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# *Town of LeRay*

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## **Area Variance Application**

**For:** \_\_\_\_\_

Contact Morgan Melancon with any questions:  
(315) 629-4052 or [clerk@townofleray.org](mailto:clerk@townofleray.org)





# Town of LeRay

## AREA VARIANCE APPLICATION

Application #: AV-\_\_\_\_\_

### OFFICE USE ONLY

<input type="checkbox"/> \$100 Application Fee	<input type="checkbox"/> \$100 Fee for Special Meeting	<input type="checkbox"/> \$50 239-M Form (County Referral)
<input type="checkbox"/> Cash <input type="checkbox"/> Card <input type="checkbox"/> Check	Check #: _____	Receipt #: _____
Date Submitted: _____	Date Paid: _____	Received By: _____
<b>Zoning District Classification:</b>		
<input type="checkbox"/> AR <input type="checkbox"/> R-1 <input type="checkbox"/> MU <input type="checkbox"/> CC <input type="checkbox"/> PD <input type="checkbox"/> MED <input type="checkbox"/> MHO <input type="checkbox"/> Well Head Protection Zone		

### The statutes define an Area Variance as follows:

“Area Variance” shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable Zoning Regulations.”

### Area Variance Application Checklist

#### A Complete Application Must Have the Following:

- A Completed Application Form (5 copies)
- A Completed Part 1 SEQR Form (5 copies)
- A denial letter of the Zoning Permit Application (5 copies)
- Photograph(s) of affected area, if applicable (5 copies)
- The fee for application submission

#### Additional Items you May Need:

- 239-m Form – \$50.00 fee
- A Letter of Authorization, page 13 (5 copies)

#### Other attachments deemed pertinent by the applicant (please list):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

**SUBMITTAL DEADLINE: no later than the 3<sup>rd</sup> Friday of the month by noon.**

## Contact Information

All communications will be directed to the applicant. If a designated contact person or an additional contact is specified, they will be included in the cc (carbon copy) list for all correspondence. The property owner has the choice to either opt out of receiving notifications or opt in.

**Applicant Name:** \_\_\_\_\_

Title:  Mr.  Mrs.  Ms.  Miss.

Company Name (if applicable): \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

You are the:  Owner  Tenant  Contractor  Other, explain: \_\_\_\_\_

**Property Owner Name** (if different from applicant): \_\_\_\_\_

Title:  Mr.  Mrs.  Ms.  Miss. Business Name (if applicable): \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Would you like to be notified of project information (i.e., meetings, mailed correspondence, emails)?

Yes  No

**Contact Person Name:** \_\_\_\_\_ Title:  Mr.  Mrs.  Ms.  Miss.

Company Name (if applicable): \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Additional contact to be notified of project information:** (optional)

**Name:** \_\_\_\_\_ Title:  Mr.  Mrs.  Ms.  Miss.

Company Name (if applicable): \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

## Project Information

1. Property Address (subject of appeal): \_\_\_\_\_

2. Tax Parcel #: \_\_\_\_\_

3. Date Applicant Acquired Property: \_\_\_\_\_

(If property is not owned by the applicant, the applicant must submit Letter of Authorization signed by the property owner authorizing the applicant to appeal on his/her behalf)

4. Present use of property: \_\_\_\_\_

5. Dimensions: Lot Area: \_\_\_\_\_ sq. ft. Width: \_\_\_\_\_ ft. Depth: \_\_\_\_\_ ft.

## Request for Area Variance Information

1. Date of Zoning Enforcement Officers Decision: \_\_\_\_\_

2. Denial was made based on the following sections of the Zoning Code:

\_\_\_\_\_  
\_\_\_\_\_

3. Setback Requirements according to the Zoning Code:

Front: \_\_\_\_\_ Rear: \_\_\_\_\_ Sides: \_\_\_\_\_ and \_\_\_\_\_

3. Requested Setback:

Front: \_\_\_\_\_ Rear: \_\_\_\_\_ Sides: \_\_\_\_\_ and \_\_\_\_\_

4. Date Applicant Acquired Property: \_\_\_\_\_

(If property is not owned by the applicant, the applicant must submit a Letter of Authorization signed by the property owner authorizing the applicant to appeal on his/her behalf. Please find on page 13.)

5. Detailed Description of Proposed Activity and the reason you are applying for an Area Variance:

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6. What is the land currently being used for: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

7. Description of the surrounding lands (adjacent uses): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Describe the character of the neighborhood: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# AREA VARIANCE TEST

Please be advised that all sections under this heading must be answered completely. Bear in mind that a variance is actually relief from the strict application of the requirements of the law (the Zoning Ordinance), and the Zoning Board of Appeals is required to give sound reasons, based on the criteria set forth in this application, for granting any such relief. It is incumbent upon the applicant to demonstrate to the Board that these criteria are satisfied. Additional sheets may be attached as necessary.

