



**BZA APPLICATION SUBMISSION CHECKLIST**

SITE ADDRESS \_\_\_\_\_

APPLICANT \_\_\_\_\_

This checklist ensures that Applicant(s) have provided all **required documents** with the BZA Application, prior to its submission to the City of Albany. Applicant(s) are responsible for submitting BZA Applications in **pursuant to §375 of the City Code**. Failure to submit the materials listed below will result in an incomplete BZA Application, and will not be accepted or approved. The Department of Planning and Development will determine the adequacy of the BZA Application submitted within **ten (10) business days** of its receipt.

<b>REQUIREMENTS</b> For All BZA Applications	<b>Applicant Checklist</b>	<b>Not Applicable*</b>	<i>For City Planning Review</i>
<b>Submit (1) HARD COPY of ALL Materials</b> listed below to: City of Albany <b>Department of Planning &amp; Development</b> 200 Henry Johnson Boulevard Albany, New York 12210	<input type="checkbox"/>		<input type="checkbox"/>
<b>Rejection Letter from Buildings &amp; Regulatory Compliance</b> .....	<input type="checkbox"/>		<input type="checkbox"/>
<b>BZA Application Form</b> .....	<input type="checkbox"/>		<input type="checkbox"/>
<b>Property Deed</b> .....	<input type="checkbox"/>		<input type="checkbox"/>
<b>Owner Consent Form</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Photographs</b> .....	<input type="checkbox"/>		<input type="checkbox"/>
<b>Floor Plans</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Site / Plot Plan</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Building Elevations</b> .....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>BZA Application Fee</b> .....	<input type="checkbox"/>		<input type="checkbox"/>
<b>Electronic Submission to <a href="mailto:zoning@albanyny.gov">zoning@albanyny.gov</a></b> <b>PDF Document(s):</b> BZA Application and <b>ALL Materials</b> listed below. Images formatted no larger than <b>11" x 17"</b> .....	<input type="checkbox"/>		<input type="checkbox"/>

\* See BZA Application for applicable materials to submit.

**FOR AGENCY USE ONLY:**

<b>Date Accepted:</b>	<b>SEQRA Classification:</b>
<b>Case #:</b>	<b>County 239 Referral:</b>
<b>Public Hearing Date:</b>	<b>Reviewed by:</b>



## USE VARIANCE

### Instructions for Applicants

Any party that is unable to comply with the use provisions of the City of Albany Zoning Ordinance may file an application with the Board of Zoning Appeals within **thirty (30) days** of the date of the issuance of a **letter of denial by the Department of Buildings & Regulatory Compliance**.

Upon submission of your application, the Director of Planning or his designee will review the application for completeness. The Department will make every effort to respond with a determination of completeness within **ten (10) business days** of receipt. Complete applications will be assigned a public hearing date and transmitted to the Board of Zoning Appeals for consideration.

Pursuant to [§375-18](#) of the City Code, a public hearing cannot be scheduled until a complete application has been received and is available to the public. If your application is found to be incomplete, you will be mailed a letter listing the deficiencies or additional information requested. An incomplete application will remain on file for a period not to exceed **thirty (30) days**, or until withdrawn, at which point it will be returned to the applicant and a new submission will be required.

### Documents Required for a Complete Application Submission

1. **Application Submission Checklist** – An application checklist is provided for the convenience of the applicant(s) and the City to ensure that the standard application submission requirements are being met. The applicant shall initial that each required item has been submitted and provide a copy of the completed checklist with the application.
2. **Rejection Letter** – A rejection letter is received when, upon submission of a Zoning & Building Permit application, it is determined that a building or use proposal does not meet the provisions of the [City Zoning Ordinance](#).
3. **Application Forms** – Standard forms to be fully completed are attached to this document. These forms ask the applicant(s) to supply some basic information such as property characteristics and contact information. They also require that the applicant(s) provide a written statement in support of each of the statutory criteria that the Board of Zoning Appeals must consider in evaluation of your appeal.
4. **Ownership / Consent** – Documentation of ownership of the property that is the subject of the appeal must be provided. Property deeds can be obtained from the Office of the Albany County Clerk. If the applicant is not the property owner, the owner(s) of record must consent to the filing by endorsing the owner consent form provided with the application.
5. **Photographs** – Photographs are required that depict the existing conditions at the property that is the subject of the appeal. The date that the photographs were taken and the name of the photographer shall be noted.
6. **Drawings** – Submittal of the following additional documents is required on a project-by-project basis as set forth within the following matrix:

