



Building Standards and Codes

New York State
Department of State
Division of Building Standards and Codes
 One Commerce Plaza, Suite 1160
 Albany, NY 12231-0001
 (518) 474-4073
 Fax: (518) 486-4487
 www.dos.ny.gov

Application for Variance or Appeal

This is an application for a variance or appeal of a local determination regarding applicable provisions of the New York State Uniform Fire Prevention and Building Code. To be deemed complete, the application must be signed by the petitioner or authorized agent, must contain all necessary documentation, be accompanied by the appropriate fee and been reviewed and accepted by a Regional Office.

The completed application including at least one (1) copy of all required documents must be submitted to the appropriate Regional Office. For Board of Review petitions, seven (7) additional copies of all documents shall be delivered to our Central Office in Albany at the address below, after Regional Office review. A hearing will be scheduled when all required documents are received.

Department of State
Division of Code Enforcement and Administration
 One Commerce Plaza
 99 Washington Avenue
 Albany, NY 12231-0001
 (518) 474-4073

PETITION NO: _____	
ROUTINE VARIANCE	<input type="checkbox"/>
BOARD VARIANCE	<input type="checkbox"/>
BOARD APPEAL	<input type="checkbox"/>
(FOR OFFICE USE ONLY)	

Mailing an application directly to our Central Office without first involving a Regional Office will result in a delay.

Certain variance requests may be treated as routine cases as determined by the Department in cooperation with the local code enforcement office. Provide two (2) copies of all required documents to the appropriate Regional Office.

PART 1 - GENERAL INFORMATION

PETITIONER

(Check one) Owner Agent Architect or Engineer Attorney

Name: _____

Title/Company: _____

Mailing Address: _____

Telephone: () _____ - _____ Fax: () _____ - _____

Email Address: _____

PROPERTY City Town Village of _____ County of _____

Address: _____ Tax Map No.: _____

<u>REGIONAL OFFICE PHONES:</u>	
BUFFALO (north)	(716) 847-7611
BUFFALO (south)	(716) 847-7612
CAPITAL	(518) 477-7497
FINGER LAKES	(315) 587-4563
KINGSTON	(845) 334-9768
LONG ISLAND	(631) 952-4909
NORTHERN NY	(518) 441-1895
PEEKSKILL	(914) 734-1347
ROCHESTER	(585) 533-1058
SOUTHERN TIER	(585) 437-5534
SYRACUSE	(315) 428-4434
UTICA	(315) 793-2526

<u>Owner if other than Petitioner</u>	<u>Code Enforcement Official</u>
Name: _____	Name: _____
Street Address: _____	Street Address: _____
City: _____ State: _____ Zip: _____	City: _____ State: _____ Zip: _____
Telephone: () _____ - _____	Telephone: () _____ - _____
Fax: () _____ - _____	Fax: () _____ - _____
Email: _____	Email: _____

Addresses for Department of State Regional Offices and tentative hearing dates can be found on our web site at www.dos.ny.gov or by calling (518) 474-4073 during normal business hours.

Application for Variance or Appeal

PART 2 – MINIMUM BUILDING INFORMATION

Height in Stories: _____ Gross Area (all floors): _____ Sq. Ft.: _____ Construction Type: _____
 Occupancy: One-Family Dwelling Two-Family Dwelling Townhouse Accessory Structure
 Other _____

PART 3 – APPLICABLE BUILDING CODE AND RELIEF REQUESTED (check all that apply)

- Title 9 - Uniform Fire Prevention and Building Code – Applicable 1/1/1984 to 12/31/2002
- Title 19 - Uniform Fire Prevention and Building Code – Applicable 1/1/2003 to present
 - Part 1220 Residential Part 1221 Building Part 1222 Plumbing Part 1223 Mechanical
 - Part 1224 Fuel Gas Part 1225 Fire Part 1226 Property Maintenance
 - Part 1227 Existing Building
- Multiple Residence Law (MRL)

One the chart below, list the specific code sections which are the subject of your variance request. (use separate sheet if necessary)

- Variance Appeal Appeal/Variance

CODE SECTION(S)	TOPIC	RELIEF SOUGHT

PART 4 – FILING

NON-REFUNDABLE FILING FEES (please review fee schedule with regional office)

