



*Village of Nissequogue*

631 Moriches Road  
St. James, N.Y. 11780

**Zoning Board of Appeals**

**NOTE: NO INCOMPLETE PACKAGES WILL BE  
ACCEPTED.**

**THE REGULAR BOARD OF APPEALS  
HEARING IS THE THIRD  
(3<sup>RD</sup>) MONDAY OF EACH  
MONTH.**

**\*\*\* COMPLETE APPLICATIONS must be filed on or  
before the first (1<sup>st</sup>) Monday of the month so that the  
hearing notice publication can be timely made.**

# *Village of Nissequoque*

## **Board of Appeals**

### **INSTRUCTIONS FOR APPLICATION TO THE BOARD OF APPEALS**

Please carefully read the application. All sections must be answered (or if not applicable, so indicate). Incomplete applications or missing items will delay the matter being placed on the hearing calendar.

1. The application must be signed by the Owner or the Owner's duly designated. If the Owner is an entity, a corporate officer or other person authorized to sign on the entity's behalf must sign the application and set forth his/her title. If the Owner has designated a representative to complete and submit this application, the "Designation of Representative" form must be properly filled in and submitted with the application. If there is more than one Owner, all owners must sign.
2. The name of the property owner(s) must follow the words, "In the Matter of the Application of." If the property is owned by an entity, the name of the entity must be used.
3. There must be six copies of the application (including six copies of all attachments) submitted, signed and notarized.
4. Each copy of the six applications must have a certified survey containing a seal and must show the following:
  - a. **Compass Direction**
  - b. **Scale**
  - c. **Location and length of property lines**
  - d. **Locations of all existing and proposed structures (to scale)**
  - e. **Front, rear and side yard set backs**
  - f. **Building Envelope**
  - g. **The distances from all existing structures and proposed structures to streets, right of ways, property lines and if applicable, the mean high water line.**
  - h. **Location of all existing structures situated on adjacent properties that are within 100' of the property line**
  - i. **If no existing structures are situated within 100' of the property line, the survey must note that there are no structures on the adjacent parcel**
5. The applicant must submit with the application a certified copy of all deeds, contracts, court orders, wills or other papers and documents having a date of April 23, 1927 or later, bearing on the ownership of the property for which the variance is requested and all adjoining properties.
6. The applicant must submit a copy of the Certificate of Occupancy for all structures on the property requiring same.
7. The applicant must inform the adjoining neighbors of the public hearing by sending a copy of the Public Notice to the adjoining neighbors by CERTIFIED MAIL, RETURN RECEIPT REQUESTED. The mailing must be completed 21 days prior to the public hearing and each returned receipt must be given to the Board of Appeals' secretary two business days prior to the hearing. The applicant must submit a fully executed Affidavit Regarding Review of Tax Rolls.
8. The applicant must submit a completed Statement of Disclosure of Interest.

# Village of Nissequogue

9. A check in the amount of \$ **350.00** made payable to the Village of Nissequogue must accompany the application which is to be submitted to:

**Susan Cimino McGarrigal, Secretary**  
**Zoning Board of Appeals**  
**c/o Village of Nissequogue**  
**631 Moriches Road**  
**Nissequogue, NY 11780**

**Telephone: 631-862-7400**  
**Fax: 631-862-7401**

**E-mail: NissequogueZBA@optonline.net**

10. Notice of hearing will be prepared by the Board and will be published in a local newspaper, posted on Village Boards and appear on Village website.

11. Your property will most likely be visited by members of the Board of Appeals prior to the date of the hearing.

12. Below is a checklist for your convenience:

- \_\_\_\_\_ 6 copies of the fully completed application and all attachments
- \_\_\_\_\_ 6 copies of the survey with seal (**Note details Paragraph 4 above**)
- \_\_\_\_\_ 6 copies of the Building Inspector's Denial
- \_\_\_\_\_ 6 copies of the recorded deed for the property
- \_\_\_\_\_ 6 copies of the Certificate of Occupancy for structures requiring same
- \_\_\_\_\_ 6 copies of the Environmental Assessment Form (If Applicable)
- \_\_\_\_\_ Completed Statement of Disclosure of Interest
- \_\_\_\_\_ Appropriate check made payable to "Village of Nissequogue"

13. There will also be a charge to you for the stenographer's minutes (at approximately \$5.50 per page plus an appearance fee, when applicable), that must be paid prior to receiving decision.

# Village of Nissequogue

14. Your presentation should be guided by §128-58 of the Code of the Incorporated Village of Nissequogue (the text of § 128-58 is set forth below).

## **§ 128-58. Variances**

Where the strict application of any of the requirements of this chapter to the case of an exceptionally irregular, narrow, shallow or steep lot or other exceptional physical condition would result in practical difficulty or unnecessary hardship which would deprive the owner of the reasonable use of the land or the building involved, the Board of Appeals shall have the power, upon appeal, to vary or adjust the strict application of the regulations or provisions of this chapter.

### **A. Use variances.**

(1) 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, as defined herein.

(2) 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 for each and every permitted use under the zoning regulations for the particular district where the property is located:

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

(b) 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;

(c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) That the alleged hardship has not been self-created.

### **B. Area variances.**

(1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such local law, to grant area variances as defined herein.

(2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider a) 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; b) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; c) whether the requested area variance is substantial; d) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and e) 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.

(3) The Board of Appeals, in the granting of 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.

**C. Imposition of conditions.** The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning local law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

*Village of Nissequoque*  
**Application to the Board of Appeals**

In the MATTER of the Application of

\_\_\_\_\_

P.O. Address \_\_\_\_\_

\_\_\_\_\_

Tel.# AM \_\_\_\_\_

PM \_\_\_\_\_

Cellular: \_\_\_\_\_

E-Mail: \_\_\_\_\_

1. Location of property (indicate distance to nearest intersection)

\_\_\_\_\_

a. Dimension of property \_\_\_\_\_

b. Acreage of property \_\_\_\_\_

2. Zoning District as shown on Zoning Map \_\_\_\_\_

3. Is property located on a Village road?

YES

NO

a. If not a Village road, who is the owner: \_\_\_\_\_

b. Is the road governed by a Home Owners Association:

YES

NO

c. Width of the road: \_\_\_\_\_

d. Is access to the property by Right of Way?

YES

NO

e. If yes, attach a copy of the easement.

4. Is the property in separate ownership from all adjoining properties? \_\_\_\_\_

a. If yes, since what date\*?

b. If no, what adjoining property is held by the same owner \_\_\_\_\_

\_\_\_\_\_

# Village of Nissequoque

**\*NOTE:** Single and separate ownership is not the date that you acquired title to the property. It is the date that your parcel was separated from a larger parcel, such as a filing of a sub-division map or the forming of three two-acre parcels from an original six-acre parcel. It is the date that your parcel was no longer a part of a larger parcel.

## 5. Type of Application

- Interpretation of the Zoning Ordinance or Zoning Map
- Special Exception under the Zoning Ordinance
- Variance of Zoning Ordinance

## 6. Reason for Application: (complete relevant sections)

a. INTERPRETATION OF THE ZONING ORDINANCE is requested to determine whether \_\_\_\_\_

\_\_\_\_\_

A SPECIAL EXCEPTION UNDER THE ZONING ORDINANCE is requested pursuant to \_\_\_\_\_ Section \_\_\_\_\_ Subsection \_\_\_\_\_ of the Zoning Ordinance for the purpose of \_\_\_\_\_

c. A VARIANCE of Section \_\_\_\_\_ Subsection \_\_\_\_\_ of the Zoning Ordinance is requested in order to \_\_\_\_\_

\_\_\_\_\_

Set forth the reasons for request of the VARIANCE on a separate page entitled "Reasons for request of the variance." Please reference Village Code § 128-58 (set forth in paragraph 14 of the instructions) to ensure you address the necessary considerations.

7. Would the granting of this application be in conformity to adjoining properties? Explain: \_\_\_\_\_

8. Is this property **presently** the subject of an application to the Planning Board, LWRP, DEC or any Village, State or Governmental agency? If so, please list

# Village of Nissequoque

agency and status.

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9. Attach six copies of surveys of the property by a licensed surveyor with seal affixed showing information required by paragraph 4 of the instructions.
10. Pursuant to Chapter 91 of the Village Code, in addition to the application filing fees, if a Trust & Agency account has not already been established and funded, applicant is responsible to pay the sums deemed necessary by the Board of Appeals to fund a Trust & Agency account established to reimburse the Village for the cost of Professional Consultant review services (including, but not limited to services of the Village Attorney and Village Engineer).

11. Have you been denied a Building Permit?                      YES                      NO

12. Has any previous owner applied for a variance on this property? Name and date of previous application

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13. Have you previously applied for a similar variance before filling out this application?

YES                      NO

Date of previous application \_\_\_\_\_

14. Applicant must inform the adjoining neighbors listed below in the application of the public hearing. This must be done by sending the Public Notice provided to said neighbors by **Certified Mail, Return Receipt Requested**. Mailing must be completed a minimum of twenty-one (21) days prior to scheduled hearing.

Each returned receipt must be presented to the secretary two days prior to the hearing. Be sure to allow ample time to finish the process. The secretary will provide the Public Notice to the applicant.

# *Village of Nissequoque*

Adjoining property owners are as follows:

<b>NORTH</b>	
<b>EAST</b>	
<b>SOUTH</b>	
<b>WEST</b>	

15. Applicant must submit the Application for a Building Permit showing "DENIAL" by the Village Building Inspector. If a denial is not required by applicable law, provide the applicable information with the citation to applicable law.

16. Is the subject property within a distance of 500 feet of:

	YES	NO
A. The boundary of any village or town;	_____	_____
B. The boundary of any existing or proposed County, state or federal park or other recreation areas;	_____	_____
C. The right-of-way of any existing or proposed County or state parkway, thruway, expressway, road or highway;	_____	_____
D. The existing or proposed right-of-way of any stream or drainage channel owned by the County or for which the County has established channel lines;	_____	_____
E. The existing or proposed boundary of any other County, state or federally owned land held or to be held for governmental use; or	_____	_____
F. The Atlantic Ocean, Long Island Sound, any bay in Suffolk County or estuary of any of the foregoing bodies of water; or	_____	_____



*Village of Nissequoque*

G. The boundary of a farm operation located in an Agricultural district, as defined by Article 25-AA of the New York Agriculture and Markets Law, except that this Subsection A (7) shall not apply to applications for area variances.

X \_\_\_\_\_  
Signature of Property Owner  
or Designated Representative

\_\_\_\_\_  
Title of Signatory if Owner is an  
Entity or Organization

Dated: \_\_\_\_\_, 20 \_\_\_\_\_

STATE OF NEW YORK)

COUNTY OF SUFFOLK) ss.:

....., being duly sworn, deposes and says that all statements made in this Application are true to the best of his/her/our knowledge and belief, except as to the matter therein stated to be alleged on information and belief and as the matters he/she/we believes the same to be true.

\_\_\_\_\_  
Signature of Property Owner or Designated Representative

\_\_\_\_\_  
Title of Signatory if Owner is an Entity or Organization

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public, Suffolk County

*Village of Nissequogue*

**AFFIDAVIT REGARDING REVIEW OF TAX ROLLS**

Pursuant to Paragraph 7 of the Instructions THIS AFFIDAVIT **MUST** ACCOMPANY APPLICATION TO THE BOARD OF APPEALS.

STATE OF NEW YORK        }  
  :  
COUNTY OF SUFFOLK        }

I, \_\_\_\_\_, being duly sworn, depose and say:

That I examined the tax rolls of the Village of Nissequogue, located at the Village Hall, and represent that the adjoining property owners listed in the application are all the property owners within 100 feet of the subject parcel as indicated on said tax rolls.

X \_\_\_\_\_  
Signature of Property Owner or  
Designated Representative

\_\_\_\_\_  
Title of Signatory if Owner is an Entity or  
Organization

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

**Note:** If the land is vacant, still indicate ownership. If the direction is a street, give neighbor across the street.

*Village of Nissequogue*

DESIGNATION OF REPRESENTATIVE

STATE OF NEW YORK        }  
  : ss.:  
COUNTY OF SUFFOLK        }

\_\_\_\_\_, being duly sworn,  
deposes and says that he/she/they/it is the Owner of \_\_\_\_\_  
("the Property") and hereby authorizes \_\_\_\_\_ to take all  
actions on the Owner's behalf that are necessary to make the attached application  
dated \_\_\_\_\_ to the Village of Nissequogue Zoning Board of  
Appeals and to represent the Owner at the Board of Appeals hearing.

X \_\_\_\_\_  
OWNER'S SIGNATURE

\_\_\_\_\_  
Title of Signatory if Owner is an Entity or  
Organization

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

*Village of Nissequoque*

**STATEMENT OF DISCLOSURE OF INTEREST**

\_\_\_\_\_ states as follows:

1. I reside at \_\_\_\_\_

2. Do any of the following individuals have an interest as defined below, in the Owner or Applicant:

- A. Any New York officer; or
- B. Any officer or employee of the Village; or
- C. Any officer or employee of the Town of Smithtown; or
- D. Any officer or employee of Suffolk County.

\*For the purpose of this disclosure, an officer or employee is deemed to have an interest in the Owner or Applicant when the officer or employee, his/her spouse, or their brothers, sisters, parents, children, grandchildren, or the spouse of any of them: (a) is the applicant or owner; or (b) is an officer, director, partner, or employee of the applicant or owner; or (c) legally or beneficially owns or controls stock of a corporate applicant or owner; or (d) is a party to an agreement with such an applicant or owner, expressed 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.

A person who knowingly and intentionally fails to make such disclosure shall be guilty of misdemeanor as provided in General Municipal Law § 809.

**Yes**                       **No**

If "YES" state the resident and nature and extent of the interest of such individual.

\_\_\_\_\_ (name) \_\_\_\_\_ (residence)

\_\_\_\_\_ (extent of interest)

X \_\_\_\_\_  
OWNER'S SIGNATURE

\_\_\_\_\_  
Title of signatory if Owner is an Entity or Organization

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_ NOTARY PUBLIC

**RE M I N D E R**

**NOTICE TO ALL BOARD OF APPEALS APPLICANTS**

**AS EXPLAINED TO YOU WHEN YOU FILED YOUR APPLICATION AT THE OFFICE OF THE BOARD OF APPEALS, YOU MUST BE PREPARED TO PROVE YOUR APPLICATION AT THE PUBLIC HEARING USING APPLICABLE CRITERIA SET FORTH IN VILLAGE CODE § 128-58.**

**ANY EXHIBITS PRESENTED TO THE BOARD (PICTURES, LETTERS AND / OR PETITIONS) MUST BE IDENTIFIED WITH NAME OF THE APPLICATION AND DATE OF HEARING.**

**DECISIONS PERTAINING TO YOUR APPLICATION WILL NOT BE RENDERED AT THE PUBLIC HEARING. YOU WILL BE NOTIFIED BY MAIL OF THE DECISION AFTER THE BOARD'S RECEIPT OF THE TRANSCRIPT.**

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**Susan Cimino McGarrigal, Clerk  
Zoning Board of Appeals**