



Plattsburgh, New York

Building & Zoning Dept.
41 City Hall Place
Plattsburgh, NY 12901
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PROCEDURE IN APPEALING THE ZONING ORDINANCE CLASS B VARIANCE

DEADLINE FOR FILING APPLICATION 3-26-2021

ZONING BOARD MEETING DATE 4-19-2021 - 7:00pm Remote (Zoom)

The Zoning Board of Appeals has been empowered to hear and decide all appeals to the Zoning Ordinance and to do so the Board holds public meetings once a month.

The attached appeal application must be completely filled out and returned to the office for action by the Zoning Board of Appeals at their monthly meeting. The filing fee for said application is as follows:

One and Two-family dwellings -	\$50.00
Multiple Dwellings	\$150.00
Commercial Properties	\$150.00

All checks should be made payable to the "City Clerk". In order for your appeal to be heard in the same month you apply, the appeal form and fee must be received by this office three weeks prior to the scheduled meeting of the Zoning Board of Appeals. All applicants or their representatives should attend the Zoning Board of Appeals Public Meeting of their appeal to answer any questions the Board may have regarding their request.

In filling out the form, please be specific and supply the Zoning Board of Appeals with all the necessary information requested on the form. If you are requesting a variance from the ordinance, you must detail why the literal enforcement of the ordinance will produce an undue hardship, while the variance requested will adhere to the spirit of the ordinance and do substantial justice. Financial disadvantage to the property is no proof of hardship within the purpose of zoning. In addition to the above, an applicant must submit adequate drawings and a site plan of all requests, which will involve any construction, alterations, or physical change of their property. **Twelve (12) copies of the entire packet including drawings and site plans are required** (we recommend the plans be approved before the twelve (12) copies are made).

Before the Zoning Board of Appeals may hear and decide your appeal, this office must first:

1. Publish the request in three successive issues of the Press-Republican newspaper not less than five (5) nor more than ten (10) days before the hearings.
2. Notify, by letter, all adjoining property owners of your request

This office is responsible for implementing the above requirements.

If there are any questions, please contact this office.
Thank you for your cooperation.

ZONING BOARD OF APPEALS

CITY HALL

PLATTSBURGH, NEW YORK 12901

STANDARDS OF PROOF - AREA VARIANCE

A. The applicant for an area variance is not entitled to an area variance unless he has furnished competent proof to satisfy the "practical difficulty standard" and that the variance, if granted will not alter the essential character of the neighborhood.

In order to satisfy the practical difficulty standard, the applicant must prove that the Zoning Ordinance as it applies to his land creates significant economic injury and that the variance, if granted, will not produce a substantial change in the character of the neighborhood. The courts of this state hold that "significant economic injury cannot be established except by dollars and cents proof which includes:

1. The original purchase price of the premises.
2. The current market value of the premises without an area variance.
3. The projected market value of the premises with the variance having been granted."

"Projected market value" in item 3 does not include any cost of valuation for the proposed construction. It includes only the current market value without any variance plus the "value of the right to build." The "value of the right to build" may be said to be the "value of the building permit". How much more valuable is the entire property with a building permit allowing the future construction of the proposed work? Projected market value which includes the value of the work to be constructed will be rejected.

Projected market value can be best shown by the in-person testimony of a real estate appraiser who is present at the hearing. Written appraisals may be less satisfactory because the writer is not present to answer any questions."

The difference between the current market value without the variance and the projected market value with the variance is the amount of economic injury. If the Zoning Board of Appeals determines that this economic injury is significant, then the applicant may be entitled to the area variance.

However, if a town official comes forward at the hearing with testimony establishing that it is important in this particular instance to enforce the Zoning Ordinance as it is written, in order to protect the health, safety and welfare, then the application must be denied. It is important to note that such testimony must be by a town official or someone hired by the town to give the testimony. If the Zoning Board of Appeals agrees with the Town Official that it is important in this case to enforce the Zoning Ordinance as written, then the applicant is not entitled to the area variance, unless he presents further testimony that the enforcement of the ordinance as written will deprive him of any reasonable use of his land. If applicant proves that, then he is entitled to the area variance.

