



TOWN OF NEWINGTON

200 Garfield Street Newington, CT 06111

Zoning Board of Appeals

Paul Dickson
Town Planner

APPLICATION FOR ZONING VARIANCE

(Use this form to request a variance of a zoning regulation standard)

TO BE COMPLETED BY STAFF: Petition # _____ Date _____ Zone _____
Application Fee, \$320 Check # _____ Sign Fee, \$40 Check # _____

Address of subject property for variance (Provide business name, if applicable): _____

Applicant Name _____
Address _____ Phone _____
Email _____ Applicant Signature _____ Date _____

Owner Name (if different than applicant) _____
Address _____ Phone _____
Email _____ Owner Signature _____ Date _____

1. Variance relates to: Use () Lot Area () Structure Height () Build Line/Setback ()
Home Occupation () Existing Building () Frontage () Other ()

2. Please provide the Section of the Zoning Ordinance on which this Petition is based.

3. Is property within 500 feet of another town? Yes/No

4. Are there wetlands on the property? Yes/No

5. Specify details of Variance and describe nature of hardship (attach letter, if more space needed):

6. Has previous Variance been filed? If yes, provide date and nature of Variance:

Application Requirements

1. Prepare letter explaining in depth, the nature of the hardship with the land (subject property) and reasons for the ZBA Variance Application.
2. Site plan/or plot plan to scale showing existing & proposed improvement. Photos can also be provided as additional documentation.
3. **An A-2 Survey is required.**
4. Elevations of proposed structures.
5. Public Hearing Notice Sign to be prominently displayed **10 calendar days** prior to hearing on the subject property.

FEES:

Variance - \$320.00

Sign Deposit - \$40.00

Additional Guidelines to consider

- Application must be submitted three weeks prior to ZBA hearing date. If not enough time, the application will be heard at next available hearing date.
- **An A-2 Survey is required.** It may be waived at the discretion of the Town, provided the applicant can provide sufficient information on existing plans in regards to their application.
- Submit photos where appropriate
- Submit Architectural Rendering of the proposed construction where appropriate.
- Show footprint of existing structures and proposed additions or alterations that would require this Variance.
- Outline any topographical consideration that may limit the use of the subject property.
- Indicate Wetland Areas on the subject property.
- Submit ten (10) copies of all documentation which will be utilized at the hearing.

TOWN PLAN & ZONING
200 Garfield Street
Newington CT 06111

Notice to all applicants
PUBLIC HEARING REQUIREMENTS

1. **Sign on Subject Property**

The applicant shall receive from the Town of Newington, a Public Hearing Notice sign to be placed on the subject property. This sign shall be placed in a location that is easily visible to the public at least ten (10) calendar days prior to such hearing. The applicant shall provide a \$40.00 security deposit (cash or check) for the sign with the application.

2. **Return of Sign**

If sign is returned in good condition, the deposit shall be returned. An applicant not returning the sign within five (5) days of the close of the public hearing shall forfeit the security deposit.

3. Notice to the newspaper (Rare Reminder) for legal advertisement of public hearing will be submitted by the Town as required by State Statute.

TOWN PLAN & ZONING
200 Garfield Street
Newington CT 06111

Date: _____

Petition #: _____

Subject Property Address: _____

I have received a Public Hearing Notice sign and submitted the \$40 sign fee.

- The sign will be posted in public view for the required ten (10) days prior to my hearing date.
- I agree to return the sign within five (5) days after the public hearing.

Print Applicant Name

Phone number

*Refundable Sign Fee: \$40.00

*Deposit shall be forfeited if Public Hearing sign is not returned to the Town Planner's office.

☐ Check # _____ or ☐ Cash

Sign Returned on ____/____/____

Applicant Signature _____

TO ALL APPLICANTS FOR A VARIANCE

The following is designed to assist the potential applicant for a variance in the Town of Newington to make an informed decision as to the required process for a variance. This brief informational hand out is not designed to be a full review of the variance power. It is not intended to give legal advice or otherwise deter you from seeking independent counsel as to your application. This hand out is designed to introduce you to the variance process and provide some insight into the requirements for each application.

THE VARIANCE POWER

The Newington Zoning board of Appeals (ZBA) is empowered to vary zoning regulations provided:

1. The variance is in harmony with the general purpose and intent of the regulations and;
2. Due consideration is given for conserving public health, safety, convenience, welfare and property values and;
3. The variance does not affect substantially the comprehensive plan of the Town of Newington and otherwise undermine the general purpose of the town zoning plan.
4. It is shown that a literal enforcement of a regulation would result in a legal hardship to that parcel.

WHAT DOES THIS MEAN?

