VILLAGE OF HARRIMAN
1 Church Street
Harriman, New York 10926
(845) 783-4421

ZONING BOARD OF APPEALS
INFORMATION PACKET

For Persons or Corporations Applying for Variance(s) or Special Permit(s)

The Harriman Zoning *Board of Appeals (hereinafter known as the "ZBA") has put together this document to assist all persons appearing before this Board. Contained within are simple explanations to the following topics:*

(1) Purpose of the ZBA and how the process works.
(2) What types of relief the ZBA can grant.
(3) What an applicant can expect from the ZBA.
(4) Your obligations as an applicant.
(5) What the ZBA requires and what is required of the ZBA regarding the decision making process.

The purpose of the Zoning Board of Appeals:

The Board of Appeals shall perform all the duties and have all the powers prescribed in Article 7 of the Village Law of the State of New York and as herein more particularly provided. The Harriman 5 member ZBA has the power to hear and decide appeals brought by persons who allege some "harm" (Negative impact) to them as a result of a decision by any local official who interprets and enforces the Zoning laws of the Village of Harriman (most likely the Building Inspector). The ZBA hears the appeals and is empowered to grant relief and/or interpret the Zoning Laws of the Village of Harriman.

Who may appeal?

Anyone who believes that they have been "harmed" by a decision of the Village Building Inspector or Code Enforcement Officer may appeal that decision to the ZBA.

Reasons for Appeal/Petition:

In most cases, the applicant has come before the ZBA for one of the following three reasons:

(1) If you wish to have the Zoning Board of Appeals interpret or determine the meaning of any portion of the Village Zoning Law or any condition or requirement therein.

(2) You were denied a building permit by the Building Inspector or Code Enforcement Officer since your request did not meet the requirements of the Harriman Zoning Laws.

(3) *You were issued a notice of violation by the Building Inspector or Code Enforcement Officer who alleges that you are constructing or maintaining a structure or condition which does not meet the requirements of the Zoning Law (for example, you have converted a residence into a business, or you have constructed an accessory building on your property which, due to location or use, requires approval by the ZBA).*

Types of Variance:

*You may apply for what is called a **"variance"** from the Zoning Law which, if granted, will allow you to obtain a building permit to construct or maintain said structure, condition or accessory building.*

There are two categories of Variance.
*(1) **Area** Variance:*

*An **area variance**, if granted, allows the applicant a use of land in a manner which is not allowed by the dimensional or physical requirements of the Zoning Law and to construct and/or maintain a structure, accessory building or condition on an otherwise restricted portion of a property. For example, (a) you wish to locate an accessory use (pool, shed, etc.) on the side or front yard of your house when the Zoning Law requires said accessory use to be located in the rear yard or (b) you wish to add an addition to your house which, when completed, will increase the total area of the structure and therefore violates the Zoning Law setback requirements (mandated distance between the structure and the boundaries of your property).*

*(2) **Use** Variance:*

*A **use variance**, if granted, allows the applicant permission to use their property (or a portion thereof) for a purpose not otherwise permitted by the Zoning Law. Examples include; (a) you wish to purchase a house and convert it into a small business in a District zoned for residential use only, (b) you wish to construct a warehouse or small factory on property zoned for banks and professional office buildings or (c) you wish to construct or convert a building to a multi-family dwelling on property zoned for single- family residence.*

What is Required of Applicants?

In order to initiate the process, applicant must submit a completed application form to the Zoning Board and pay a non-refundable fee and may be required to deposit an escrow fee to cover the cost associated with the review of the application.

*Whether the request is for a **use** or an **area** variance, the applicant is required to provide appropriate documentation that will allow the ZBA to decide the merits of the case. Examples of such documentation includes, but is not limited to SEQRA assessment and/or environmental impact statements (if applicable: consult Building Inspector, Code Enforcement Officer or ZBA Secretary), plans, blueprints, survey map(s) of property in question in relation to adjoining properties, photographs of the property and/or structure from various angles, related and pertinent documents from Federal, State, County and Municipal agencies (DOT, CED, Health Departments, etc.), corroborating, documentation from Real Estate Professionals, banks, appraisers, mortgage companies, etc. and any other documentation required by the ZBA.*

Additionally, the applicant may make use of reasonable resources available such as professional representation (attorney, architect, engineer, etc.) affidavits from interested parties (neighbors, business associates, etc.) and the use of experts (contractors, real estate professionals, appraisers, etc.).