B. The second question to be determined by the Zoning Board of Appeals is whether the the propose will alte the essential character of the neighborhood. Will a substantial detriment to adjoining properties be created? If it will, then the variance may be denied.

C. Other Grounds for Denial:

1. Whether the variance applied for is the minimum variance that is necessary.
2. Is the variance sought one that is merely desirable for the greater enjoyment of the property, as opposed to one that is necessary for continued practical utilization of the premises? (Bielak v. Zoning Board of Appeals, 78 AD 2d 435).

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STANDARDS OF PROOF - AREA VARIANCE

3. Is this hardship self-created? An area variance cannot be denied solely on the ground of self-created hardship, but is a factor to be considered.
4. Is the plight of the owner due to personal problems of the owner as opposed to matters dealing with the land or buildings? While an area variance may not be denied solely on this basis, it is a factor to be considered.

Area Variances Standards

The state statues define area variances as: "the 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 the applicable zoning regulations."

General City Law, 81-b(1)

The state statues then go on to provide the zoning board with the standards for granting the area variances;

"(b) In making it's determination, the zoning board 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 condition 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.

The board of appeals , in the granting of 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."

General City Law, 81-b(4)

Area or Dimensional Variances

Area variances may be granted where setback, frontage, lot size or yard requirements of this Code cannot be reasonably met. In making its determination the ZBA 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 determinations the board shall also consider the following criteria:

Please give a written response to each section.

(1) Will an undesirable change be produced to the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

NO - SEE ATTACHED

(2) Can the benefit sought by the applicant be achieved by some method, feasible to the applicant to pursue, other than an area variance?

NO - SEE ATTACHED

(3) Is the requested area variance substantial?

NO - SEE ATTACHED

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

NO - SEE ATTACHED

(5) Has the alleged difficulty been self-created?
This information shall be relevant to the decision of the board but shall not necessarily preclude granting of the variance.

NO - SEE ATTACHED

Area or Dimensional Variances - Attachment

(1) Will an undesirable change be produced to the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance?

No. The requested variance for a taller replacement fence will not be detrimental to the neighborhood or harm the use and enjoyment of neighboring properties nor would it detract from the character of the neighborhood. The fence would produce an aesthetically proper addition, if not an enhancement to our neighborhood.

(2) Can the benefit sought by the applicant be achieved by some method, feasible to the applicant to pursue, other than an area variance?

No. A fence will provide security and privacy by preventing the public from walking through our backyard, which we have witnessed on several occasions. It also lessens the potential for liability issues caused by the public taking shortcuts through our backyard.

(3) Is the requested area variance substantial?

No. The existing hedge will be replaced by extending the fence along the Prospect Ave side of our property. We are requesting a three (3') foot variance for approx.50 foot section on the west side (Prospect Avenue).

(4) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

No. The requested variance will not infringe on any neighboring residential properties, nor would it impose any hardship on any neighbors, nor would it create a situation where any neighbor's property value or peaceful co-existence would be negatively affected.

(5) Has the alleged difficulty been self-created?

No. The unusual topographical conditions in the northwest corner of our lot are caused by the street elevation of Prospect Avenue to the west and the height of a retaining wall on the north side of our property. Increasing the height of the fence in that area is the minimum needed to address the situation caused by the grade change. The variance makes possible a reasonable use of the property by allowing the fence to be extended the minimum amount that would provide security and privacy.

Respectfully submitted,
Roger and Sandra Marland
February 24, 2021

Variances

One of the basic powers given by law to a zoning board of appeals is called the "variance" power. The board has the authority to "vary," or modify, the strict letter of a zoning ordinance or local law in cases where this strict interpretation could cause practical difficulties or unnecessary hardships for an individual.

Appeals boards are frequently confronted with requests for variances. There are two types of requests that come before the board, and the standards by which they are judged differ. A use variance is a request to utilize property for a use or activity which is not permitted by the zoning ordinance, and the applicant must demonstrate "unnecessary hardship." An area variance is a request for relief from dimensional standards contained in the zoning ordinance, and it requires a demonstration of "practical difficulty."

The basic standards for determining unnecessary hardship and practical difficulty have been established and refined by the courts in numerous cases.

