



Zoning Board of Appeals Application Instructions

1. a. For all Major Projects, the applicant **MUST** participate in one or more Pre-Application Conference(s) prior to an appearance before the Zoning Board of Appeals.
110.76.1 "Major Project" shall mean a specific plan, design or planned undertaking determined by a representative of the City of Elmira Bureau of Inspection Services which requires Planning Commission or Zoning Board of Appeals action and approval including, but not limited to, new industrial, commercial or residential construction, subdivisions, or business expansion, as well as any project requiring a special permit or a variance. In addition, fencing and plantings in a Junkyard, as defined in section 452 of the Zoning Ordinance, shall be considered Major Projects.
 - b. Pre-Application meeting fee is \$100.00 per meeting.
2. a. All applicants **MUST** attend the Zoning Board of Appeals meeting.
 - b. The Zoning Board of Appeals meets on the **FIRST** Tuesday of the month at 4:30 pm in the Courtroom on the second floor at City Hall, 317 E. Church Street, Elmira, New York.
3. Applications for an Appeal or Variance **MUST** be received by the Clerk to the Board at the Code Enforcement Department no later than 12:00 noon, on the 20th of each month or the next business day if the 20th of the month falls on a Saturday, Sunday, or a Federal Holiday, prior to the Zoning Board of Appeals meeting date. Failure to meet the deadline will result in placement on the agenda for the following meeting. If you are submitting prints or attachments with your application, please provide **8 1/2 X 11 size only** and one (1) **full size** set for the Director of Code Enforcement.
4. Application must be complete with all necessary information, including, but not limited to:
 1. Name of Applicant with legal address and relationship to the property.
 2. Name and address of the property owner.
 3. Reason for request.
 4. Lot size square footage, length, width, frontage, and location of any existing structures.
 5. Name and address of Applicant's attorney (if applicable).
 6. Specific Zoning Ordinance sections in question.
 7. If application is for a special permit, the following **MUST** be included if applicable:
 - a. Survey
 - b. A plan showing:
 1. Building location, existing and proposed
 2. Parking areas (if any)
 3. Curb cuts, existing or proposed
 4. Landscaping
 5. Drainage
 6. Traffic access and circulation
 7. Open spaces
 8. Height an number of buildings
 9. Such other information required in the standards for each special permit use as set forth by ordinance

City of Elmira Code Enforcement: CPC/ZBA Application

- c. Building elevations and floor plans
 - d. Site lighting proposed
 - e. Signage proposed
5. Environmental Assessment Form: one of the two below MUST be completed
 - a. Short Form (available on Page 5 and 6 of the application)
 - b. Long Form (available online at <http://www.dec.state.ny.us>)
6. When completing the application, please use **BLUE or BLACK INK** OR complete this application online at <http://www.cityofelmira.net/permits>. Forms may be filled out online and printed for submission to the Clerk to the Board at the Code Enforcement Department.
7. Please be sure to fill in all necessary information on the ZBA Application. Failure to provide all the details of the proposed request could result in your application being tabled until the next regularly scheduled meeting date.
8. A \$125.00 application fee is required for all applications for the Zoning Board of Appeals. This fee also covers the cost of the legal advertisement, which is placed by the City of Elmira.
9. If a variance is requested, the appellant shall send notice of same to all property owners within two hundred feet (200') from the boundaries of the lot or lots under consideration. Such notice shall be by mail and shall state the time and day of the public hearing, the relief sought, the type of use contemplated, the appellant's name and the location of the property in question. Such notices shall be mailed so as to arrive at least five (5) days prior to the public hearing date. On or before the date and time of the public hearing, the appellant or his/her agent shall certify, in writing, in a notarized affidavit to the board that he/she has complied with the said mailing requirement as described herein. At the discretion of the board, failure to mail notices or submit the affidavit may result in adjournment of the hearing or denial of the application.
10. Mail or bring your completed application and \$125.00 application fee to:
City of Elmira Code Enforcement Department
Clerk to the Elmira City Zoning Board of Appeals
101 W. Second Street
Elmira, NY 14901



