

SITE PLAN REVIEW APPLICATION

VARIANCE INFO

Variance #	VARIANCE(S) REQUESTED	ZONING BYLAW REQUIREMENT	PROPOSED	VARIANCE
Example	Residential District Side yard setback	15'	5'	10'
1				
2				
3				

CONFORMANCE WITH STATUTORY CRITERIA

Applications for Variances must meet several criteria contained in State Statute. The review process will to function more smoothly when you provide thorough responses to the following items.

Describe or summarize and attach any evidence indicating the variance request complies with the following criteria

There are unique physical circumstances or conditions peculiar to the particular property.

[Is the property irregularly shaped? exceedingly narrow, wet shallow, or small? the location of an exceptional topographic feature—such as deep gully or ravine?

Note: Case law has established that the existence of an historic inn on the property, or the existence of a leach field on the property were not unique physical circumstances. *Sorg v. North Hero ZBA*, 135 Vt. 423 (1977).]

That unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of the bylaw.

[Do features of the bylaw—such as setbacks—allow you to locate a proposed structure or use]

VARIANCE REQUEST APPLICATION

CONFORMANCE WITH STATUTORY CRITERIA , CONTINUED

Describe or summarize and attach any evidence indicating the variance request complies with the following criteria

That Because of unique physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw

[Note: Case law has established that even if one part of a lot cannot be developed because of a unique physical circumstances, a variance will be denied if the parcel, overall can be reasonably used. Therefore, the zoning board must consider all of the applicant's property, and not just that included in the variance request.]

That a variance is therefore necessary to enable reasonable use of the property.

[Note: The court will also consider whether the property can be used in conjunction with adjoining property owned by the applicant. Blow v. Town of Berlin, 151 Vt. 333 (1989); In re McDonald's Corp, 151 Vt. 346 (1989). F If the property is already developed and being used, then a variance cannot be granted under this section. Gadhue v. Marcotte, 141 Vt. 238 (1982).]

That Unnecessary hardship has not been created by the appellant.

[The court has held that hardships are created by the applicant when the applicant purchases a parcel with actual or constructive knowledge (i.e. applicant should have known) of zoning restrictions; when the applicant sells a contiguous lot, leaving himself with insufficient lot size for the development sought; when the applicant builds in violation of the ordinance; when the applicant's contractor makes an error when pouring the foundation; and when the applicant purchases a small part of a larger parcel when the larger parcel could have been developed in strict conformity to the bylaws. L & M Pike & Sons, Inc. v. Town of Waterford, 130 Vt. 432 (1972); LeBlanc v. City of Barre, 144 Vt. 369 (1984); In re Reilly Tire Mart, Inc., 141 Vt. 330 (1982); In re McDonald's Corporation, 151 Vt. 346 (1989); In re Cumberland Farms, 152 Vt. 59 (1989); In re Fecteau, 149 Vt. 319 (1988).]

Form continues ... 

VARIANCE REQUEST APPLICATION

CONFORMANCE WITH STATUTORY CRITERIA , CONTINUED

Describe or summarize and attach any evidence indicating the variance request complies with the following criteria

The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located,

[Is the property located in a residential neighborhood, village center, or commercial area? Will approval of the variance enable the appellant/referrant to conduct a use or establish a structure that will change the essence of the area in which it is located?]

The variance, if authorized, will not alter substantially or permanently impair the appropriate use or development of adjacent property.

[Will approval of the variance enable the appellant/referrant to conduct a use or establish a structure that will discourage owners of adjacent properties from using or developing their properties in the manner called for in the bylaw ?]

The variance, if authorized, will not reduce access to renewable energy resources,

[Will approval of the variance enable the appellant/referrant to conduct a use or establish a structure that will limit the ability of neighbors to utilize wind or sun powered (photovoltaic) energy generating equipment?]

Form continues ... 

VARIANCE REQUEST APPLICATION

CONFORMANCE WITH STATUTORY CRITERIA , CONTINUED

Describe or summarize and attach any evidence indicating the variance request complies with the following criteria

The variance, if authorized, will not be detrimental to the public welfare.

[Will approval of the variance enable the appellant/referrant to conduct a use or establish a structure that will jeopardize public safety, health, or finances, or aesthetics?]

The variance, if authorized, will represent the minimum variance that will afford relief

[Note: This provision means that an applicant is not entitled to the most economically beneficial variance, but rather, the smallest variance necessary to provide reasonable use of the property. In re Maurice Memorials, 142 Vt. 532 (1983). Also, modification of previously issued variances is extremely unlikely given that by statute **the previous variance had to represent the minimum variance that would afford relief**]

The variance, if authorized, will represent the least deviation possible from the bylaw and from the plan.

