

# Town of Salina

## Department of Planning & Development

201 School Road  
Liverpool, New York 13088

315) 451-0492 ♦ FAX (315) 457-4785 ♦ E-Mail codes@salina.ny.us

Bernard D. English, Director

### ZONING BOARD OF APPEALS INSTRUCTIONS FOR APPLICATIONS

**NOTE:** Before an application can be considered ready for submittal to the Town of Salina Zoning Board of Appeals, the applicant must provide *all applicable* items noted below:

- APPLICATION** (Completely filled out and signed by the applicant **and** the owner)
- PROPERTY SURVEY** (Drawn to scale and representing the property as it currently exists, if survey is over 1 year old, provide a survey affidavit)
- SITE PLAN** (Drawn to scale, maximum 1"=50' of the proposed project)
- FLOOR PLANS** (Drawn to scale, showing the proposed layout)
- EXTERIOR SIGNAGE DRAWING** (Showing any existing and proposed signs on the property, where applicable.)
- SHORT ENVIRONMENTAL ASSESSMENT FORM** (Completely filled out and signed)
- APPLICATION FEE** (The application fee must accompany the application. This fee is non-refundable)

Area variance (one- or two-family residential (sheds, pool and fences):	\$75.00
Area variance (one- or two-family residential (all others):	\$125.00
Area variances multiple dwellings and non-residential uses:	\$400.00
Use variances (all uses)	\$500.00
Interpretations to Zoning Ordinance:	\$50.00

- The above must be submitted at least two (2) weeks before the date of the public hearing. (See meeting schedule.)
- The applicant must come to the public hearing ready to prove the need for the granting of the variance or the purpose of the interpretation. (See attached sheet with burden of proof information)
- For additional assistance please call 451-0492. Office hours are from 9:00 AM to 4:30 PM daily.

Town of Salina 201 School Road, Liverpool, NY 13088 <b>ZONING BOARD OF APPEALS</b> <b>APPLICATION</b>	Case# _____ Fee \$ _____ Receipt # _____ Ck# _____
	Date Received _____ Meeting Date: _____

Nature of Appeal <input type="checkbox"/> Area Variance (one- two-family residential) <input type="checkbox"/> Area Variance(Commercial) <input type="checkbox"/> Interpretation <input type="checkbox"/> Use Variance	
Project Name	
Project Address	Zip Code
Tax Map No.	Zoning District

**CONTACTS**

Owner Name	Telephone	E-mail
Owner Address		
Applicant Name	Telephone	E-mail
Applicant Address		
Plan Preparer	Telephone	E-mail
Preparers Address		
Attorney	Telephone	E-mail
Attorney Address		
Contact Person	Telephone	E-mail
Contact Person Address		

**APPLICATION DETAILS**

Existing Use	Proposed Use
Describe need for variance/requested interpretation:	
Is property in a floodway or floodplain? <input type="checkbox"/> Yes <input type="checkbox"/> No	Is property in a federal or state wetland? <input type="checkbox"/> Yes <input type="checkbox"/> No

I the undersigned, do hereby affirm, under the penalty of perjury, that the information contained in this application is true and accurate to the best of my knowledge and belief. I further understand that intentionally providing false or misleading information is grounds for immediate denial of my application. I further understand that I, or a designated representative, must be present at such hearing held by the Planning Board to consider this application.

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Owner (if not applicant): \_\_\_\_\_ Date: \_\_\_\_\_

## **USE VARIANCE – “UNNECESSARY HARDSHIP STANDARD”**

The New York State Legislature has recently amended Town Law, § 267 to specify more particularly the proof required to be furnished by a Use Variance applicant before a Use Variance can be granted by the Zoning Board of Appeals (ZBA) which reads as follows:

### **Use variances.**

(a) The board of appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of such local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the local law.

(b) 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 (1) 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; (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.

(c) 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 proved 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.”

Your attention is especially invited to Standard No. 1 set out in (b) above:

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*.

What is meant by “deprivation of all economic use or benefit”? This involves the purchase price and current market value of the property . It must also involve “*rate of return*.”

