



**TOWN OF KITTERY**  
**CODE ENFORCEMENT OFFICE**  
 200 ROGERS ROAD, KITTERY, MAINE 03904  
 PHONE: (207) 475-1305  
 FAX: (207) 439-6806

*Application to the*  
**BOARD OF APPEALS**

DATE SUBMITTED	
MAP & LOT	
ASA FEE	
DATE PAID	
DATE COMPLETE	
HEARING DATE	

**UNDUE HARDSHIP VARIANCE REQUEST**

I have reviewed Town Code Title 16, Board of Appeals By-Laws, and the Ordinance(s) pertinent to this application. My request is based on Section 16.6.4.2A, for an Undue Hardship Variance (30-A MRS. §4353 (4-C)).

**IN ORDER FOR AN APPLICATION TO BE DETERMINED COMPLETE AND SCHEDULED FOR A PUBLIC HEARING: APPLICATIONS FORMS MUST BE COMPLETE; 10 SETS OF DOCUMENTATION PROVIDED; & ALL FEE(S) PAID**

**PROPERTY INFORMATION**

ADDRESS					
MAP		LOT #		LOT SIZE	
BASE ZONE(S):			OVERLAY ZONE(S):		

**The subject property:**  
 [ is / is not ] in a Shoreland overlay or Resource Protection zone; [ is / is not ] in a floodplain; AND  
 [ does / does not ] have outstanding code violations; and, if so, granting this appeal provides resolution .

**PROPERTY OWNER: I have right, title or interest in the affected property, or issue, as shown by:**

NAME(S)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

*NOTE: You may have an attorney represent you, but such representation is not necessary. You may also be represented by a designated agent (e.g. family member, neighbor, engineer, contractor) as you so desire.*

**APPLICANT (if different) I am an agent of the applicant with standing, as shown by:**

NAME(S)					
MAILING ADDRESS					
CITY		STATE		ZIP CODE	
PHONE No.				e-MAIL:	

Variance means:

1. a relaxation of the terms of Title 16 where such relaxation will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant or prior owner, a literal enforcement of the title will result in unnecessary or undue hardship.
2. As used in Title 16, a variance is authorized only for dimensional requirements related to height, area and size of structure, or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited is not allowed by variance, nor may a variance be granted because of the presence of nonconforming uses in the particular zone or adjoining zone).

**Describe the general nature of the hardship variance request:**

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To the best of my knowledge, all information submitted on and with this application is true and correct.

Date: \_\_\_\_\_

By: \_\_\_\_\_

*(Signature)*

*(Print Name)*

**UNDUE HARDSHIP VARIANCE CRITERIA**

**16.6.4.2 Variance Request.**

- A. A variance may be granted only by the Board of Appeals under the following conditions:
  - 1. for a reduction in dimensional requirements related to height, area and size of structure, or size of yards and open spaces;
  - 2. the use is not prohibited by this Code; and
  - 3. only if the strict application of the terms of this Code would result in “undue hardship.” The term “undue hardship” means the applicant must demonstrate all of the following:
    - a. The land in question cannot yield a reasonable return unless a variance is granted.
    - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
    - c. The granting of a variance will not alter the essential character of the locality. d. The hardship is not the result of action taken by the applicant or a prior owner.
- B. Notwithstanding Section 16.6.4.2A, the Board of Appeals may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in, or regularly uses, the dwelling. The Board of Appeals must restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to, or egress from, the dwelling by the person with the disability.

The Board of Appeals may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” includes railing, wall or roof systems necessary for the safety or effectiveness of the structure.

- C. A copy of each variance request within the Shoreland Overlay Zone, including the application and all supporting information supplied by the applicant, must be forwarded by the Code Enforcement Officer to the Commissioner of the Maine Department of Environmental Protection at least twenty (20) days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals will be made part of the record to be taken into consideration by the Board of Appeals.
- D. The Board of Appeals must limit any variance granted as strictly as possible to ensure conformance with the purposes and provisions of this Code to the greatest extent possible, and in doing so may impose such conditions of approval to a variance as it deems necessary. The party receiving the variance must comply with any conditions imposed.