City of Elmira
Code Enforcement Department
Phone: (607) 737-5653
<http://www.cityofelmira.net>

101 W. Second St.
Elmira, NY 14901
Fax: (607) 733-5235

Zoning Board of Appeals Application

To the Zoning Board of Appeals:

A. Statement of Ownership and Interest

I (We) _____
Name of Applicant

of _____
Street #

City, State, Zip

hereby appeal to the Zoning Board of Appeals for:

- 1. An interpretation of the Zoning Ordinance
- 2. A Certification of Continuing Nonconforming Use
- 3a. A Use Variance
- 3b. An Area Variance
- 4. A Special Permit
- 5. Change from one Nonconforming Use to another
- 6. Other:

B. Location of Property

1. The property in question is situated at the following address:

2. current zoning classification _____ (Available from Code Enforcement)
3. tax map # _____ (Available from Assessor's Office: (607) 737-5670)
4. Is the property in question located within five hundred (500) feet from the boundary of any city, village, or town, or from any county or state parkway, expressway, throughway, or other limited access highway, or from the right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines, or from any county or state lands on which a public building or institution is situated?

Yes No

C. General Data

1. Current Use _____ Proposed Use _____

2. Number of dwelling units proposed: _____

3. Number of employees proposed: _____

4. Parking spaces required: _____

A. Proposed: _____ C. Loading Zone Required: Yes No

B. Handicapped: _____ D. Curb Cut Permit Required: Yes No

5. Type of Non-Residential Use (if any)

6. Lot Size A. Length: _____ Ft.

B. Depth: _____ Ft.

C. Area: _____ Square Ft.

(A and B available from Assessor's Office)
(607) 737-5670

7. Building Information

A. Number of Stories: _____

B. Floor area per story in square feet: (Available from the Assessor's Office)
(607) 737-5670

Basement: _____ First Floor: _____ Second Floor: _____ Third Floor: _____

8. Applicant's relationship to the property:

A. Owner

B. Purchaser (must provide valid purchase offer)

C. Tenant (present)

D. Tenant (new) Lease Commitment: Yes No

E. Attorney for: A B C D F

[] F. Other (explain) _____

9. Name and Address of Record Owner:

10. Name and Address of Attorney:

D. Request

The complete Zoning Ordinance is available online at <http://www.cityofelmira.net/permits>

1. Provisions of the Zoning Ordinance:

Section: _____

Concerning: _____

From: _____ To: _____

2. Previous Appeal A previous appeal concerning this property

Has not been made

Has been made on: _____ Date:

Result:

E. Reasons for Request to Zoning Board (attach additional pages if needed)

1. Interpretation of the Zoning Ordinance above is requested to determine whether:

2. A Special Permit would be in harmony with the intent and purpose of the Zoning Ordinance because:

3. A Variance of the Zoning Ordinance is requested for these reasons: (attach pages if needed)

A. Strict applications of the Ordinance would produce Undue Hardship because:

B. The variance would observe the spirit of the Ordinance and would not change the character of the district because:

C. **THE APPLICANT MUST PROVIDE A SEPARATE PAGE GIVING A FULL DETAILED DESCRIPTION OF THE REQUEST.**

F. In addition to meeting the standards prescribed by the Zoning Ordinance, the applicant will provide:

In order that the public convenience and welfare will be further served.

G. If you would like to receive an electronic copy of the agenda and/or minutes that apply to your application, please provide your e-mail address, otherwise you may view and/or download this information at www.cityofelmira.net/. If you do not provide an e-mail address, please refer to #1 of the Application Instruction for meeting dates and times.

Applicant's e-mail address: _____

Zoning Appeals are approved on a provisional basis, subject to the applicant obtaining all required permits and meeting all New York State Fire Prevention and Building Codes.

