



TOWN OF PERINTON

1350 TURK HILL ROAD. FAIRPORT, NEW YORK 14450-8796

(585) 223-0770, Fax: (585) 223-3629, www.perinton.org

NUMBER _____ FEE \$ _____
(verify fee with staff)

MEETING DATE _____

APPLICATION FORM -AREA VARIANCE - **RESIDENTIAL**

Please see **Zoning Board of Appeals Procedures and Application Requirements**

1. APPLICANT

Name _____ Phone _____

Mailing address _____ City _____ Zip _____

Interest in Property: Owner _____ Lessee _____ Other _____

2. PROPERTY OWNER (if other than applicant)

Name _____ Phone _____

Mailing address _____ City _____ Zip _____

3. ATTORNEY (if represented)

Name _____ Phone _____

Mailing address _____ City _____ Zip _____

4. INTEREST: Does any officer or employee of the State of New York, County of Monroe, or

Town of Perinton have any interest in the owner/applicant or the subject property?

Yes _____ No _____

If yes, who?

Name _____ Address _____

INTEREST (explain):

5. **LOCATION:** Street Address OR tax id # if no street address given

6. **SIZE OF PARCEL:** _____

7. **PRESENT USE OF PROPERTY:** _____

8. **ZONING DISTRICT:** _____ **TAX ACCOUNT #** _____

9. **APPLICATION FOR VARIANCE OF CODE SECTION(S):**

10. **DESCRIBE SPECIFICALLY THE NATURE OF YOUR REQUEST:**

11. **DESCRIBE THE LOCATION, USE AND SIZE OF STRUCTURES, AND OTHER LAND USES WITHIN 100 FEET OF THE BOUNDARIES OF THE SUBJECT PROPERTY**

12. **HOW SUBSTANTIAL IS THE VARIANCE REQUESTED IN RELATION TO THE CODE?**

CODE REQUIRES: _____

REQUEST IS: _____

13. **WILL GRANTING YOUR REQUEST RESULT IN AN INCREASE IN POPULATION DENSITY?**

NO ___ **YES** ___ **IF YES, WHAT EFFECT WILL THIS HAVE ON AVAILABLE GOVERNMENT FACILITIES?**

14. WILL YOUR REQUEST RESULT IN A SUBSTANTIAL CHANGE IN CHARACTER OR BE DETRIMENTAL TO SURROUNDING PROPERTIES? NO _____ YES _____

15. CAN THE DIFFICULTY WHICH LEADS YOU TO APPLY FOR THIS VARIANCE BE SOLVED IN ANOTHER MANNER? NO _____ YES _____ *If yes how?*

16. WHY DO YOU FEEL YOUR VARIANCE REQUEST IS PROPER?

17. IS THIS PROPERTY IN A LIMITED DEVELOPMENT DISTRICT? NO _____ YES _____

I certify that the information supplied on this application is complete and accurate, and that the project described, if approved, will be completed and the premises used as stipulated in this request.

Signature of Applicant: _____ Date _____

Printed name of Applicant _____

Property Owner (If other than applicant)

I have read and familiarized myself with the contents of this application and do hereby consent to its submission and processing.

Signature of property owner _____ Date _____

Printed Name of property owner _____

**PROCEDURES FOR FILING AN APPLICATION TO APPEAR BEFORE THE
ZONING BOARD OF APPEALS (ZBA)**

1. Applicant obtains application form from Zoning Board of Appeals Secretary (located at Code Enforcement & Development or Perinton website at <http://www.perinton.org/Boards/Zonebd/forms/> and fills it out with complete detailed information as requested. Also, complete short E.A.F. form (if applicable). Print or type. EAF is available at [Link](#) to Short EAF & Long EAF - parts 1, 2 & 3.
2. The original application, along with 11 copies, shall be returned to the Zoning Board of Appeals Secretary, according to cut-off date schedule with application fee. (see fee schedule for pricing at <http://www.perinton.org/government/fees> or contact ZBA Secretary at 223-0770 to determine cost). Attach to each application, copies of maps, plans, and any required supporting documentation. If address of property is different than applicant's address, show that on map and plans. Please return application in person; they may not be mailed in, as there is paperwork to be completed at the time of submission.
3. Applications will not be put on the agenda for a public hearing if any of the above items or information is missing.
4. Code Enforcement & Development staff will post a notice of application received sign at the front property line two weeks prior to the public hearing.
5. The Zoning Board of Appeals Secretary will place a legal notice in the proper newspaper, advertising applicant's name, location, and request.
6. Town staff & Zoning Board of Appeals members may inspect the property to review the application request.
7. The next step is that the applicant or agent of the applicant must appear before the Zoning Board of Appeals on the scheduled date to explain what they would like to do. The meetings are held on the fourth (4th) Monday of each month starting at 7:30 P.M, unless otherwise noted.