The Burden of Proof by the Applicant

*In the case of an **area** variance, New York Village Law requires the applicant to show that "the benefit received from the variance outweighs any burden to health, safety and welfare that may be suffered by the community". The Law requires the ZBA to consider 5 factors when making its determination. Thus, the ZBA requires that the applicant answer the following questions, in writing, on the application and be prepared to explain and support those answers, if required, at the hearing:*

*(1) If the **area** variance is granted, will an undesirable change be produced in the neighborhood or will a detriment to nearby properties be created?*

*(2) Could the implementation of a feasible alternative provide a similar benefit to the applicant, in place of granting the **area** variance?*

*(3) Is the requested **area** variance substantial? (In a manner that could impact the character of the neighborhood and/or the surrounding properties.)*

*(4) Will the proposed **area** variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?*

(5) Is the alleged difficulty self–created?

*In the case of a **use** variance, New York Village Law requires the applicant prove **"unnecessary hardship"**. To prove this, the applicant must show **all** of the following: that*

(1) The property is incapable of earning a "reasonable" return on the initial investment if used for any of the uses allowed by the Zoning Law.

*Applicants planning on using (1) above as their primary reason for requesting a **use** variance should be aware of the following:*

(a) Actual "dollars and cents" proof must be submitted. A mere showing of present loss is not enough; the applicant must demonstrate that the return from the property is not reasonable for each and every permitted use under the Zoning Law.
*(b) Be aware that a reduction in the value of a property because of the Zoning Law or the fact that a change in the permitted use may increase the selling price of the property, or permit a larger profit does not in itself justify the granting of a **use** variance on the grounds of unnecessary hardship.*

(2) The property is being affected by unique or at least highly uncommon circumstances;

Applicants must show that the hardship is totally unique to this property and is not shared by other properties in the applicant's district or neighborhood.

*(3) The **use** variance, if granted, will not alter the essential character of the neighborhood; and*

(4) That the hardship is not self-created.

Flexibility of the Decision(s) Allowed a ZBA

*Applicants should be aware that in considering an **area** variance, the ZBA is not bound by the particular answers to any of the 5 questions in reaching a decision. Rather, the ZBA must take each one of the factors into account. Further, in regards to the granting of relief, the Board may decide on the following:*

(1) that the applicant has not submitted the required proof and therefore deny the variance;
(2) that a lesser variance (than the one requested by the applicant) is appropriate or
*(3) that there are remedies and alternatives available to the applicant that doesn't require the granting of an **area** variance.*

In the case of a use variance, the Village Law requires that the ZBA must deny the variance if any one (or more) of the 4 factors is not proven.

Whether you are applying for a use or an area variance, New York State law requires the ZBA to grant the minimum variance necessary to provide you with relief. You should be aware that the ZBA is required to protect the character of the neighborhood and the health, safety and welfare of the community; as a result, the Board may impose reasonable conditions and restrictions on the variance.

A FINAL WORD

This informational document has been prepared as a resource to those applicants who are unfamiliar with ZBA procedures. It is intended to complement, not replace the advice of professionals (such as attorneys, architects, civil engineers) and advisors.

If, as a result of reading the information contained in this packet, you have additional questions or need clarification, please contact the Building Inspector or Code Enforcement Officer at 783-6892.

PLEASE NOTE:

The explanations, examples and guidelines contained in this document are not in any way intended to function as a promise or guarantee of any type to an applicant. Each case is judged on its own merits. Procedures and case law may change at any time; it is the responsibility of each applicant to be familiar with the current laws, precedents and protocol.

VILLAGE OF HARRIMAN
1 Church Street
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APPLICATION

Date Received: _____

Please check all that apply.

_____ Area (Bulk) Variance

_____ Use Variance

_____ Interpretation of the Zoning Code

_____ The Application arises from disapproval by the Building Inspector or Code Enforcement Officer in regards to a Building Permit Application (copy of notice must be attached)

_____ Referred by the Building Inspector or Code Enforcement Officer (copy of notice must be attached)

_____ Referred by the Planning Board (copy of notice must be attached)

_____ Referred by the Village Board (copy of notice must be attached)

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STATEMENT OF OWNERSHIP AND INTEREST – Page 1