- Routine (administrative) variance review process..... \$ 50
- Board of Review Petitions
 - Construction, alteration or renovation of residential or agricultural occupancies no more than one structure; no more than 2 dwelling units..... \$ 50
 - Construction, alteration or renovation of other buildings or structures having a gross area of:
 - not more than 8,000 square feet..... \$ 100
 - more than 8,000 square feet but not more than 25,000 square feet..... \$ 300
 - more than 25,000 square feet but not more than 50,000 square feet..... \$ 500
 - more than 50,000 square feet..... \$1,000
 - Maintenance or use of buildings or materials and not otherwise provided for above..... \$ 100

Checks must be made payable to **New York State Department of State**. Amount of check:\$ _____
 I make this application pursuant to 19NYCRR Part 1205 and I assert under the penalties of perjury that the information furnished by me in support of this application is true and correct to the best of my knowledge.

Previous Action

Has any previous action related to the subject property been taken by the Department of State or another administrative agency or a court? (Include any formal interpretations, decisions, orders or informal advisories issued by the Department of State, Division of Housing and Community Renewal or the Department of Labor).

- No Yes (describe below and provide relevant documents)
- I request that a hearing before the Board of Review be scheduled on this application for variance or appeal.

SIGNATURE: _____ **DATE:** _____

**For routine variances, STOP HERE, do not proceed to Page 3
 For Board of Review variances or appeals, PROCEED to PART 5 on Page 3**

Application for Variance or Appeal

PART 5 – ADDITIONAL CONTACT INFORMATION

For Board of Review Variances provide the following names and addresses if applicable:

<u>Architect or Engineer (if any):</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (____) _____ - _____ Fax: (____) _____ - _____ Email: _____	<u>Fire Marshal or Inspector</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (____) _____ - _____ Fax: (____) _____ - _____ Email: _____
<u>Fire Department Contact Person</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (____) _____ - _____ Fax: (____) _____ - _____ Email: _____	<u>Other Interested Person or Organization</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (____) _____ - _____ Fax: (____) _____ - _____ Email: _____

(attach additional pages if necessary)

PART 6 – BUILDING STATUS AND PROJECT INFORMATION

A. OCCUPANCY CLASSIFICATION (check all that apply for mixed use buildings)

1. Residential Code of New York State [effective 1/1/2003] (see Section 101.2)

- One-Family Dwelling
 Two-Family Dwelling
 Townhouse

2. Building, Fire, Plumbing, Mechanical, Fuel Gas or Property Maintenance Code of New York State [effective 1/1/2003]

(see Section 303 of the Building Code of New York State)

- Assembly A-1 A-2 A-3 A-4 A-5
 Business B
 Educational E
 Factory F-1 Moderate Hazard F-2 Low Hazard
 Hazardous H-1 H-2 H-3 H-4 H-5
 Institutional I-1 I-2 I-3 I-4
 Mercantile M
 Residential R-1 R-2 R-3 R-4 One or Two-Family Dwelling Townhouse
 Storage S-1 Moderate Hazard S-2 Low Hazard
 Utility U

Uniform Fire Prevention and Building Code – Title 9B [effective 1/1/1984 – 12/31/2002]

Residential

- A1 One-Family Dwelling A2 Two-Family Dwelling
 Multiple Dwelling B1 B2 B3 B4

Commercial

- C1 Business C2 Mercantile
 C3 Industrial C3.1 Low Hazard C3.2 Moderate Hazard C3.3 High Hazard
 C4 Storage C4.1 Low Hazard C4.2 Moderate Hazard C4.3 High Hazard
 C5 Assembly C5.1 C5.2 C5.3 C5.4 (religious) C5.5 Educational
 C6 Miscellaneous (describe): _____

3. Multiple Residence Law: No. of Stories _____ No. of Dwelling Units _____ Approx. Age: _____ years

Application for Variance or Appeal

B. BUILDING DESCRIPTION AND PROJECT INFORMATION

Construction Type: If more than one is applicable, specify where each occurs in the building; consult the building code or your building official for assistance.

