



TOWN OF PERINTON

1350 TURK HILL ROAD. FAIRPORT, NEW YORK 14450-8796
(585) 223-0770, Fax: (585) 223-3629, www.perinton.org

NUMBER _____ FEE _____

MEETING DATE _____

APPLICATION FORM - USE VARIANCE

Instructions to Applicant

1. Submit **original** and **11 (eleven)** copies of this application, **include short EAF form**. Type or print.
2. A non-refundable fee of \$_____ shall accompany this application. (verify fee with Zoning Board of Appeals Secretary)
3. **Twelve (12)** copies of a tape location or instrument survey map should be attached to the application.
4. **Twelve (12)** copies of a floor plan, **when necessary**, should be attached to the application.
5. A financial statement shall be completed for Use Variance applications.
6. Zoning Boards of Appeal in New York State are bound by court cases which have clearly set forth the factors to be considered by the Board in reviewing your request. These may seem unnecessary in many instances but by handling all cases under the same guidelines, you are assured equitable treatment by the Board.

1. APPLICANT

Name _____ Phone _____

Street & Number _____ City _____ Zip _____

Interest in Property: Owner _____ Lessee _____ Other _____

2. OWNER (if other than above)

Name _____ Phone _____

Street & Number _____ City _____ Zip _____

3. ATTORNEY (If represented)

Name _____ Phone _____

Street & Number _____ 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 Legal Description (subdivision and lot number)

6. SIZE OF PARCEL: _____

7. PRESENT USE OF PROPERTY: _____

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

9. APPLICATION FOR VARIANCE OF SECTIONS(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. In applying for a USE VARIANCE, you must meet the test of showing that a strict application of the zoning ordinance would impose an 'unnecessary hardship' on you. The criteria of 'unnecessary hardship' has special meaning in the law and was first set forth in the Court of Appeals case of OTTO vs. STEINKILBER, 282 NY71(1939) and further explained in the case of CROSSROADS RECREATION vx. BROZ, 4NY2d 39 (1958). In order to meet that test, you must explain by dollars and cents proof that your property cannot yield a reasonable return if used only for the purposes allowed in that zone; that your problem is due to unique circumstances which apply to your property and

not to general conditions in the neighborhood; and that your proposed use will not alter the essential character of the locality. In order to assist you in presenting your proof, this form separates each factor and allows you to address each one individually.

The applicant is to explain how his/her application meets the following criteria in order to secure the variance requested.

A. NO REASONABLE RETURN: If you believe that the subject property is not capable of yielding a reasonable Return on your investment in it if the property can only be used as presently zoned, then you must complete the attached financial statement (or a similar form) showing the amount which you paid for the subject property; the present value of the subject property; the expenses which are attributable to maintenance; the amount of the total taxes on the subject property; the amount of the mortgages and other liens on the property, together with the amount of the monthly payments; the income which you derive or can derive from the property; and, any other facts relevant to your particular circumstances in this matter.

B. UNIQUE CIRCUMSTANCES: You must show that your inability to secure a reasonable return from the subject property is a result of unique circumstances peculiar to the subject property and not to general conditions in the area which affect other properties in the area in the same way. The criteria involves unique circumstances affecting the property, not your personal circumstances.

C. HARDSHIP NOT SELF-CREATED: You must show that the inability of your property to yield a reasonable return is the result of factors other than those which you or your predecessors in title are responsible for.

D. CHARACTER OF THE AREA: You must show that using the subject property in the manner proposed by you will not be materially detrimental to surrounding uses and facilities, or be injurious to the enjoyment, use or development of neighboring properties or to the public welfare.

E. VARIANCE IS ONLY REMEDY: You must show that there is no other feasible means to you, other than

securing a use variance, by which the subject property can yield a reasonable return to you.

F. MINIMUM RELIEF: You must show that your application is for the minimum relief necessary to enable you to realize a reasonable return on your investment in the subject property:

13. Is this property in a Limited Development District? Yes _____ No _____

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 Owner: _____ Date: _____

Printed Name of Owner _____

Residential Use

STATEMENT OF INCOME & EXPENSE

Property Location _____ Date _____

A.) Property Data:

1. When was the property purchased by current owner? _____
2. Was a Certificate of Occupancy issued? _____
3. Is the property for sale? YES NO (if so) Purchase Price _____
4. Has property been listed? YES NO How Long? _____
5. Any offers received? YES NO Amount? _____
6. Amount of Mortgage? _____ Terms? _____

B.) Gross Annual Income: (Based on Permitted Use)

<u>Apt.#</u>	<u>Unit Size</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____

TOTAL RENTAL INCOME _____

Less Vacancy Factor (not to exceed 7%) _____

TOTAL GROSS INCOME _____

C.) Annual Expenses:

1. Annual Fixed Charges:
Real Estate Taxes (School and County) Insurance _____
Average Annual Interest (Over next 5 years) _____

2. Operating Expenses:

Electric _____

Fuel _____

Water _____

Trash Pickup _____

Miscellaneous (attach explanation) _____

3. Maintenance Expenses: (attach list) Repairs _____

General Building Maintenance Yard & Ground Care _____

Miscellaneous (attach explanation) _____

Total Annual Expenses _____

Profit or Loss _____

D.) Total Investment:

1. Down Payment _____

2. Capital Improvements (Attach List) _____

3. Principal Paid to Date (Original Mortgage less current principal balance) _____

TOTAL INVESTMENT
(Sum of D1, D2, D3) _____

E.) Rate of Return:

$$\frac{R/R = \text{Profit or (Loss)}}{\text{Total Investment}} = \underline{\hspace{2cm}}$$

This statement completed by _____ Date _____
Signature

Print name here
3/6/19

BURDEN OF PROOF AND STANDARD OF PROOF FOR A USE VARIANCE
*****UNNECESSARY HARDSHIP STANDARD*****

The burden of proof is always on the applicant to satisfy the Board of Appeals by competent proof that he is entitled to a USE VARIANCE. **The standard of proof is as follows:**

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.
2. The hardship is unique and does not apply to a substantial portion of the district or neighborhood.
3. The variance will not alter the essential character of the neighborhood.
4. The alleged hardship is not self-created.

The reasonable returns standard cannot be satisfied except by a dollars and cents proof in which the following is shown by competent proof:

- A. The amount paid for the property in question;
- B. Its present value (appraisal);
- C. Maintenance and upkeep expenses;
- D. Real estate taxes and assessments;
- E. The amount of any mortgage or other encumbrance;
- F. The gross and net income from the property in question.

When the property in question is in a zone or district which permits several different uses, the applicant **must** prove by competent evidence that none of those permitted uses will yield a reasonable return - each permitted use must be separately addressed. For more information, contact the Zoning Board of Appeals Secretary at 223-0770.

3/6/19

**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.