



Town of Sanbornton
17 Meetinghouse Hill Road
Sanbornton, New Hampshire 03269
603-286-8303

Do not write in this space

Case # _____

Date _____

Signed _____

Fee _____

APPLICATION FOR A VARIANCE

Note: When completing this application please refer to the attached “*Guidance Document – Understanding and Answering Questions on Your Variance Application.*” In the event an incomplete application is submitted, the Zoning Board of Adjustment reserves the right to return the application or to deny a hearing.

Applicant Name _____
Mailing Address _____
Property Owner _____
Home Phone _____ Business Phone _____
Location of Property _____
Zoning District _____ Tax Map _____ Lot _____

I am requesting a variance from Article _____, Section _____ of the Sanbornton zoning ordinance to permit (provide a detailed description of your requested variance): _____

Facts supporting this request:

1. The values of the surrounding properties are not diminished because: _____

2. The variance will not be contrary to the public interest because: _____

3. Substantial justice is done because: _____

4. The spirit of the ordinance is observed because: _____

5. Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship:

Unnecessary Hardship means that owing to special conditions of the property that distinguish it from other properties in the area:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision because: _____

and,

(B) The proposed use is a reasonable one because: _____

If criteria in subparagraphs (A) and (B) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it (you must refer to the attached guidance document for a detailed explanation of this criteria) because:

Note: For persons with physical disabilities, please see RSA 674:33 regarding alternative criteria for a variance.

Property Owner Signature _____; Date _____

Applicant Signature _____; Date _____

Signature: To the best of my knowledge, the above is true and correct. I understand that the public hearing will be held at the scheduled date and time unless a request by is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing.

Guidance Document

Understanding and Answering Questions on Your Variance Application

The Zoning Board of Adjustment has provided the following guidance regarding the intention of the proposed questions and subsequent thought process, and to aid in the personal review and addressment of the five criteria. This is not an exhaustive review and is not meant to be legal guidance. Applicants are encouraged to do their own research to gain full comprehension of each question as a means of providing applicable information to the Zoning Board of Adjustment in support of the application.

1. The Variance Will Not Be Contrary to the Public Interest.

The Zoning Board of Adjustment has the power to authorize a variance from the terms of the town's zoning ordinance in a manner that will not be contrary to the public interest; in the event that the literal enforcement of the ordinance provisions will result in unnecessary hardship (owing to special conditions of the property), granting the variance ensures that the spirit of the ordinance is observed and substantial justice done.

An applicant must show that there will be no harm (i.e., "will not be contrary") to the public interest if granted.

For the variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. To best determine this, applicant should consider if the variance would alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public?

Please note: the requirement that a "variance will not be contrary to the public interest" is related to the requirement that "a variance be consistent with the spirit of the ordinance."

2. The Spirit of the Ordinance is Observed.

In deciding if a variance is in violation of the spirit and intent of the ordinance, the applicant must determine what legal purpose the ordinance serves and the reason it was established. This requires that the effect of the variance be evaluated in consideration of purpose and goals set forth by the zoning ordinance, which may begin or end with a review of the comprehensive master plan upon which the ordinance is based.

When the ordinance clearly states and contains a restriction regarding a particular use of the land, the Zoning Board of Adjustment would violate the spirit and intent of the ordinance by granting the requested variance. Since the Zoning Board of Adjustment cannot change an ordinance or violate the ordinance in any way, granting a variance would be of questionable legality.

3. Substantial Justice is Done.

Determination of justice done will be considered on an individual basis bearing in mind the unique circumstances of each case. Interests of the individual property owner will be weighed against the interests of the public as a method of determination. It is necessary for the requested variance to meet the

four accordant points of qualification for the injustice to be relieved by granting a variance. The Zoning Board of Adjustment of adjustment cannot alleviate an injustice by granting an illegal variance. The Zoning Board of Adjustment of adjustment cannot alleviate an injustice by granting an illegal variance.

4. The Values of Surrounding Properties are not Diminished.

Determination of whether a granted variance will decrease surrounding property values is reliant on the facts presented in the applicant's submitted request. While objections and concerns raised by abutters may be taken into consideration during the hearing, these objections are not required for the Zoning Board of Adjustment to reach a decision regarding a decrease to property value. Very often conflicting evidence and inconsistent expert opinion will be presented to the Zoning Board of Adjustment. All of this will be addressed by the Zoning Board of Adjustment members during the hearing and considered alongside their own knowledge and experience to ascertain if a decrease in property value will occur.

The Zoning Board of Adjustment is not required to accept the conclusions of experts with regard to property valuation, or on any other point, being that one of the functions of the Zoning Board of Adjustment is to establish the credibility and significance of given testimony or witness opinion, including expert witnesses.

Remain mindful that the burden of proving that the proposed usage of the property will not decrease the value of surrounding properties lies solely with the applicant; as such, it is in the applicant's best interest to present a convincing and well-informed argument to the Zoning Board of Adjustment.

5. Literal Enforcement of the Provisions of the Ordinance Would Result in an Unnecessary Hardship.

By nature, a zoning ordinance imposes some hardship on all property by setting forth required lot size dimensions, allowable uses, etc. and these restrictions are shared amongst all parcels that fall within the same zone or district, therefore sharing the same burden of hardship. When the hardship so imposed is shared equally by all property owners no grounds for a variance exist. Only when some characteristic of your property makes it different from others can an unnecessary hardship be claimed (as the applicant you must prove to the Zoning Board of Adjustment that your property meets this criteria in order to claim an unnecessary hardship).

For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.

Is the restriction on the property necessary in order to give full effect to the purpose of the ordinance, or can relief be granted to this property without frustrating the purpose of the ordinance? Is the full application of the ordinance to this particular property necessary to promote a valid public purpose?

Once the purposes of the ordinance provision have been established, the applicant must demonstrate that, due to the special conditions of the land in question, the ordinance provision being considered would not advance the purposes (of the ordinance) in any “fair and substantial” way when applied to the property. This test works to balance the public good resulting from the application of the ordinance against the potential harm to a private landowner, and serves to answer the question of whether it creates a necessary or "unnecessary" hardship.

And (must meet this criteria also),

(B) The proposed use is a reasonable one.

The applicant must establish that, because of the special conditions of the property, the proposed use is reasonable. A hardship exists when special conditions of the land render the use for which the variance is sought ‘reasonable.’

This is necessarily a subjective judgment - as is almost everything having to do with variances - but presumably it includes an analysis of how the proposed use would affect neighboring properties and the municipality’s zoning goals generally. It clearly includes “whether the landowner’s proposed use would alter the essential character of the neighborhood.”

If the criteria in subparagraphs A and B above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance and a variance is therefore necessary to enable a reasonable use of it.

Under this standard, it is not enough to show that the proposed use is reasonable; the applicant is required to establish that there is no other reasonable use of the property that would comply with the zoning ordinance. Even though the restriction significantly limits the value of the property, the standard is not met if the property can be put to any reasonable use. If the owner is currently making a reasonable use of the property, that fact is “conclusive evidence that a hardship does not exist.” Further, the burden remains with the applicant to show that the subject property is unique and that the zoning restriction imposes more of a burden on it than on other properties in the area.