Variance Application Checklist

- ☐ Complete the application form.
- ☐ **You must complete the "Criteria for a Variance" sheet, addressing the 5 items set forth by the NH Supreme Court governing the granting of Variances.**
- ☐ A narrative explaining what you are requesting the variance for.
- ☐ A sketch (see attached example) 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 – <u>The Zoning Board of Adjustment requires a certified plot plan of the property</u>, if that is not available, you can ask for a waiver – see the secretary for details)***
- ☐ Photographs, if you have them.
- ☐ Abutter's list. **This information must be obtained from the Zoning Clerk in the Building, Zoning and Licensing Office from their computer. 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** (at this time the fee is **$3.78 each**)
- ☐ If there are wetlands on the parcel, refer to the City's Ordinance Chapter 42.12 (c) 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 (make check payable to City of Rochester). A check for the certified mail amount is also due when the application is submitted. One check is sufficient for both fees.

All of the above information must be completed and submitted to the Building, Zoning 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 (1) postponement of the hearing on their application**, and shall notify the Building & Zoning Office in writing of their intent to postpone such hearing at **least two (2) days prior to the meeting** at which their application is to be considered. **If the applicant request a second (2nd) postponement of the hearing, the application will be considered to have been withdrawn and the applicant must file a new application with the Board in order to receive a hearing.** The provisions of this paragraph shall not apply to any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 call Karen Grenier at 603-332-3976 or e-mail at karen.grenier@rochesternh.net

_____

Applicant Signature & Date

City of Rochester, New Hampshire

Department of Building, Zoning and Licensing Services
31 Wakefield Street * Rochester, NH 03867
(603) 332-3508 * Fax (603) 509-1912

APPLICATION FOR A VARIANCE

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

DO NOT WRITE IN THIS SPACE
CASE NO._____
DATE FILED_____
_____
ZONING BOARD CLERK

Phone No _____

Name of applicant_____

Address_____

Owner of property concerned_____
(If the same as applicant, write "same")

Address_____
(If the same as applicant, write "same")

Location_____

Map No. _____ Lot No. _____ Zone_____

Description of property_____

Proposed use or existing use affected_____

_____

The undersigned hereby requests a variance to the terms of Article_____, Section_____and asked 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.

Signed_____
(Applicant)

CRITERIA FOR VARIANCE

Case #_____

Date:_____

A Variance is requested by_____

from Section _____ Subsection_____

of the Zoning Ordinance to permit:_____

_____

at_____ Map_____ Lot_____ Zone

Facts supporting this request:

1) The proposed use would not diminish surrounding property values because:

_____

_____

2) Granting the variance is not contrary to the public interest because: _____

_____

_____

3.) Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property:_____

_____

_____

4.) Granting the variance would do substantial justice because:_____

_____

_____

5.) The use is not contrary to the spirit of the ordinance because:_____

_____

Name_____ Date:

VARIANCE TEST

Please refer to this sheet when filling out the second page of your application "Criteria for Variance"

A variance is a relaxation or a waiver of the strict interpretation of any provision of the Ordinance and may be granted by the Board of Adjustment on appeal. "Variances are included in the Zoning Ordinance to prevent the Ordinance from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated."

The local Ordinance cannot limit or increase the powers of the Board to grant variances under this authority, but this power must be exercised within bounds. In several decisions from 1952 to the present, the Supreme Court has declared that each of the following conditions must be found in order for a variance to be legally granted:

(1) The proposed use would not diminish surrounding property values because:

(2) Granting the variance is not contrary to the public interest because:

(3) Denial of the variance would result in unnecessary hardship to the owner because of the following special circumstances of the property

(4) Granting the variance would do substantial justice because:

(5) The use is not contrary to the spirit of the ordinance because:

Terms such as spirit, hardship, and injustice cannot be measured as specific quantities. Each case must be considered separately and the decision based on the judgment of the members of the Board.

Please carefully read the following information on the five tests before filling out page 2 (Criteria for Variance) of the application

1. No diminution in value of surrounding properties would be suffered.

The public hearing provides an opportunity for abutters to state how the proposed variance would affect their property. The Board will weigh the opinions of abutters, any expert testimony, along with its own understanding of the situation. The final decision must be based on the factual evidence presented, even though granting the variance might have some adverse effect on property values in the immediate area.

2. Granting the permit is not contrary to the public interest.

As an extension of the first condition, the Board must decide that granting the requested variance is not contrary to the general public.

3. Denial of the permit would result in unnecessary hardship to the owner seeking it.

Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. For the purposes of this section "unnecessary hardship" means that, owing to special conditions* of the property that distinguish it from other properties in the area:

A fair and substantial relationship does not exist between the general public purposes of the ordinance provision and the specific application of that provision to the property because of what?

-AND-

Owing to special conditions of the property the proposed use is a reasonable one because of what?

(What in the setting of this property makes it more problematic, challenging, difficult, or complicated or presents a significant impediment to utilization of the property in a manner consistent with the Zoning Ordinance than that of other property in the same environment)

Constitutional Component: If the criteria as stated 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.

4. By granting the variance substantial justice would be done.

It is not possible to set up rules that can measure or determine justice. Each case must be individually determined by Board members. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable or relief by granting of a variance that meets the other qualifications. A Board of Adjustment cannot alleviate an injustice by granting an illegal variance.

5. The use must not be contrary to the spirit of the Ordinance.

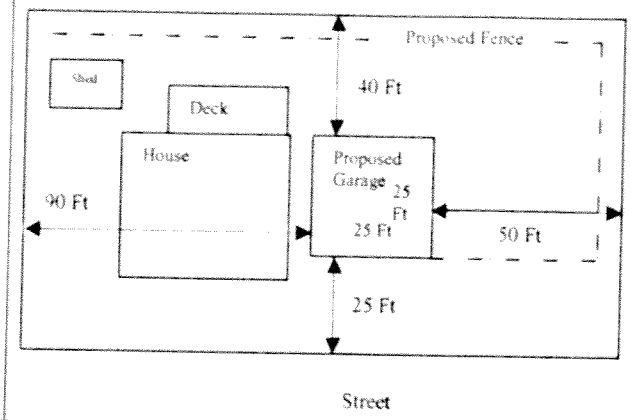
The power to zone is delegated to municipalities by the State. In general, the provisions must promote the 'health, safety, or general welfare of the community." They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers, and providing, for adequate light and air. In deciding whether or not a variance will violate the spirit and intent of the Ordinance, the Board of Adjustment must determine the legal purpose the Ordinance serves and the reason it was enacted.

Sketch Plan

Instructions:

1) Show the Property lines and road(s).
2) Show the proposed Structure and all existing structures.
3) Show the Measurements from the proposed structure to all lot lines, measure straight through existing structures if needed.
4) Include the dimensions of the proposed structure.
5) If installing a fence – show the location.

Sample Plan:



Signature _____ Date _____

Request of waiver of requirement to have a Certified Plot Plan for Case # 20 -____

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:_____

  _____

  _____