

# USE VARIANCE APPLICATION

## CITY OF GENEVA, NEW YORK

A Use Variance is defined as the authorization by this city's **Zoning Board of Appeals (ZBA)** for the use of land for a purpose that is otherwise not allowed or is prohibited by the applicable zoning regulations. No such variance shall be granted by the ZBA without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary hardship. A statement of hardship, as described in the following pages, shall be prepared by the applicant and submitted to this board for approval.

Clearly, the burden of proof is on the applicant to show that a particular local zoning law has caused unnecessary hardship by providing proof of each of the four elements required in the statement of hardship. It is not the duty of the ZBA itself to establish this proof for the applicant. The ZBA must find each and every element and cannot dispense or ignore any one of the elements. Lastly, the ZBA, in granting of use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proved by the applicant and at the same time, preserve and protect the character of the neighborhood and health, safety and welfare of the community.

### **Imposing conditions on area variances:**

This city's Zoning Board of Appeals (ZBA) has the authority to impose reasonable conditions and restrictions when granting a Use Variance if they are directly related to and incidental to the proposed use of the property. Once the ZBA has imposed a condition on an applicant, it shall be complied with before the City of Geneva, New York can issue a building permit and/or a certificate of occupancy. The purpose of these conditions is to minimize the adverse impact of the variance on the neighborhood or community. These conditions can be related to fences, safety devices, landscaping, screening and access roads, traffic, outdoor lighting and noises, and enclosures of buildings, emission of odors, dust, smoke, refuse matter, vibrations, parking and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area.

### **Schedule:**

Please refer to the City Of Geneva website, [www.cityofgenevany.com](http://www.cityofgenevany.com), under Forms, for the Zoning Board schedule of application deadlines for the specific date when applications are due.

### **Contacting the City's Superintendent of Building & Zoning**

Prospective applicants are strongly advised to consult with this city's Superintendent of Building & Zoning before submitting their application. The coordinator will explain the approval process and make the applicants aware of regulations that apply to their projects.

The coordinator's main telephone number is (315) 789-5311. Most applications can be downloaded from the City of Geneva's website at [www.cityofgenevany.com](http://www.cityofgenevany.com), under Forms.

## Application process:

1. The application for a use variance must be completed and presented before the ZBA by a certified public accountant, lawyer and/or registered design professional licensed in the State of New York. The property owner shall also be present to answer any questions pertaining to the proposed use.
2. The following documents shall be submitted with all applications:
  - a. A complete application form.
  - b. A written statement of hardship.
  - c. Scaled drawings of proposed project in an 11x17 format, or, if necessary to maintain legibility, a larger format that are signed and stamped by a registered design professional. These drawings shall include, but are not limited to, the following:
    - i. Site plan.
    - ii. Floor plan(s).
    - iii. Elevations.
    - iv. Any other details deemed necessary to explain this project.
  - d. Survey maps of the property signed and stamped by a land surveyor licensed in the State of New York.
  - e. Legal proof of control of the property by ownership.
  - f. New York State Environmental Assessment Form. The type of environmental assessment form to be submitted will depend on the scope of work and proposed use described in the application. Please refer to the New York State Department of Environmental Conservation's website at [www.dec.ny.gov/permits/357.html](http://www.dec.ny.gov/permits/357.html) for further information as well as printing required forms.
  - g. Application fee:
    - i. One hundred fifty dollars (\$150) for any property.
3. (7) copies of the completed application, required documentation and application fee shall be submitted to the City's Code Enforcement Office prior to the application deadline date that is located on the city website, [www.cityofgenevany.com](http://www.cityofgenevany.com), under Forms. Such copies shall also be collated and stapled for distribution. Please understand that the City of Geneva shall not accept any applications past the deadline date due to the timeframe needed to execute a coordinate review with other applicable agencies and/or City entities.

**Approval by other City Entities and/or Regulatory Agencies:**

Please understand that any approval(s) granted by the ZBA for this variance does not imply approval of drawings that are required to be reviewed and approved by other City entities and/or regulatory agencies. Questions about building permits and other regulations can be addressed by the City's Code Enforcement Office at (315) 789-5311.

# PREPARING YOUR STATEMENT OF HARDSHIP

## CITY OF GENEVA, NEW YORK

To obtain a Use Variance, an applicant must show, to the satisfaction of the City's Zoning Board of Appeals (ZBA), which strictly adhering to the Zoning Code's limitations on the use of his/her property, would result in an "unnecessary hardship." To this end, a written statement of hardship shall be completed by an approved professional and presented to the ZBA as part of the application for a use variance. In such statement of hardship, the professional must address all criteria listed below.

