

ZONING BOARD OF APPEALS USE VARIANCE

TO THE APPLICANT:

It is important to understand that decisions by the Zoning Board of Appeals (ZBA) are based on a body of law, starting with legislation by the State of New York, and developed by court decisions. Most of the “business” of the Mendon ZBA has to do with applications for variances. Please read below to better understand the variance process. The more complete your answers, the more facts you can supply, the easier it is for the ZBA to make a well-reasoned decision.

VARIANCE – EXPLANATION

A Zoning variance is essentially a waiver of the application of specific zoning requirements to a specific parcel of land and may be authorized if certain conditions exist. Each person seeking a variance has the legal burden of showing that these conditions are met.

There are two distinct kinds of variances: Use Variance and Area Variance. A variance which allows an activity not permitted by the Zoning Ordinance is called a **USE VARIANCE**; for example, a variance permitting commercial activity in a residential zoning district. All other variances are grouped together and called **AREA VARIANCES**; for example, a variance permitting a structure to be closer to the road than allowed. The legal requirements for a **USE VARIANCE** are different from and are stricter than those for an **AREA VARIANCE**.

The Code Enforcement Officer has determined that you require an **Use Variance**.

CIRCUMSTANCES FOR GRANTING A USE VARIANCE

As of July 1, 1992, a Zoning Board of Appeals must discover the facts of each variance application and use the following tests, as set forth by the Legislature of the State of New York:

USE VARIANCE

The use variance applicant has the burden to show that the applicable zoning requirements have caused unnecessary hardship with respect to the applicant's property.

1. Deprivation of a reasonable economic return from the property in question as demonstrated by competent financial evidence.
2. That the particular hardship is unique in that it is not shared by a substantial portion of the district or neighborhood.
3. That if the use variance is granted, it will not alter the essential character of the neighborhood.
4. The alleged hardship has not been self-created.

The applicant must prove, to the satisfaction of the ZBA, each part of the four-part test in order to be entitled to a use variance.

CONDITIONS

Zoning Board of Appeals are expressly authorized to impose reasonable conditions and restrictions which relate to the proposed use of the property, including the period of time the variance is to be in effect. The law also requires that the board grant the minimum variance which the board determines "necessary and adequate and at the same time preserves and protects the character of the neighborhood and the public health, safety and welfare of the community".

PROCEDURES FOR MAKING APPLICATION
TO THE ZONING BOARD OF APPEALS
FOR A HEARING ON A USE VARIANCE

1. Questions on procedures should be directed to the Clerk of the Zoning Board of Appeals (ZBA).
2. A variance requires a public hearing. When applying, a completed application and a \$500.00 application fee must be submitted. The application shall be signed by the owner of the property, one who has a direct interest in the property or his/her agent.
3. At the time you make application, you will need to present a site plan, in duplicate, that will become a permanent part of the record. It should be either a tape location map, an instrument survey map or drawing showing accurate dimensions. The site plan shall include at least the location of all existing buildings and accessory structures (barns, garages, sheds, etc.).

Your site plan will not be returned to you. It is required for the legal record as part of the hearing and for referral to the County Planning Board and Town Conservation Boards, if appropriate.

4. When the application and site plan are received, the ZBA Clerk will notify the Chairman of the Zoning Board of Appeals. The ZBA Clerk will contact you and arrange a mutually agreeable date for your hearing. The Board meets on the second and fourth Thursday evenings of the month, in the Town Hall, if it has business to transact.
 - A. The Zoning Board of Appeals attorney will write a legal notice, from your application, to be published in the Town's legal advertising publication. At least three weeks should be allowed between the date you submit your completed application and the date of the hearing.
 - B. You will need to obtain a sign from the ZBA Clerk to be posted in a conspicuous location on the property. This sign gives notice of a variance request and must be posted continuously for at least ten days prior to the hearing. This is your responsibility and should be attended to as soon as you have a hearing date.

5. You or a representative of your choice must make the presentation at the hearing. The purpose of the hearing is for the Board to hear all the facts in the case so it can render a fair decision. Anyone at the meeting will be permitted to express his/her opinions about the application. Each application is considered on its own merit. You should be prepared to address the following in your presentation:

- A. You must show that the economic hardship (e.g. inability to obtain a reasonable return on the property) has resulted or would result unless a variance is granted.
- B. Dollar figures must be presented to prove hardship.
- C. The hardship must have been created as a result of the zoning code, and not be self-created.
- D. The situation should be unique to the property.