Residential Code of New York State Wood Frame Other: _____

Building Code of New York State [Section 602] _____

Uniform Fire Prevention and Building Code [Section 704] _____

Statistics: Number of stories above a basement: _____ (do not count unfinished attic)

Total floor area of largest story (square feet) _____

Gross floor area of entire building (square feet) _____

Date of last Certificate of Occupancy (if applicable) _____

Project Type/Status:

- New Building
- Addition to Existing Building
- Repair
- Alteration Level 1
- Alteration Level 2
- Alteration Level 3
- Change of Occupancy
- Other _____
- In Planning
- No Official Allegation of Non-Compliance
- Work in Progress Start Date: _____ / _____ / _____
- Work Completed

Permit/Compliance Status:

- Building Permit Application Date: _____ / _____ / _____
- Building Permit Date: _____ / _____ / _____
- Certificate of Occupancy Date: _____ / _____ / _____
- Orders or Denials
- Inspection Report

Note: Attach all Pertinent Documents

PART 7 – SUBJECT OF THE PETITION (appeal and/or variance, both may be requested)

APPEAL (check if appealing a code official's determination)

An appeal is a request for a Board of Review to review any order or determination or the failure within a reasonable time to make any such order or determination by a Code Enforcement Official. Describe the order or determination and explain specifically why you believe the order or determination; or failure to act is incorrect, improper or otherwise unwarranted. This should include specific explanations relative to code sections cited.

Specific Code Section(s) in Question: _____

A. An order or determination or the failure to make said order or determination in a timely fashion; or the failure to issue a permit or other document in a timely fashion is appealed. A copy of the order or determination is attached as **EXHIBIT** _____.

Briefly describe the order or determination (additional sheets may be used if necessary) _____

B. Attached as **EXHIBIT** _____ are the reasons why the order or determination should be reversed or modified or why other relief should be fashioned so as to do justice among the parties.

Application for Variance or Appeal

VARIANCE (check if requesting a variance)

REQUIRED ARGUMENTS FOR A VARIANCE

The Board of Review may only grant a variance or modification on the basis of one or more of the following six reasons. To be eligible for a variance you must document that at least one applies to the requested variance or modification.

Strict compliance with the sections described above would entail practical difficulties, unnecessary hardship or would otherwise be unwarranted because such (check the statements that apply and provide appropriate documentation):

- 1. would create an excessive and unreasonable economic burden; Reasons are attached in EXHIBIT _____
- 2. would not achieve its intended objective; Reasons are attached in EXHIBIT _____
- 3. would inhibit achievement of some other important public policy; Reasons are attached in EXHIBIT _____
- 4. would be physically or legally impracticable; Reasons are attached in EXHIBIT _____
- 5. would be unnecessary in light of alternatives which, without a loss in the level of safety, achieve the intended objective of the code; List alternatives and describe in EXHIBIT _____
- 6. would entail a change so slight as to produce a negligible additional benefit consonant with the purpose of the code. Reasons are attached in EXHIBIT _____

PART 8 – DOCUMENTS (for board cases, provide at least 8 copies)

Required Documents: (supplemental to the petition form)

Summary: Describe the project, present conditions, proposed work, details of the appeal and/or variance requests along with support of the grounds for relief you checked above.

Site Plan: Indicate size and location of all structures on the premises (if applicable).

Building Plans: Drawings in sufficient quantity and quality to clearly describe the requested variance or modification. Such drawings may include dimensioned floor plans, elevations, sections and construction details. Any drawings submitted should be identical to those submitted to the code enforcement official or be noted otherwise.

Supplementary Documents: Submit such materials as photographs, charts, reports, detailed descriptions or any other information that can be used to more fully describe the nature of the request. List any such supplementary materials by Exhibit number:

EXHIBIT NUMBER	DESCRIPTION

A hearing will not be scheduled until all required materials are received by the Division of Code Enforcement and Administration and the appropriate Regional Office has confirmed that the application is complete. All materials must be received at least three (3) weeks prior to a hearing date.



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Uniform Fire Prevention and Building Code Board of Review Petition Instructions

Before you Begin: Prior to completing a petition for the Board of Review, you must first contact the Division’s regional representative to begin the process. In many cases, an appointment for a site visit is necessary. Failure to first contact a regional representative can result in a delay in the processing of the variance. Our regional office locations and phone numbers can be viewed at: http://www.dos.ny.gov/DCEA/reg_off_cty.html.