In deciding whether to grant a use variance, the City's ZBA must determine that all the following criteria are met by the proposed use of the property that is the subject of the use variance request:

1. *The applicant must demonstrate that under applicable zoning regulations, the applicant is deprived of all economic use or benefit from the property in question, which deprivation must be established by competent financial evidence.* In order to satisfy the "deprivation of all economic use or benefit standard", the applicant must furnish competent financial evidence to the ZBA establishing:
  - a. The amount paid for the land in question.
  - b. Its present market value.
  - c. Annual maintenance expenses.
  - d. Annual land taxes and school taxes.
  - e. The unpaid balance of mortgages and other encumbrances.
  - f. The annual income from the land in question for each and every use permitted in this Zoning District.
  - g. Proof that this actual or estimated return for each permitted use is not reasonable under the circumstances.
  - h. If the subject premises are the subject of a contract of purchase contingent upon the grant of a use variance, then the applicant must establish the fair market value of the property independent of the purchase price, because in the absence of such proof, it will be presumed that the purchase price included a premium over fair market price at the time of purchase in expectation of favorable zoning relief. (Professional Park v. Town of Bedford, 60 N.Y. 2d 492 (1983))
  - i. The rate of return for the current use and all other uses permitted in the zoning district.
  - j. The rate of return deemed necessary by applicant in order to gain a return equal to comparables in the neighborhood.

2. *The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zoning district.* For example, the applicant shall prove that the hardship is not so general throughout the zoning district as to require the conclusion that if all parcels similarly situated were granted variances, the zoning of the district would be materially changed.
3. *The hardship condition is not created by actions of the applicant.* Please understand that if the hardship complained of is self-imposed, then the variance must be denied by the City's ZBA. For example, legal cases hold that a party who acquired land for a use prohibited by a zoning ordinance has created his/her own hardship even if he/she did not actually learn of the prohibition at the time of the purchase.
4. *The granting of the variance will not adversely affect the essential character of the neighborhood.* For example, the applicant shall describe accurately and fully the entire neighborhood as well as how the proposed use will not adversely impact the essential character of the neighborhood. The use of tax maps, aerial photographs or ground level photographs may help satisfy this criterion.
5. *The granting of the variance will not adversely affect the public health, safety or general welfare.* The City's Zoning Board of Appeals shall make environmental quality review (SEQR) determination prior to making a decision for a use variance in accordance to 6 NYCRR Part 617. Please understand that SEQR applies to a ZBA's consideration of use variance request due to the fact that it is a land use decision. Unlike area variances, where in certain limited circumstances they are classified as Type II actions, there are no Type II categories corresponding to use variances. Use variances will be classified as either Type I or Unlisted actions. Please refer to the New York State Department of Environmental Conservation's website at [www.dec.ny.gov/permits/357.html](http://www.dec.ny.gov/permits/357.html) for further information as well as printing required forms.

Please understand that the request for a use variance places the burden of proof upon the applicant in accordance to General City Law. If the applicant does not satisfy each of the above-mentioned criteria, the variance must be denied by the City's Zoning Board of Appeals (ZBA).

# USE VARIANCE APPLICATION FORM

## CITY OF GENEVA, NEW YORK

Date of Application: \_\_\_\_\_

Please type or print clearly.

### Contact Information:

Property owner(s): \_\_\_\_\_  
Property owner(s) telephone no.: \_\_\_\_\_  
Property owner(s) email: \_\_\_\_\_  
Mailing address of property owner: \_\_\_\_\_  
\_\_\_\_\_

Approved professional's name: \_\_\_\_\_  
Professional's telephone no.: \_\_\_\_\_  
Professional's email: \_\_\_\_\_  
Mailing address of professional: \_\_\_\_\_  
\_\_\_\_\_

### Real Property Information:

Address of real property: \_\_\_\_\_  
Tax parcel identification number: \_\_\_\_\_  
Zoning district: \_\_\_\_\_  
Current use of real property: \_\_\_\_\_

### Brief Summary of Use Variance Request:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Supporting Documentation (check all that apply):

- ☐ Completed application form (7 copies)
- ☐ Detailed statement of hardship (7 copies)
- ☐ Scaled drawings signed and stamped by a registered design professional (7 copies)
- ☐ Survey maps of the property signed and stamped by a land surveyor (7 copies)
- ☐ Legal proof of ownership (7 copies)
- ☐ New York State Environmental Assessment Form (7 copies)
- ☐ Application Fee (Please make all checks payable to the "City of Geneva, New York.")

Property Owner's signature \_\_\_\_\_ Date: \_\_\_\_\_  
Property Owner's name: \_\_\_\_\_