Use Variance

An individual who wants to utilize property for a use that is not permitted by the zoning ordinance must apply for a use variance. An applicant for a use variance must demonstrate unnecessary hardship by satisfying each of the following three tests:

1. Uniqueness

The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone AND that these features make it impossible to earn a reasonable return without some adjustment. If the features or conditions are generally applicable throughout the district, a variance should not be granted. In those situations where the difficulty is shared by others, the relief should be accomplished by an amendment to the zoning ordinance, not a variance.

2. Reasonable Return

The applicant must demonstrate an inability to realize a reasonable return under any of the uses permitted by the zoning ordinance. There must be a "dollars and cents" proof of the applicant's inability to realize reasonable return; speculation or qualitative assessment is inadequate.² Failure to realize the highest return is not considered a hardship.

3. Character

The applicant must prove that the requested modification will not change the character or quality of the neighborhood. In addition, the "spirit" of the ordinance or local law should be preserved.

The applicant for a use variance must meet all three tests before the appeals board may grant relief. A use variance should not be granted if the "unnecessary hardship" was created by the applicant. If the appeals board grants a use variance to an applicant who has failed to meet each of the tests, it runs the risk of assuming the function of the legislative body and making a decision contrary to the legislative intent of the zoning ordinance.

An increasing number of use variance requests is often the sign of an "aged" zoning regulation. The appeals board should not circumvent the legislative process by granting use variances. Instead, the appeals board should advise the governing body of the need to reexamine and amend the zoning ordinance.

Area Variance

In the case of an area variance, the applicant is seeking modification of dimensional standards, such as yard requirements, set-back lines, lot coverage, frontage requirements or density regulations, so that the property may be utilized for one of the uses permitted by the zoning ordinance. The appeals board may grant relief if the applicant can demonstrate that strict compliance with the regulations would cause practical difficulty.

The determination of practical difficulty is a three-step process.³

1. First, the applicant must demonstrate that the application of the zoning ordinance to his property causes significant economic injury.
2. Once the applicant has demonstrated economic injury, then the municipality must show that the regulation in question is reasonably related to a legitimate exercise of the police power.
3. Last, assuming the municipality has met its burden of proof, the applicant must demonstrate that the restrictions, as strictly applied in his case, are unrelated to the public health, safety or welfare of the community and that granting the variance will not adversely affect the community.

In making a determination of practical difficulty, the appeals board may consider:⁴

1. How substantial the variation is in relation to the requirement;
2. The potential effect of increased density on available municipal, county and state facilities and services;
3. Whether the variance will cause a substantial change in the character of the neighborhood;
4. Whether the difficulty can feasibly be mitigated by some other method; or
5. Whether the interests of justice will be served in granting the variance.

The appeals board should grant the minimum relief necessary to allow reasonable use of the land in question. Not every applicant for an area variance is automatically entitled to receive relief. Each application should be carefully considered against the requirement for proof of practical difficulty.

Summary

The major difference between a use variance and an area variance involves the use of the property. An area variance results in a modification of physical restrictions so that an allowable use may be established on the property. By contrast, a use variance permits the establishment of a use which is prohibited by the zoning ordinance and the zoning map. It is for this reason that the standards for a use variance are more stringent than the standards established for an area variance.

Frequently, the appeals board is encouraged to make legislative decisions under the guise of use variance requests. The appeals board should exercise caution when confronted with a request for a use variance, and only grant those which meet the tests established for determining unnecessary hardship. The appeals board should resist the inclination to correct deficiencies in the zoning ordinance through the exercise of its variance power. If particular provisions of the zoning ordinance are inappropriate or unjust, the appeals board should recommend that the legislative body (City Council, Town Board, Board of Trustees) take the necessary steps to amend the ordinance or local law.

¹Otto v. Steinhilber, 282 NY 71 (1939), Village of Bronxville v. Francis, 150 NYS 2d 906 (1956); Jayne Estates v. Raynor, 22 NY 2d 417 (1968); Douglaston Civic Association, Inc. v. Klein, 51 NY 2d 963 (1980).

²Fayetteville v. Jarrold, 53 NY 2d 254 (1981).

