

**Village of Bronxville
200 Pondfield Road
Bronxville, New York 10708**

REQUIREMENTS FOR ZONING BOARD OF APPEALS

REQUIRED PRIOR TO PROCESSING APPLICATION

- Filing Fee of \$300.00-(The applicant will also be responsible for the cost of hearing Transcript)
- Completed Application Form
- Copy of Denial letter or Violation Notice
- Copy of Survey
- Building Plans including:
 - Site Plan showing required Zoning Setbacks
 - Floor Plans
 - Elevation Views
 - Photographs
- Any additional information pertinent to the Appeal

NOTE: One COMPLETE collated application must be received a minimum of 21 business days prior to the hearing date. Applicants are encouraged to file the original submission as soon as possible to ensure timely placement on the agenda. Once approved you will be provided with a list of neighboring properties to be notified. Notification of the hearing date shall be given to all persons listed or current resident by Certified Mail or Registered Mail. Proof of Service is required prior to the time of hearing. An additional Ten (10) complete collated packets containing all the above information must be submitted, 10 days prior to hearing.

If there is additional information for the Board to consider after the original submission it must be forwarded through the Building Department Office. Failure to direct all information through the Building Department could delay the hearing process.

Once the Board decision has been filed with the Village Clerk's Office, all persons aggrieved may institute Article 78 Appeal proceedings within thirty days. The applicant will be responsible for the cost of transcribing the hearing and will be provided with a copy of the transcript. The current fee is \$5.25 per page, this is subject to change.

The above is intended to be a summary of the Zoning Board of Appeals requirements. If there are additional or specific questions please contact this office at 914-337-7338.

GUIDELINES FOR APPLICANTS

All applicants or representatives of applicants, for relief before the Village Zoning Board of Appeals should be aware of the procedure involved in applying for and receiving a determination.

1. An applicant must have received notice of a formal decision or action by the enforcement officer as a prerequisite to taking an appeal before the Board.
2. The applicant or his representative must present proof that is sufficient to allow the Board under the applicable legal standards to grant relief.

The following questions and answers should help:

Q: Who may apply to the Board relief?

A: Anyone who stands to be “aggrieved” (i.e. injured or harmed) by decisions of the enforced officer. Commonly the “aggrieved” party is the property owner who has been refused a permit, but an “aggrieved” party could also be a neighboring landowner who believes the officer’s decision in issuing a permit was improper and will injure him.

Also, anyone who has received notice of an enforcement action (such as a cease and desist order) is eligible to take an appeal to the board

Q: What types of relief can the Board Grant?

A: Basically, the Board can grant (or deny) two types of relief.

First, the Board may affirm, modify or reverse the decision of the enforcement officer, based on the evidence and testimony placed before the Board.

Second, the Board may grant or deny a variance.

Because of the range of powers the Board has, it is essential that the applicant or his representative know what type of relief to request when making application to the Board.

If the applicant (either the landowner or a third party) believes the officer’s decision was incorrect, the appropriate request is for reversal.

If the applicant believes that the officer’s decision was correct under the Zoning Code, then the appropriate request is for a variance.

It is also possible for an applicant to make a request prior to the hearing date, for a reversal, and in the same application ask for a variance if the reversal is not granted.

Q: What must the applicant be prepared to do?

A: When application for relief is filed, the Board will notify the applicant of a hearing date. At any time before or during the hearing, the applicant may submit written evidence and/or briefs supporting this case. Written material should be submitted with the application, or as soon thereafter as possible, so that it can be

sent to Board members prior to the hearing. Anyone else having an interest in the outcome of the case is also entitled and, in fact, encouraged, to submit written evidence or briefs.

At the public hearing if at all possible the Board will offer the applicant and/ or his representative the opportunity to present his case for relief. The applicant may testify himself, call his own witnesses, or submit written evidence, including drawings and graphics.

Because an appeals is an adversarial proceeding, the Board will offer the Village an opportunity to present reasons why the original decision was correct (if the request is for reversal) or why a variance should not be granted (if the request is for a variance). Each side will be given the opportunity to question the other, or the other's witnesses. In addition, the Board members themselves may ask question.

After the applicant and the Village have presented their cases, any other interested persons will be given the opportunity to speak and/ or submit written material. If necessary, the hearing may be adjourned and continued at a later date.

When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed. At this point, the board may begin discussing the case, reach a decision or may postpone a decision until a later date. If the Board deems it necessary, the hearing may be reopened, either at that same session or at a later date. Once the hearing is finally closed, the Board must issue its decision and file it with the Village Clerk.