<b>Additional Document Matrix</b>	Floor Plans	Site / Plot Plan	Building Elevations
New Construction	X	X	X
Reuse of Existing Building	X		
Parking Lot or Outdoor Use		X	

- **Site / Plot Plan** – A graphic representation, drawing, or sketch that shows the arrangement, layout and design of the proposed improvements. The plan shall be drawn to scale and include dimensions. Key elements of a site plan are the location of the property boundaries, proposed and/or existing structures, vegetation, landscaping or screening, utility runs, roadways and topography of the project site.
- **Floor Plans** – A graphic representation, drawing, or sketch, of the proposed relationships between rooms, spaces and other physical features of the interior levels within the applicable structure. Floor plans must be drawn to scale and include dimensions.
- **Building Elevations** – A drawing or rendering showing the external façade of the front, rear and sides of the applicable structure. Elevation drawings must be drawn to scale and include dimensions.

### **Additional Requirements**

The City's Department of Planning and Development may request additional information or clarification of any matter pertaining to your application. Conversely, the appellant may voluntarily provide additional information that it believes is relevant to the appeal. Examples include the following:

- A project narrative providing a more detailed description of the appeal or other relevant information, such as a more detailed description of proposed alterations, relevant history of the property, a description of proposed impacts and/or mitigation measures.
- A business plan describing the nature of a proposed business operation.
- Completion of an Environmental Assessment Form that is required for the project pursuant to the State Environmental Quality Review Act (SEQRA)
- Federal, State, County or Local licensing paperwork.

### **Public Hearing / Legal Notification**

Each application to the Board of Zoning Appeals is the subject of a public hearing. The applicant or a representing agent must attend the public hearing to describe the proposal and answer any relevant questions of the Board; a public hearing on an application will not go forward unless the applicant and/or their representing agent is present. The applicant will be provided an opportunity at the hearing to respond to any questions or comments about the proposal by the Board or the general public. Any party wishing to testify in support of, or in opposition to, the proposal will have the opportunity to do so at the public hearing.

The Planning Department sends out legal notification to the applicant, the applicable Neighborhood Association and Common Council Representative for the area, property owners within a 250-foot radius of the property and other interested parties. The legal notice describes the nature of the application and includes the date, time and location of the public hearing. A copy of the application is also posted on the City's website. It is incumbent upon the applicant to discuss the application with any relevant or affected parties prior to the public hearing.

In addition to the mailed notification, the applicant is required to post one or more signs (provided by the Planning Department) in/on visually conspicuous locations of the property that is the subject of the appeal. Signs are required to be posed a minimum of **ten (10) days** prior to the public hearing. It is assumed that the applicant will make a reasonable effort to replace postings that are either removed or substantially damaged. The Board may postpone the hearing if adequate evidence exists that the requirements for the public posting have not been met.

### **Decisions**

The Board will make a determination on each appeal, likely within **sixty (60) days** of the public hearing. A copy of the Board's decision will be mailed to the applicant and filed in the Office of the City Clerk. If approved, the decision may be subject to certain conditions, which may need to be fulfilled prior to a Certificate of Occupancy being issued for the use. Unless otherwise specified by the Board, these decisions shall expire and become null and void if the applicant fails to

obtain any necessary zoning, building, or other permits or otherwise comply with the conditions of the decision within **six (6) months** of the date of signature.

