

September 17, 2019

Dear West Hampton Dunes Property Owner:

The Village has created a sample variance application to New York State for those properties that have an underground fuel storage tank which New York State claims is in a noncompliant location and would like to file a variance application with New York State for the current location to be approved. The sample application and materials are provided to owners as a guide only, and is not meant to replace the legal or other advice that you should obtain from your personal attorney, code professional-architect or engineer- or surveyor.

New York State has created a page entitled “Supplemental Variance Application Requirements” which can be used as a guide as to the information that will be requested by New York State.

The materials that you will need for this application are:

- (1) a completed New York State Department of State Form 2078 (a fillable version of this form is available online) with the exhibits (survey, photographs and answers to questions);
- (2) a recent survey of your property showing all buildings and structures and the location of the underground tank on your property, and the distances or setbacks of the tank from the buildings on the property and the property lines of the property;
- (3) a page with the answer to question 1. of the supplemental variance application sheet; and
- (4) photographs of your property and the location of the tank that depict either why the tank cannot be at another location, or the safety of the tank where it is currently located.

It is suggested that Question 1 of the Supplement be answered by stating why the location was selected and that there is no other location on the property where the tank could be located.

It is suggested that Question 2 of the Supplement be answered with information that you receive from your surveyor.

It is suggested that Question 3 be answered with information that you receive from your gas company.

Sample answers to questions 1. through 6. of page 4 of the application are attached. These are a sample only, the answers must be changed to meet the specifics of your property, property location and the location of the tank.

You can forward any questions that you have during this process to the Village office and the questions will be responded to. The Village cannot provide you with personal legal advice however the Village can answer code-related questions about your tank and property.

**Exhibit 1. (suggested language only- you should create your own language based on your unique property).**

1. To abandon or move the tank would create an excessive and unreasonable economic burden. I have obtained estimates to have the tank moved in the amount of \_\_\_\_\_ or more. To abandon the tank and use above ground tanks would increase the risk of the tanks as the tanks would be right against the house and would also be a risk in a flood or in a windstorm when they would become projectiles.

2. Relocating the tank to another location would not achieve any safety objective for several reasons. The house is elevated at least \_\_\_\_ feet above the ground and the tank. Therefore there is no point of the house that could be an ignition point within that distance from the tank, and all points of the “building” are at least that distance from the tank. There is no house in the Village that has a basement, all property in the Village is sand only, which has a slope to the water, and there is therefore no risk of gas escaped from a leak collecting and causing an unsafe condition.

3. (oceanfront owners) The Village was created on several principles. The ocean front owners agreed to move their homes to within twenty-five feet of the Dune Road right of way in order to grant a public easement for the beach, which limited the areas that would be available for the placement of the tank. The strict enforcement of the Code would inhibit the public goal of maintaining the public beach due to the further loss of rights of the ocean front property owners.

(Bayfront owners) There is a public policy that limits construction in or near wetlands. The location of the tank was at least in part selected to minimize the impacts on the wetlands and the neighbors. Moving the tank to another location has the potential of affecting the wetlands and the surrounding properties.

4. The tank cannot be moved to another location because (add specifics of your property here)

5. For the reasons state above, a move the tank of a few feet would not achieve any additional safety or other benefit.

Supplemental Variance Application requirements.

The following code sections pertain to underground (buried) LP tanks:

**Section 6104.3 and Table 6104.3 of the 2015 International Fire Code** requires that underground Liquid Petroleum gas tanks that have a capacity of up to 2,000 gallons shall be located a minimum of 10 feet from buildings public ways or lot lines of adjoining property that can be built upon.

**An exception to Section R322.1.6 of the 2015 International Residential Code** requires, locating electrical systems, equipment and components; heating, ventilating, air conditioning; plumbing appliances, and plumbing fixtures; duct systems; and other service equipment is permitted below the elevation required in Section R322.2 or R322.3 provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the design flood elevation in accordance with ASCE 24. Electrical wiring systems are permitted to be located below the required elevation provided that they conform to the provisions of the electrical part of this code for wet locations.

These sections of the Uniform code involve specialized expertise and in order to provide the State Board of Review with an adequate basis to render a determination on variance requests of this nature, it is strongly suggested that the following documentation accompany a completed application form (Please see Part 6 in the attached application form):

1. A written summary describing the circumstances surrounding the installation of the buried LP gas tanks on your property.
2. A site plan prepared by a New York State licensed surveyor or registered design professional showing:
  - a) the boundary lines of the lot on which the tank is located
  - b) each building on the lot
  - c) the location of the underground tank, including an outline of the tank's perimeter
  - d) the locations of the tank's fill pipe and relief (vent) pipe
  - e) the distance between tank's fill and relief (vent) pipes and nearest lot line
  - f) the distance between tank's fill and relief (vent) pipes and each building on the lot
  - g) the distance between tanks and buildings located on the adjacent lot.
3. Information about the underground tank including:
  - a) Tank size (capacity), type, and listing (i.e. DOT, ASME, etc.)
  - b) Tank manufacturer's specifications and data
  - c) Tank installer's name
  - d) Description, signed by the installer or his representative, of the tank's installation (i.e. materials & fill used, anchoring, etc.)
4. Photographs of the tank's fill pipe and relief (vent) pipe showing their proximity to adjacent buildings.

Please note that at the hearing, you will have the right to present expert testimony by individuals who are qualified to address these issues.