STATE OF NEW YORK)
COUNTY OF CHEMUNG) ss:

Applicant's Signature

Sworn to before me this

Applicant's Address

_____ day of _____, _____
(month) (year)

Applicant's Phone Number

← **THIS FORM MUST BE NOTARIZED**

Short Environmental Assessment Form

Part 1 - Project Information

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? 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.			NO <input type="checkbox"/>	YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>	YES <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, are adjoining or near the proposed action:				
5. <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				

		NO	YES	N/A
5. Is the proposed action,	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"/>	<input type="checkbox"/>
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area?			NO	YES
If Yes, identify: _____		<input type="checkbox"/>	<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"/>	<input type="checkbox"/>
b. Are public transportation services available at or near the site of the proposed action?			<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?			<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Does the proposed action meet or exceed the state energy code requirements?			NO	YES
If the proposed action will exceed requirements, describe design features and technologies: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Will the proposed action connect to an existing public/private water supply?			NO	YES
If No, describe method for providing potable water: _____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action connect to existing wastewater utilities?			NO	YES
If No, describe method for providing wastewater treatment: _____		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?			NO	YES
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?			<input type="checkbox"/>	<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
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody?			<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____				

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 <input type="checkbox"/>	YES <input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO <input type="checkbox"/>	YES <input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes,	NO <input type="checkbox"/>	YES <input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____	NO <input type="checkbox"/>	YES <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 <input type="checkbox"/>	YES <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 <input type="checkbox"/>	YES <input type="checkbox"/>
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: _____ Date: _____ Signature: _____ Title: _____		

Project:

Date:

Short Environmental Assessment Form
Part 2 - Impact Assessment

Part 2 is to be completed by the Lead Agency.

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"/>
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"/>

Project:

Date:

**Short Environmental Assessment Form
Part 3 Determination of Significance**

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.

- 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.
- 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.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

PRINT FORM

Notice of Hearing Information

1. Publication of legal notice will be placed in the Elmira Star-Gazette by the City of Elmira.
2. The applicant must mail the Notice of Hearing letter attached hereto so that it arrives to owners of real property located within two hundred (200) feet from the boundaries of property in question five (5) days prior to the date of the Zoning Board of Appeals meeting. A list of the property owners within two hundred (200) feet will be provided to the applicant by the City.

AFFIDAVIT REQUIRED

The Appellant shall file with Code Enforcement one copy of the letter of notification to property owners together with a **NOTARIZED** affidavit setting forth a certification that the letter of notification to property owners was mailed to the individuals listed in affidavit, and a further certification that they are all owners of real property within two hundred (200) feet from the boundaries of the lot or lots for which the consideration and/or action of the Zoning Board of Appeals is requested.

NOTE: The Notice of Hearing mail should be done no later than one (1) week prior to the Zoning Board of Appeals meeting (required to be received five (5) days prior to the date of the Zoning Board of Appeals meeting). In addition to the mailing, the applicant must return the "Affidavit of Mailing" prior to the Zoning Board of Appeals meeting. The Affidavit may be returned to:

City of Elmira Code Enforcement Department
101 W Second Street
Elmira NY 14901

If you have any questions, please contact the Code Enforcement Department at (607) 737-5653.

ZONING BOARD OF APPEALS

CITY OF ELMIRA, NEW YORK
<http://www.cityofelmira.net>

A public hearing before the Zoning Board of Appeals of the City of Elmira, New York, will be held in the City Hall Court Room, City Hall, Elmira, New York, on the _____ day of _____, _____, at 4:30 o'clock in the P.M.

The purpose of this hearing will be to consider comments from the public concerning the application of _____ regarding property at _____, Elmira, New York. This applicant is requesting a _____ from the Zoning Ordinance* to allow the following changes concerning the above mentioned property:

The above applications and supporting papers are open to inspection in the Code Department, 101 W. Second Street, Elmira, New York. Persons wishing to appear at such hearing may do so in person or by attorney or other representative duly designated. Communications in writing which relate thereto may be filed with the Code Department, 101 W. Second Street, Elmira, New York, 14901.

Signed: _____

Dated: _____

*The full text of the Zoning Ordinance is available online at <http://www.cityofelmira.net/permits>



**Division of Local
Government Services**

Guidelines for Applicants To the Zoning Board of Appeals

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

Kathy Hochul, Governor

Rossana Rosado, Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
99 WASHINGTON AVENUE
ALBANY, NEW YORK 12231-0001
<https://dos.ny.gov>

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Guidelines for Applicants To the Zoning Board of Appeals

This publication has been written to aid potential applicants in understanding and appreciating the appeals process, and to provide an explanation of the rules and standards under which appeals and variance decisions must be made. Applicants and their representatives should be guided in advance by the standards in deciding whether an appeal would be appropriate. These standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals.

