

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.

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.



Building Standards and Codes

New York State
Department of State
Division of Building Standards
and Codes
One Commerce Plaza
99 Washington Avenue, Suite 1160
Albany, NY 12231-0001
(518) 474-4073
Fax: (518) 474-5788
www.dos.ny.gov

Application for Variance or Appeal

USE THIS FORM TO APPLY FOR A VARIANCE FROM SPECIFIC REQUIREMENTS OF THE NY STATE UNIFORM FIRE PREVENTION AND BUILDING CODE, OR TO APPEAL A LOCAL DETERMINATION OF SAME. FILING INITIATES A LEGAL PROCESS REGULATED BY 19 NYCRR 1205.

All fields marked with * must be completed in order for this form to be submitted.

All Completed Applications must:

- Be mailed/e-mailed to the appropriate Regional Office, not Albany Central Office
- Be signed. Unsigned applications will be returned
- Include any additional plans or documentation needed to support your request (checklist enclosed)
- Include (2) copies of the application and any additional documentation.

PETITION NO:
ROUTINE VARIANCE <input type="checkbox"/>
BOARD VARIANCE <input type="checkbox"/>
BOARD APPEAL <input type="checkbox"/>
(FOR OFFICE USE ONLY)

PART 1 - GENERAL INFORMATION

PART 2 - ADDITIONAL REQUIRED CONTACT INFORMATION

PART 3 - MINIMUM BUILDING INFORMATION

PART 4 - APPLICABLE BUILDING CODE RELIEF REQUESTED

PART 5 - SUBJECT OF THE PETITION

PART 6 - DOCUMENTS

PART 7 - FILING AND SIGNATURE

PART 1 - GENERAL INFORMATION

PETITIONER Name: * Edmund Brown

(Check one) Owner Agent Architect or Engineer Attorney Other (specify)

Company Name / Title: *

Mailing Address (number and street, city, state, zip code): * 1271 Third Avenue, New York, New York 10022

Telephone: * (212) 456-7890 Email Address: * ebrown@aol.com

PROPERTY City Town Village of West Hampton Dunes County of Suffolk

Street Address: * 959 Dune Road, West Hampton Dunes 11722 Tax Map No.: 907-3-4-2

Property Name: (if applicable)

OWNER (if other than Petitioner) *	CODE ENFORCEMENT OFFICIAL *
Name: _____	Name: Robert Kaufer
Street Address: _____	Street Address: 4 Arthur Street
City: _____ State: _____ Zip: _____	City: Westhampton Beach State: NY Zip: 11978
Telephone: () _____	Telephone: (631) 288 6571
Email: _____	Email: _____

Application for Variance or Appeal

PART 2 – ADDITIONAL CONTACT INFORMATION (attach additional pages as necessary)

<u>ARCHITECT OR ENGINEER</u> Name: <u>THIS IS YOUR ARCHITECT</u> Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (_____) _____ Email: _____	<u>FIRE MARSHAL OR INSPECTOR</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (_____) _____ Email: _____
<u>FIRE DEPARTMENT CONTACT PERSON</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (_____) _____ Email: _____	<u>OTHER INTERESTED PERSON OR ORGANIZATION</u> Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Telephone: (_____) _____ Email: _____

PART 3 – MINIMUM BUILDING INFORMATION*

Occupancy Classification: (check all that apply for mixed use buildings)

- Assembly A-1 A-2 A-3 A-4 A-5
- Business B
- Educational E
- Factory F-1 Moderate Hazard F-2 Low Hazard
- Hazardous H-1 H-2 H-3 H-4 H-5
- Institutional I-1 I-2 I-3 I-4
- Mercantile M
- Residential R-1 R-2 R-3 R-4 One or Two-Family Dwelling Townhouse
- Storage S-1 Moderate Hazard S-2 Low Hazard
- Utility U
- Other (specify): _____

Construction type: (If more than one is applicable, specify where each occurs in the building. Consult the building code or your local Code Enforcement Official for assistance)

- Type IA - Fire resistive
- Type IB - Fire resistive
- Type IIA - Non-combustible – Protected
- Type IIB - Non-combustible – Unprotected
- Type IIIA - Ordinary - Protected
- Type IIIB - Ordinary – Unprotected
- Type IV - Heavy timber
- Type VA - Wood Frame – Protected
- Type VB - Wood Frame - Unprotected

Height/Stories & Area: 327
 Height in Feet: _____
 Number of stories above a Basement: 2
 Total Floor Area of Largest Story (gross square feet): 1500 (include any attic spaces)
 Floor area of entire building (gross square feet; include any basement areas): 3000

THIS IS FROM YOUR HOUSE PLANS / ARCHITECT

Application for Variance or Appeal

PART 3 – MINIMUM BUILDING INFORMATION (continued):*

Project Type:

- New Building
- Addition to Existing Building
- Repair
- Alteration Level 1
- Alteration Level 2
- Alteration Level 3
- Change of Occupancy
- Other Certificate of Occupancy for existing underground gastank

Permit/Compliance Status:

- Building Permit Application Date: _____/_____/_____
- Building Permit Date: _____/_____/_____
- Certificate of Occupancy Date: _____/_____/_____
- Orders or Denials
- Inspection Report

Project Status:

- In-Planning
- Work in Progress Start Date: _____/_____/_____
- Work Completed

PART 4 – APPLICABLE BUILDING CODE RELIEF REQUESTED * (check any that apply)

