



Town of New Lebanon
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 New Lebanon, New York 12125
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 Email: BuildingDept@townofnewlebanon.com

ZONING BOARD OF APPEALS APPLICATION

Application No. (office use only): _____

SITE INFORMATION

Site Location (911 Address): _____ Nearest Crossroad: _____

Tax Map No.: _____ Zoning District: _____

PROPERTY OWNER & APPLICANT INFORMATION

Property Owner Name: _____ Phone: _____

Mailing Address: _____

Email: _____

Applicant Name (if different from Property Owner): _____ Phone: _____

Mailing Address: _____

Email: _____

SURVEYOR INFORMATION (if applicable)

Surveyor Name: _____ License No.: _____

Mailing Address: _____

Email: _____ Phone: _____

ENGINEER / ARCHITECT INFORMATION (if applicable)

Name: _____ License No.: _____

Company Name & Address: _____

Email: _____ Phone: _____

PURPOSE OF APPLICATION (check ONE; a separate application is required for each request)

- Appeal Zoning Enforcement Officer (ZEO) Permit Denial (complete Section A - Appeal / Interpretation)
- Appeal: Interpretation of Zoning Ordinance or Zoning Classification Boundary (complete Section A - Appeal / Interpretation)
- Area Variance (complete Section B - Area Variance and attach SEQR forms)
- Use Variance (complete Section C - Use Variance and attach SEQR forms)
- Special Permit for _____ (identify use) (attach SEQR forms and drawings and provide a detailed narrative showing compliance with relevant requirements of Zoning Ordinance 205-13 B and E; also see General Instructions.)

For an appeal or variance request, only complete and submit the section (A, B or C) pertaining to the relief you are requesting.

GENERAL PROJECT INFORMATION

Project Use/Description: _____

The project occurring within 500 feet of (Check all that may apply):

- A municipal Boundary
- County or State Park or recreation either existing or proposed
- State or County road or right-of-way, either existing or proposed
- State or County owned building or institution
- Stream or drainage channel owned by the County or for which channel lines have been established
- Active farm operation within a County Defined Agricultural District

SECTION A - APPEAL / INTERPRETATION

Applicant Name: _____

Date: _____

Determination from which you are appealing:

- Appeal: Zoning Permit Denial (attach copy of the Permit Application and ZEO's written determination)
- Appeal: Interpretation of Zoning Code or Zoning Classification Boundary

In the space below:

1. Identify the section of the Zoning Ordinance for which you are seeking an interpretation or appeal.
2. Describe your interpretation of the section of the Zoning Ordinance and any errors you believe may exist in the determination appealed from.

Attach additional pages as required

SECTION B - APPLICATION FOR AREA VARIANCE

Applicant Name: _____

Date: _____

Identify and describe by section number of the Zoning Ordinance requirement(s) from which you seek relief: _____

: _____

Provide the names and addresses of owners of all property within 100 feet of your property and within 100 feet of any road frontage that is directly opposite your property's road frontage. The list shall also contain the Town of New Lebanon current tax map numbers for each parcel. (The Building Department Clerk can assist you with this.) Attach additional pages as required.

Attach a drawing showing all features that are relevant to the variance you are seeking, such as the location of the structure or use in question, and the adjoining properties, roads, etc..

To grant an Area Variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the five Area Variance Standards listed below. Please provide responses to each of the five Area Variance Standards. Attach additional pages as required.

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 variance. Granting the variance will not create a detriment to nearby properties or an undesirable change in the neighborhood character for the following reasons:

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? Identify what alternatives to the variance have been explored (alternative designs, attempts to purchase land, etc.) and why they are not feasible.

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.

5. Whether the alleged difficulty was self-created.

SECTION C - APPLICATION FOR USE VARIANCE

Applicant Name: _____

Date: _____

Identify and describe by section number of the Zoning Ordinance requirement(s) from which you seek relief: _____
: _____

List the names and addresses of owners of all property within 100 feet of your property and within 100 feet of any road frontage that is directly opposite your property's road frontage. The list shall also contain the Town of New Lebanon current tax map numbers for each parcel. (The Building Department Clerk will assist you with this.) Attach additional pages as required.

Describe other means you have considered to accomplish your objective that would not require a Use Variance and your reasons for rejecting them.

To grant a Use Variance, the ZBA must balance the benefits to the applicant and the health, safety, and welfare of the neighborhood and community, taking into consideration the four Use Variance Standards listed below. Please provide responses to each of the four Use Variance Standards. Attach additional pages as required.

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. "Dollars and Cents" proof must be submitted as evidence. The property in question cannot yield a reasonable return for the below reasons. *Note, the following information is helpful to this analysis: date of purchase and purchase price, cost of improvements made to the property, annual maintenance expenses and/or income generated from the property, appraised value of the property, period of time the property has been listed for sale and the listing prices, included any changes, efforts made to market the property for the allowable uses within the zone, number of showings of the property and any offers made.*

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. Difficulties shared with numerous other properties in the neighborhood or zoning district would not satisfy this requirement.

