

VILLAGE OF CORNWALL-ON-HUDSON
ZONING BOARD OF APPEALS
APPLICATION PACKAGE

VARIANCES AND INTERPRETATIONS

VILLAGE OF CORNWALL-ON-HUDSON

APPLICANT'S GUIDE

"APPEALS TO THE ZONING BOARD OF APPEALS"

READ FIRST

INTRODUCTION

Any person aggrieved by a decision of the Code Enforcement Official may take an appeal to the Zoning Board of Appeals. The matter appealed from is most commonly a notice of refusal with respect to a permit application. There are two basic types of appeals to the Zoning Board of Appeals: Appeals for interpretation and appeals for a variance. In making an appeal, the burden of proof lies with the applicant, and if the applicant does not prove his or her case, the appeal will be denied. You may be represented by an attorney if you so desire.

INTERPRETATIONS

An interpretation is a request to have the Zoning Board make a determination as to the meaning of a particular provision of the zoning code with respect to a particular set of facts and circumstances. If you are aggrieved because you believe the Code Enforcement Official has misinterpreted the zoning code, you may make an appeal. You must clearly identify the code provision for which you request an interpretation and must completely, clearly and accurately set forth the facts and circumstances to which the code provisions apply. The Zoning Board cannot make an interpretation if you fail to properly state the facts of the matter.

VARIANCES

Variances are a form of extraordinary relief which allows a person to do something that is not allowed by the zoning code. A variance will not be granted unless you prove all the elements necessary to do so. The two basic types of variances are use variances and area variances. A use variance would allow you to conduct a particular type of activity in a zone where that activity is not normally permitted. An area variance will afford relief from the three dimensional or "bulk" requirements, such as lot sizes, set backs, etc. The basic elements which must be proved are

set forth below:

No use variance can be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located, (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated 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.

No area variances can be granted unless the ZBA takes 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 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.

All applications *must* be accompanied by a plot plan survey, denoting the property lines, all existing and proposed buildings and structures in relation to the property lines, paved or parking surfaces and appropriate measurements.

Applicants must include prescribed application fees payable to the Village of Cornwall-on-Hudson to cover costs associated with legal notifications, advertising and administrative expenses to review your application. The Zoning Board of Appeals may require a State Environmental Assessment Form for use variances and area variances for non-residential property. Prior to the scheduling of

the public hearing or review by Village lawyer or engineer all application and escrow deposits must be paid by using two separate checks. At that point your application will be forwarded on to be review by council.

SPIRIT OF THE ZONING LAW

The applicant must show that the granting of the variance will be within the general spirit of the zoning law. The variance requested must be the minimum necessary to grant the relief while conserving the essential character of the neighborhood and protecting the value of other properties in the zone. No variance will be granted where to do so will make a significant impact on the public health, safety and welfare purposes for which the zoning code was implemented.

CONCLUSION

The above is intended to be a general outline concerning appeals to the Zoning Board of Appeals. It is only a rough outline and is no substitute for the advice of an attorney or engineer to assist you. The applicant must take responsibility for familiarization with both local code and state requirements.

Remember, the applicant must prove his or her case or the appeal will be denied.

BEFORE YOU FILE AN APPLICATION FOR A VARIANCE, MAKE SURE THAT THE CODE ENFORCEMENT OFFICIAL CLEARLY UNDERSTANDS WHAT YOU WANT TO DO. IT MAY TURN OUT THAT A VARIANCE IS NOT NEEDED WHEN YOU EXPLAIN YOUR SITUATION TO HIM IN DETAIL. If you receive your variance there can be no deviation from what the approved you for.