The Board of appeals must consider the following five factors:

- 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.**

The Board must consider whether the dimensional alteration being proposed will result in a structure or a configuration that will be seriously out of place in the neighborhood.

Example: In Pecoraro v. Board of Appeals of the Town of Hempstead, the Court of Appeals upheld the 65 denial of an Area Variance that would have reduced the minimum lot size from 6,000 square feet to 4,000 and would have reduced the required frontage from 55 feet to 40. The court held that the Board of Appeals could rationally conclude that the proposal would seriously compromise the character of the neighborhood, which consisted overwhelmingly of parcels which met the required minimums.

Proof: \_\_\_\_\_

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2. Whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an Area Variance.

Here, the Board should consider alternatives open to the applicant that are lawful under the zoning.

Example: A proposed addition can be constructed in a different location on the property, where a variance would not be needed. Or, as one court recently observed, the applicant should have at least explored the possibility, either of acquiring adjoining vacant property, or of selling his substandard unimproved lot to an adjoining neighbor.

Proof: \_\_\_\_\_

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**4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district**

Here, the Board of appeals should weigh the proposal’s potential impact on such factors as drainage, traffic circulation, dust, noise, odor, and impact on emergency services, among others.

Example: In one case, a court upheld the grant of a height variance allowing construction of a fence which would screen several exhaust fans installed at the rear of a diner. The court held that substantial evidence supported the Board’s decision that the fence would protect the aesthetics of the diner, which had unique design, that installation of a grease reservoir would prevent grease from dripping to the ground, and that the fence would keep grease and fumes from neighboring property.

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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.**

Example: One court shed light on the possible scenarios constituting self-created difficulty as follows:

“Where the lot was substandard and nonconforming at the time it was purchased . . ., or where construction occurred due to contractor’s error . . ., or without the benefit of a building permit..., or where an applicant seeks to construct three homes on a parcel zoned for one house.”

On the other hand, said the same court, when an owner builds on a lot, he does not thereby preclude himself from obtaining a variance for additional construction in the future. Thus, the Board of appeals should not “require homeowners to anticipate all future needs and property uses before one construct a home, otherwise all subsequent nonconforming desires would be rejected as self-created.”

But perhaps the most important point we can make here is that self-created difficulty, as it relates to an Area Variance application, is not the same as self-created hardship, as set forth above with respect to the Use Variance. Even if present, it constitutes only one factor to be considered by the Board of Appeals; it does not, in and of itself, act as a bar to the grant of an Area Variance.

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**SIGNATURE AND VERIFICATION**

**Please be advised that no application can be deemed complete unless signed below.**

I hereby certify that the information enclosed herewith and on the application is true to the best of my/our knowledge and belief:

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of ZEO: \_\_\_\_\_ Date: \_\_\_\_\_

# DIMENSIONAL DRAWING

Please use this to plot the dimensions of the lot. Show the size and location of all proposed and/or existing structures and accessory structures on the property, **including the distance from the building line to all lot lines, road Right-of-Way lines, streams, and any other features of the lot.** Road right-of-ways can be found by contacting the Jefferson County Highway Department at (315) 786-3600.

## PLOT

FRONT

STREET

This page is left blank on purpose.

# ADJACENT LANDOWNERS

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The following list consists of all individuals, firms, corporations, and businesses owning property adjacent to both sides and rear, and in front of (across street from) the property. Addresses must be obtained from the current tax rolls which are available in the Town Office. Use additional pages if needed.

**Property Owner:** \_\_\_\_\_ Tax Map ID #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**Property Owner:** \_\_\_\_\_ Tax Map ID #: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

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Mailing Address: \_\_\_\_\_

# Town of LeRay

## LETTER OF AUTHORIZATION

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Let it be known that \_\_\_\_\_ has been retained to act as agent to perform all acts for my application at the property identified below.

**These acts include:** (please initial all the acts you are authorizing)

- \_\_\_\_\_ Pre-application conferences with Town staff, filing applications and/or other required documents relative to all Planning Board applications.
- \_\_\_\_\_ Main point of contact for Town staff.
- \_\_\_\_\_ Agent will be contacted on all matters instead of the owner.
- \_\_\_\_\_ Attending all Planning Board meetings on my behalf.

Tax Parcel #: \_\_\_\_\_

Property Address: \_\_\_\_\_  
\_\_\_\_\_

### Property Owners(s)

Property Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
**Signature** **Date**

Property Owner: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

\_\_\_\_\_  
**Signature** **Date**

### Agent

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*Matthew R. Morgie*

\_\_\_\_\_  
**Signature** **Date**