

DIMINSIONAL VARIANCE LETTER

A Dimensional Variance Appeal is an appeal from the denial of a permit because the Codes Officer informs you that you cannot meet one or more of the dimensional standards of the Winthrop Zoning 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 project fails to meet them. But, you must also do something else. State law requires the Zoning 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 of the 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 four tests. If you do not prove this to their satisfaction, the Board does not have the legal authority to grant you a variance. The four 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. 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 a house (example) you may wish to 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 test three, 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 APPELLANT OR A PRIOR OWNER.

Past history of this property is relevant under this criterion. An example might be one where the prior 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, a BRIEF history of how the property was created and developed over the years.

If you think that you can meet all four tests, and if you TRULY NEED one or more variances, you should proceed with a variance appeal.

Although it is unusual to apply for both an Administrative Appeal and a Variance Appeal, you are entitled to do so. However, in the event that the first appeal is denied, it is the Boards' policy to hear only one appeal an evening; you would be required to wait until the next available meeting for the second appeal.

Whether you make one or two appeals, BE SURE TO COMPLETE the application forms and provide the Board with as much concrete documentation of your case as you can, keeping in mind that the Board will weigh the nature of the evidence submitted and rely on only that 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 questions, 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 Winthrop Zoning Board of Appeals within thirty (30) days of the issuance of the Code Enforcement Officer'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 non-refundable fee of \$50.00 in order for the application to be deemed complete.

In the event that you are granted a variance, you must record the variance at the Kennebec County Registry of Deeds within ninety (90) days, according to State Law, in order for the variance to be valid. Therefore, be sure to obtain a signed Certificate of Variance Approval from the Codes Enforcement Office. You should also be advised that in accordance with State Law, the Board of Appeals members have thirty (30) days to which to reconsider their decision, and interested persons have forty-five (45) days to appeal the Appeals Board decision in court. Therefore, until the thirty (30) days has expired, you cannot be certain that the Board of Appeals decision is final.

Effective September 17, 2005 - Municipalities must forward a copy of all shoreland zoning variance appeals to the Department of Environmental Protection (DEP) at least twenty (20) days BEFORE action by the local appeals board.