

PROCEDURE FOR COMPLETING GARDINER ZONING BOARD OF APPEALS APPLICATION

1. Complete all pages of the application (Type or print legibly). Have application notarized and return packet to the Town Hall along with a check (made payable to the *Town of Gardiner*) in the amount of \$200-\$300(Per Current Fee Schedule).
2. Complete a Short or Long Environmental Assessment Form (Part 1 only) as required by the type of project (Special Permit, Minor Project, or Major Project). Return with the application to the Town Hall. Note: Complete the Full Form EAF if instructed to do so otherwise.
3. Obtain plot map (from Ulster County Parcel Viewer) and draw in appropriate changes, additions, etc. with detailed measurements being applied for. Attach plot map to packet.
4. Address a plain #10 self-stamped envelope to each property owner within 500 feet of the property. The return address on each envelope should be just your name. The remainder of the return address will be the Town of Gardiner address and will be completed by the Clerk of the Zoning Board. Applicant should obtain an updated list of neighboring land by contacting the Clerk of the Zoning Board or the Assessor's Office. Include a copy of the mailing list with your application.

Your Name Only	
Neighbor Name	
Mailing Address	
Town, ST, Zip	

5. For an application to be placed on the Zoning Board agenda, **all of the above** must be completed **no later than the 1st day of the month for which the meeting is scheduled.** When required, the Zoning Board of Appeals will meet on the 4th Thursday of the month at 7:00 pm. There are no exceptions.

If there are any further questions concerning these procedures, please refer to the Code of the Town of Gardiner § 220-59 Zoning or call the Clerk of the Zoning Board, at (845) 255-9675 ext. 108.

TOWN OF GARDINER
ZONING BOARD OF APPEALS APPLICATION

Applicant's Name _____ Phone () _____

Applicant's Mailing Address _____

Applicant's Email _____

Property interest of applicant:

Owner: _____

Contact Purchaser: _____

(attach copy of contract)

Tenant : _____

(attach copy of lease)

Location of property: _____

Zoning District: _____

Tax map designation: Section _____ Block _____ Lot _____

Please answer all the following questions:

1. Describe the use you desire to make of the property.

2. Describe the uses surrounding property owners make of their properties.

3. Will the proposed use increase traffic congestion?

If not, why?

4. Will off-street parking be provided for customers? _____

If so, how many spaces? _____

Size of each space: _____ ft. by _____ ft.

Submit a diagram of the parking available on site.

Indicate entry and exit from the public streets.

5. List any churches, public buildings, playgrounds and recreation facilities which are locate within 500 ft. of the exterior property lines of the property on which the proposed use is to be located.

6. How many persons will be employed by the use?

Full-time _____ Part-time _____

7. State the maximum number of customers, clients, patients or patrons expected to be on the premises at any one time.

8. State the size of the lot on which the use is to be located both in square footage and dimensions of front, side, and rear lot lines.

Square footage: _____

Lot Lines: Front _____ ft. Side _____ ft. Rear _____ ft.

9. State the dimensions of all the building or structures to be used and if more than one

Building No. _____

Size: _____ ft. x _____ ft.

Building No. _____

Size: _____ ft. x _____ ft.

Building No. _____

Size: _____ ft. x _____ ft.

10. How many square feet are usable space in each building?

Building No. _____

Usable Sq. ft. _____

Sq. ft. to be devoted to
proposed use: _____

Building No. _____

Usable Sq. ft. _____

Sq. ft. to be devoted to
proposed use: _____

Building No. _____

Usable Sq. ft. _____

Sq. ft. to be devoted to
proposed use: _____

11. State the distance of the building in which the use will be located from all front, rear, and side property lines. If more than one building or structure is to be used, list each individually.

Submit a drawing diagramming this information.

Building No. _____

Distance from property lines:

Front: _____ ft. Rear: _____ ft. Side: _____ ft. Side: _____ ft.

Building No. _____

Distance from property lines:

Front: _____ ft. Rear: _____ ft. Side: _____ ft. Side: _____ ft.

Building No. _____

Distance from property lines:

Front: _____ ft. Rear: _____ ft. Side: _____ ft. Side: _____ ft.

[illegible]

COUNTY OF ULSTER)

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(to be completed by Corporate applicant)

_____, being duly sworn deposes and that he/she
is (title) _____ (name of corporation) _____ a
(enter name of State of incorporation) _____ cooperation, the
applicant name in the foregoing application knows the contents thereof, and the same
is true to his/her own knowledge, except as to the matters therein stated to be alleged
upon information as to belief and as those matter he/she believes it to be true.

SIGNED: _____

Print Name: _____

Sworn to me
this _____ day of _____, year _____

Notary Public

§ 220-59. Zoning Board of Appeals.

Pursuant to the provisions of § 267 of the Town Law, there is hereby established a Zoning Board of Appeals consisting of five members appointed by the Town Board. The Zoning Board of Appeals shall have all the powers and duties prescribed by law and this chapter in connection with appeals to review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of this chapter, generally the Building Inspector. An appeal may be taken by any person aggrieved or by any officer, department, board, or bureau of the Town.

A. Appeals of orders, requirements, decisions, interpretations, or determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed from, and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of this chapter. In so doing, the Zoning Board of Appeals shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.

