



# Board of Appeals

## Applying for a Variance

### ***What is a variance?***

A variance is a process in which the Board of Appeals determines if the zoning ordinance is unduly burdensome if strictly interpreted and applied to particular case and applicant. Variances can only be granted if the applicant can demonstrate that they meet the state-mandated hardship criteria. A four pronged test is mandated by state law and it is difficult to get a variance. Training manuals for Board of Appeals members state generally that variances are the exception not the rule. In the Town of York general variances are only allowed for lot area, lot coverage by structures, and setbacks. All other variances are prohibited.

### ***How do I apply for variance?***

Applications for a variance are found on the town website ([www.yorkmaine.org](http://www.yorkmaine.org)) and at the Town Hall - see an Administrative Assistant in the Code Enforcement Department. All appeals must be taken within 30 days of the action or inaction by a municipal official. Deadlines are critical. Missing a deadline usually means automatic loss of an appeal, the Board of Appeals will deny your appeal as untimely.

### ***Do I need a lawyer?***

The burden of proof is on the party that appeals to the Board of Appeals. The applicant must prove his or her case with facts and evidence. Appearing in front of the Board of Appeals can be unnerving. If you do not feel you can present your case effectively then you should consider getting help. Help may be a neighbor or friend, or professional help such as an attorney or surveyor.

### ***Do you want to convince the board that you should get a variance?***

The better prepared you are, the more likely you are to get what you would like. You should familiarize yourself with the ordinance, the various criteria, and the denial prepared by the town official.

### ***What are the hardship criteria?***

When you present before the Board of Appeals you should realize that each of the four questions is important and that you must prove to the Board that you meet each of the four criteria.

1. The first hardship criteria is the land in question cannot yield a reasonable return without a variance. The courts have held that reasonable return is not simply financial gain. In one case the court held reasonable use of an oceanfront lot was camping because the original cottage had been destroyed by flooding. Variances are not granted so that the applicant can have the highest or best use of the property.

2. The second criteria is the need for a variance is due to the unique circumstances of the property and not the general conditions of the neighborhood. Unique circumstances arise when the lot is significantly different than those around it. If all the adjacent lots need same variances to be built on then a lot would not be unique. In recent years the issue of unique circumstances for the property has become a more prominent issue.
3. Third criteria is the granting of a variance will not alter the essential character of the locality. An example of how a use could change the essential character of the locality would be a liquor store in a residential neighborhood. In this case a retail liquor store is not only significantly different than the current use but would result in a change of the essential character of the neighborhood.
4. The fourth criteria is the hardship is not the result of an action taken by the appellant or prior owner. An example of a self created hardship is selling part of your lot and then requesting a variance for lot coverage because you do not have enough land to meet lot coverage requirements for an addition that you are proposing. Two recent Supreme Court decisions have held that purchasing a nonconforming lot will not automatically be considered a self-created hardship.

***Are other different kinds of variances?***

Yes, there are three additional types of variances.

- Variances granted in the Shoreland Zone have additional criteria to meet and may have limitations that the Board of Appeals cannot vary.
- Minor dimensional variances are allowed except in the Shoreland Zone when the applicant can prove a "practical difficulty". The standard of proof for a Minor Dimensional Variance is easier to meet but the required setback or required frontage can only be reduced by 20%.
- Disability Variances are allowed for access only and may have to be removed when the handicapped person no longer lives there.

***Is there anything I need to do if I am granted a variance?***

Yes, there are two things you must do. First, all variances must be recorded in the York County Registry of Deeds within 90 days of the Board of Appeals decision. Second, a variance is not a permit. You must obtain a permit from the proper municipal official or board.

***What happens if I am not granted a variance?***

You have a right to appeal to the Superior Court within 45 days of the Board of Appeals decision. If you don't appeal within 45 days you'll lose your right to appeal the decision to court and are generally banned from asking for the same variance in the future.

***Can I get a variance "after the fact"?***

In order to get a consent agreement from the town of York you are required to exhaust all other possible remedies. The Board of Appeals should consider if you would have been entitled to a variance had you asked prior to construction. The Board of Appeals may grant a variance only in those cases when it believes it would have granted a variance if properly sought.