



Zoning Board of Appeals

Building Department
518-783-2706

TOWN OF COLONIE

PUBLIC OPERATIONS CENTER
347 OLD NISKAYUNA ROAD
LATHAM, NY 12110-2286

NICHOLAS J. GREISLER
Counsel

JEAN DONOVAN
Chairman

Dear Proposed Applicant:

If you elect to appeal to the Town of Colonie Zoning Board of Appeals the decision of the Town of Colonie Building Department denying your application for a building and/or zoning permit you are required to do the following:

1. Complete and file an appeal using the form provided to you by the Building Department;
2. Provide the required number of copies of a surveyor prepared map or survey of your premises showing the location of the improvements anticipated to be made and all setbacks;
3. Pay the required fee which is based on the type of property (commercial, residential, agricultural, etc.)
4. Appear at the scheduled hearing before the Zoning Board of Appeals and present evidence sufficient to satisfy the requirements of Section 267-b of the Town Law of the State of New York. For your convenience a copy of Section 267-b, amended to November 2000, is attached. From time to time the Legislature of the State of New York may amend Section 267-b and it is your responsibility to be aware of those amendments.

There are two types of variances. One is an area variance which means an authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by dimensional or physical requirements of applicable zoning regulations. The other is a use variance which means an authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. Section 267-b(2) applies to use variances and Section 267-b(3) applies to area variances. As an applicant it is your obligation to present written and oral testimony and to call such witnesses as you may deem necessary in order to satisfy the Zoning Board of Appeals that criteria for the type of variance you have applied for, as is set forth in Section 267-b, are met.

Since a request for a variance is a quasi-legal proceeding, you may want to consider, although it is not necessary, obtaining an attorney, engineer and/or consultant to assist you in the process.

Very truly yours,

Colonie Zoning Board of Appeals

§267-b. Permitted action by board of appeals [Eff. July 1, 1992.]

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

2. Use variances. (a) The board of appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, as defined herein.

(b) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restriction have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that (1) under applicable zoning regulations the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and (4) that the alleged hardship has not been self-created.

(c) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem 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.

3. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (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, feasible for the applicant to pursue, other than an area 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 the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in granting the area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

4. Imposition of conditions. The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and/or the period of time such variance shall be in effect. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

(Added L.1991. c. 692, § 3; amended L.1992, c. 248, §§ 9 to 12.)