[Assuming no reasonable use exists on the property at present, does the variance request seek the absolute minimum amount of relief required to allow a reasonable use? What is the basis for the determination that the request is for the minimum amount of relief required, rather than something more?]

VARIANCE REQUEST APPLICATION

NAMES AND ADDRESSES OF ADJOINING PROPERTY OWNERS

A list of list of current adjoining and cross-street property owners " must be submitted in conjunction with this application, along with a set of stamped and addressed envelopes including one for each adjoining and cross-street property.

Adjoiner 1

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 5

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 2

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 6

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 3

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 7

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 4

Name _____

Address _____

City _____

State _____ Zip _____

Adjoiner 8

Name _____

Address _____

City _____

State _____ Zip _____

Use additional copies of this form as required ...

Form continues ... 

VARIANCE REQUEST APPLICATION

VARIANCE REQUEST PLAN CHECKLIST

Appellants/referrants seeking variances should submit a "Variance Request Plan". The features depicted on such "Variance Request Plan" should include the following:

- Property owner.
- Property address.
- Property lines as delineated on a survey prepared by a surveyor licensed in the State of Vermont.
- All structures, easements, and other proposed development or improvements and land use areas.
- Existing and proposed driveways, pedestrian walks, other circulation facilities, parking, loading areas.
- Existing and proposed landscaping (if developed site).
- Existing and proposed utility and dumpster locations.
- Existing and proposed signage.
- Significant features including wooded areas, streams, drainage swales, ledge.
- Any zoning district boundaries that abut or cross the site.
- Context map, North arrow, scale and date.

If the variance request affects structures (e.g., setback or height variance), building plans must be submitted in conjunction with this application. Such Plans must include the following:

- Building footprints (existing and proposed), and
- Building elevations (existing and proposed).

If not included in completed application form, Appellants/referrants seeking variances must also submit site data including:

- Variance request (required and proposed).
- Total building square footage (existing and proposed).
- Building coverage (existing and proposed).
- Parking spaces (number required and number proposed)

Applications must also be accompanied by the appropriate fee.

VARIANCE REQUEST APPLICATION

VARIANCE REQUEST PLAN PROCEDURE

Variance applications must be filed using forms and related materials prepared by staff of the Planning and Zoning office. Applications for variances will not be warned for public hearing until the applicant conducts a filing conference with staff of the Planning and Zoning Office. The applicant will schedule this conference with the DRB Administrator or another staff member assigned by the Administrator. The purpose of the conference is to review the application materials and determine whether the application is complete. Application materials shall be submitted to Planning and Zoning staff 24 hours prior to the Filing Conference.

Public hearings shall be conducted as quasi-judicial proceedings pursuant to 1 V.S.A. § 310(5)(B). Public comment may be offered during the hearing with the permission of the chair. The Board will be assisted by Staff, including, but not limited to, the Town's DRB Administrator and the Town's Director of Planning. Public hearings will be conducted in the following manner:

The presiding officer will:

- A. Open the hearing by reading the warning of the hearing.
- B. Review the order of events and review requirements such as conflicts of interest, ex parte communications, and appeals.
- C. Ask all who believe they will participate in the hearing to sign the 'sign-in' sheet, provide contact information, and take the following oath: I hereby swear or affirm that the evidence I give in the cause under consideration shall be the whole truth and nothing but the truth under the pains and penalties of perjury.
- D. Invite Development Review Board staff to comment on the application or proposal.
- E. Accept and acknowledge written information presented to the board prior to the hearing.
- F. Invite the applicant or applicant's representative to present the application or proposal. (Applicants are encouraged to tailor presentations to address outstanding issues identified by staff.)**
- G. Invite board members to ask questions of the applicant or applicant's representative.
- H. Invite other persons to present information regarding the application or proposal.
- I. Invite the applicant, applicant's representative, or other persons to respond to information presented.
- J. Invite more questions or comments from members of the board.
- K. Invite more questions from other persons and members of the public.
- L. Allow final comments or questions from the applicant or his/her representative or members of the board.
- M. Upon motion and majority approval, either continue the hearing to a time certain, or close the proceedings. If the hearing is continued to a time certain and additional materials are requested of the applicant, the Chair shall set a date by which materials must be submitted.

The board may conduct public deliberations at any time, or may vote to enter deliberative session.

Site visits may be scheduled in connection with an application. Final decisions will be in writing and issued within no more than 45 days of the close of the public hearing. The written decision will either Approve the request (with or without conditions) or Deny the request.

In the event the request is approved, the appellant/referrant must still complete any additional permitting requirements. Approval of a variance request is not a substitute for issuance of a building permit or any other permitting requirement.

SUBMIT