**I UNDERSTAND THAT THE BOARD OF APPEALS:**

- May hear and decide on a variance request within the limitations set forth in Title 16, Section 6.4.2A, Variance Request, and 30-A MRS §4353(4).
- Appears to have jurisdiction to hear this request; hearing must be held within 30 days of this request filing; application must be complete; and, public and abutter notice must be made no less than seven days prior to the scheduled hearing.
  - Will conduct this hearing De Novo (meaning the Board acts if it were considering the question for the first time, affording no deference to the preceding agency decisions; may receive new evidence and testimony consistent with this Town Code Title 16 and the Board rules; and, conduct additional hearings and receive additional evidence and testimony).
- Will determine my Burden of Proof:
  - 1) What does the ordinance/statute require the applicant to prove?
  - 2) Does the ordinance/statute prohibit or limit the type of use being proposed?
  - 3) What factors must be considered under ordinance/statutes to decide whether to grant the request?
  - 4) Is the evidence presented substantial? Is it credible? Is it outweighed by conflicting evidence?
- Requires substantial evidence as the Standard of Review for this request, meaning:

*“More than a mere scintilla”. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The preponderance of evidence standard is met if the proposition is more likely to be true than not true. The standard is satisfied if there is greater than fifty percent chance that the proposition is true.*
- May hear, decide, and approve variations in accordance with the criteria listed in Town Code Title 16, Sections 6.6.1, Factors, and 6.6.2, Considerations; and may consider other Title 16 standards.
- Approval may not be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance or regulation or any state law which the Town is responsible for enforcing.
- Is only legally authorized to deal with issues arising from the list above, and do not include such matters as constitutionality, civil rights, criminal acts, property disputes, surliness, etc.
- Will not even hear my appeal unless I can show that I have “standing” to have my request heard.
- Purpose of establishing my case for “standing” is to limit appeals on an issue to those who are directly involved and/or affected.
- Will try to decide my case based only on the factual information presented and what is written in the pertinent Town ordinance/regulation, State statute(s)/regulation(s) and the rulings of the State Supreme Judicial Court.
- Tries to make decisions it believes would be upheld if appealed to Superior Court.

In order for a variance to be granted, the applicant must demonstrate to the Board that the strict application of the terms of the ordinance would cause undue hardship. There are four criteria, each of which must be met before the Board can find that a hardship exists. Please explain how your situation meets each of these criteria listed below, either in the space provided or on a separate sheet:

A. The land in question cannot yield a “*reasonable return*” unless the variance is granted. (Applicant must demonstrate that all or substantially all of the value and use of the property would be lost without a variance).

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B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. (Applicant must show that this property has unique characteristics different from surrounding properties and that these differences are the reason for the need for a variance.)

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C. That the granting of a variance will not alter the essential character of the locality, and

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D. The hardship is not the result of action taken by the owners or a prior owner. (Applicant must demonstrate that the need for a variance is due to the nature of the property, not the action of owners.)

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**To the applicant:**

The goal is to provide building and use standards that apply to all properties equally within a given zone. Getting an exception or variance to standards is purposely difficult because granting variances to the standards would diminish the value of in protecting neighboring properties. It is important that you respond completely to the requests below:

1. Please complete this application in its entirety. You may add other information as may be needed to adequately describe the purpose of seeking relief from the Board of Appeals.
2. A detailed plot plan or diagram must be provided showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings or alterations, and any natural or topographic features (wetlands, streams, etc) of the lot in question. This plot plan should also include the distances to the nearest structures on abutting properties and show the detail of any rights-of-way, easements, or other encumbrances.
3. Blueprints, surveys, photos and other documents may be helpful in explaining your request and should be included.