The Newington ZBA is the only municipal agency that can “vary” the zoning regulations. The power to grant a variance allows the ZBA to permit something to be done to a particular parcel of land that is different than what is required under the existing zoning regulations. Therefore, the variance power:

- Is to be exercised sparingly and only under exceptional circumstances.
- Is to be granted only where a literal enforcement of the regulations would result in a legal hardship to the land. This hardship must be unique to the parcel. It must be different in kind from that which generally effects properties in the same zoning district. The legal hardship must be expressly stated by the applicant on the application and at the hearing.
- Typically, is based on legal hardships that address the topography of the land. For example, an application for a variance on a residential lot that has a substantial portion of

wetlands may support a variance for a side yard requirement because of the topography of the land, (i.e. wetlands). The unusual shape of a lot may be a topographical basis for a variance.

- Is not an appropriate remedy to self-created hardship, such as the potential for financial loss. However, variances must be granted where the application of the regulations to an individual piece of property greatly decreases or practically destroys that particular piece of property's value, where the failure to grant a variance will result in the property being of little or no value.
- Must be based on the condition of the land not the identity or particular circumstances of the applicant. Variances are not personal to a property owner; instead they run with the land, regardless of ownership.

OTHER INFORMATIONAL ITEMS

1. The ZBA may attach reasonable conditions to the granting of a variance. The attachment of conditions to the granting of the variance may support the variance as being in harmony with the general purpose and intent of the zoning ordinance.
2. The ZBA is not required to hear an application for the same variance or substantially the same variance for a period of six months after a decision has been made by the ZBA.
3. The ZBA, in granting a variance, can require modification of the application so that, for example, neighbors will not be adversely affected (the ZBA could require a fence to be erected or trees to be planted as a buffer between the property and adjoining property).

GENERAL SUMMARY OF VARIANCE ISSUES

A variance should be granted because the property would have "no reasonable use" without the variance. Reasonable use is not simply the use that would bring the applicant the greatest financial return or will make the current owner most satisfied. It is also not simply the alternative that is the cheapest, most convenient, or most desirable for the landowner. A legal hardship is not supported merely because an applicant may want to add an addition to his home because his family is growing. Remember, the hardship relates to the land, not the individual persons. If the house already exists on the land, then you have a reasonable use for the property. Similarly, in a commercial setting, a variance is not justified merely where a business wishes to extend its parking or avoid buffers as required by zoning regulations in that again there is a reasonable use for the property that exists.

LAND USE EDUCATION PARTNERSHIP VARIANCE PROCEDURES

1. All variances require a public hearing.
2. The ZBA must publish two legal ads announcing the public hearing. The first ad must be published between ten and fifteen days before the hearing. The second ad must be published between ten and two days before the hearing. In addition, the ads must be published at least two days apart.
3. The State Statutes [Section 8-7d (f)] require that the ZBA notify the town clerk of any adjoining municipality of the application if:
 - “(1) Any portion of the property affected by a decision of such commission, board or agency is within five hundred feet of the boundary of the adjoining municipality;
 - (2) a significant portion of the traffic to the completed project on the site will use streets within the adjoining municipality to enter or exit the site;
 - (3) a significant portion of the sewer or water drainage from the project on the site will flow through and significantly impact the drainage or sewerage system within the adjoining municipality; or
 - (4) water runoff from the improved site will impact streets or other municipal or private property within the adjoining municipality.”

The notification must be sent by certified mail, return receipt requested. It must be mailed within seven days of the date of receipt of the application. **It must be sent to the Town Clerk, not the Planning and Zoning Commission, or Mayor, or Zoning Enforcement Officer.**

4. The ZBA must hold the public hearing within sixty-five days of receipt of the application. The day of receipt is the day of the next regularly scheduled meeting of the ZBA or thirty-five days after the application is submitted, whichever is sooner. The public hearing must be completed within thirty-five days after the hearing starts. The ZBA must make a decision on the application within sixty-five days of the close of the public hearing. The applicant can grant the ZBA, one or more extensions of these time limits but the total extension cannot be longer than the original time period. For example, the applicant can grant up to a sixty-five day extension of the time in which to open the public hearing. The total time, therefore, can be a maximum of 130 days from the day of receipt to the opening of the public hearing.
5. **To grant a variance requires four affirmative votes.**
6. Notice of the ZBA's decision must be published as a legal ad within fifteen days of the date of decision.
7. The applicant must be notified by certified mail of the ZBA's decision within 15 days of the decision.
8. If the variance is granted, it does not become effective until a copy of the variance is filed in the Town Clerk's Office and on the Town Land Records (Applicant must provide documentation and fee to the Newington Town Clerk's Office).

LAND USE EDUCATION PARTNERSHIP VARIANCES

Example of one scenario: You would like to build an addition to your house. You go to Town Hall to get the necessary permits and the Zoning Enforcement Officer tells you your addition would be too close to your property line. Before you can get a permit, you will need a variance from the ZBA.

What is a variance? And what is ZBA?