### **WHAT YOU MUST PROVE**

A. In order to satisfy the “deprivation of all economic use or benefit standard”, the applicant must furnish *competent financial evidence* to the ZBA establishing:

1. The amount paid for the land in question.

2. Its present market value.
3. Annual maintenance expenses.
4. Annual land taxes and school taxes.
5. The unpaid balance of mortgages and other encumbrances.
6. The annual income from the land in question for each and every use permitted in this Zoning District.
7. Proof that this actual or estimated return for each permitted use is not reasonable under the circumstances.
8. 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).
9. The rate of return for the current use and all other uses permitted in the zoning district.
10. The rate of return deemed necessary by applicant in order to gain a return equal to comparables in the neighborhood.

Proof of present market value and annual income can be best established through the testimony of an expert witness.

Where more than one use is permitted in the zoning district, the applicant must prove the projected annual income from each and every permitted use, and must prove that this annual return is not reasonable as compared to the return by like property in the community.

If, on the basis of this dollars and cents proof, the ZBA determines that the applicant will be deprived of all economic use or benefit of the property, then the applicant has proven the first part of the unnecessary hardship standard.

How can an applicant best prepare such proof for his case? By engaging a professional such as a licensed real estate appraiser (not a real estate salesman or broker) whose sole profession is appraising.

B. ESSENTIAL CHARACTER: In addition, the applicant must prove by competent evidence that the proposed use will not alter the essential character of the neighborhood.

Describe accurately and fully the entire neighborhood. Use of tax maps, aerial photographs or ground level photographs may help.

C. UNIQUENESS: The applicant must prove that the hardship 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. In other words, if the hardship is common throughout the area, then perhaps legislative action by the Town Board in the nature of a zone change or zoning ordinance amendment may be in order.

D. SELF-CREATED HARDSHIP: If the hardship complained of is self-imposed, then the variance must be denied. The cases hold that a party who knowingly acquires land for a use prohibited by the Zoning Ordinance creates his own hardship. Even if he did not actually learn of the prohibition at the time of the purchase he is nevertheless chargeable with knowing the restrictions on use.

E. PERSONAL PROBLEMS: Is the plight of the owner due to personal problems as opposed to use of the land or buildings? If due to personal problems, then the use variance must be denied.

Your attention is especially invited to the new law which states:

“Which deprivation must be established by *competent financial evidence*.”

The bottom line in Use Variances is that the burden of proof is on the applicant. If the applicant does not satisfy *each* of those above standards, then the variance must be denied.

## **Use Variance Application**

### ***Statement of Unnecessary Hardship***

Explain **how** the request conforms to EACH of the following requirements (additional pages may be attached):

**1. Reasonable Return.** The subject property is not capable of yielding a reasonable rate of return if used for its present use or developed, redeveloped or used for any other use permitted in the district in which such property is located. There is no means other than the granting of the variance by which the property can yield a reasonable return. Such inability to yield a reasonable return must be shown by specific fact (dollars and cents) from an expert or authority in economic deprivation, not the unsupported opinion of the owner or those appearing for the owner.

*"The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence"*

**2. Unique Hardship.** The inability to yield a reasonable return results from a unique circumstance peculiar to the subject property which does not apply to or affect other properties in the immediate vicinity that are subject to the same regulations. The personal situation of the owner shall not be considered unique.

*"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. Essential Character of the Neighborhood.** The granting of the variance will not be materially detrimental to the public health, safety, and welfare or injurious to the enjoyment, use or development of neighboring properties or the community. Applicant must demonstrate that the proposed use will not change the essential character of the neighborhood with regard to such physical and environmental elements such as parking, traffic, signage, landscape, architectural and structural features, location and dimensions of buildings, any by-products of proposed use such as noise or smoke, and any other impacts upon adjacent or neighboring lands.

*"The requested use variance, if granted, will not alter the essential character of the neighborhood"*

**4. Not Self-Created.** The inability to yield a reasonable return is not the result of any action by the owner or predecessors in title. The applicant must show that when the property was purchased the zoning restrictions from which a use variance is now sought were not in existence or that some other change or factor has occurred that has resulted in an inability to yield a reasonable return. Otherwise, the hardship is self-created.