Why might you consider an appeal to the Zoning Board of Appeals?

A person may want to appeal to the Zoning Board of Appeals (ZBA) for two basic reasons. First, he or she may disagree with a decision the enforcement officer has made or an action he or she has taken. Second, the appealing party may believe that an exception (variance) to the zoning laws should be made for his or her property.

How is the appeals process initiated?

Either the applicant or the applicant's representative must file a Notice of Appeal with the ZBA within 60 days after the enforcement officer has filed his or her decision or action. The enforcement officer's decision is filed in his or her office, unless the municipal governing board has authorized it to be filed instead in the municipal clerk's office. A copy of the Notice of Appeal must also be filed with the enforcement officer.

Under what circumstances may an appeal be made to the Zoning Board of Appeals?

Except in certain instances, an applicant must be "aggrieved" by an actual decision or action taken by the enforcement officer. The exceptions occur where an applicant has already submitted an application for subdivision, site plan, or special use permit approval which requires an area variance in connection with that approval. In those instances, no decision of the enforcement officer is necessary. The applicant may simply file a Notice of Appeal directly with the ZBA.

Who may apply to the ZBA for relief?

Anyone who could be "aggrieved" by the decision or action of the enforcement officer, has standing to take an appeal before the ZBA. A person is "aggrieved" if his or her property value is affected negatively by the enforcement officer's action. Commonly, a property owner who either has been refused a permit or has been served with an enforcement action, is the "aggrieved party." Also note, as stated above, that a landowner who has submitted an application for subdivision, site plan, or special use permit approval, may apply to the ZBA for an area variance without a decision of the enforcement officer. A neighboring landowner may also be an "aggrieved party", if he or she believes the enforcement officer's decision in issuing a permit was improper, and will negatively affect their property value. In addition, any officer, board or commission of the municipality may appeal a decision of the enforcement officer, whether or not that officer, board or commission is aggrieved.

What decisions or actions are appealable?

Any decision or action issued in writing by the enforcement officer, which affects anyone's rights, is appealable. These decisions include: the grant or denial of a permit, the issuance of an appearance ticket or summons, or any order which mandates certain action, such as a cease-and-desist or stop-work order.

I'm a resident who lives near the proposed project. What happens if I find out about the project more than 60 days after the permit is filed?

If you are a "third party", such as a nearby resident, you may still bring an appeal more than 60 days after the permit is filed, *if* you file within 60 days after you've had a reasonable opportunity to find out about the planned project. For example, you would have 60 days from the time a sign is posted on the property announcing the future construction of a new business (whether or not you actually see the sign), if the sign is posted after the permit has been issued.

What types of relief can the ZBA grant?

The ZBA can grant (or deny) two types of relief: interpretive and variance. In either case, the ZBA will either affirm, reverse, or modify the enforcement officer's decision. In so doing, it will either grant or deny the requested relief. If the appeal is for an interpretation, the ZBA's decision will be based on the municipal zoning regulations. On the other hand, if the appeal is for a variance, the ZBA's decision will be based on the standards of proof contained in the following state statutes: §267-b of the New York State Town Law, §7-712-b of the Village Law, or §81-b of the General City Law.

Because of the range of powers the ZBA has, it is essential that the applicant (or the applicant's representative) know what type of relief to request when making application to the ZBA. If the applicant believes the enforcement officer's decision is incorrect, the appropriate request is for an *interpretation* reversing the officer's decision. If the applicant (in this case, the landowner) believes that the officer's decision may be correct, but that he or she can show proof under the statutes that a variance is warranted, then the appropriate request is for a decision granting a *variance*. It is also possible for an applicant to make a request for an interpretation, and, in the same application, ask for a variance if a favorable interpretation is not granted.

