next scheduled meeting. However, depending on the nature and complexity of an application, the ZBA may exercise its discretion to schedule and conduct a workshop session prior to scheduling the public hearing.

The Board will provide notice of the public hearing by publishing a legal notice in the official newspaper of the Town, and by sending written notice to neighboring property owners

by certified mail. The applicant is responsible for reimbursing the Town for the costs of this notice.

## Criteria For Granting A Variance; What The Applicant Needs To Show

### **1. Area Variance**

An applicant for an AREA VARIANCE is essentially seeking permission to build on an otherwise restricted portion of the property (such as in the required front, side, or rear yards or above the permitted height or in excess of the required lot coverage). In ruling on the application, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or Town. When considering a request for an AREA VARIANCE, the Board will consider:

- (1) whether the granting of the variance will result in an undesirable change in the character of the neighborhood or a detriment to nearby properties;
- (2) whether there is some feasible way to achieve the same benefit to the applicant without an area variance;
- (3) whether the requested area variance is substantial;
- (4) whether there will be any adverse physical or environmental effects or impacts on the neighborhood or district if the variance is granted;
- (5) whether the applicant created the condition that gave rise to the need for the variance.

These factors are listed in the application. It is beneficial for the applicant to answer the questions fully and with as much detail as possible. The more detail provided in the application, and the more information provided at the hearing (including, for example, letters from neighbors, photographs, other variances granted on the applicant's or neighboring property), the more helpful it will be to the ZBA.

Anyone who has an interest in the outcome of an application is entitled to speak and submit evidence at the public hearing. To the extent that members of the public oppose an application, they too are encouraged to submit whatever additional information they believe is relevant to the determination. If necessary, a hearing may be adjourned or continued to a later date.

Whether you are the applicant or an interested person, be prepared to answer questions from the ZBA members at the public hearing. It is important to remember that the ZBA is looking at a balancing test. It is not necessary or required that an applicant prove that each factor weighs in his or her favor. However, the more factors that are in favor of the applicant, the greater the chance of receiving an area variance.

After the applicant presents his or her case, and any other interested person is given the opportunity to be heard, the hearing will be closed. At this point, the ZBA may begin discussing

the case, reach a decision or may postpone the decision until a later date. The ZBA must issue a decision within **62 days** of the close of the public hearing, unless the applicant consents to an extension beyond those 62 days.

If the ZBA determines that the factors set forth above weigh in favor of the applicant, the Board is required by law to grant the **minimum** area variance that it deems necessary and adequate to accomplish the applicant's goal while at the same time preserving and protecting the character of the neighborhood and the health safety and welfare of the community. The ZBA may impose conditions, restrictions and time periods upon its grants of variances, as long as they are consistent with the spirit of the local code and are imposed to minimize any adverse impact. The decision of the ZBA will be filed with the Town Clerk.

## 2. Use Variance

When requesting a USE VARIANCE, that is permission to establish a use of the property not otherwise permitted in the zoning district where the property is located, an applicant has a different, and **more onerous burden of proof**. The applicant must prove that the denial of the variance will cause "**unnecessary hardship**." This means the applicant must show:

- (a) That under the applicable regulations and restrictions imposed by Chapter 210 of the Union Vale Code, the property cannot realize a reasonable return on investment if used for *any* of the permitted uses in the district. The lack of return must be substantial and demonstrated by competent financial evidence (i.e., actual "dollars and cents" proof must be submitted);
- (b) That the property is being affected by unique or at least highly uncommon circumstances;
- (c) That the use variance, if granted, will not alter the essential character of the district or neighborhood; **and**
- (d) That the alleged hardship has not been self-created.

As with area variances, in granting a use variance, the ZBA must grant the **minimum** variance that is deemed necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Because requests for use variances are rare and require a higher level of proof to support approval, it is recommended that the applicant for a use variance solicit the assistance of an attorney when filing an application. As with area variances, the more information provided, the more helpful it is to the ZBA is making its determination.

The scheduling and conduct of a public hearing, and the timetable for decision by the ZBA is the same as that set forth above with respect to area variances.