At the hearing, any party may appear in person or by agent or attorney. The Board of Appeals may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or Determination, as in its opinion ought to be made for the premises, and to that end shall have all the powers of the officer from whom the appeal is taken. Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of such ordinances, the Board of Appeals shall have the power in passing upon appeals, to vary or modify the application of any of the regulations or provisions of such ordinance relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

8. A notification letter is mailed out by the Zoning Board of Appeals Secretary to each applicant stating the Board's decision. Several days may elapse after a meeting before notification is mailed out, depending on the number of applications and other duties that the ZBA Secretary is responsible to fulfill.

9. Should an applicant desire to know the outcome of the Board's action before receiving a formal notice, they may call the Zoning Board Secretary at 223-0770.

Minutes of Board meetings are not final until approved by the members at a future meeting and then filed with the Town Clerk.

10. Next step, if applicable, is to obtain a Building Permit from Office of Code Enforcement & Development.

In addition, it may be necessary to obtain a Certificate of Occupancy prior to occupying or starting operations. This can be verified by checking with the Office of Code Enforcement & Development at 223-0770.

WHEN IN DOUBT, PLEASE CALL THE ZONING BOARD OF APPEALS SECRETARY OR THE OFFICE OF CODE ENFORCEMENT & DEVELOPMENT AT 223-0770.

BURDEN OF PROOF AND STANDARD OF PROOF FOR AN AREA VARIANCE

When the applicant requests an area variance, the Board of Appeals is required to balance the benefits from the variance to the applicant with the detriment to the health, safety and welfare of the community.

Before the Zoning Board of Appeals can grant an area variance, the Board must consider the following factors and the applicant must offer competent proof as to each factor:

- A. Whether the variations requested are substantial in relation to the requirement set forth in the Zoning Ordinance
- B. Whether an undesirable change will be produced in the character of the neighborhood or whether a detriment to adjoining properties will be created, if the variance is granted
- C. Whether the benefit sought by the applicant can be achieved by some reasonable, alternate method, other than a variance
- D. Whether the alleged difficulty was self-created (this will not necessarily preclude the granting of an area variance)
- E. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district

Generally, in a request for an area variance, the property will continue to be used in a permitted manner, but some relief from the strict requirements of the ordinance is requested because the applicant cannot comply with the requirements without PRACTICAL DIFFICULTIES, if at all. An applicant for an area variance may want to construct an addition to their home, but may want to build closer to their property line than the zone allows; or they may have a lot in which they wants to construct a dwelling in a zone which requires a 20,000 sq. ft. lot and their lot has only 19,000 sq. ft. In each case, a variance would be needed, but can only be granted by the Board of Appeals, if the applicant meets their burden of proof to establish their entitlement to the variance.

Under N.Y.S. Town Law, the Zoning Board of Appeals is required to grant the minimum area variance. The Zoning Board of Appeals is also given statutory authority to impose reasonable conditions or restrictions which relate directly to the proposed use of the property. It is recommended that, as part of your application, you suggest reasonable conditions which will mitigate the impact of your variance. For example, it would be appropriate to propose planting shrubbery to lessen the impact of construction in a side setback.

In accordance with Town Law Section 267, Zoning Board of Appeals, and Section 26-7-b, Permitted action by Board of Appeals, the following sections apply to the granting of area variances.

267.1 Definitions: As used in this section:

b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

267-b-3. Area variances

(a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) 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 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 conditions in the neighborhood or district.

(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.

(c) The Board of Appeals in 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.