After a Notice of Appeal has been filed, what must happen?

After a Notice of Appeal has been filed, the ZBA will take up the matter at a future meeting. The ZBA is required to schedule a hearing on the applicant's appeal within a reasonable time, and give notice of the hearing to the applicant. If a variance is requested, the ZBA may be required to take some preliminary steps before it may hear the case.

First, the ZBA may have to make a determination of significance under the State's Environmental Quality Review Act (SEQRA). Based on this determination, an Environmental Impact Statement (EIS) may or may not be required. If an EIS is required, the case cannot be heard until the EIS has been completed and accepted by the ZBA. Environmental review is not necessary for interpretations of the zoning regulations or for area variances relating to setbacks and lot lines, or for area variances relating to one-, two-, or three-family residences.

Second, depending on the location of the property, the ZBA may be required by State law to refer requests for variances to the county planning agency for a preliminary recommendation. If such a referral is required, the ZBA must give the county 30 days to respond. It is also possible that the county's recommendation could result in an increase in the number of votes needed for the ZBA to approve the variance. Appeals for interpretations need not be referred to the county.

What is the responsibility of the applicant at the hearing?

At the hearing, the applicant may submit written evidence and/or argument to support his or her case. Obviously, the sooner that written testimony or material is received, the more time ZBA members will have to consider the case and reach a proper decision. Therefore, it is a good idea to submit written material with the application, or as soon thereafter as possible, so that it can be sent to ZBA members prior to the hearing. (Please note that the applicant can present written evidence at any time up to the close of the hearing, or even after the hearing if the ZBA allows the record to remain open.)

At the hearing, the ZBA will offer the applicant and/or the applicant's representative the opportunity to present a case for relief. The applicant may personally testify, call witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case (the side which supports the enforcement officer's decision). Each side will be given an opportunity to question the other, or the other's witnesses. In addition, ZBA members may ask questions.

After the applicant and the municipality have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed.

Will the ZBA make a decision the night of the hearing?

Once the hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the hearing may be reopened at any time. Once the hearing has been finally closed, the ZBA must make its decision within 62 days.

What is the basis for the ZBA's decision on an interpretation?

If requesting a reversal on an interpretative basis, the applicant must prove that the enforcement officer's decision was incorrect, according to a proper reading of the municipality's zoning regulations. If the ZBA has heard a case in the past which involved an interpretation of the same provision, the ZBA's decision will be consistent with its prior ruling. If the ZBA has never interpreted the particular provision at issue, it will use its best judgment as to the municipal governing board's original intent in enacting the provision. Secondly, the ZBA will try to arrive at the best practical solution for future application by the enforcement officer.

Careful and thorough reference will be given to all definitions and other provisions of the regulations. If necessary, the ZBA will refer to authoritative publications on planning and zoning law. The applicant may, of course, use those resources in presenting his own case as well.

What must be proven in order to be granted a use variance?

If requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State law requires the applicant to show *all* of the following:

- (1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
- (2) that the property is being affected by unique, or at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the hardship is not self-created.

If *any one or more* of the above factors is not proven, State law requires that the ZBA must deny the variance.

What must be proven in order to be granted an area variance?

If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

- (1) 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;
- (2) whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) whether an alleged difficulty is self-created.

Unlike the use variance test, the ZBA need not find in favor of the applicant on every one of the above questions. Rather, the ZBA must merely take each one of the factors into account. The ZBA may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance.

Must the variance, if granted, be exactly what was applied for by the applicant?

Whether the ZBA decides to grant a use *or* area variance, State law requires the ZBA to grant the *minimum variance necessary* to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

If there is no opposition to my variance request, must the ZBA grant the request?

The above rules and standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals. If they are not followed, the municipality would be subject to costly lawsuits. The public is entitled to speak in favor of, or against, a proposed project, but opinions in and of themselves are not enough.

Applicants and their representatives should be guided in advance by the appropriate legal standards in deciding whether an appeal would be appropriate. If an appeal is taken, the applicant should present clear, definite facts showing that the standards have been met. The ZBA cannot grant relief where proper legal proof is not adequately presented.