B. Appeals for variance.

- (1) Where there are practical difficulties or unnecessary hardships imposed by the strict letter of this chapter, the Zoning Board of Appeals shall have the power, upon appeal from a determination by the Building Inspector and after public notice and hearing, to vary or modify the application of any of the provisions of this chapter relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.
- (2) All applications for variances shall be submitted to the Building Inspector at least 10 days before the meeting of the Zoning Board of Appeals and shall be accompanied by six copies of a plot plan, drawn to scale with accurate dimensions, showing the location of all existing and proposed structures on the lot. An application for a use variance may require submission of an agricultural data statement pursuant to § 220-37D.

- (3) Any variance which is not exercised by application for a zoning permit or by otherwise commencing the use within one year of the date of issuance shall automatically lapse.

C. Use variances.

- (1) The Zoning Board of Appeals, on appeal from a decision or determination of the Building Inspector, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this chapter. 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 chapter 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.
- (2) Failure to demonstrate any one of the requirements in Subsection C1(a) through (d) above is sufficient to justify the denial of a use variance.
- (3) The Zoning Board of Appeals shall consider any agricultural data statement submitted pursuant to § 220-37D.
- (4) The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems 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.
- (5) In addition to the grounds for granting a use variance in Subsection C(1) above, a use variance may also be granted if the applicant can prove, by competent financial evidence, deprivation of all economically beneficial use of the property.

In such a case, the Zoning Board of Appeals shall grant only the minimum variance necessary to allow an economically beneficial use.

- (6) If the use variance is granted for a nonresidential use, the applicant shall obtain site plan approval from the Planning Board prior to commencing the use or obtaining a building permit or zoning permit.

D. Area variances.

- (1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Building Inspector, or in connection with a special permit or site plan application as provided in § 220-62D or § 220-66D, to grant area variances from the area or dimensional requirements.
- (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 of such grant. In making its determination, the Board 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 shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance.
- (3) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the

character of the neighborhood and the health, safety, and welfare of the community.

E. Imposition of conditions on variances. The Zoning Board of Appeals shall, in granting use variances and area variances, impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

F. Procedures.

(1) Application. Appeals shall be taken by filing a written notice of appeal and any required plans with the Building Inspector and the Zoning Board of Appeals, within 60 days after the filing of the order, requirement, decision, interpretation, or determination that is being appealed, on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this chapter involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision, or determination of an administrative official. The Building Inspector shall forthwith transmit all the papers constituting the record of the appeal to the Zoning Board of Appeals.

(2) Referral to County Planning Board.

(a) Requests for variances that require referral to the County Planning Board shall be so referred pursuant to General Municipal Law, Article 12-B, §§ 239-l and 239-m, as amended.

(b) No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the thirty-day requirement for the County Planning Board's review.

(c) County disapproval. A majority-plus-one vote shall be required to approve any variance which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above,

along with a resolution setting forth the reasons for such contrary action.

G. Hearing and public notice.

- (1) If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of any variance application, mail written notice of the application to the owners of land as identified by the appellant in the agricultural data statement. Such notice shall include a description of the proposed variance and its location. The cost of mailing the notice shall be borne by the appellant.
- (2) The Zoning Board of Appeals shall set a reasonable time after receipt of a complete application for the hearing of appeals.
- (3) The Secretary of the Zoning Board of Appeals shall refer all applications for use variances to the Planning Board for a report prior to the public hearing. If the Planning Board does not report within 30 days of such referral, the Zoning Board of Appeals may take action without the Planning Board's report.
- (4) At least five days prior to the date of the hearing of appeals, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to the Planning Board and by certified mail to all property owners within 200 feet of the property upon which the appeal is taken. The cost of publishing and mailing such notices shall be borne by the appellant.
- (5) If the application is for a use variance on property located within 500 feet of the boundary of an adjacent municipality, notice of the hearing shall be sent to the clerk of the adjacent municipality by mail or electronic transmission at least 10 days prior to such hearing, and such adjacent municipality may appear and be heard.
- (6) The clerk of the board and the Code Enforcement Officer shall comply with the supplemental notice requirements in § 220-59.1, and the costs shall be borne by the applicant.
- (7) At the hearing, any party may appear in person or by agent or by attorney.

- (8) The Zoning Board of Appeals may adjourn the hearing for a reasonable period in order to cause such further notice as it deems proper to be served upon such other property owners as it decides may be interested in the appeal. If the hearing is adjourned for more than 30 days, the Board may require that it be re-noticed as provided in Subsection G(4) above.
- H. Action. The Zoning Board of Appeals may, in conformity with the provisions of this chapter, reverse, affirm, or modify, wholly or in part, the order, requirement, decision, interpretation or determination of the administrative official in accordance with the provisions of this chapter.
- (1) Any such action shall be decided within 62 days after the close of the hearing.
- (2) Every decision of the Zoning Board of Appeals shall be approved by vote of a majority of the members by resolution which contains a full record of the findings and rationale for the decision. If the Zoning Board of Appeals acts contrary to the recommendations of the Town Planning Board or the County Planning Board, it shall give written reasons for such action.
- I. Filing. Every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five business days after the decision is rendered, and shall be a public record. A copy thereof shall be placed in the permanent file of the property and shall also be mailed to the appellant within the same five-day period.
- J. Court review of Board decisions. Any person or persons, jointly or severally aggrieved by any decision of the Zoning Board of Appeals, may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law and Rules and § 267-c of the Town Law.
- K. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within 12 months of the date of such decision.
- L. Stay of proceedings. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Building Inspector certifies for the Zoning Board of Appeals, after the notice of appeal has been filed, that such a stay of proceedings would, in the Building Inspector's opinion, cause imminent peril to life or property by reason of facts stated in the certificate. In such a case, proceedings shall not be stayed except by a restraining order granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Building Inspector for due cause shown.