1. Fill out the building permit application completely. It is necessary to provide a property survey. The Code Enforcement Official can advise you about this.
2. Present the building permit application to the Code Enforcement Official. He will either issue you a building permit or deny it, citing reason(s) for denial.
3. Take the denial of the building permit to the Zoning Clerk and get an application for a Zoning Variance. (Read the application before filling it out).
4. Fill out the application, in its entirety, and return it to the Zoning Clerk. Make sure that all of the documents requested on the forms are given to the Clerk at the time you submit the application. The zoning application fee and escrow fees must be paid at the time you follow the application. Your application will not proceed until you pay fees.
5. Applicants must submit elevation drawings by a licensed designed professional application. 2 Sets of stamped architect stamped plans are what is required for submission along with digital PDF copy of plans. Failure to do so may delay the decision making process. Submission of photographs showing present conditions on and near the property is recommended.
6. The Zoning Clerk will then contact you once the application has been reviewed for completeness by the Village Attorney, a list of parcels within 500' of your property has been compiled by the zoning board clerk, a notice of hearing generated and your Public Hearing date has been scheduled.
7. Obtain the Public Hearing Notice from the Clerk and use the list of names provided by the clerk to assemble the envelopes for mailing. Return envelopes to the Zoning clerk at least ten (10) days prior the scheduled date of the public hearing. The applicant shall deliver copies of the notice to the Zoning Clerk in unsealed envelopes properly addressed to each property owner entitled to notice with pre-paid first class postage affixed. The return address on each envelope shall be "Village of Cornwall-on-Hudson, 325 Hudson Street, Cornwall-on-Hudson, NY 12520."
8. The Zoning Clerk shall cause the prepared envelopes to be sealed and mailed at least eight (8) days prior to the hearing date and provide proof of mailing to the Board.

9. It is the responsibility of the applicant to provide a copy of the Public Hearing notice to the Cornwall Local. This notice must appear in the legal notice section of the official newspaper of the Village of Cornwall-on-Hudson at least five (5) days prior to the public hearing date. The affidavit of publication you receive back from the newspaper must be brought to the public hearing. Failure of you to not present this notice the night of the hearing will result in you not being able to continue with the hearing.
10. At the Hearing you or your agent must appear and explain your need for a variance. You may be represented by an attorney and you have the right to call your own witnesses. Remember to state the facts. State the sections of the Zoning Law that need to be varied and why a variance should be granted in your case. Meetings start promptly at 7:00 p.m.
11. The Zoning Board may or may not act on your application at the Hearing.
12. If a variance is granted, you must bring a new building permit to the Code Enforcement Official so a Building Permit can be issued, this must be done within 6 months. If work does not commence within the 6 months you must reappear in front of the Zoning board and request a renewal every 6 months. You must comply with any special requirements placed on you by the Zoning Board of Appeals. A Certificate of occupancy/compliance will be issued when the work is in a satisfactorily manner and has been inspected by the Building Inspector. In addition all escrow fees must have been collected by the Village clerk.
13. NOTE: Some variance requests may involve other governmental agencies such as the Department of Transportation or the Orange County Department of Planning. In this event, approval of these requests is contingent upon approval by these agencies.
14. NOTE: That the applicant will be assessed the cost to the Village of the Village Engineer and Village Attorney's assistance with the processing of your application. These consultants assist the Zoning Board, and are not required to advise the applicants, who should have their own consultants. At the close of the application process, the engineering and legal bills will be reviewed and if approved by the Village, billed to the applicant.
15. NOTE: If the variance area is located within a View Preservation Overlay District, a View Preservation Referral will be made by the Building Inspector to the Planning Board, or the applicant may apply directly to the Planning Board for Visual Site Plan approval pursuant to Chapter 172-173 *et seq.* of the Village Code.
16. Prior to the scheduling of the application before any board all application fees and escrow deposits must be paid in order for you to be placed on the agenda

ZONING BOARD OF APPEALS

APPLICATION

Appeal of _____ Reason for Request: _____
(Name)

(Address)

(Phone #)

(Name & Address of Agent/Attorney if applicable)

Date Application Received: _____ Hearing Date: _____

A. STATEMENT OF OWNERSHIP AND INTEREST:

1. The applicant(s) is (are) the owner(s) / contract vendee(s) of the property known as,
(# and street address - include street intersections, property of others, etc.)
2. The property is identified on the most recent tax roll of the Village as
Section _____, Block _____, Lot _____.
3. The above described property was acquired by the applicant on
_____. Attach a copy of the deed.
4. Attach a photocopy of the Tax Map outlining the property in red.
5. The premises are located in Zoning District: _____

B. REASONS FOR REQUEST

- (1) State briefly your reason(s) for requesting a variance or interpretation:

C. RELIEF REQUESTED:

1. The applicants requests: (check one or both as appropriate)

(a) A Variance from ()

An Interpretation of ()
the following Section(s) of the Zoning Code:

Zoning Code Section	Subject Matter of Section
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

(b-1) State briefly how the strict application of the provisions of the Zoning Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Zoning Code.

