



# CITY OF RENSSELAER PLANNING AND DEVELOPMENT

CITY HALL, 62 WASHINGTON STREET  
Planning (518) 462-4839 Building (518) 465-1693 Fax (518) 465-2031



## APPLICATION TO THE ZONING BOARD OF APPEALS

### Request

*See attached schedule of fees for cost of application. One request per application.*

Area Variance  Use Variance  Zoning Interpretation

This application made on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is an appeal from the decision of the Planning Department's based on requirements set forth in the City of Rensselaer Zoning Ordinance. Included with this application is a site plan of the property with all structures indicated heron and a copy of the Planning Department's determination

**Property Address:** \_\_\_\_\_

**Zoning District:** \_\_\_\_\_ **Tax Map #/#'s:** \_\_\_\_\_

**Detailed description of proposed activity and use(s):** \_\_\_\_\_

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**Why is a variance required? Please refer to the relevant sections of the Zoning Ordinance.**

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**Justification? You must address each criteria outlined in the attachments to this application.**

**Please use an additional sheet if necessary.**

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**Applicant's Name (print):** \_\_\_\_\_

**Applicant's Phone Number:** \_\_\_\_\_

**Full Mailing Address:** \_\_\_\_\_

**Full Physical Address (if different from mailing):** \_\_\_\_\_

**Is the applicant the property owner?** Yes  No

*If you checked "No", please complete the section below with the property owner's contact information.*

**Owner's Name (print):** \_\_\_\_\_

**Owner's Phone Number:** \_\_\_\_\_

**Full Mailing Address:** \_\_\_\_\_

**Full Physical Address (if different from mailing):** \_\_\_\_\_

I hereby certify that all of the above statements and statements contained in all the exhibits transmitted herewith are true to the best of my knowledge.

**Request must be accompanied by cash or check (made payable to the City of Rensselaer):**

\_\_\_\_\_  
**Signature of Applicant**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of Owner (if applicant is not property owner)**

\_\_\_\_\_  
**Date**

\$

\_\_\_\_\_  
**Amount Enclosed**

**Cash**

**Check**

**(Circle one)**



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## FOR PLANNING USE ONLY

Received by Planning Department

Date:

Notice of Complete

Date:

Notice of Incomplete

Date:

Public Notice

Date:

Referred to County

Date:

Action:

Public Hearings

Date:

Zoning Board Action/Decision

Date:

Action:

### Applicant Notified of Zoning Board Action/Decision

- Use Variance Granted
- Use Variance Denied
- Area Variance Granted
- Area Variance Denied
- Interpretation

Date:

Date:

Date:

Date:

Date:

Notes:

Building and Zoning Administrator notified

Date:

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.

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Andrew M. Cuomo,  
Governor

Cesar A. Perales,  
Secretary of State

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