

APPLICATION FOR AN AREA/USE VARIANCE
From the Town of North Harmony
Zoning Board of Appeals

I. **AREA VARIANCE DEFINED** — Persons seeking Area Variances request relief usually from a minimal measured distance requirement established in the Zoning Law such as: minimum total square foot lot size, width and depth of lot, yard requirements, building setback distances from boundary lines, maximum building and other improvements square footage of total lot coverage, minimum frontage distance requirements and density regulations.

II. **WHEN TO USE THIS FORM** — A person who disagrees with a denial by the Zoning Officer or Building Inspector of a building permit or other type of permit application may appeal that denial by requesting an Area Variance from the Zoning Board of Appeals. All area variance applications are reviewed by the Zoning Board of Appeals pursuant to the provisions of **Sections 902, 903, and 904** of the Town of North Harmony Zoning Law, copy of which is listed below. Applicants should familiarize themselves with the requirements of that law prior to their appearance and presentation at the required public hearing.

III. Name of Property Owner: _____

Address of Property Owner: _____

Phone # of Property Owner: _____

Name of Applicant: _____

Mailing Address: _____

Phone: _____ E-Mail: _____

Property Identification # (Tax Map #): _____

Property Address: _____

Property Zoning Code Classification: _____

IV. **PROJECT DESCRIPTION** — List Planning Board site plan review dates, decision and submit actual copies of all site plan documents reviewed by the Planning Board.

V. **DOCUMENTS REQUIRED, SURVEY/SKETCH:** Attach a land surveyor's stamped survey of property or a site plan. Show the size of the lot, adjacent streets, position of the proposed addition or change, existing structures, etc. Additionally, show slopes or other obstructions which make it difficult to comply with the Zoning Ordinance. Attach photographs of the property showing its current building locations relative to all adjoining properties.

VII. REASON FOR BUILDING/ZONING PERMIT DENIAL (Refer to Zoning Ordinance)

- A. Dimension requested (specify): _____
Does not conform with Zoning Ordinance Section _____ requirements
(Specify) _____
- B. Building/Zoning Permit was denied _____, 20_____
Building/Zoning Permit was requested _____, 20_____

VIII. CONSIDERATIONS: The burden of proof that the variance requested is necessary and should be allowed is upon the applicant, not the Zoning Board of Appeals. The following are some considerations which will guide the Zoning Board in its decision.
(Please answer yes or not to each question and provide additional information with as much detail as possible.)

A. Does the Area Variance request differ substantially (a mathematical percentage calculation) in relation to the existing zoning requirements? Yes _____ No _____
Comments: _____

B. If the Area Variance is allowed, will there be an increased population density creating new burdens on available public facilities and services (i.e. fire, water, sewer, roads, etc.)?
Yes _____ No _____
Comments: _____

C. If the Area Variance is allowed, will the resultant change in character of the neighborhood create a substantial detriment to the adjoining properties? Yes _____ No _____
Comments: _____

D. Do other feasible methods exist that the applicant can pursue to achieve similar results to those sought in the Area Variance request? Yes _____ No _____
Comments: _____

E. Is the Area Variance request based on a difficulty created by the applicant?
Yes _____ No _____
Comments: _____

IX. HEARING — The Zoning Board of Appeals regular hearing date is the 4th Wednesday of each month at 7:30 PM. All requests to be on the agenda must be received no later than 14 days prior to the scheduled hearing date. Written notification of the date and time will be sent to the applicant.

The undersigned hereby declares, under penalties of perjury, that the above information, and all application supporting documentation, provided to the Town of North Harmony Zoning Board of Appeals, is true, correct and complete.