(b-2) Purpose of Request

1. _____

2. _____

3. _____

(b-3) Change Requirement

From:	To:
1. _____	_____
2. _____	_____
3. _____	_____

(c) State briefly how the granting of the requested relief will not be a substantial detriment to the public interest, to the property, to the surrounding properties and will not materially undermine the purpose of the Zoning Code.

(d) State briefly how the practical difficulties or unnecessary hardships are particular to your property and are not shared by other properties in your neighborhood or the same Zoning District.

D. APPEAL FROM:

1. This appeal is made from a Notice of Refusal of the Code Enforcement Official dated _____, a copy of which is attached to the top of this application.
2. This is a referral from the Planning Board. Yes/No
3. This property has (has not) been the subject of a previous appeal. If applicable, I have attached a copy of the Decision in that previous matter.
4. When filing your application for a variance make sure the Code Enforcement Official clearly understands the scope of your project. If you receive your variance there is no deviation from what the board approved for you. Think carefully what variances you would like to request.

E. Process

- 1) Fill out building permit application completely.
- 2) Present permit to the building dept
- 3) If denied acquire zoning board application from Village website or the clerk
- 4) Make sure you have all requested documentation
- 5) 2 sets of stamped plans along with a digital PDF copy are required
- 6) Application and escrow fees must be submitted with the application and all documentation
- 7) Zoning clerk will generate the list of names for your mailing while the Village attorney reviews your application for completeness. Our attorney generates the required documentation to be placed in each envelope.
- 8) It is the Applicants responsibility to bring the notice of hearing to the Cornwall Local and post the notice of pendency at the curb
- 9) Plan on meeting with the zoning clerk when you submit the request for a variance for further directions

E. Required Documentation:

1. I have included with this application; copies of the following documents which I understand must be fully submitted in order for my application to be acted upon:
 - A. ____ Deed to the property in the present owners name.
 - B. ____ A portion of the Tax Map on which my property has been outlined in red.
 - C. ____ The Notice of Refusal by the Code Enforcement Official from which this Appeal is taken.
 - D. ____ Drawing to scale or survey showing present and proposed conditions and elevations if relief is granted. (Submission of photographs showing present conditions on the property are recommended). This must be in the present owners name.
 - E. ____ Environmental Assessment Form (Short Form EAF, Part 1)
 - F. ____ General Municipal Law Section 809 Affidavit.
 - G. ____ List of names and addresses with corresponding Tax Map numbers of all property owners within 500 feet of my property entitled to a Notice of Public Hearing on my

application. (This to be turned in to Zoning Clerk at time of mailing)

F. Fees

1. Enclosed is my **non-refundable application** fee of \$_____. In addition to \$_____ which will be held in escrow and have lawyer and engineer fees applied against. I realize these fees must be paid at the time my application is submitted or it will not be processed.
2. Fee received on _____.
BY: _____

Signature of Applicant_____

STATE OF NEW YORK)SS.:
COUNTY OF ORANGE)

Sworn to before me this _____ day of _____, _____.

Notary Public
State of New York

ORANGE COUNTY DEPARTMENT OF PLANNING
APPLICATION FOR MANDATORY COUNTY REVIEW OF
LOCAL ZONING BOARD
(Variances)

Local File No. _____

1. Municipality Village of Cornwall-on-Hudson Public Hearing Date _____

2. Owner: Name:
 Address:

3. Applicant*: Name:
 Address:

If Applicant is owner, leave blank

4. Location of Site:
(Street or highway, plus nearest intersection)

Tax Map Identification: Section _____, Block _____, Lot _____

Present Zoning District: _____, Size of Parcel _____

Amount of Lot Area Disturbed _____

5. Type of Review:

Variance: Use: _____
 Area: _____

Date

Signature and Title

OWNER'S ENDORSEMENT

State of New York)
County of)SS.:

_____ being duly sworn, deposes and says that

(s)he resides at _____, in the
(Owner's Address)

County of _____ and State of _____ and that (s)he is

(the owner in fee) or _____ of the
(Official Title)

_____ Corporation which is the owner in fee of the premises described

in the foregoing application and that (s)he has authorized _____ to

make the foregoing application as described herein and that (s)he agrees to be bound by all

statements, conditions and representations contained therein as if (s)he had so petitioned.

(Owner's Signature)

Sworn to before me this

_____ day of _____, 20__.

Notary Signature_____

Notary Public - State of _____

AFFIDAVIT OF REGULARITY

STATE OF NEW YORK
COUNTY OF ORANGE
VILLAGE OF CORNWALL-ON-HUDSON

_____, being duly sworn, deposes and says:

1. That _____ is the owner of real property in the Village of Cornwall-on-Hudson, Orange County, State of New York, who has made application to the Planning Board for a public hearing on said application which has been scheduled for _____, 20____, at _____ o'clock.
2. That on the _____ day of _____, 20____, I served a Notice of Public Hearing regarding this application, by certified mail with return receipt requested, to the persons at the addresses given as follows:

NAME OF ADDRESSEE

ADDRESS

1. See Attached list of names
- 2.
- 3.
- 4.
- 5.

3. That the persons named in Paragraph II above constitute all of the owners of real property abutting the property of the applicant and all persons owning real property within 500 feet of the applicant's property as is required by the Code of the Village of Cornwall-on-Hudson.
4. That attached hereto is an exact copy of the notice that was mailed to the above named persons.

Applicant/ Agent _____

Sworn to before me this _____ day of _____, 20____.

Notary Signature _____

DISCLOSURE STATEMENT

Mindful of the provisions of Section 809 of the General Municipal Law of the State of New York and of the Penal provisions thereof as well, the undersigned applicant states that no State Officer, Officer or Employee of the Village of Cornwall-on-Hudson, or of the Town or County of which it is a part, has any interest, financial or otherwise, in this application or with, or in the applicant as defined in said Statute, except the following person or persons who is or are represented to have only the following type of interest, in the nature and to the extent hereinafter indicated:

() None

() Names: Address: Relationship or interest (financial or otherwise)

Dated: _____

Applicant

Corporate or Partnership Applicant

BY: _____

(Pres.) (Partner) (Vice-Pres.)

GENERAL MUNICIPAL LAW OF THE STATE OF NEW YORK

Section 809 Disclosure in certain applications:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemptions from a plat or official map, license or permit, pursuant to the provision of any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state officer or any employee of such municipality or of a municipality of which such municipality is a part, in the person partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.
2. For the purpose of this section an officer or employee shall be deemed to have an interest in the application when (s)he, their spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:
 - a) is applicant, or
 - b) is an officer, director, partner or employee of the applicant, or
 - c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
 - d) is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.
3. Ownership of less than five percent of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.
4. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

**617.20 Appendix C Short Environmental Form Must be included with this application- See
DEC website**

IMPORTANT INFORMATION FOR APPLICANTS

**VILLAGE OF CORNWALL-ON-HUDSON
ZONING BOARD OF APPEALS & PLANNING BOARD APPLICANTS**

Applicants to the Zoning Board of Appeals and the Planning Board of the Village of Cornwall-on-Hudson are advised that in addition to application fees, all Applicants will be assessed the actual cost incurred by the Village for the legal and engineering review of the application by the Village's consultant. Once the consultant's charges have been approved by the Village, the charges will be sent to the applicant for payment.

The attorney and engineer are employed by the Village to assist the ZBA and Planning Board to fully evaluate each application. These consultants are not the applicant's consultants, although they may work with your consultants. All applicants are encouraged to retain private consultants as appropriate for the nature of the application. Applicants are further advised that the amount and description of technical assistance to the respective Boards may differ substantially for different applications as a result of a variety of factors.

This form should be signed by the Applicant/Owner of the premises that is the subject of the application for the purpose of acknowledging that this information has been communicated, and this form will remain in the application file maintained by the Village.

Dated:

Applicant/Owner

Notary

Signature

Applicant/ Owner Information

Applicant:
Phone # _____ email _____ Fax # _____

Property Owner
Phone # _____ email _____ Fax # _____

Engineer
Phone # _____ email _____ Fax # _____

Surveyor
Phone # _____ email _____ Fax # _____

Attorney
Phone # _____ email _____ Fax # _____

Contact Person
Phone # _____ email _____ Fax # _____

Other
Applicant:
Phone # _____ email _____ Fax # _____