3. The requested use variance, if granted, will not alter the essential character of the neighborhood. Changes that will change the character of a neighborhood or district are at odds with the purpose of the zoning ordinance. Describe how the requested variance will not alter the character of this neighborhood and zoning district.

4. The alleged hardship has not been self-created. An applicant cannot claim unnecessary hardship if the hardship was created by the applicant/owner or if the property was acquired with the knowledge of the conditions for which the applicant seeks relief. Applicants are deemed to have investigated or known the zoning at the time of purchase.

I certify that the statements herein contained are true to the best of my knowledge and belief and I have prepared and submitted all pages of this application. By signing this application, the undersigned does hereby grant permission to members of the Town of New Lebanon Zoning Board of Appeals and Building Department to enter upon my property for the purpose of examining same by reason of an application now pending before said Board.

Signature of Property Owner _____ Date: _____

Signature of Applicant _____ Date: _____

Fees: Appeals to ZBA (incl. interpretations, use variance, and area variance applications) can be found under the zoning section of the Town's Fee Schedule located here:

<https://secureservercdn.net/198.71.233.235/482.ab5.myftpupload.com/wp-content/uploads/2021/03/Updated-fee-Schedule-12.8.20.pdf>

A DECISION DOCUMENT BY THE ZONING BOARD OF APPEALS AND A BUILDING PERMIT APPLICATION (IF APPLICABLE) MUST BE SUBMITTED AND OBTAINED BEFORE BEGINNING ANY CONSTRUCTION OR OCCUPANCY.

Office Review – office use only

Date Received: _____ Application No: _____

Zoning Classification: _____

Fee Paid: \$ _____ Date: _____ Check No.: _____

Receipt No.: _____

Was Application complete when received? Yes ___ No ___

If No: Date Application was complete _____

Date of meeting when Application will be first reviewed by ZBA _____

Referred to: Planning Board on _____ County Planning Board on _____

Clerk Signature: _____ Date: _____

General Instructions

Please Read

1. If you are filing an appeal to the Zoning Board of Appeals (“ZBA”) because the Zoning Enforcement Officer (“ZEO”) denied your application for a permit or found your property to be in violation of the Zoning Ordinance, you are entitled to a written statement by the ZEO of the reasons for the decision.
2. The Building Department Clerk can assist you to identify relevant portions of the Zoning Ordinance and identify the abutters to your property to whom you will need to give notice of your Application. The ZBA encourages you to contact your abutters and neighbors to tell them about your plans and to solicit their ideas or concerns. This can avoid unnecessary controversy and delay in acting upon your application.
3. You will need to fill out the Zoning Board of Appeals Application and one of the three sections of the Application depending on the interpretation or variance relief you are seeking. If you are seeking a **special use permit**, you will need to review the relevant portions of the Zoning Ordinance and provide the required information, detailed narrative and drawings.
4. If the owner is a corporate entity or trust, submit a resolution authorizing the entity or trust to submit this Application.
5. The definitions, standards and considerations applicable to the ZBA can be found in the New Lebanon Zoning Ordinance (Chapter 205 of the Code of the Town of New Lebanon.) Please review those that apply to the relief you are seeking. The narratives in your Application **MUST** provide the ZBA all information relevant to these standards and considerations.

Appeal – The ZBA may reverse or modify any determination, including a permit denial, made by the ZEO. The person appealing a ZEO decision must file an appeal within sixty (60) days of the ZEO’s written determination. The person appealing a determination must demonstrate to the ZBA’s satisfaction that the ZEO’s determination was based on errors of fact and/or errors in interpreting the Zoning Ordinance.

Area Variance – An area variance authorizes a use of land that does not meet in all respects the dimensional or physical limitations of the applicable provisions of the zoning ordinance. Before deciding whether to grant an area variance the ZBA must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the neighborhood or community, and in doing so must consider the area variance standards in the application.

Use Variance – A use variance authorizes a use of one’s land for a purpose which is otherwise prohibited by the zoning ordinance. Before deciding whether to grant a use variance, the ZBA must determine that the applicant has demonstrated that the Zoning Ordinance has produced an unnecessary hardship to the owner or applicant. To satisfy this requirement, the ZBA must weigh the benefit to the applicant if the variance is granted against the detriment to the health, safety and welfare of the neighborhood or community, and in doing so must consider the use variance standards in the application.

6. The ZBA review process may involve engineering, legal, and other professional skills. While the Building Department staff will provide guidance and assistance within reasonable limits, the responsibility for the proper presentation of the proposal lies with the applicant and the applicant’s advisors, and not upon the Building Department, its staff, or the ZBA.
7. Fee Schedule: Individual fee schedules are listed on the Building/Planning/Zoning Department webpage of the Town of New Lebanon website and are specific to the type of project. These are subject to change from time to time at the approval of the Town Board. Escrow accounts will be established as required by the ZBA for the advice of applicable professionals (town engineer, town attorney or other professionals) engaged by the Town to assist the ZBA.

8. Additional fees may be required in an amount necessary to defray additional costs of special consultants engaged by the Town to assist in the review of an application. The ZBA will endeavor to provide notice to the applicant in advance of securing a special consultant to allow the applicant time to alter or remove their application before the ZBA.



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>