*"The alleged hardship has not been self-created"*

**Town of Salina**  
**DISCLOSURE AFFIDAVIT**

This affidavit is a part of and must be completed and attached to every application, petition, request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit.

STATE OF NEW YORK )  
COUNTY OF ONONDAGA) ss.:

1. \_\_\_\_\_, being duly sworn, deposes and says that (s)he is:

\_\_\_\_\_  
(applicant, petitioner, corporation officer, property owner, etc.)

2. That deponent has read and is familiar with the provisions of the General Municipal Law, Section 809 which states:

1. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of a plat, exemption from a plat or official map, license or permit, pursuant to the provisions or any ordinance, local law, rule or regulation constituting the zoning and planning regulations of a municipality shall state the name, residence and the nature and extent of the interest of any state officer or any officer or employee of such municipality is a part, in the person, partnership or association making such application, petition or request (hereinafter called the applicant) to the extent known to such applicant.

2. For the purpose of this action an officer or employee shall be deemed to have an interest in the applicant when (s)he, his/her spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:

- a) is the applicant, or
- b) is an officer, director, partner or employee of the applicant, or
- c) legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant, or
- d) is a party to an agreement with such an applicant, express or implied, whereby (s)he may receive any payment or other benefit, whether or not for services rendered, or contingent upon the favorable approval of such application, petition or request.

3. Ownership of less than five percent (5%) of the stock of a corporation whose stock is listed on the New York or American Stock Exchanges shall not constitute an interest for the purposes of this section.

4. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

5. That no Town of Salina officer, employee or a relative of either, as defined in Section 809 General Municipal Law has any interest in this application.

-OR-

If a Town of Salina officer, employee or relative of either as defined in Section 809 General Municipal law has any interest in this application, the full particulars are provided on an attached sheet.

\_\_\_\_\_ Date: \_\_\_\_\_, 20 \_\_\_\_  
(Individual Signature)

\_\_\_\_\_  
(Corporate Name)

\_\_\_\_\_  
By (Officer)

\_\_\_\_\_  
(Mailing address of applicant)

\_\_\_\_\_ (Telephone Number)      \_\_\_\_\_ (Facsimile Number)

(Individual Acknowledgement)

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing application for Site Plan Review and Approval, and he duly acknowledged to me that he executed the same.

\_\_\_\_\_  
Notary Public

(Corporate Acknowledgement)

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came and appeared \_\_\_\_\_, to me known, who being by me duly sworn did depose and say that he resides at \_\_\_\_\_, that (s)he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing application for Site Plan Review and Approval; Subdivision Plat and Approval; Variance or Interpretation that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public

**TOWN OF SALINA  
PLANNING AND DEVELOPMENT  
FEE SCHEDULE**

<b>BUILDING PERMIT FEES</b>		<b>Base Fee</b>	<b>Plus</b>	<b>Variable</b>
<b>Building Permits:</b>				
	Residential (per dwelling unit)	\$ 25.00	\$ 7.00	Per \$1000 value
	Commercial (per tenant space)	\$ 50.00	\$ 7.00	Per \$1000 value
	Multiple Dwelling (per dwelling unit)	\$ 50.00	\$ 7.00	Per \$1000 value
	Industrial (per tenant space)	\$ 50.00	\$ 7.00	Per \$1000 value
<b>Where work started before permit is obtained</b>	<i>Double fee noted above</i>			
<b>Renewal of building permit</b>	25% of original fee: Minimum Fee	\$ 25.00		
<b>Plan Reviews:</b>	<i>(Where no building permit is issued)</i>			
	50% of fee noted above: Minimum Fee	\$ 25.00		
<b>Refund</b>	Where no work is begun on a permit 50% of fee			
<b>Certificate of Occupancy</b>	Permanent	\$ 25.00		
	Temporary (maximum 30 days)	\$ 25.00		
<b>Certificate of Compliance</b>	Where building permit is in effect	\$0.00		
	Where no building permit is in effect			
	1- or 2-family dwelling (per unit)	\$ 50.00		
	All other occupancies/users (per unit)	\$ 100.00		
<b>Signs</b>	Sign Permits: (Base fee per sign)	\$ 50.00	\$ 1.00	per 1 sq ft
<b>Fences (per Chapter 115)</b>	1- and 2-family uses	\$ 25.00		
	all other uses/occupancies	\$ 100.00		
<b>Microfilming Fee</b>	Where plans are not submitted in electronic format (per page)	\$ 5.00		

