



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application Checklist

- ☐ Completed application form
- ☐ Completed "Criteria for a Variance" sheet, addressing the five items set forth by the New Hampshire Supreme Court governing the granting of Variances.
- ☐ A narrative touching on the five criteria and explaining what you are requesting a variance for.
- ☐ If the applicant is not the property owner, he/she must supply a note signed by the property owner stating his/her knowledge of the application being submitted to the Zoning Board of Adjustment. The property owner will receive a copy of the public hearing notice by certified mail along with the abutters.
- ☐ A sketch including the following:
 - Measurements of the distances from any existing structure to the lot lines. If the proposed structure is not attached to the building you will need the distance between buildings.
 - Dimensions of the lot. (If the variance is requesting relief from a setback regulation – The Zoning Board of Adjustment requires a certified plot plan of the property, if that is not available, you can ask for a waiver)
- ☐ Photographs, if you have them.
- ☐ Abutters list. **This information must be obtained from the Planning & Development Department. The applicant must pay the cost of the certified fee for each abutter, applicant and any other applicable person on the abutter list, including applicant.** (See Zoning Clerk for current fee)
- ☐ If there are wetlands on the parcel, refer to the City's Ordinance Chapter 275.12.3 for wetland buffers of 50' and 75'.
- ☐ Prior to applying for a variance regarding wetlands, the applicant must receive all necessary State permits.
- ☐ Application fee (\$175.00). Check is made payable to City of Rochester, including abutters' fees.
- ☐ One PDF form of your application packet is due as well as **ten** paper copies.

All of the above information must be completed and submitted to the Planning & Development Department on or before the deadline date, or the application will be considered incomplete and will be postponed until the next scheduled meeting, or until all the requirements have been met.

NOTE: All applications will be allowed one postponement of the hearing in their application, and shall notify the Planning & Development Department in writing of their intent to postpone hearing at least two days prior to the meeting at which their application is to be considered. If the applicant requests a second postponement of the hearing, the application will be considered to have been withdrawn and the applicant must file a new application with the Board in order to receive a hearing. The provisions of this paragraph shall not apply to any postponement requested by an applicant as a result of the inability of the Zoning Board of Adjustment to provide the applicant with a five-member board for the hearing on the application.

The applicant or their representative MUST attend the Zoning Board of Adjustment meeting to present their case, or no action will be taken.

If you have any questions with any of these requirements, please contact the Zoning Clerk, Crystal

Galloway. Phone: (603) 335-1338 E-mail: crystal.galloway@rochesternh.gov



City of Rochester, New Hampshire

Zoning Board of Adjustment

Variance Application

**TO: BOARD OF ADJUSTMENT
CITY OF ROCHESTER**

DO NOT WRITE IN THIS SPACE

CASE NO. _____

DATE FILED _____

ZONING BOARD CLERK

Applicant: _____

E-mail: _____ Phone: _____

Applicant Address: _____

Property Owner (if different): _____

Property Owner Address: _____

Variance Address: _____

Map Lot and Block No: _____

Description of Property: _____

Proposed use or existing use affected: _____

The undersigned hereby requests a variance to the terms of the Rochester Zoning Ordinance, Ch. 275, Section _____

and asks that said terms be waived to permit _____

_____.

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance and thus constitute grounds for a variance. **I understand that while presenting my case the testimony should be confined to the 5 criteria and how they pertain to my case.**

Signed: _____ Date: _____



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Variance Criteria

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. Owning to special **conditions of the property that distinguish it from other properties in the area**, denial of the variance would result in an 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, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in the strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.



City of Rochester, New Hampshire

Zoning Board of Adjustment

Request of waiver of requirement to have a Certified Plot Plan for Case # _____

I request a waiver of the requirement to have a certified plot plan for the following reasons:

- There are no objections from any abutter, **and:**
- Based on the information provided, the distance into the setback will not create any problems to the abutting property because: _____

- The property is described in its deed as being bounded, on the side for which relief is requested, by a natural feature like a: (stone wall/ row of large trees/roadway, etc.)

- The request for relief from the setback required is modest enough that the probability of a surveying error large enough to make a material difference is remote. Yes ☐ No ☐
- Information provided is based upon other surveyed parcels in the immediate vicinity and is consistent with the tax map information, so the probability of a surveying error large enough to make a material difference is remote. Yes ☐ No ☐
- The request for relief from the setback required is in a direction where any impact on the abutter is small or nonexistent and, should a large surveying error be found in the future, there is adequate land area to correct the problem through a lot-line adjustment. Yes ☐ No ☐
- Any other applicable information: _____

Check with the Planning & Development Department to see if it is necessary to fill out this form

ROCHESTER ZONING BOARD OF ADJUSTMENT VARIANCE & SPECIAL EXCEPTION CRITERIA

Variances.

The board may authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if it determines that all of the following conditions are met:

- A. The variance will not be contrary to the public interest;
- B. The spirit of the ordinance is observed;
- C. Substantial justice is done;
- D. The values of surrounding properties are not diminished; and
- E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - i. For purposes of this condition, "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; and
 - b. The proposed use is a reasonable one.
 - ii. If the criteria in subparagraph i, 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.

Notwithstanding Section 2., above, the board may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance, when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that:

- A. Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance.
- B. In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance that the variance shall survive only so long as the particular person has a continuing need to use the premises.

Special Exceptions.

The board grants special exceptions for particular uses and activities as listed in the Tables of Uses in Section 18-Use Regulations and as articulated in Section 22-Special Exceptions.

The board shall grant a special exception only if it reasonably determines that *all of the following base criteria are met* (in addition to those criteria and conditions included for specific uses in Section 22):

- A. *Location.* The specific site is an appropriate location for the proposed use or structure;
- B. *Neighborhood.* The proposed use would not be detrimental, injurious, obnoxious, or offensive to the neighborhood;
- C. *Traffic.* The proposed use would not create an undue hazard or nuisance to vehicular or pedestrian traffic;
- D. *Public Facilities.* Adequate and appropriate facilities and utilities would be provided to ensure the proper operation of the proposed use or structure; and,
- E. *Master Plan.* The proposed use or structure is consistent with the spirit of this chapter and the intent of the Master Plan.

Requirements for Granting a Variance: A Suggested Approach

THE APPLICANT MUST ESTABLISH ALL OF THE FOLLOWING

Requirement	Explanation
1. The variance is not contrary to the public interest.	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."
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public or to other individuals.
4. The values of surrounding properties are not diminished.	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>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means:</p> <p><i>Because of</i> special conditions of the property that distinguish it from other properties in the area:</p> <p>(a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; <i>and</i></p> <p>(b) The proposed use is a reasonable one.</p> <p><i>Alternatively</i>, unnecessary hardship means that, 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.</p>	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other similarly situated property.</p> <p>(a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the 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>As an alternative to (a) and (b) above, 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>