

Town of Nelson - Zoning Board of Appeals
Application for a Use Variance

To be completed by the Zoning Enforcement Officer:

Name of Applicant _____ Date _____
Address of Applicant _____ Phone# _____
Owner (if different) _____
Location of Property _____
Zone _____ Property Tax Map # _____
Section(s) of Zoning Law involved _____
Variance(s) requested _____

To be completed by the applicant:

According to Section 371 (b) of the Town of Nelson Land Use and Development Regulations (revised May 1995), the Board of Zoning Appeals is empowered to grant a "... variance as to permitted facilities and uses ...".

A use variance is permission granted to a parcel of land so that it may be used for something not allowed by zoning.

Section 373 defines the Requirements for Granting Use Variances. New York State Law specifies, in New York Town Law paragraph 267-b section 2(b), the requirements for granting a use variance:

"No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created."

Note that all four of the above tests must be satisfied in order to grant a use variance.

Paragraph 267-b section 2(c) of the New York State Town Law continues: "The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

The Zoning Board of Appeals must consider each of the four points above in deciding whether a use variance may be granted. To help the Board to do that job, please answer the following questions to the best of your ability:

1) What do you want to do? (Examples: "Have a mobile home", "Operate a Day-Care Center", etc.)

(Section 221 of the Town of Nelson Land Use and Development Regulations contains the lists of uses allowed in each zone.)

2) Why do you need a use variance? (Example: "The property is located in a Residential A zone, and Day-Care centers are not listed in the permitted uses.")

Town of Nelson - Zoning Board of Appeals
Application for a Use Variance

3) Could the property reasonably be used for any use which is permitted in that zone? (Yes or No) _____

Why or Why Not? _____

4) Does this same hardship apply to a substantial portion of the neighborhood? (Yes or No) _____

Why or Why Not? _____

5) If this variance is granted, would the character of the neighborhood be changed? (Yes or No) _____

Why or Why Not? _____

6) Was this difficulty created by you or your actions? (Yes or No) _____

Why or Why Not? _____

7) Did you know that this condition existed when you acquired the property? (Yes or No) _____

Why or Why Not? _____

8) **(Optional)** Please include (write below, or attach to this application) any additional information which you feel is important and helpful for the Board to understand your situation. You may include photographs, topographic maps, statements from neighbors, or any other information.

9) If appropriate, attach to this application a site plan map showing what you want to do.

The map should include:

- (a) An arrow showing the (approximate) direction of North.
- (b) A map scale.
- (c) The location(s) of existing and proposed structures, parking areas, roads, utilities, rights-of-way, etc.
- (d) The dimensions of existing and proposed structures, parking areas, roads, and setbacks, etc.
- (e) Surrounding land parcels (within 200 feet of property lines), and their usage and zoning.

Signature of Applicant _____