6. The Zoning Board must render a decision within sixty-two days of the hearing. The applicant will be notified of the Board's decision in writing.

APPLICATION TO THE ZONING BOARD OF APPEALS
FOR A USE VARIANCE
TOWN OF MENDON

NAME: _____
ADDRESS: _____
PHONE: () _____

Location of property: _____

Name of nearest intersection: _____

Direction of property from nearest intersection: _____

Use District (see Zoning Map): _____

Tax Account No.: _____

Decision by Code Enforcement Officer

1. Proposal is in violation of Section _____ of the Zoning Ordinance.
2. I have interpreted Section _____ of the Zoning Ordinance to mean _____.

Signed: _____

An Appeal is taken to the Zoning Board of Appeals for the granting of the following relief:

- () Review of the Code Enforcement Officer's Interpretation of the Ordinance
() A permit for a Use Variance

Was there a previous appeal? YES () NO ()

If yes, give date and decision on that appeal. Also give the names of the previous owner if other than yourself.

Please state briefly what you wish to do.

Please describe thoroughly how your requested variance would affect each of the criteria listed below. Feel free to attach additional comments, drawings, maps etc. that may help explain your situation and assist the Zoning Board of Appeals in making a determination.

Use Variance Criteria

1. Deprivation of a reasonable economic return from the property in question as demonstrated by competent financial evidence.

2. That the particular hardship is unique in that it is not shared by a substantial portion of the district or neighborhood.

3. That if the use variance is granted, it will not alter the essential character of the neighborhood.

4. The alleged hardship has not been self-created.

Is the property located within an agricultural district containing a farm operation or within 500' of a farm operation in an agricultural district? _____yes _____no

If yes, please complete the attached Agricultural Date Statement in accordance with Section 283a of the New York State Town Law.

By signing this Application, I am giving my permission to the members of the Zoning Board of Appeals to enter my property for the purpose of inspection with regards to this application.

Signature of Applicant

Date

AGRICULTURAL DATA STATEMENT

In accordance with Section 283-a of the New York State Town law, the Town of Mendon will use the data in this statement to assist in evaluating the impacts of proposed development projects on farm operations in Agricultural Use Districts.

A. Name of Applicant: _____
Mailing Address: _____

B. Description of proposed project: _____

C. Project Location: _____

D. Tax Account Number: _____

E. Number of total acres involved in project: _____

F. Number of total acres presently in tax account: _____

G. Is any portion of the subject site currently being farmed?

Yes _____ If so, how much? _____ acres

No _____

H. Please identify who is farming the subject site: _____

I. Does this person _____ own or _____ rent the land. (please check one)

J. The Slope of this site is _____. This information may be obtained from the Town Building Department.

K. Please indicate what the intentions are for use of the remainder of the property.

L. Who will maintain the remainder of the property not being used for the development?

M. Other Project Information. Please include information about the existing land cover of the site, any known impacts on existing stormwater drainage (including field tiles), or other significant plant materials.

N. Please make a copy of the overall (original) parcel from the Town Tax Maps. Identify the sire of this application by placing an "x" on it. Include the tax map with this completed agricultural data statement.

FOR TOWN USE ONLY – Has this agricultural Data Statement been referred to the County Planning Agency? _____ Yes _____ No

If yes, please give date of Referral: _____

If yes, please give County Referral Number: _____

If no, please state reason: _____

Name of Official Completing Form

Date

AGRICULTURAL DATA STATEMENT

In accordance with Section 283-a of the New York State Town law, the Town of Mendon will use the data in this statement to document that notification has been made to those property owners whose property contains farm operations and is located within five hundred feet of the boundary of the property upon which the project identified is being proposed.

The following persons, their respective mailing addresses and tax account identification numbers were mailed written notice of this pending application. Copies of the Town of Mendon's agricultural data statement and notice of the _____ Board Meeting date for this application were also included with this mailing.

	<u>Name</u>	<u>Address</u>	<u>Tax Account No.</u>
1.			
2.			
3.			
4.			
5.			
6.			
7.			

I, _____, Clerk of the Town of Mendon _____ Board, do hereby certify that the above cited persons were given notice of this proposed application in accordance with the provisions of New York State Town Law, Section 283-a(3).

Clerk Signature

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

Part 1 - Project and Sponsor Information			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO
			YES
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO
			YES
3.a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?			
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation service(s) available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing potable water: _____ _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places? b. Is the proposed action located in an archeological sensitive area?	NO	YES	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO <input type="checkbox"/>	YES <input type="checkbox"/>
I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____		

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)