

Town of Milton

Variance Application Instructions

Instructions to applicant for a variance from the Milton New Hampshire Zoning Board of Adjustment. The Board strongly recommends that, before making any appeal, you become familiar with Milton's Zoning Ordinance and with NH Statutes Title LXIV, RSA Chapters 672 to 677, covering planning and zoning.

A **“Variance”** is one, which permits a use of land for a purpose that is not allowed by the Milton Zoning Ordinance such as a commercial use in a residential zone or a multi-family use in an area that only permits single-family dwellings. **A variance is one, which also involves physical aspects of the development such as building height, setback or size, the number of parking spaces required; frontage, lot size, etc.**

For a variance to be legally granted, you must show that your proposed use meets all five of the following conditions **per RSA 674:33**:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an 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 that 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.

Hardship, as the term applies to zoning, results in a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner.

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.

The application form must be properly filled out. Describe the property by giving the area, frontage, side and rear lines, slopes, natural features and any other pertinent information regarding the property. Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of prior applications concerning the property. Attach a plat drawing showing where the abutters abut your property.

Pursuant to RSA 676:7 the State law of New Hampshire, the Town of Milton is required to notify the applicant and every abutter of the public hearing by certified mail, return receipt requested. The cost of required publication or posting of notice and the cost of mailing said notices shall be paid by the applicant.

According to RSA 672:3, "abutter" is defined as "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". For purposes of receiving testimony only, and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of any abutting property being in condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356:B, XXIII. Please note: All roads, highways, railroads, rivers, ponds and streams are neutral.

Prepare a list of all abutting property owners (use attached sheet), verify the list at Milton's Town Office, and return it with three (3) sets of 1" x 2-5/8" mailing labels and your application. List the names and mailing addresses of the applicant and/or property owner and authorized agent (surveyor), not more than five (5) days prior to submission, per RSA 676:4, 1(b). The accuracy of the list is the applicant's responsibility.

The Zoning Board of Adjustment will schedule a public hearing within 30 days of receipt of your properly completed application. Public Notice of the hearing will be posted and printed in Foster's Daily Democrat and notice will be mailed to you, all abutters, and other parties whom the Board may deem to have an interest, at least five (5) days prior to the date of the hearing. You and all other parties will be invited to appear in person or by agent/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 must be in the form of a letter to the

Board. The motion must be made within 30 days of the Board's 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 its' convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested a rehearing 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 all abutters. (Applicable fees will be charged to the applicant motioning for the rehearing).

Fees are charged to cover the cost of preparing and mailing the legally required notices:

Application Fee.....	\$150.00
Abutter Notice.....	\$8.53 each
Site Identification Sign.....	\$5.00

Please make checks or money orders payable to the Town of Milton. Mail or deliver the completed application with all the necessary attachments to:

Land Use Department
PO Box 310
Milton, NH 03851

Site Walk Authorization

The owner(s), by filing an application, hereby give permission for any member of the Milton Zoning Board of Adjustment and such agents or employees of the Town or other persons as the Zoning Board of Adjustment may authorize, to enter upon the property which is the subject of the application at all reasonable times for the purpose of such examinations and inspection as may be appropriate.

Owner(s) Signature: _____

Authorized Agent Signature: _____

Town of Milton

“Variance” Application

Date Received: _____ Public Hearing: _____

Applicant(s) Name: _____

Mailing Address: _____

Phone: _____

Land Owner’s Name(s): _____

Map# _____ Lot # _____ Zone: _____

Physical Address of Property: _____

Note: This application is not acceptable unless all required statements have been made.

A “**Variance**” is requested from Article: _____, Section: _____ of the Milton Zoning Ordinance to permit:

Facts supporting this request:

1. The Variance will not be contrary to the public interest because: *(In responding to this question, please address: (1) Whether granting the variance would alter the essential character of the locality, and (2) Whether granting the variance would threaten public health, safety or welfare.)*

2. The **spirit** of the ordinance is observed because:

3. Granting the variance would do substantial **justice** because:

4. The **values** of surrounding properties are not diminished because:

5. Literal enforcement of the provision of the ordinance would result in an **unnecessary hardship**. Special conditions of the property distinguish it from other properties in the area because:

(A) Denial of the variance would result in unnecessary hardship because:

(i) No fair and substantial relationship exists between the general purposes of the ordinance provision and the specific application of that provision to the property because:

(ii) The proposed use is a reasonable one because:

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Applicant's Signature: _____ Date: _____

Property Owner(s) Signature: _____ Date: _____

Requirements for Granting a Variance: A Suggested Approach

The applicant must established 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 the 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 distinguished 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 a not available.</p>