SIGNATURE OF APPLICANT: _____

DATE: _____

\$50/\$100 FEE: Paid _____ Not Paid _____

NOTICE TO APPLICANT:

TEN (10) COMPLETE COPIES OF BUILDING PERMIT REQUESTS REQUIRING ANY TYPE OF **VARIANCE APPLICATION TO BE HEARD BY THE ZONING BOARD OF APPEALS** MUST BE SUBMITTED TO THE ZONING OFFICER OR TOWN CLERK AT LEAST 14 DAYS PRIOR TO THE HEARING DATE. EACH COPY SHOULD INCLUDE THE FOLLOWING (COPIES MAY BE TWO SIDED AND REDUCED AS NECESSARY):

- **FULLY COMPLETED AND SIGNED APPLICATION** FOR BUILDING PERMIT
- **FULLY COMPLETED AND SIGNED APPLICATION** FOR AREA/USE VARIANCE
- SUPPORTING DOCUMENTATION (I.E. PHOTOS, DRAWINGS, MAPS, ETC.)

The Town of North Harmony Zoning Ordinance is available online at www.townofnorthharmony.com

SECTION 902 - General Procedures (Duties)

- A. Duties - The Zoning Board of Appeals shall act in strict accordance with procedures specified by law and this Zoning Law. The major duties of the Board shall be to hear and decide on variance requests as well as to interpret the meaning of the Zoning Law as requested. Additionally, except as otherwise specifically provided by another provision of this zoning law, it shall hear requests for special use permits, whether or not a variance is also requested, as provided in [Section 905](#).
- B. Format for Requests - All requests shall be in writing on forms prescribed by the Zoning Board of Appeals. Specific provisions of the Zoning Law shall be referred to and as a minimum, the following information shall be provided by the person requesting the variance or interpretation.
1. property identification;
 2. project description;
 3. a drawing of sufficient detail to provide needed information sufficient to decide on the request;
 4. reasons for permit denial;
 5. proof of unnecessary hardship or practical difficulties; and
 6. hearing information.
- C. Referral to Planning Board - On an optional basis, the Zoning Board of Appeals may request in writing a recommendation by the Planning Board. The failure of the Planning Board to submit said report shall be deemed to be an approval of the appeal or interpretation in favor of the applicant.
- D. Hearings - All hearing procedures shall be in accordance with appropriate laws with respect to notices, timeliness, etc.
- E. Decisions - Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings. Decisions shall be made in a timely manner in accordance with state law. As per state law, a majority of the membership are needed to pass or reject any request.
- F. Time Requirements - All appeals to the Zoning Board of Appeals for an interpretation or a variance shall be submitted to the Zoning Board of Appeals within 30 days of the date of denial of the application.

SECTION 903 - Interpretation

The Zoning Board of Appeals shall have the power to interpret the meaning of this Zoning Law whenever called upon by the Municipal Board, Zoning or Code Enforcement Officer, or an aggrieved party. This shall include the power to reverse any order, requirement, decision, or determination of an administrative official or Board. This interpretive power shall include the determination of the location of district boundary lines.

SECTION 904 - Use and Area Variances

- A. Reasons for Variances - The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Law where a literal interpretation would cause practical difficulties (Area Variances) or unnecessary hardships (Use Variance).
- B. Applicability & Limitations -
1. The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Enforcement Officer.
 2. The Zoning Board of Appeals may reverse, affirm, or modify the decision made by the Municipal Board.
 3. The Zoning Board of Appeals has absolutely no power to amend the Zoning Law and must exercise great care to insure that its rulings do not, in effect, amend the Zoning Law.
- C. Area Variances —
1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officials charged with the enforcement of this law, to grant area variances as defined herein.
 2. 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 of Appeals shall also consider:
 - (a) 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;
 - (b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - (c) whether the requested area variance is substantial;
 - (d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
 - (e) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
 - (f) The Zoning 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.
- D. Use Variances -
1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officials charged with the enforcement of this law, shall have the power to grant use variances, as defined herein.
 2. The Zoning 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. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship to the applicant. In order to prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under this Local Law for the district in which the applicant's property is located:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
 - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
 - c. The requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. The alleged hardship has not been self-created.

Failure to demonstrate any one of the requirements in Subsections 1(a) through 1(d) above is sufficient to justify the denial of a use variance.

- E. Conditions and Restrictions - The Zoning 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 this law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- F. Temporary Variances - The Zoning Board of Appeals may issue, for uses which are of a temporary nature, a Variance. Said Variance shall clearly state the conditions of the variance to include, when it shall terminate, the possibility of renewal, and other conditions deemed necessary.