

Town of Milo, New York

Department of Buildings
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GUIDE FOR APPLICANTS APPLYING FOR A USE VARIANCE

This publication has been written to aid potential applicants in understanding and appreciating the variance process, and to provide an explanation of the rules and standards under which variance decisions of this Town's Zoning Board of Appeals (ZBA) must be made.

What must be proven in order to be granted a use variance?

If requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State law requires the applicant to show *all* of the following:

1. that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
2. that the property is being affected by unique, or at least highly uncommon circumstances;
3. that the variance, if granted, will not alter the essential character of the neighborhood; and
4. that the hardship is not self-created.

If *any one or more* of the above factors is not proven, State law requires that the ZBA must deny the variance.

Must the variance, if granted, be exactly what was applied for by the applicant?

Whether the ZBA decides to grant a use variance, State law requires the ZBA to grant the *minimum variance necessary* to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

It shall also be understood that a property owner is not entitled to a use variance simply because the zoning ordinance proscribes the "highest and best" use of his/her land. The ZBA shall not grant a use variance solely on the grant that the variant use will yield a higher return than those permitted by the zoning regulations, or allow the property owner to compete more successfully in the market.

Will the ZBA make a decision the night of the hearing?

Once the hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the hearing may be reopened at any time. Once the hearing has been finally closed, the ZBA must make its decision within 62 days.

Application Checklist: Please make ten (10) collated copies of each document, except for the application fee, and submit the application package to the Town's Code Enforcement Officer.

- | | |
|---|---|
| <input type="checkbox"/> Completed application form | <input type="checkbox"/> Site plan / Survey map |
| <input type="checkbox"/> Statement of hardship | <input type="checkbox"/> Environmental Assessment Form (EAF) |
| <input type="checkbox"/> Application fee | <input type="checkbox"/> Construction drawings for proposed project |
| <input type="checkbox"/> Agricultural Data Assessment | <input type="checkbox"/> Competent Financial Evidence |

USE VARIANCE APPLICATION FORM

TOWN OF MILO, NEW YORK

WHEN TO USE THIS FORM: *This form is to be used by an owner seeking an appeal for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations prescribed within the Code of the Town of Milo. The applicant is responsible for complying with established rules and procedures which are available for inspection from the ZBA secretary.*

Contact Information:

Owner(s) Name:

Owner(s) Address:

Owner(s) Telephone No.:

Real Property Information:

Address of Property:

Is the area of proposed construction located on a steep slope?

Yes No

Does the property abut Keuka or Seneca Lakes?

Yes No

Does the property abut Keuka Lake Outlet or Plum Point Creek?

Yes No

Brief Summary of Use Variance Request:

Zoning: (Note: The Code Enforcement Officer can fill in the Zoning District if you are unsure.)

Zoning District:

Current Use of Property:

Proposed Use of Property:

STATEMENT OF HARDSHIP

1. Whether the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

2. Whether the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the applicable zoning district or neighborhood.

3. Whether the requested use variance, if granted, will not alter the essential character of the neighborhood.

4. Whether the alleged difficulty is self created.

AGREEMENT TO PAY FEES FOR CONSULTANT SERVICES INCURRED BY THE TOWN

When reviewing an application for, or when conducting inspections in relation to, an application, the Town of Milo, New York may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the application. Whenever possible, the Town of Milo, New York shall work cooperatively with the applicant to identify what scope of work shall require the employment of consultants. Additionally, the Town may require that an applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Town of Milo, New York may require additional deposits.

Let it be understood and the property owner agrees that:

1. In hiring outside consultants, the Town of Milo, New York may engage registered design professionals, financial analysts, planners, lawyers or other appropriate professionals who can assist the Town in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Town's decision or regulations, or inspecting a project during construction or implementation.
2. Funds received by the Town of Milo, New York pursuant to this section shall be deposited with the Town Clerk who shall establish a line item for this purpose. Expenditures from this line item may be made at the direction of the Town Clerk without further appropriation. Expenditures from this line item shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the property owner. Additionally, the failure of a property owner to pay any fee shall be grounds for denial of an application. Lastly, any outstanding fees incurred by the Town of Milo, New York shall be charged against the property, and shall constitute a lien thereon in favor of the municipality, and the amount of such costs shall be entered on the tax rolls as being due and payable. Such fees may also be recovered in any other lawful manner.
3. At the completion of the Town's review of a project, any excess amount in the line item attributable to a specific project shall be repaid to the property owner. A final report of said line item shall be made available to the property owner if requested.
4. Any property owner may take an administrative appeal from the selection of the outside consultant to the Town Board. Such appeal must be made in writing and may be taken only within twenty (20) days after the Town has mailed or hand-delivered notice to the property owner of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The required time limit for action upon an application by the Town Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Town Board within one month following the filing of the appeal, the selection made by the Town of Milo, New York shall stand.