BURDEN OF PROOF

The applicant for relief should be prepared to make a case for relief under the rules established by the laws and the courts of New York State. If requesting a simple **REVERSAL**, the applicant must prove that the enforcement officer's decision was incorrect according to a proper interpretation of the Village Zoning Code.

When requesting a **USE VARIANCE**, that is permission to establish a use of his property not otherwise permitted in his zoning district, the applicant must prove that denial of the variance will cause "Unnecessary hardship" This means he must show:

- (a) That the property is incapable of earning a reasonable return on investment if used for any of the permitted uses in the district (actual "dollars and cents" proof must be submitted);
- (b) That the property is being affected by unique or at least highly uncommon, circumstances;
- (c) That the variance, if granted will not alter the essential character of the neighborhood; and
- (d) That the spirit and intent of the Zoning Laws will be preserved.

Please see exhibit below for order in which documents should be submitted.

Village of Bronxville
Zoning Board of Appeals

Sample Exhibit Listing Sheet

- | | |
|--------------------|--|
| Exhibit # 1 | ZBA Application form and any supplemental attachments. (Required) |
| Exhibit # 2 | Copy of Zoning Denial Letter (Required) |
| Exhibit # 3 | Architectural Drawings (Drawings to be bound and bear original architect seal and signature) (Required) |
| Exhibit # 4 | Copy of current land survey. (Required) |
| Exhibit # 5 | Signed Affidavit of Mailing and certified mail receipts. (Required) |
| Exhibit # 6 | Photographs showing the proposed area (Recommended) |
| Exhibit # 7 | Letters from adjoining properties. (Recommended) |
| Exhibit # 8 | Additional information for the Boards consideration (Recommended) |

AREA VARIANCE

When requesting an **AREA VARIANCE** that is permission to build on an otherwise restricted portion of the property, (such as in the required front side or rear yards or above the permitted height or in excess of the required lot coverage), the Board must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or Village. When considering a request for an Area Variance the Board will consider:

- (1) whether granting the variance will result in an undesirable change in neighborhood character or detriment to nearby properties will occur;
- (2) Whether there is some feasible way to achieve the same benefit to the applicant without an area variance;
- (3) Whether the requested area variance is substantial;
- (4) Whether there will be any adverse physical or environmental effects or impacts on the neighborhood or district if the variance was granted;
- (5) Whether the applicant created the condition that gave rise to the need for variance:

The Board will grant the minimum area variance that it deems necessary and adequate to accomplish the applicant's goal while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community. The Board may impose conditions, restrictions and time periods upon its grants of area variances, as long as they are consistent with the spirit of the local code and are imposed to minimize any adverse impact.

It is important that the potential applicant understands and appreciates the above rules and standards under which appeals and variance decisions must be made by a Board of Appeals. These standards have been set forth in law and by the courts of the State. Too often an applicant will appear before the Board and offer only generalized conclusions that his proposed project will "look nice" and that it won't bother his neighbors. **This isn't enough.** It is also not enough for neighbors or other affected parties to protest the granting of a variance without offering evidence (not just speculation) that granting a variance will be detrimental to their property or will create an unsafe condition or excessive burden on local facilities.

The Board therefore urges all applicants, or their representatives, to become familiar with the applicable standards, to be guided by them in deciding whether an appeal would be appropriate, and to present clear, definite facts showing that the standards have been met. While the Board will try to assist applicants who may be unfamiliar with the procedure itself (for example, by granting adjournments so that appraisals, environmental impact statements or other evidence can be obtained), the Board cannot grant relief where proper proof is not presented.

TESTS FOR AREA VARIANCES

Applicants for area variances must indicate in writing how the application meets the following 5 tests for area variances (restate each test and follow with a response).

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making its determination, the Board shall also consider:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
3. Whether the requested area variance is substantial
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental condition in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

The Zoning Board of Appeals, in granting area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

NOTICE OF PUBLIC HEARING FOR ADJOINING PROPERTIES

NOTICE IS HEREBY GIVEN that a public hearing will be held by the Zoning Board of Appeals of the Village of Bronxville, in the Trustee Chamber/Court Room at 200 Pondfield Road, Bronxville NY on *Hearing Date* at 7:30 P.M. to consider an application of *Owner Name* for a zoning variance from Section(s) *Sections* at property located at *Project Location*, Bronxville NY Section *Sect*;; Block *Block*;; Lot *Lot*

A copy of the ZBA application, including the proposed plans and all other maps and documents filed therewith, is on file and available for public inspection on any business day prior to the hearing between the hours of 10:00 A.M. and 2:00 P.M. at the office of the Superintendent of Buildings, 2nd floor, Village Hall, Bronxville NY.