Part 1

- Petitioner – The petitioner is the person who signs the form. Indicate whether the petitioner is the owner, agent, etc. Attorneys, architects, engineers, agents and representatives appearing on behalf of any person, firm, corporation or association and for which a fee is received, must file a notice to that effect as required by Executive Law, Section 166. A simple letter stating such is sufficient.
- Property – The actual location of the property, not a mailing address. For a property located in a village or city give the village or city name. For a property not located in a village or city give the town name. If the property has a name such as “Municipal Tower” include that name.
- Owner – The name given here is the owner of record of the subject property.
- Code Enforcement Official – Give the name and address of the primary code enforcement agency involved in the subject of the petition.

Parts 2, 3 and 6

- The code enforcement official should be able to help provide this information. The listing of code sections involved should be as complete as possible. The Department of State can furnish, on request, a free copy of relevant code sections and information on purchasing a copy of the complete code. A free online version of the Codes of New York State may be viewed at: <http://publicecodes.cyberregs.com/st/ny/st/index.htm>.
- Copies of all applications, permits, certificates, orders, etc. that are relevant to the petition must be included with the application.

Part 4

- All petitions to a regional Board of Review shall be accompanied by the following fees:
 Petitions involving construction, alteration or renovation of residential or agricultural occupancies involving no more than one structure with no more than two dwelling units \$ 50
- Petitions involving construction, alteration or renovation of other buildings and structures:
 Not more than 8,000 square feet \$ 100
 More than 8,000 square feet but less than 25,000 square feet \$ 300
 More than 25,000 square feet but less than 50,000 square feet \$ 500
 More than 50,000 square feet \$1,000
- Petitions related to maintenance or use of buildings or materials or any petition not otherwise provided for above.... \$ 100
- Enclose a check, money order or voucher (*government agencies only*) for the appropriate fee payable to the **New York State Department of State**.
- PETITION FEES ARE NON-REFUNDABLE.
- Please provide at least one petition with an original signature.

Part 5

- It is important to provide complete information in this section to ensure that affected parties are notified.
- If architects or engineers are involved in this matter include their names and addresses.
- If there is a separate fire inspector or fire marshal not listed in **Part 1** provide this information.
- The name and address of the responding fire department should be available from the code enforcement official or municipal clerk.
- Include civic organizations such as historical societies or societies for the disabled, government agencies not otherwise listed, neighbors, tenants, co-owners or their association, or others whose interest may be affected by the Uniform Fire Prevention and Building Code Board of Review Petition Instructions, property or subject matter at issue. There is no need to repeat any names and addresses which are otherwise provided.

Uniform Fire Prevention and Building Code Board of Review Petition Instructions

Part 7

- An appeal is a request for a Board of Review to review any order or determination or the failure within a reasonable time to make any such order or determination by an administrative official charged with the enforcement of or purporting to enforce the Uniform Code.
- A variance is a request to deviate from one or more provisions of the Uniform Code.
- To obtain a variance a showing must be made which will permit a board to make a finding upon one or more of the six grounds stated in 19 NYCRR 1205.4 and restated on the petition form. On a separate page or pages state the reasons which support the petition keeping the following points in mind: If ground one is argued, show by dollars and cents proof not that it is more expensive to comply but that the expense is burdensome to the point of being undue. If ground two is argued, show how strict compliance would not obtain that provision's (not your) intended objective. If ground three is argued, show the origin of the competing policy and why the Code should yield to that policy. If ground four is argued, fully describe the impediments and constraints to strict compliance and show why they cannot be overcome. If ground five is argued, clearly state the proposed alternatives to the Code requirement and show that they are equally safe and proper and do not substantially adversely affect provisions for health, safety, and security. If ground six is argued, show that the incremental change required to comply results in an insubstantial advantage to the Code's objective.
- Be sure to include copies of all relevant documents.

Part 8

- Ordinarily a site plan and building plans should be submitted with the petition. If it is felt that the case can be adequately presented without plans, it is suggested that Codes Division be called. Please note that the State Education Law requires that most plans be signed by and stamped with the seal of a New York State licensed engineer or architect. Exceptions to the requirement for signed and stamped plans include agricultural buildings, renovations or additions costing under \$10,000 and residential structures 1,500 square feet or less in area. If relief is being sought based in part on the historical nature of the building, full documentation of any relevant designations should be provided.
- The comparison should be made with the latest copy of the site plan or building plans which have been submitted to the code enforcement agency. Any difference should be explained. Attach additional sheets as necessary.
- Include court actions, other actions as local zoning related requests whether approved or denied and especially other appearances before these boards.