- Title 9 - Uniform Fire Prevention and Building Code – Applicable 1/1/1984 to 12/31/2002
- Title 19 - Uniform Fire Prevention and Building Code – Applicable 1/1/2003 to present
 - Part 1220 Residential
 - Part 1221 Building
 - Part 1222 Plumbing
 - Part 1223 Mechanical
 - Part 1224 Fuel Gas
 - Part 1225 Fire
 - Part 1226 Property Maintenance
 - Part 1227 Existing Building
- 2016 Uniform Code Supplement – Applicable 10/03/2016 to present
- Multiple Residence Law (MRL) No. of Stories _____ No. of Dwelling Units _____ Year Built _____

PART 5 – SUBJECT OF THE PETITION (appeal and/or variance, both may be requested)

Check One * Variance Appeal Appeal/Variance

On the chart below, list the specific code sections which are the subject of your application. Use a separate sheet if necessary.

CODE SECTION(S)	TOPIC	RELIEF SOUGHT
Table 6104.3	setback from property line	3.5 ft. setback variance where 10' setback is required and 6.5' is provided
Table 6104.3	setback from building	2.5' setback variance where 10' is required and 7.5' is provided

THIS IS FROM YOUR SURVEY/SURVEYOR

Application for Variance or Appeal

VARIANCE*

To be eligible for a variance you must document which of the following apply:

Strict compliance with sections above would entail practical difficulties, unnecessary hardship or would otherwise be unwarranted because such (*check the statements that apply and provide appropriate documentation*):

- | | |
|---|---|
| <input type="checkbox"/> 1. would create an excessive and unreasonable economic burden; | Reasons are attached in EXHIBIT <u> 1 </u> |
| <input type="checkbox"/> 2. would not achieve its intended objective; | Reasons are attached in EXHIBIT <u> 1 </u> |
| <input checked="" type="checkbox"/> 3. would inhibit achievement of some other important public policy; | Reasons are attached in EXHIBIT <u> 1 </u> |
| <input checked="" type="checkbox"/> 4. would be physically or legally impracticable; | Reasons are attached in EXHIBIT <u> 1 </u> |
| <input type="checkbox"/> 5. would be unnecessary in light of alternatives which, without a loss in the level of safety, achieve the intended objective of the code; | Reasons are attached in EXHIBIT <u> </u> |
| <input checked="" type="checkbox"/> 6. would entail a change so slight as to produce a negligible additional benefit consonant with the purpose of the code. | Reasons are attached in EXHIBIT <u> 1 </u> |

APPEAL

An appeal is a request for a Board of Review to review any order or determination or the failure within a reasonable time to make any such order or determination by a Code Enforcement Official. Describe the order or determination and explain specifically why you believe the order or determination; or failure to act is incorrect, improper or otherwise unwarranted. This should include specific explanations relative to code sections cited.

- A. An order or determination or the failure to make said order or determination in a timely fashion; or the failure to issue a permit or other document in a timely fashion is appealed. A copy of the order or determination is attached as EXHIBIT . Briefly describe the order or determination (*additional sheets may be used if necessary*)

-
- B. Attached as EXHIBIT are reasons why the order or determination should be reversed or modified or why other relief should be fashioned so as to do justice among the parties.
-

Application for Variance or Appeal

PART 6 – DOCUMENTS

Required Documents: (supplemental to the petition form)

Summary: Describe the project, present conditions, proposed work, details of the appeal and/or variance requests along with support of the grounds for relief you checked above.

Site Plan: Indicate size and location of all structures on the premises (if applicable).

Building Plans: Drawings in sufficient quantity and quality to clearly describe the requested variance or modification. Such drawings may include dimensioned floor plans, elevations, sections and construction details. Any drawings submitted should be identical to those submitted to the code enforcement official or be noted otherwise.

Supplementary Documents: Submit such materials as photographs, charts, reports, detailed descriptions or any other information that can be used to more fully describe the nature of the request. List any such supplementary materials by Exhibit number:

EXHIBIT NUMBER	DESCRIPTION
1	site plan
2	supplemental explanation

PART 7 – FILING AND SIGNATURE

NON-REFUNDABLE FILING FEES (Checks must be made payable to **New York State Department of State**)

Your Regional Representative will contact you to verify fee requirements and additional documentation requirements. Board of Review cases require 8 sets of documents. For appeals and Board of Review variances, a hearing will be scheduled once all required materials are received by the Albany Central Office AND the Regional Representative has confirmed the application is otherwise complete.

Routine (*administrative*) variance review process \$ 50

Board of Review Petitions

Construction, alteration or renovation of residential or agricultural occupancies no more than one structure; no more than 2 dwelling units \$ 50

Construction, alteration or renovation of other buildings or structures having a gross area of:

- not more than 8,000 square feet \$ 100
- more than 8,000 square feet but not more than 25,000 square feet \$ 300
- more than 25,000 square feet but not more than 50,000 square feet \$ 500
- more than 50,000 square feet \$1,000

Maintenance or use of buildings or materials and not otherwise provided for above \$ 100

Previous Action

Has any previous action related to the subject property been taken by the Department of State or another administrative agency or a court? (Include any formal interpretations, decisions, orders or informal advisories issued by the Department of State, Division of Housing and Community Renewal or the Department of Labor).

- No Yes (describe below and provide relevant documents)

I make this application pursuant to 19NYCRR Part 1205 and I assert under the penalties of perjury that the information provided in support of this application is true and correct to the best of my knowledge.

SIGNATURE: *

DATE: *

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.