The public is invited to attend and will be given reasonable opportunity to present oral or written presentations relevant to the application. The hearing maybe adjourned from time to time at the discretion of the Zoning Board.

(APPLICANT TO ATTACH A COPY OF ZONING DENIAL TO THIS NOTICE)

ZONING BOARD OF APPEALS APPLICATION

Project Name, If Applicable: _____

Project Street Address: _____

Section: _____ **Block:** _____ **Lot(s):** _____ **Zone:** _____

Applicant: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone #: _____ **Email:** _____

Owner: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Phone #: _____ **Email:** _____

Application is for:

_____ An interpretation of the Zoning Law or a determination by the Superintendent of Buildings

_____ Area variance(s) _____
List Sections

_____ Use Variance _____
List Sections

_____ Special Permit Use _____
List Sections

Description of the proposed project and nature of the interpretation, variance(s) and/or special permit being sought: _____

When did present owner acquire title? _____

Was the title acquired by purchase: (Yes or No), If so from whom? _____

Are you seeking a variance from the provisions of the ordinance? (Yes or No)

If so, from which ordinance, from which provision thereof and to what extent? _____

If you are seeking a variance from the provisions of the ordinance, do you contend that the effect of the ordinance on the property to which this appeal pertains is different from its effect on other properties in the same zoning district? (Yes or No) If so, in what respect and what is the cause of the difference?

Does the owner of the premises involved in this application own any contiguous property? (Yes or No)

If so, in what respect and what is the cause of the difference? _____

Owners Signature: _____ **Date:** _____

Zoning Compliance Analysis

Property Address: _____

Zoning District: _____

Flood Zone: Yes: _____ No: _____

ZONING STANDARD	REQUIRED	EXISTING	PROPOSED	STATUS
BUILDING USE				
LOT AREA				
LOT WIDTH				
LOT DEPTH				
FRONT YARD				
SIDE YARD #1				
SIDE YARD #2				
REAR YARD				
HEIGHT (Feet & Stories)				
BUILDING COVERAGE				
USABLE OPEN SPACE				
F.A.R.				
PARKING				

All applications for additions to submit complete detailed finished grade and FAR calculations, and completed F.A.R. computation worksheet on reverse, submission to be stamped by the design professional of record.

Form Prepared By: **Name (Print):** _____

Signature: _____

Zoning F.A.R. Calculation

	EXISTING	PROPOSED	SUB TOTAL
BASEMENT ^(b)			
1 ST FLOOR			
2 ND FLOOR			
3 RD FLOOR ^(d)			
ATTIC ^(d)			
GARAGE ^(c)			
ACTUAL TOTAL BUILDING FLOOR AREA =			
ACTUAL LOT AREA =			
PERMITTED F.A.R. (From Table, interpolate if necessary) =			
MAXIMUM PERMITTED BUILDING FLOOR AREA (ACTUAL LOT AREA X PERMITTED F.A.R.) =			

Floor Area Ratio (for a lot whose principal use is a one or two family dwelling): The ratio of the gross floor area of all buildings on a lot to the area of the lot on which the buildings are located. For the purpose of determining the floor area ratio (FAR), all floor areas of each floor of all principal and all accessory structures on the lot shall be included. Any interior space with a floor-to-ceiling height in excess of 14 feet shall be counted twice. Notwithstanding the preceding the following shall be excluded from the calculation of floor area:

- a) The aggregate area of all unroofed structures such as decks and patios and all spaces in unenclosed porches and porticos, except that existing unenclosed porches may be enclosed and the enclosed area excluded from the FAR calculation provided that the exterior walls of the unenclosed porch and the walls of the dwelling to which the porch is attached are not relocated closer to the lot lines of the subject property than the existing unenclosed porch.
- b) The aggregate area of any cellar regardless of its use or of any basement unless it is defined as a story. See Basement definition.
- c) The aggregate area of grade level garage parking (whether attached or detached) or basement level parking, in either case, up to a maximum of 400 square feet. In those instances where an additional story is provided above a garage (whether attached or detached) such floor area shall be subject to the attic and sloping roof limitations in (d) below.
- d) The aggregate area of all unfinished or finished space in an attic or under a sloping roof provided that the total exterior width of all dormers does not exceed 30% of the exterior linear width of the portion of the roof upon which they are situated. The exterior linear width of the roof shall be measured from end to end at the widest point of the roof. Where the linear width of the dormers exceeds the limitation above, the total area in the attic or under the sloping roof shall be included in the calculation of FAR, except where floor area between the top of the floor beams and the structural ceiling level is five (5) feet or less.

Calculations Prepared By: Name (Print): _____

Signature: _____