A variance is a request to vary the Zoning Regulations. In other words, a variance lets you do something with your property that the Zoning Regulations do not allow. Variances are granted on the basis of “exceptional difficulty or unusual hardship.”

“ZBA” is the Zoning Board of Appeals. It has five regular members and three alternate members. ZBA members are unpaid volunteers who are either elected or appointed depending on your town ordinance.

Exceptional Difficulty? Unusual Hardship? Please define. (Topography lot location)

Exceptional difficulty and unusual hardship are terms used in the Connecticut General Statutes to describe the conditions that must be met before the ZBA can grant a variance. You must convince the ZBA that there are special conditions or circumstances affecting your lot but not affecting the rest of the lots in the zoning district. The conditions or circumstances must be related solely either to the property’s unusual shape or topography or to the conditions or location of existing structures.

The exception, difficulty or unusual hardship cannot be due to something you did – e.g. putting up a building without a permit.

You must convince the ZBA that without the variance you would have no “reasonable” use for the property. Remember “reasonable use” is not simply the use that would bring you the greatest financial returns. It is also not simply the alternative that is the cheapest, most convenient, or most desirable for you to take.

You must also convince the ZBA that what you want to do will not hurt the surrounding properties. As a condition of granting a variance, the ZBA can require you to modify your plans so that your neighbors will not be affected. They could, for example, require you to erect a fence or plant trees to buffer your property from the adjoining property.

That sounds tough. How about an example.

Suppose you own a piece of property that was subdivided prior to zoning.

- The property is wide but not very deep. To meet the front yard setback and the rear yard setback requirements you would have to build a single family house that was only six feet wide. The hardship – your inability to build even a single family house – would be due to the lot’s unusual shape.

Another example: the vacant property you own has wetlands on it.

- To stay out of the wetlands, you have to build a single family house closer to the side yard than is allowed. In this case, the hardship would be due to the topography – e.g. the wetlands.

I need to build an addition to my house because I have a growing family. Doesn't that count as a hardship?

No. Hardship relates to the land – not the person. If you already have a house on the property – even if it is smaller than you would like – then you have a “reasonable use” of the property.

I need to expand my business but money is tight and I can't afford to expand the parking lot or put in all those damn trees and shrubs that the zoning regulations require. Does my financial situation count as a hardship?

No. The exceptional difficulty or unusual hardship cannot be just financial. Your contentions that money is tight or that trees and shrubs are a waste of money do not qualify as hardships or unusual circumstances.

My son has been unemployed for nearly a year. I want to build an apartment onto my house so he will have a place to live. Surely, that is a hardship.

No. Again, hardship must relate to the land. The hardship must not be due solely to your personal circumstances. While providing an apartment of a child – or an elderly parent – is commendable, it is not grounds for a variance.

What do I have to do to apply for a variance?

You must fill out an application form and pay an application fee. Each town has different forms and fees. Many towns will require the submission of a survey. Ask the Zoning Enforcement Officer to whom you must submit the application. You should make sure the application is complete.

Then what happens?

State Statutes require the ZBA to hold a public hearing on all variances. The public hearing must be held within 65 days of the “date of receipt”. Day of receipt is defined as the next regularly scheduled ZBA meeting or thirty-five days after the application is submitted- whichever is sooner.

When you submit the application, you should find out when the public hearing will be held. You should also inquire about any other notifications the town might have. Some towns require you to post a sign on the property or to notify the adjoining neighbors of the public hearing. Make sure you fulfill all the notification requirements exactly as required. Your failure to meet all the notification requirements can result in your public hearing being delayed or your variance being denied.

What happens at the public hearing?

You will have the opportunity to present your case to the ZBA as to why you should be granted a variance. Any ZBA member may ask you questions about the property or about your reasons as to why you should be granted the variance. Remember it is your responsibility to convince them that you have a hardship. You should stick to reasons relating to the land. Anyone opposed to your receiving the variance will also have the opportunity to speak. Depending on the town, there may be reports from the town planning staff or the zoning enforcement officer.

After all sides are heard from, the Chairperson “closes” the public hearing. A public hearing can remain open for thirty days. After a public hearing is closed, the ZBA can hear no more testimony about the application. The ZBA, however, may ask questions of its staff.

How long after the public hearing is closed do I have to wait for the ZBA to make up their minds?

By State Statute, the ZBA has sixty-five days after the close of the public hearing in which to make a decision. The State Statutes also require that four of the five members must vote in favor of a variance before it can be granted.

If you are granted a variance, a certification form will have to be filed on the town land records. Check with your town to determine how the certification form is handled. The variance does not become effective until the certification form is filed.

If you are denied the variance, you can appeal to the Superior Court in your county.

If I get the variance and then sell the property, what happens?

Nothing. The variance goes with the property. The new owner will have the same rights – and obligations – as the person who applied for, and received, the variance.