DISCLOSURE AFFIDAVIT (GML SECTION 809)

The Applicant has read and is familiar with the provisions of the General Municipal Law, Section 809, which states:

- A. Every application, petition or request submitted for a variance, amendment, change of zoning, approval of plat, exemption of plat or official map, license or permit, pursuant to the provisions of 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 or of a municipality of which such municipality or 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.
- B. For the purpose of this section of State law, an officer or employee shall be deemed to have an interest in the applicant when he, his spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them:
 1. is the applicant;
 2. is an officer, director, partner or employee of the applicant;
 3. legally or beneficially owns or controls stock of a corporate applicant or is a member of a partnership or association applicant; or
 4. is a party to an agreement with such an applicant, express or implied, whereby he may receive any payment or other benefit, whether or not for services rendered, dependent or contingent upon the favorable approval of such application, petition or request.
- C. Ownership of less than five per cent 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.
- D. A person who knowingly and intentionally violates this section shall be guilty of a misdemeanor.

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

OWNER'S AGREEMENT TO CONTENTS OF APPLICATION

It is hereby understood that the contents of this entire application is hereby subscribed by the property owner, all matters understood and agreed to, and is hereby affirmed by the owner as true under the penalties for perjury.

Property Owner's signature

Date:

Property Owner's name:

617.20
Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR	2. PROJECT NAME
3. PROJECT LOCATION: Municipality _____ County _____	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY:	
7. AMOUNT OF LAND AFFECTED: Initially _____ acres Ultimately _____ acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: _____	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: _____	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: _____	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: _____ Date: _____ Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER
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Reset

TOWN OF MILO, NEW YORK

Agricultural Data Statement

Instructions: This form must be completed for any application for a special use permit, site plan approval, use variance or a subdivision approval requiring municipal review that would occur on property within 500 feet of a farm operation located in a NYS Dept. of Ag & Markets certified Agricultural District.

Applicant	Owner if Different from Applicant
Name: _____ Address: _____ _____	Name: _____ Address: _____ _____

1. Type of Application: Special Use Permit; Site Plan Approval ; Use Variance;
(circle one or more) Subdivision Approval

2. Description of proposed project: _____

3. Location of project: Address: _____
Tax Map Number (TMP) _____

4. Is this parcel within an Agricultural District? NO YES (Check with your local assessor if
5. If YES, Agricultural District Number _____ you do not know)
6. Is this parcel actively farmed? NO YES
7. List all farm operations within 500 feet of your parcel. Attach additional sheets if necessary.

Name: _____ Address: _____ _____	Name: _____ Address: _____ _____
Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES	Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES
Name: _____ Address: _____ _____	Name: _____ Address: _____ _____
Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES	Is this parcel actively farmed? <input type="checkbox"/> NO <input type="checkbox"/> YES

Signature of Applicant

Signature of Owner (if other than applicant)

Reviewed by:

Signature of Municipal Official

Date

NOTE TO REFERRAL AGENCY: County Planning Board review is required. A copy of the Agricultural Data Statement must be submitted along with the referral to the County Planning Department.

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AUTHORIZED REPRESENTATIVE FORM

WHEN TO USE THIS FORM: *This Authorized Representative form is enclosed if the owner wants to authorize someone to represent him/her/they at the public meeting and hearing. Please complete this form and submit it to this Town's Code Enforcement Officer. Lastly, the owner is responsible to notify his/her/their representative of the time and place of the public meeting and hearing.*

Owner's Name:

Owner's Address:

Owner's Telephone No.:

Representative's Name:

Representative's Address:

Representative's Telephone No.:

The Owner hereby permits the Authorized Representative to act on his/her/their behalf regarding an application submitted to the Town of Milo, New York. Such Owner also authorizes this Town to release any or all information relating to this application to this Authorized Representative.

Owner's Signature:

Date of Signature:

STATE OF NEW YORK)
 SS.:
COUNTY OF)

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public