

**General Variance Referral Process for Towns with
Agency-approved Local Land Use Programs**
DRAFT for discussion purposes only
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General Variance Referral Process

The variance referral process for Towns with an Agency-approved Local Land Use Program (ALLUP) is outlined in both the APA Act and the local Town zoning code. The local process may or may not exempt variances in Hamlet from the referral process as provided for in Section 808(3) of the APA Act and Section 582.6 of the APA Regulations. The local process may also include referrals for all septic variances.

Recognizing the growing expense involved in copying and mailing the variance referrals to the APA, electronic submission can be an option for most variances. The language in the local code may or may not specify the format of the variance referral (such as certified mail) and any deviation from that should be confirmed with the Town attorney and/or making the appropriate change to the zoning code. The language in the APA Act requires "written notice." It is the current policy of the APA not to conduct "official business" via email however, since not every variance referred by an ALLUP requires action on the part of the APA, it is reasonable for the Town to do an initial submission electronically. If upon receipt of the variance referral the APA requests additional information, a paper copy would likely be required.

The Variance Referral Record should include:

- ✓ APA 'Variance Referral Coversheet' (optional)
 - Copies available: www.apa.ny.gov/Local_Government/LGS/ALLUP-VarianceReferralCoverSheet.pdf
- ✓ Town Variance Application
 - Applicant Name
 - Location/Tax map number
 - Type of variance requested
 - Site Plans
 - Deeds
 - Pictures (if available)
 - Pictures can be helpful since APA staff are unfamiliar with the project site
- ✓ Minutes (draft minutes are OK) from ZBA meetings discussing the variance
 - It is helpful if the minutes:
 - Identify the type(s) of variance(s) sought; and
 - List the variance factors and the ZBA's findings for each factor
- ✓ Record of the Variance Decision
 - Sample variance resolutions are on the Local Land Use References section of the APA's website: www.apa.ny.gov/Local_Government/index.html
- ✓ The APA may also request additional pertinent information
 - Note: The Agency's 30-day review period may re-start when additional requested information is received

The Town typically has 15-days from the grant of a variance to refer it to the APA for review.

APA Variance Consultation

APA Staff are authorized to provide advisory comments for any variance application received by the Town. Comments can be requested by the CEO, ZA or ZBA members. If a variance request involves shoreline setbacks or exemptions from the density or intensity requirements APA staff strongly encourage Town Officials to seek advisory comments.

APA Variance Review Process

The APA has 30-days from receipt of a complete variance referral record in which to respond to the Town. For most variances, as mentioned above, an electronic submission would provide adequate notification and materials for review. However, there may be cases where the Town code or Town attorney specifies a paper copy be sent or where the APA requests a full paper copy of the variance referral record following electronic submission. This request would be made after an initial electronic submission and the 30-day time clock for review by the APA would re-start when the paper copy was received.

When the APA receives a variance referral record from a Town with an ALLUP it must determine if the variance granted involves provisions of the APA Act and whether it was granted appropriately. If the APA determines the variance involves provisions of the Act and was not granted appropriately, it may reverse the variance. In the case of a variance reversal the APA sends notification to the Town that the variance has been reversed. This essentially nullifies the ZBA's grant of the variance. There are several options available to the Town and applicant following a variance reversal. The applicant may choose to modify the project and reapply to the ZBA (new application, new hearing, etc.) Another option available under NYS Town Law §267-a(12) is that any member of the ZBA can move to rehear the variance. To rehear the variance, the vote by the ZBA must be unanimous. The reheard variance would then be referred to the APA for review. A third option would be for the applicant to choose not to do the project or to redesign the project so that it no longer requires a variance. The final option would be for an aggrieved party to pursue an Article 78 against the APA on the decision of the variance reversal. There is a 60-day time clock under §818 of the APA Act in which to file the Article 78 on a variance reversal. It is recommended that the Town consult with its attorney to discuss the available options.

If the APA chooses not to reverse a variance, the APA may either:

- 1) Send a letter to the Town advising them that the variance referral process is complete; or
- 2) Allow the 30-day review period to expire with or without a follow-up letter notifying the Town after the 30-days has elapsed.

Note: The complete variance referral process may take up to ±45 days from the date that the ZBA granted the variance until the process is complete (depends on when materials are sent to and received by the APA). The sooner the Town can send the complete record to the APA, the sooner the statutory 30-day review period can begin. The Town should advise applicants to not to start work on any project requiring a variance until the variance referral process has been completed and the Town receives confirmation from the APA.

APA References

APA Act:

§808 Administration and Enforcement of Approved Local Land Use Programs

3. Upon receipt of an application for a variance from any provision of an approved local land use program involving land in any land use area other than a hamlet, including any shoreline restriction, the local government body or officer having jurisdiction thereof shall give written notice thereof to the agency together with such pertinent information as the agency may deem necessary. If such variance is granted, it shall not take effect for thirty days after the granting thereof. If, within such thirty day period, the agency determines that such variance involves the provisions of the land use and development plan as approved in the local land use program including any shoreline restriction and was not based upon the appropriate statutory basis of practical difficulties or unnecessary hardships, the agency may reverse the local determination to permit the variance. If the agency so acts, the appropriate local government officer or body, as well as any other person aggrieved by such action, shall have standing to have such action reviewed under article seventy-eight of the civil practice law and rules.

§818 Judicial Review

1. Any act, omission, or order of the agency or of any officer or employee thereof, pursuant to or within the scope of this article, may be reviewed at the instance of any aggrieved person in accordance with article seventy-eight of the civil practice law and rules, but application for such review must be made not later than sixty [60] days from the effective date of the order or the date when the act or omission occurred.
2. Any local government which appears as a party in any proceeding before the agency, shall have standing to have the agency's decision on such project reviewed pursuant to article seventy-eight of the civil practice law and rules.

APA Regulations:

§582.6

- (a) The following variances from approved local land use programs shall be subject to agency review, pursuant to section 808(3) of the Adirondack Park Agency Act, if outside hamlet areas:
 - (1) variances from local shoreline restrictions;
 - (2) variances from the local controls governing intensity of development, such as minimum lot areas;
 - (3) variances from use restrictions which would allow a use other than those on the classification of compatible use lists in the Adirondack Park Agency Act for the official map land use area in which it would be located; and
 - (4) any other variances which involve the provisions of the land use and development plan.
- (b) A local government shall provide written notice to the agency of an application for any variance referred to in subdivision (a) of this section within 15 days of receipt or within such period as may be agreed upon. The agency may request additional pertinent information.
- (c) Prior to local action on a variance application, the agency may, at the request of the local government, render an advisory opinion as to whether a variance may be granted.
- (d) Written notice of the granting of a variance described by this section shall be given to the agency within 15 days thereof. The variance shall not take effect until the agency determines that it will not reverse or modify the variance. If the agency has made no determination within 30 calendar days after receipt of notice, the variance shall take effect at the end of such period.

