

APPLICATION FOR A VARIANCE

FEE: \$75.00 & Mailing Costs

To the Zoning Board of Adjustment,
Town of Cornish, New Hampshire

Do not write in this space.
Case No. _____
Date Filed _____
_____ (signed – ZBA)

Name of Applicant _____

Address _____

Owner _____

(if same as applicant, write “same”)

Phone/Cell _____ Email _____

Location of Property _____

(street, number, map and lot number)

NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if the space provided is inadequate.

Application for a Variance

A Variance is requested from Article _____ Section _____ Sub-section _____ of the Zoning Ordinance to permit _____

Facts in support of granting the variance:

1. Granting the Variance would not be contrary to the public interest because:

2. If the Variance were granted the spirit of the ordinance would be observed because:

3. Granting the Variance would do substantial justice because:

4. If the Variance were granted, the values of the surrounding properties would not be diminished because:

5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. 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 because:

- and -

ii. The proposed use is a reasonable one because:

b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist 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.

Applicant _____ Date _____
(Signature)

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

Variance: A variance is an authorization which may be granted under special circumstances to use your property in a way that is not permitted under the strict terms of the Zoning Ordinance.

If you are applying for a Variance, you must first have some form of determination that your proposed use is not permitted without a Variance. Most often this determination is a denial of a building permit. A copy of the determination must be attached to your application.

For a Variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the Variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the Variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. Denial of the Variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(b)(5) provides the criteria for establishing unnecessary hardship:
 - A. 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:
 - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property; and
 - ii. The proposed use is a reasonable one.
 - B. If the criteria in subparagraph (A) 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.

The chart on the following page may be helpful in completing a variance application:

VARIANCE CRITERIA GUIDELINES

Statutory Requirements (RSA 674:33, I(b))	Explanation
<p>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</p>	
<p>1. The variance is not contrary to the public interest</p>	<p>The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”</p>
<p>2. The spirit of the ordinance is observed</p>	<p>As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.</p>
<p>3. Substantial justice is done.</p>	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
<p>4. The values of surrounding properties are not diminished.</p>	<p>Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.</p>
<p>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p>First is to show that because of special conditions of the property that distinguish it from other properties in the area:</p> <p>(a) There is no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provision to the property; and</p> <p>(b) The proposed use is a reasonable one.</p> <p><i>Alternatively</i>, unnecessary hardship exists 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.</p>	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.</p> <p>(a) Determine the purpose of the zoning restriction in question. The applicant must establish that because of special conditions of the property, the restriction, as applied to the property does not serve that purpose in a “fair and substantial” way.</p> <p>(b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.</p> <p><i>Alternatively</i>, The applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.</p>

For any appeal, the application must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property. If the applicant is not the property owner, this must be explained.

WHERE the property is located.

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc.

WHAT do you propose to do? Attach sketches, plot plans, pictures, constructions plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property.

WHY does your proposed use require an appeal to the board of adjustment?

WHY should the appeal be granted?

Prepare a list of all abutting property owners and attach it to your application. **Under N.H. RSA 672:3, “Abutter” means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board.** If you have difficulty, consult the assessor’s office, but the accuracy of the list is your responsibility. Mail or deliver the completed application, with all attachments, to the Clerk of the Board or to the office of the Board of Selectmen. **A fee is charged sufficient to cover the cost of all legally required notices. Fees will be collected at the hearing. Please bring your checkbook to the hearing and make checks payable to the Town of Cornish. Failure to pay the fee will result in a denial of the appeal without a public hearing.**

The Board will promptly schedule a public hearing upon receipt of your properly completed application. Public notice of the hearing will be posted and printed in a newspaper and notice will be mailed to you, to all abutters, and to other parties whom the Board may deem to have an interest, at least five days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the Board will reach a decision. You will be sent a notice of decision.

If you believe the Board’s decision is wrong, you have the right to appeal. The Selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the Board for a rehearing. The Motion for Rehearing may be in the form of a letter to the Board. The motion must be made within 30 days of the decision and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in its opinion, good reason is stated in the motion. The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created in not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal to the courts. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

See NH RSA Chapter 677 for more detail on rehearing and appeal procedures.