**TOWN OF SALINA  
PLANNING AND DEVELOPMENT  
FEE SCHEDULE**

<b>FIRE INSPECTION / OPERATING PERMIT FEES</b>		<b>Base Fee</b>		
<b>Fire Safety/Property Maintenance Inspections</b>	(Inspections required by Title 19, NYCRR)			
	Commercial / Industrial			
	Assembly (occupancy 99 or less, operating permit waived)			
	Buildings not exceeding 5000 square feet	\$ 75.00		
	Buildings 5,001- 20,000 square feet	\$ 100.00		
	Buildings 20,001-50,000 square feet	\$ 125.00		
	Buildings over 50,000 square feet	\$ 150.00		
	Multiple Family (3 Dwelling Units and up)			
	1-3 Buildings (includes 1 reinspection)	\$ 75.00		
	4-6 Buildings (includes 1 reinspection)	\$ 100.00		
	7-10 Buildings (includes 1 reinspection)	\$ 150.00		
	11 or more buildings refer to above fee schedule			
	Reinspection over the 1 included	\$ 25.00	Each	
<b>Operating (Fire Code) Permits</b>				
	Assembly (Fire Inspection Fee noted above)	\$ 75.00		
	Hazardous materials (storage, handling, use)	\$ 100.00		
	Hazardous processes	\$ 75.00		
	Pyrotechnic devices (per event)	\$ 75.00		
	Hazardous use or occupancy	\$ 75.00		
	Other (per event)	\$ 75.00		
	Fireworks (per event)	\$ 75.00		
	Witness existing system test (alarm/sprinkler)	\$ 25.00		

**TOWN OF SALINA  
PLANNING AND DEVELOPMENT  
FEE SCHEDULE**

<b>ZONING / PLANNING FEES</b>			
<b>Variances</b>	(Application fee not refundable)		
	Residential (1- and 2-family uses)		
	Sheds, pools, fences	\$ 75.00	
	All other uses	\$ 125.00	
	Multiple dwellings and other non residential uses	\$ 400.00	
	All use variances	\$ 500.00	
<b>Interpretations</b>	Variance ordinance	\$ 100.00	
<b>Zoning Compliance Letters</b>		\$ 75.00	
<b>Site Plan/Special Permit Review</b>			
	Application for initial site plan review only	\$ 500.00	
	Application for special permit only	\$ 500.00	
	Application for combined site plan and special permit	\$ 900.00	
	Application for site plan or special permit for existing site 20,000 sq. ft. or less	\$ 250.00	
	Application for combined site plan and special permit for existing site 20,000 sq.ft. or less	\$ 400.00	
	Engineering and legal deposit (separate check)		
	Minor (revision to existing without stormwater pollution prevention plan)	\$ 2,500.00	
	Major (New or Major site work to existing) site plan	\$ 5,000.00	
	Existing site 20,000 sq.ft. or less	\$ 500.00	
<b>Subdivisions</b>			
	Lot Line Adjustment	\$ 75.00	
	Re-subdivision - Residential (Over 3 lots with not streets or utilities)	\$ 500.00	
	Engineering & legal fee (Separate check) [PER LOT]	\$ 1,000.00	
	Minor Residential Subdivision		
	4 lots or less with no new streets/utilities	\$ 500.00	
	Engineering & legal fee (Separate check) [PER LOT]	\$ 1,000.00	
	Major Residential Subdivision (More than 4 lots or with new streets/utilities)	\$ 500.00	
	Engineering & legal (BASE)	\$ 5,000.00	\$ 75.00 per lot created
	Non-residential Subdivision	\$ 500.00	
	Engineering & legal (BASE)	\$ 5,000.00	\$ 500.00 per lot created