

USE VARIANCE APPLICATION PROCEDURE GUIDELINES
Town of Lake Pleasant

Please read and complete the enclosed application for use variance with as much detail as possible. All applications must be accompanied by detailed diagrams showing lot size, adjoining roads, driveways, the location and dimensions of all buildings including building heights and the distance of all buildings from all lot boundaries.

It is the sole responsibility of the applicant to provide the Zoning Board of Appeals (ZBA) with **one original and five (5) copies** of the application and all necessary information and documentation concerning this application. The ZBA will make its determination solely on the basis of the information and material that it is provided; therefore, the burden of proof is on the applicant to prove the necessity of the request.

There is **\$15.00 filing fee** with the submission of each application. This fee is not refundable once presented to the ZBA and shall not be used to cover any other fee, permit, etc. Any decision on any variance shall expire if the applicant fails to obtain any necessary permit or comply with the conditions of such permit within 6 months from the date of authorization thereof. Before work is started, please obtain a permit from the Code Enforcement Office.

Please be advised that construction must comply with all regulations of the New York State Uniform Fire Prevention and Building Code.

Example of items that may be enclosed in support of the application:

- (a) Renovation documents
- (b) Business proposal (if applicable)
- (c) Photos
- (d) Survey map of property
- (e) Neighborhood letter(s) of support
- (f) Map/photos/layout of neighborhood

USE VARIANCE: A use variance is a variance granted by the ZBA, if granted, allows the property owner to use the property in a certain way even though the desired use is otherwise prohibited in the zoning district. A use variance may be granted upon a demonstration of unnecessary hardship to the property owner in the use of the land.

3. STANDARDS: Please make sure to answer all questions in detail. You must clearly demonstrate that *all* the following prerequisites have been met in order to qualify for a use variance:

(a) the applicant will be deprived of use or benefit from the property unless it can be used for the purpose requested, which deprivation must be established by competent evidence. Competent financial evidence may include records or documents of: the amount paid for the property, the present values of the property, the expenses attributable to the maintenance, the amount of taxes on the property, income from the property, etc.;

(b) the hardship created is unique and does not apply to a substantial portion of the district or neighborhood. To determine whether the conditions that make an applicant's land difficult to use are unique, the ZBA may, for example, consider proximity to a major highway or physical conditions of the site itself, such as steep slopes or wetlands;

(c) the requested variance would not alter the essential character of the neighborhood. For example, the establishment of a commercial use that generated a lot of traffic or excessive noise could disrupt a residential area;

(d) the hardship is not self-created. An example of a hardship that has been created by the applicant's own actions may be where the applicant purchases residentially zoned land for a very high price, with the thought of subsequently obtaining a variance to use the land commercially. In this case, the applicant created the hardship by paying an inflated amount for the land and should not be granted a variance;

(e) the variance is the minimum necessary to grant relief from the hardship. The ZBA may grant the least relief, or smallest variance, necessary to allow the applicant a reasonable return on the property;

(f) the variance will preserve and protect the character of the neighborhood and the health, safety and welfare of the community. The neighborhood should not be disrupted by the proposed use, even if the applicant proved unnecessary hardship.

4. SELF-CREATED HARDSHIP: The ZBA may not grant a use variance to relieve a hardship created by the applicant, such as purchase of land with actual or constructive (should have known-presumed to know the law) knowledge that the desired use is prohibited by the zoning ordinance, even if the landowner *does not have actual knowledge* of the applicable provisions of the ordinance prohibiting the desired use.

The applicant should keep in mind that a use variance, if granted, runs with the land; in other words, the variance is granted to benefit the use of the property regardless of who owns the property. The variance is not granted for the personal benefit of the property owner; rather, it will continue to benefit the property for subsequent owners of the property as well.

Should you require assistance please contact:

Code Enforcement Officer
2679 State Route 8
P.O. Box 799
Lake Pleasant, NY 12108

APPLICATION FOR USE VARIANCE

Date: _____

1. Applicant(s): _____

2. Address: _____

3. Phone: work: _____ home: _____ Cell: _____

4. Location of property where variance is requested:

Tax Map number: _____ Zoning district: _____

5. Property owner (if different than applicant): _____

(if applicant is not the property owner a notarized statement giving authorization to the applicant must be obtained from the property owner and submitted with this application.)

6. Date property acquired by applicant: _____

7. Current use:

Residential - Number of dwelling units ; _____

Commercial - _____

Industrial - Type _____

Accessory building – Describe - _____

Other – Describe - _____

8. Proposed use: (please use above descriptions): _____

9. If the use variance is granted, will the applicant be performing the changes? Yes ___ No ___

10. If not, please provide the name, address and phone number of the contractor(s):

11. Please describe in detail the changes you plan to make on the premises (be specific).

12. Please explain how the variance will affect the character of and the health, safety and welfare of the neighborhood:

13. Please explain how the hardship *is not* self-created:

14. Please explain how the hardship created is unique and does not apply to a substantial portion of the district or neighborhood:

15. Please explain why the requested variance will not alter the essential character of the neighborhood:

16. Please explain how the variance is the minimum necessary to grant relief from the hardship:

17. Please explain how you will be deprived of *all* economic use or benefit from your property unless it can be used for the purpose you request, which deprivation must be established by competent financial evidence:

18. Please explain how the land will not yield a reasonable return by providing the following information:

- (a) Amount paid for the property in question:
- (b) Date of purchase of the property:
- (c) Present market value of the property or any part thereof:
- (d) Basis upon which the present market value of the property (from (c) above) was obtained:
- (e) The projected market value of the property if the use variance is/is not granted:
- (f) Basis upon which the present market value of the property (from (e) above) was obtained:
- (g) Please provide a breakdown of the expenses attributable to maintenance since acquiring the property in issue (you may wish to include receipts, if applicable):
- (h) Assessment and amount of taxes on the property in issue: (if applicable)
- (i) Amount of mortgages and other encumbrances: (if applicable)
- (j) Income from the land in issue: (if applicable)
- (k) Any other relevant facts particular to the facts of the case:

Please use the attached sheet of paper if you require further space and clearly indicate which questions you are answering.

Remember that it is the sole responsibility of the applicant to provide sufficient information and documentation concerning this application. Because the determination is made solely on the basis of information provided to the ZBA, it is to the applicant's benefit to include as much supporting information as possible.

I/We hereby consent to allow members of the Zoning Board of Appeals, upon reasonable notice to me/us, the right of access to my/our property for viewing and inspecting the proposed use variance, which is a subject matter of the proceeding herein before the Zoning Board of Appeals.