



Town of New Lebanon, NY
Zoning Board of Appeals
Procedures for Applicants
(Variances, Interpretations)

When the Zoning Enforcement Officer (ZEO) denies your request for a zoning permit on the basis that it does not comply with zoning, or you do not agree with how the ZEO interpreted the zoning code, you may appear before the Zoning Board of Appeals (ZBA) to appeal that decision. The following are the procedures that will apply should you choose to appeal:

1. File an application. The ZBA Appeals Application must be completed and submitted to the ZBA. The application will contain the legal standards upon which a use or area variance will be reviewed by the ZBA. These standards are also in the Town Code.

If you file your application at least 18 days in advance of the next regularly scheduled meeting of the ZBA (first Tuesday of the month), you may be able to complete the appeal process in one meeting, which would include the required Public Hearing. If you are unable to submit your application within that time frame, you have the option to file within five days of the ZBA meeting and have a preliminary meeting with the ZBA to explain your application. A Public Hearing will ordinarily be scheduled for the following month.

The ZEO/Administrator in Town Hall (Building Department) will guide you as to the application forms you will need to complete and the documents you will be required to submit along with the application, such as sketch plans which demonstrate the dimensional relief you are seeking, the location of your property lines and structures on the property. .

2. Notify Abutters. The Planning/Zoning Clerk (P/Z Clerk) will also explain the requirements for notifying the abutters to the property involved with your application as well as provide you with the names and addresses of all who qualify as abutters. You will send a letter by Certified Mail to each abutting property owner stating the date of the Public Hearing for your appeal request and the substance of the relief you are seeking. Proof of mailing must be provided to the Planning/Zoning Clerk in advance of the meeting. The public hearing allows abutters to attend the Public Hearing to comment on your application and the impact to their properties.

The Planning/Zoning Clerk (P/Z Clerk) will send a copy of your application to the Columbia County Planning Department, if required by the circumstances of your application. A decision by the ZBA cannot occur until the County Planning Board has issued their recommendation on the application, or 30 days have elapsed and it has not offered comment.

3. Appearance before the ZBA. On the scheduled date of the meeting, the ZBA will give you an opportunity to explain your application based on the legal criteria. This should focus on why you should be granted a variance from the Zoning Code using the rationale of the standards in the application or providing evidence of why the ZEO's interpretation of the code is incorrect. Your presentation must give your rationale for each of the applicable legal standards. Following your presentation, any other interested party may speak at this hearing or provide comments in writing, which will be included in the record. While public input is important, it is not the only deciding factor. After hearing all commentary and if there is no further information requested by the ZBA, the Public Hearing will be closed.

If you were unable to meet the 18 day filing deadline but opted to appear before the ZBA in advance of Public Hearing, you will present your case and the Public Hearing will be scheduled for the following month. The ZBA may ask you to provide additional information to clarify your application.

Following the Public Hearing, the ZBA will then deliberate. ZBA members may ask you additional questions about your request or ask for clarification on the documents you submitted. If necessary, the ZBA may request additional information which will be considered at its next regularly scheduled meeting date. If additional information is not needed, the ZBA may come to a decision on your request.

4. Decision. A decision document will be prepared within five (5) days of the decision being rendered. You may need this in order to obtain the necessary building permits. If the ZBA denies your request, you may appeal by filing what is called an “Article 78” in the State Supreme Court.

Please note that these procedures will apply if you are seeking a use or area variance or if you are seeking a review of an interpretation of the Zoning Code made by the Zoning Enforcement Officer. There are separate procedures if you are applying for a special use permit that does not require site plan review. There are two types of variances:

Area Variance. It is understood that not every property can comply with the dimensional requirements imposed by the Town Zoning Code. The purpose of the ZBA is to provide relief in those cases where strict compliance with the dimensional requirements is not possible and the variances meet the criteria of the legal standards.

Use Variance. A use variance is necessary when the proposed use is not allowed within the zoning district. This is a much harder variance to obtain because of the legal standards which must be met to be granted this type of variance. NYS Law requires, among other items, the property owner to provide financial evidence that no use permitted for that property can provide a reasonable return on the owner’s investment. In New York State, this is a very high standard and a very small percentage of use variance applications are granted.

For additional information on handling variances in New York, you may want to consult the Coon series of documents promulgated by New York State located at the below link.

<https://dos.ny.gov/system/files/documents/2019/05/zoningboardofappeals.pdf>