1. Name of Applicant:_____
   If Corp/LLC, Name of Pres/Member: _____
   Vice Pres/Member: _____
   Treasurer: _____Secretary/Member:_____
2. Owner of Property (if different from Applicant):
   _____
3. Owners Address
   _____
4. Location of Property
   _____
5. Tax Map: Section _____ Block _____ Lot _____ Zoning District: _____
6. Present Use of Property:
   Residential (Single-Family) _____ Multi-Family _____ Community _____
7. Such Use has Continued Without Change Since (YEAR): _____
8. Proposed Use of Property: _____
9. Type of Relief Requested:
   Use Variance _____ Area Variance _____ Appeal _____ Interpretation _____

List Sections of the Harriman Zoning Law from which Variance(s), Appeal or Interpretation are requested:
_____
_____

Date Filed: _____

Applicants Signature: _____
Applicants Address: _____
Daytime Telephone #:_____
Evening Telephone #:_____

If Owner is different from applicant, complete the following along with attached affidavit consent

Owner's Signature: _____

Owner's Address: _____

Daytime Telephone #: _____ Evening Telephone #: _____

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STATEMENT OF OWNERSHIP AND INTEREST – Page 2

This questionnaire is to be completed by persons applying for a ***USE Variance*** (if unsure, see Information Packet attached or contact the Building Inspector).

PLEASE ANSWER ALL QUESTIONS IN FULL AND THEN GIVE DETAILED EXPLANATION
(Attach additional pages if necessary)

USE VARIANCE

1. Explain how, based on the current applicable zoning regulations applicant is incapable of earning a "reasonable" financial return on his/her initial investment if used for any of the uses allowed by the zoning code. Applicant must demonstrate using financial evidence:

   _____
   _____
   _____
   _____
   _____

2. Explain how the alleged hardship that relates to the property in question is unique and does not apply to a substantial portion of the district or neighborhood:

   _____
   _____
   _____
   _____
   _____

3. Explain how the requested variance, if granted, will not alter the essential character of the neighborhood:

   _____
   _____
   _____
   _____
   _____

4. Explain how the hardship is not self-created:

   _____
   _____
   _____
   _____
   _____

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STATEMENT OF OWNERSHIP AND INTEREST – Page 3

This questionnaire to be completed by persons applying for an ***AREA Variance*** (if unsure, see information packet or contact the Building Inspector).

PLEASE ANSWER ALL QUESTIONS YES OR NO AND THEN GIVE DETAILED EXPLANATION
(Attach additional pages if necessary)

AREA VARIANCE

1. Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?

   _____
   _____
   _____
   _____
   _____

2. Can the benefit you seek be achieved by some other feasible method other than variance?

   _____
   _____
   _____
   _____
   _____

3. How substantial is the variance that you are requesting?

   _____
   _____
   _____
   _____
   _____

4. Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

   _____
   _____
   _____
   _____
   _____

5. Is the alleged difficulty self-created?

   _____
   _____

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This property if within 500 feet of:
(check all that apply)

If any item is checked, a review must be done by the Orange County Commissioner of Planning under the State General Municipal Law, Sections 239 K, L, M, and N.

_____ ***State Road/Highway***
_____ ***State or County Park***
_____ ***Municipal Boundary***
_____ ***Municipal Facility***
_____ ***County Road***
_____ ***County Stream***
_____ ***County Facility***
_____ ***State Facility***

List name(s) of facility checked above. _____

_____

_____

Applicant's Signature and Certification

State of New York)
County of Orange) SS.:
Town/Village of _____)

I, _____, hereby depose and say that all the above statements contained in the papers submitted herewith are true.

Mailing Address: _____
_____
_____

SWORN to before this
_____ Day of _____, 20____

_____
Notary Public

Affidavit of Ownership/Owner's Consent

State of New York)
County of Orange)SS.:
Town/Village of _____)

I, _____, being duly sworn, hereby depose and say that I reside at: _____

In the county of _____, in the state of _____. Described in a certain deed of said premises recorded in the Orange County Clerk's Office in Liber _____ of conveyances, page _____.

Said premises have been in my/its possession since _____. Said premises are also known and designated on the Town/Village of _____ Tax Map as:

Section _____ Block _____ Lot(s) _____.

I hereby authorize _____ on my behalf, and that the statements of fact contained in said application are true, and agree to be bound by the determination of the board.