**Additional Resources**

*Zoning Board of Appeals*

James A. Coon Local Government Technical Series

New York State Department of State

[https://www.dos.ny.gov/lg/publications/Zoning Board of Appeals.pdf](https://www.dos.ny.gov/lg/publications/Zoning_Board_of_Appeals.pdf)

*Beginner’s Guide to Land Use Law*

Land Use Law Center

Pace University School of Law

<http://www.law.pace.edu/sites/default/files/LULC/LandUsePrimer.pdf>

City of Albany BZA Schedule & Agendas

<http://www.albanyny.gov/Government/Departments/DevelopmentandPlanning/BZA/BZAAgendas.aspx>

**APPLICATION SUBMISSION**

Submit the following to the **Board of Zoning Appeals** c/o the Department of Planning & Development

**(1) HARD COPY** of this Application and all required materials (*see BZA Submission Checklist*)

**(1) DIGITAL (.pdf)** copy via email to [zoning@albanyny.gov](mailto:zoning@albanyny.gov).

**Application Fee**

A fee shall be included with each application for a Use Variance, as follows:

Use Variance ..... \$ 400.00

Please make checks or money order payable to the **“City of Albany, Treasurer.”**

**BZA Contact**

City of Albany Board of Zoning Appeals

c/o **Department of Planning & Development**

200 Henry Johnson Boulevard, Suite 3

Albany, New York 12210

[zoning@albanyny.gov](mailto:zoning@albanyny.gov)

(518) 465-6066



**City of Albany**  
**Board of Zoning Appeals Application Form**

File this Application with the City of Albany  
**Department of Planning & Development**  
 200 Henry Johnson Boulevard | Albany, New York 12210  
[zoning@albanyny.gov](mailto:zoning@albanyny.gov)  
 (518) 465-6066

All Applications are reviewed for completeness before scheduling the BZA case public hearing. Applications are considered complete when all required supplemental documents and fees are received. *(See Submission Checklist)*. Notice of the case public hearing will be mailed to the Applicant, adjacent property owners, and other interested parties. **The Applicant(s), or his/her representative(s), shall appear at the public hearing to substantiate the application.**

**REGARDING THE PREMISES AT** \_\_\_\_\_

**PROPERTY OWNER** \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

**APPLICANT** \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

**AUTHORIZED AGENT** \_\_\_\_\_

**AFFILIATION** \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

- REQUEST:**
- |   |  |
|---|--|
| <input type="checkbox"/> SPECIAL USE PERMIT | <input type="checkbox"/> AMENDMENT             |
| <input type="checkbox"/> USE VARIANCE       | <input type="checkbox"/> INTERPRETATION        |
| <input type="checkbox"/> AREA VARIANCE      | <input type="checkbox"/> ADMINISTRATIVE APPEAL |
| <input type="checkbox"/> PARKING LOT PERMIT | <input type="checkbox"/> EXTENSION             |

Does any New York State officer or employee of the City of Albany or County of Albany, have an affiliation or interest in the Applicant or this Application?  YES  No

If **yes**, provide the name, address, and nature of the affiliation or interest of the employee:

I, the undersigned **APPLICANT**, hereby authorize the agent to bring the application herein before the Board of Zoning Appeals of the City of Albany. I certify that the information and facts set forth in this application are true to the best of my knowledge and belief.

**APPLICANT SIGNATURE** \_\_\_\_\_ **DATE** \_\_\_\_\_



**OWNER'S CONSENT FORM**

The undersigned, \_\_\_\_\_, being the owner(s) of record for the property commonly known as \_\_\_\_\_ hereby authorizes \_\_\_\_\_ to file zoning and/or land development petitions or request the applicable permits for the aforementioned address. This consent shall remain in effect until revoked by a written statement filed with the Department of Planning and Development of the City of Albany, New York.

The undersigned, being the owner(s) of the land to which this application relates hereby:

1. Consent to the making of this application and hereby grants the City of Albany the power of entry to carry out inspections in relation to any land or work to which this application relates.
2. Consent to the City of Albany displaying and copying this application and supporting documentation, including designs, for the purpose of obtaining, when necessary, public comment.
3. Certify that the copyright of such supporting documentation, including designs, is vested to me/us.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 201 \_\_\_\_ under penalty of perjury of the laws of the State of New York.

(To be signed by all record owners)

Print Name: \_\_\_\_\_

Title\*: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title\*: \_\_\_\_\_

Signature: \_\_\_\_\_

\*If the owner of record is a corporation or other entity, fill in the office held by signatory.



## USE VARIANCE STANDARDS

A Use Variance is the authorization by the Board of Zoning Appeals (“the Board”) for the use of land for a purpose which is prohibited by the applicable regulations of the Zoning Ordinance (Chapter 375 of the City Code). Each zoning district is provided a Schedule of Use Controls within the Ordinance, which lists the permitted principal, accessory and special uses.

As the Use Variance grants permission to the owner to do what the use regulations prohibit, this power of the Board is exercised very carefully lest there be serious conflict with the overall zoning scheme for the community. The showing required for entitlement to a Use Variance is therefore intended to be a difficult one, and there must be proof that a particular property suffers from a singular disadvantage resulting from the imposition of the zoning regulations.

To obtain a Use Variance, the applicant must demonstrate that the applicable zoning regulations have caused an unnecessary hardship – e.g. a deprivation of an owner's right to the beneficial use of property that results when a zoning ordinance makes it impossible to receive a reasonable return from the property. To prove unnecessary hardship, the applicant must establish that the requested variance meets each of the following four statutory conditions, as set forth within statutes (see Albany City Code, §375-26; NYS General City Law§ 81-b).

### [1] REASONABLE RETURN

When considering a request for a use variance, the Board requires a showing by the applicant that applicable zoning regulations have resulted in a deprivation of the owner's right to the beneficial use of property and have made it impossible for the owner to receive a reasonable rate of return from the property. The property owner must demonstrate that a reasonable return would be unachievable for **each** and **every** permitted (including special permit uses) use under the zoning regulations for the district in which the property is zoned. Said lack of return must be documented with competent financial evidence. It is insufficient for the applicant to show only that the desired use would be more profitable than the uses permitted under the zoning.

The rate of return is the annual income from the investment expressed as a proportion (usually a percentage) of the original investment. In assessing “reasonableness,” the Board considers the legitimacy of the return given the circumstances of the particular case.

**Attach a statement, with supporting evidence, describing the hardship(s) that deprive the property owner of a reasonable economic use or return from the property in question. Competent financial evidence must be provided, such as pro-forma financial statements or expert testimony that demonstrates the suggested lack of return. Failure to do so will result in a denial of the application.**

### [2] UNIQUENESS

A hardship must be unique to the affected property and must not be generally applicable to a substantial portion of those properties within the applicable zoning district. An alleged hardship is not unique if the stated hardship is common to all or multiple properties within the zoning district. In the case that a hardship exists which is not unique, the appropriate remedy is for the property owner to make an application to the local legislature for rezoning of the affected area rather than to grant a singular advantage to a particular property.

**Attach a statement, with supporting evidence, describing how the stated hardship is unique to the affected property and does not apply to a substantial portion of the district or neighborhood. Include evidence where necessary to support your statements or conclusions.**

### **[3] CHARACTER OF THE NEIGHBORHOOD**

An applicant must demonstrate that the granting of the variance will not alter the essential character of the neighborhood. In making this determination, the Board will consider the intensity of the proposed development as compared to the existing and permitted uses in the neighborhood. The Board will also weigh such considerations against applicable long-range planning objectives set forth for the affected area.

**Attach a statement, with supporting evidence, describing how the granting of the requested variance will not alter the essential or planned character of the neighborhood. Include evidence where necessary to support your statements or conclusions.**

### **[4] SELF-CREATED**

If the hardship has been self-created by the applicant, it will be subject to denial. One cannot acquire land for a prohibited use and thereafter seek a variance on the grounds of hardship. Whether the purchaser actually knew about the use restriction is not relevant; it was his/her responsibility to discover such restrictions.

**Attach a statement, with supporting evidence, describing why the stated hardship is not self-created in nature. Include evidence where necessary to support your statements or conclusions.**

### **[5] MINIMUM NECESSARY**

The Board, when granting a variance, shall grant the minimum variance that it shall deem necessary and adequate to relieve the hardship while also preserving and protecting the character of the area and the health, safety and welfare of the community. This may not necessary be in accord with the applicant's request. The Board may also impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property.

**Attach a statement, with supporting evidence, describing why the variance being sought is the minimum necessary that can be granted to relieve the hardship, including any proposed conditions to alleviate or minimize the impact of granting the variance.**