³Fulling v. Palumbo, 21 NY 2d 30 (1967); National Merrit, Inc. v. Werst, 41 NY 2d 438 (1977).

⁴Waschsberger v. Michalls, 19 Misc 2d 909 (1959).

Department of Planning



Note: This Tech Memo was prepared by the Department of Planning as an informational publication for municipal governments. It is not intended to be a legal opinion.

PROJECT I.D. NUMBER

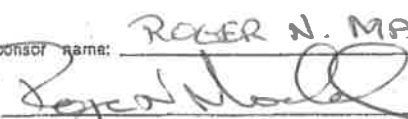
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SEQR

Appendix C

State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
 For UNLISTED ACTIONS Only

PART I—PROJECT INFORMATION (To be completed by Applicant or Project sponsor)

1. APPLICANT (SPONSOR) ROGER & SANDY MARLAND	2. PROJECT NAME REPLACE HEDGE w/ FENCE
3. PROJECT LOCATION: Municipality CITY / PLOTTSBURG, NY County CLINTON	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) 70 PARK AVE - CORNER LOT	
5. IS PROPOSED ACTION: <input type="checkbox"/> New <input checked="" type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: REMOVE HEDGE & EXTEND EXISTING FENCE LINE ALONG PROSPECT AVE.	
7. AMOUNT OF LAND AFFECTED: Initially <u>2.1</u> acres Ultimately <u>2.1</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly FENCE TO BE 7'	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open space <input type="checkbox"/> Other Describe:	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency(s) and permit/approvals CITY PERMIT	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, list agency name and permit/approval	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE	
Applicant/Sponsor name: ROGER N. MARLAND	Date: 02/24/2021
Signature: 	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

1

PART II—ENVIRONMENTAL ASSESSMENT (To be completed by Agency)

A. DOES ACTION EXCEED ANY TYPE I THRESHOLD IN 6 NYCRR, PART 617.4? If yes, coordinate the review process and use the FULL EAF.
 Yes No

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.6? If No, a negative declaration may be superseded by another involved agency.
 Yes No

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING: (Answers may be handwritten, if legible)

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic patterns, solid waste production or disposal, potential for erosion, drainage or flooding problems? Explain briefly:
 NO

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? Explain briefly:
 NO

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Explain briefly:
 NO

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources? Explain briefly:
 NO

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action? Explain briefly.
 NO

C6. Long term, short term, cumulative, or other effects not identified in C1-C5? Explain briefly.
 NO

C7. Other impacts (including changes in use of either quantity or type of energy)? Explain briefly.
 NO

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CEA?
 Yes No

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?
 Yes No If Yes, explain briefly

PART III—DETERMINATION OF SIGNIFICANCE (To be completed by Agency)

INSTRUCTIONS: For each adverse effect identified above, determine whether it is substantial, large, important or otherwise significant. Each effect should be assessed in connection with its (a) setting (i.e. urban or rural); (b) probability of occurring; (c) duration; (d) irreversibility; (e) geographic scope; and (f) magnitude. If necessary, add attachments or reference supporting materials. Ensure that explanations contain sufficient detail to show that all relevant adverse impacts have been identified and adequately addressed. If question D of Part II was checked yes, the determination and significance must evaluate the potential impact of the proposed action on the environmental characteristics of the CEA.

Check this box if you have identified one or more potentially large or significant adverse impacts which MAY occur. Then proceed directly to the FULL EAF and/or prepare a positive declaration.

Check this box if you have determined, based on the information and analysis above and any supporting documentation, that the proposed action WILL NOT result in any significant adverse environmental impacts AND provide on attachments as necessary, the reasons supporting this determination:

 Name of Lead Agency

 Print or Type Name of Responsible Officer in Lead Agency

 Title of Responsible Officer

 Signature of Responsible Officer in Lead Agency

 Signature of Preparer (If different from responsible officer)

 Date

EXISTING FENCE
TO BE EXTENDED
"IN KIND" →

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TO BE EXTENDED
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66 Park

68 P

62 P

64 Park

PARK AVENUE

AREA OF REQUEST

PROSPECT AVENUE

53 Prospect

51 Prospect

49 Prospect