Owner: _____
Mailing Address: _____
_____
_____

SWORN to before this
_____ Day of _____, 20_____

_____
Notary Public

**If owner is a corporation, fill in the office held by deponent and name of corporation, and provide a list of all directors, officers and stockholders owning more than 5% of any class of stock.*

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ZONING BOARD OF APPEALS
APPLICATION INSTRUCTIONS

The following must be completed and submitted 14 days before the application is reviewed and scheduled for the Zoning Board of Appeals regular scheduled meeting:

1. ***Ten (10) copies of the application (filled out entirely), ten (10) plot plans drawn to scale (showing setbacks and other dimensions) or ten (10) surveys that have been sworn or attested to as being true by a licensed Architect or Engineer.***

2. ***Ten (10) copies of a narrative describing why the applicant is appearing before the Board.***

3. ***Ten (10) copies of reference to the Zoning Board of Appeals (Building Inspector's determination, Code Inspector's determination, referral from the Planning Board or for an interpretation of the Zoning Code). No application can come for a variance without first being denied by the Building Inspector or Code Enforcement Officer or referred from the Planning Board.***

4. ***Ten (10) copies of the completed Environment Assessment Form (Short Form or Long Form). For access to the above State Environmental Quality Review forms you can go the following sites: http://www.dec.ny.gov, http://www.dec.ny.gov/docs/permits ej operations pdf/shorteaf.pdf, http://www.dec.ny.gov/docs/permits ej operations pdf/longeaf.pdf***

5. ***Tax Map Designation***

6. ***Affidavit of Ownership/Owner's Consent***

7. ***Affidavit Pursuant to Section 809 of the General Municipal Law***

8. ***Applicant must submit with application payment of fee(s) in accordance with fee schedule below – made payable to the Village of Harriman.***

The Application must be received at least two weeks prior to the next scheduled Zoning Board of Appeals meeting, which is the 1st Wednesday of every month, in order to be placed on the Agenda. Also, the application is subject to the review by the Zoning Board of Appeals attorney.

For any action or approval, the applicant must deposit with the ZBA Secretary an application fee of $150 along with one of the following escrow fees stated below to defray the costs incurred by the Village for all services incurred in the processing and reviewing of such application. The escrow must be handed in at the time of the filing of the notice of appeal or application for hearing with the review for each non-residential application.

The ZBA Secretary will publish a notice of the Public Hearing in the Times Herald Record at least 10 days prior to any Public Hearing(s) that may be held concerning this application and payment for the publication will be the applicant's responsibility, at which time the applicant will be billed and payment is required within 10 days after receiving bill.

A copy of the legal notice of Public Hearing must be sent by certified mail return receipt requested ATLEAST 10 DAYS prior to the Public Hearing to all property owners within 300 feet of the outer boundaries of the subject parcel. The names and addresses of the affected property owners will be provided to the applicant by the ZBA Secretary. The affidavit of mailing and return receipts (according to Section 105-2) must be submitted to the Board at the Public Hearing.

The Orange County Planning Department must review all projects that meet the requirements of Section 239 of the NYS General Municipal Law prior to a decision by the Board if the real property is within three hundred (500) feet of any of the following:

The boundary of any City, Village or Town;
The boundary of any existing or proposed County or State Park or any other Recreational area;
The Right – of – Way of any existing or proposed County or State Parkway; Thruway, Expressway, Road or Highway;
The existing or proposed Right – of – Way of any Stream or drainage channel owned by the County of for which the County has established Channel lines.
The existing or proposed boundary of any County or State owned land on which a public building or institution is situated; or

ZONING BOARD OF APPEALS – FEE SCHEDULE

Application Fee_____	***$150.00***
Residential Area Variance _____	***$250.00***
Residential Use Variance _____	***$250.00***
Commercial Area Variance _____	***$500.00***
Commercial Use Variance _____	***$750.00***
Commercial Escrow Fee_____	***$2500.00***
Zoning Board of Appeals Interpretation of Code _____	***$250.00***
Review of Ruling by Building Inspector _____	***$250.00***

All Application fees must be paid upon submission of the application. All Engineering and/or legal fees incurred by the Board with respect to this application (except for yard setback variances or an existing single family dwelling) must be paid by the applicant and shall be charged back accordingly to the applicant.

Any questions please contact the Building Inspector or Code Enforcement Officer at (845) 782-6892 or the Zoning Board of Appeals Secretary at (845) 783-4421.

Zoning Board of Appeals meetings are held on the First Wednesday of every month at 7:30pm.

INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED