

ZONING BOARD OF APPEALS APPLICATION

Dear Applicant for an Appeal:

In order for the Board of Appeals to consider a case, the law requires that you present the Board with a complete application. This purpose of this letter is to provide you with instructions on how to meet your responsibilities, so the Board may hear your case and judge it fairly.

The first thing we recommend is that you review the municipal ordinance and make sure you understand why your permit application was denied. Then you will be prepared to complete the application form given to you. If you do not know what zoning district your property is in or specific zoning restrictions on the property, you may obtain this information from the Code Enforcement Officer.

Next, you must provide the Board with the factual information required on the form given to you. Therefore, you must provide the Board of Appeals with proof that you have a legal interest in the property about which you are bringing an appeal, in addition to information about the property, including any details about its physical characteristics. It may be helpful to describe the neighboring property as well, although the Board of Appeals may make a site inspection of the property prior to conducting a public hearing on your appeal. (You are certainly entitled to accompany board members when they make that site visit. Just let them know you would like to be present.)

Then you must decide what kind of appeal you wish to bring. Your options are to bring an administrative appeal or variance appeal. The Code Enforcement Officer may give you some guidance in making this decision, but ultimately it is your decision to make, not the CEO's. What are the differences?

An administrative appeal is an appeal from a decision of either the CEO or the Planning Board, which you think is a wrong decision. You may think it is wrong because you do not agree with how the ordinance is being interpreted, or you think the Town made some administrative error when processing your permit application. For example, if you have a non-conforming use, you may need to bring an administrative appeal to challenge the CEO's interpretations of "expansion." On the application you must explain what the decision said, what you want to do with your property, why you think the decision was wrong and what you would like the Board of Appeals to do about it.

A variance appeal is an appeal from the denial of a permit because the CEO says you cannot meet one or more of the dimensional standards of the ordinance, such as setback, lot coverage, or parking space requirements. On the application you must illustrate precisely what dimensional standards you do not meet and by how much your proposed project fails to meet them. But you must also do something else. State law requires the Board of Appeals to find that you will experience an "undue hardship" if the appeal is not granted. "Undue hardship" is defined by state law. It consists of four tests. You must show that you will meet

ALL four tests before the Board can grant you a variance. You, in turn, bear the burden of proving to the Board that you actually do meet ALL those tests.

If you do not prove this to their satisfaction, the Board does not have the legal authority to grant you a variance. Those tests are:

#1. *That the land in question cannot yield a reasonable return unless the variance is granted.* What the Board will be looking for under this test is proof that without a variance you cannot make reasonable use of your property. For example, if you have a single, undeveloped lot only big enough to put a 10 x 20 foot house and a septic system without a setback variance in a residential neighborhood, the ordinance has denied you a reasonable return on that residential lot. However, "reasonable return" in the eyes of the law does NOT mean maximum financial return for you or as high a return as your personal financial circumstances would require in order to profit from developing the property. Therefore, the Board may legally limit the size of the house you do build to one which yields no more than a reasonable return. The courts have also ruled that family circumstances are not a relevant consideration. A variance is for the property, not for you or your family.

#2. *The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.* What the Board will be looking for is proof from you that your property, NOT your personal circumstances, is somehow different from other property in the neighborhood. Differences could include its shape, its topography, or its unique location.

#3. *The granting of a variance will not alter the essential character of the locality.* To meet #3 you must prove to the Board that what you propose to do will not change the neighborhood or pose health or safety problems. This is usually the easiest test to meet.

#4. *The hardship is not the result of action taken by the applicant or a prior owner.* Past history of the property is relevant under this criteria. An example might be one where the property owner split the lot in question out of a larger parcel and in doing so created a substandard lot after zoning was enacted. You will, therefore, need to present to the board the history of how the property was created and developed over the years.

If your property is not located in whole or in part within the Shoreland Zone you may apply for a variance from dimensional requirements using a second set of criteria. You must meet all six tests for the board to grant a variance.

#1. *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and*

#2. *The granting of variance will not produce an undesirable change in the character of the neighborhood and will not unreasonable detrimentally affect the use or market value of abutting properties; and*

#3 The practical difficulty is not the result of action taken by the applicant or a prior owner; and

#4 No other feasible alternative to a variance is available to the applicant; and

#5 The granting of a variance will not unreasonable adversely affect the natural environment; and

#6. The property is not located in whole or in part within the shoreland area as described in Title 38 MRSA §435.

As used in this section "dimensional standards" means and is limited to ordinance provisions related to lot area, lot coverage, frontage and setback requirements.

Although it is unusual to apply for both an administrative appeal and a variance appeal, you are entitled to do so.

Whether you make one or two appeals BE SURE TO COMPLETE the application form and provide the Board with as much concrete documentation of your case as you can, keeping in mind the Board will weigh the nature of the evidence submitted and rely on only the evidence it judges substantial, relevant and credible. In addition to any written material submitted with the application, you may also bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements from individuals with personal knowledge of the property, and any documentation of previous building permits or ordinances.

Your appeal must be submitted to the Board of Appeals within 30 days of the issuance of the CEO's decision in order for the appeal to be heard by the Appeals Board. They are not obligated to hear your appeal until you have provided them with all the information requested on the form. You are also required to submit a fee of \$330.00 in order for the application to be judged complete.

In the event you are granted a variance, you must record the variance in the Registry of Deeds within 90 days according to state law in order for the variance to be valid. Therefore, be sure to obtain a signed form from the Board of Appeals.

You should also be advised that in accordance with state law the Board of Appeals members have 30 days in which to reconsider their decision, and interested persons have 45 days to appeal the Appeals Board decision to court. Therefore, until the 45 days has expired you cannot be certain the Board of Appeals decision is final.

APPLICATION FOR VARIANCE OR APPEAL TO ZONING BOARD OF APPEALS

Name of Appellant _____

Mailing address _____

City or Town _____ State _____ Zip Code _____

Telephone _____

Name of Owner _____

Property Located on Tax Map _____ Lot _____ Zone _____

The undersigned requests that the Board of Appeals consider one or both of the following:

1. Administrative Appeal

Relief from the decision or lack of decision of the Code Enforcement Officer or Planning Board in regard to an application for a permit. The undersigned believes that (check one):

- _____ an error was made in the denial of the permit
- _____ the denial of the permit was based on misinterpretation of the ordinance
- _____ there has been a failure to approve or deny the permit within a reasonable period of time
- _____ other _____

Please explain in more detail the facts surrounding this appeal (please attach a separate piece of paper, if necessary). You should be as specific as possible so that the Board of Appeals can give full consideration to the case.

2. A Variance

A. Nature of variance: Describe generally the nature of the variance.

In addition a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size the locations of existing building, the locations and dimensions of proposed buildings or alterations, and any natural or topographic peculiarities of the lot in question.

B. Justification of variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals, that the strict application of the terms of the Zoning Ordinance would cause undue hardship. There are four criteria which must be met before the Zoning Board of Appeals can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

- #1. *The land in question cannot yield a reasonable return unless the variance is granted.*
- #2. *The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.*
- #3. *The granting of a variance will not alter the essential character of the locality.*
- #4. *The hardship is not the result of action taken by the applicant or a prior owner.*

OR

C. In the case of the property not being located within the Shoreland Zone, the applicant can request the application to be reviewed under a second set of criteria as follows. The applicant must prove to the Zoning Board that they meet all six tests for the board to grant a variance using these standards.

- #1. *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and*
- #2. *The granting of variance will not produce an undesirable change in the character of the neighborhood and will unreasonable detrimentally affect the use or market value of abutting properties; and*
- #3. *The practical difficulty is not the result of action taken by the applicant or a prior owner; and*
- #4. *No other feasible alternative to a variance is available to the applicant; and*
- #5. *The granting of a variance will not unreasonable adversely affect the natural environment; and*
- #6. *The property is not located in whole or in part within the shoreland area as described in Title 38 MRSA §435.*

I certify that the information contained in this application and its supplement is true and correct.

Date _____ Appellant _____

Note to appellant: Please file this form with the Chairman of the Board of Appeals, at which time a fee of \$330.00 must be paid. You will be notified of the date of the hearing on your appeal.