

**TOWN OF TOPSHAM  
APPLICATION FOR VARIANCE OR APPEAL**

**GENERAL INFORMATION**

APPLICANT	APPLICANT ADDRESS	APPLICANT PHONE NUMBER
PROPERTY OWNER	OWNER'S ADDRESS	OWNER'S PHONE NUMBER
LOCATION/PROPERTY ADDRESS	TAX MAP & LOT NUMBER	PROPERTY USE

**SAGadahoc COUNTY REGISTRY OF DEEDS**

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**OWNER OF RECORD**

APPLICANT   
 OTHER

The present owner acquired title to this property:  
 Date: \_\_\_\_\_

If the applicant is not the owner of record please submit a purchase and sales agreement with the application.

<p><b>ZONING</b></p> <table style="width: 100%;"> <tr><td><input type="checkbox"/></td><td>R-1 URBAN RESIDENTIAL</td></tr> <tr><td><input type="checkbox"/></td><td>R-2 SUBURBAN RESIDENTIAL</td></tr> <tr><td><input type="checkbox"/></td><td>R-3 RURAL RESIDENTIAL</td></tr> <tr><td><input type="checkbox"/></td><td>UV UPPER VILLAGE</td></tr> <tr><td><input type="checkbox"/></td><td>MV MIDDLE VILLAGE</td></tr> <tr><td><input type="checkbox"/></td><td>LV LOWER VILLAGE</td></tr> <tr><td><input type="checkbox"/></td><td>MUC MIXED USE COMMERCIAL</td></tr> <tr><td><input type="checkbox"/></td><td>MUL MIXED USE LIMITED</td></tr> <tr><td><input type="checkbox"/></td><td>RCU RURAL COMMERCIAL USE</td></tr> <tr><td><input type="checkbox"/></td><td>CC COMMERCIAL CORRIDOR</td></tr> <tr><td><input type="checkbox"/></td><td>I INDUSTRIAL</td></tr> </table>	<input type="checkbox"/>	R-1 URBAN RESIDENTIAL	<input type="checkbox"/>	R-2 SUBURBAN RESIDENTIAL	<input type="checkbox"/>	R-3 RURAL RESIDENTIAL	<input type="checkbox"/>	UV UPPER VILLAGE	<input type="checkbox"/>	MV MIDDLE VILLAGE	<input type="checkbox"/>	LV LOWER VILLAGE	<input type="checkbox"/>	MUC MIXED USE COMMERCIAL	<input type="checkbox"/>	MUL MIXED USE LIMITED	<input type="checkbox"/>	RCU RURAL COMMERCIAL USE	<input type="checkbox"/>	CC COMMERCIAL CORRIDOR	<input type="checkbox"/>	I INDUSTRIAL	<p><b>SHORELAND ZONES</b></p> <table style="width: 100%;"> <tr><td><input type="checkbox"/></td><td>RP-RESOURCE PROTECTION</td></tr> <tr><td><input type="checkbox"/></td><td>LR-LIMITED RESIDENTIAL</td></tr> <tr><td><input type="checkbox"/></td><td>LC-LIMITED COMMERCIAL</td></tr> <tr><td><input type="checkbox"/></td><td>GD-GENERAL DEVELOPMENT</td></tr> <tr><td><input type="checkbox"/></td><td>SP-STREAM PROTECTION</td></tr> </table> <p><b>OTHER SPECIAL ZONES</b></p> <table style="width: 100%;"> <tr><td><input type="checkbox"/></td><td>HD-HISTORIC DISTRICT</td></tr> <tr><td><input type="checkbox"/></td><td>AP-AQUIFER PROTECTION</td></tr> <tr><td><input type="checkbox"/></td><td>MM-MOBILE HOME PARK</td></tr> </table> <p><input type="checkbox"/> FLOOD ZONE</p>	<input type="checkbox"/>	RP-RESOURCE PROTECTION	<input type="checkbox"/>	LR-LIMITED RESIDENTIAL	<input type="checkbox"/>	LC-LIMITED COMMERCIAL	<input type="checkbox"/>	GD-GENERAL DEVELOPMENT	<input type="checkbox"/>	SP-STREAM PROTECTION	<input type="checkbox"/>	HD-HISTORIC DISTRICT	<input type="checkbox"/>	AP-AQUIFER PROTECTION	<input type="checkbox"/>	MM-MOBILE HOME PARK
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**SETBACKS**

FRONT <input style="width: 50px;" type="text"/> FT.	LEFT SIDE <input style="width: 50px;" type="text"/> FT.
REAR <input style="width: 50px;" type="text"/> FT.	RIGHT SIDE <input style="width: 50px;" type="text"/> FT.

**PURPOSE OF THE APPLICATION**

Variance <input style="width: 50px;" type="checkbox"/>
Appeal <input style="width: 50px;" type="checkbox"/>

**DESCRIPTION OF THE CASE**

Please describe why the variance or appeal is being requested. Attach a site plan of the property with all buildings and lot dimensions shown. Measurements from lot lines to proposed building also need to be shown on the plan.

Fee: \$150.00 \_\_\_\_\_ Paid

CASES ARE LIMITED TO 6 PER MEETING. APPLICATIONS WILL BE ACCEPTED AND SCHEDULED ON A FIRST COME FIRST SERVE BASIS. ALTERNATE MEETINGS WILL BE HELD AT THE DISCRETION OF THE BOARD OF APPEALS CHAIRMAN.

VARIANCES SECURED UNDER THE PROVISIONS OF THE TOPSHAM TOWN ZONING ORDINANCE SHALL EXPIRE IF THE WORK IS NOT COMPLETED WITHIN TWO(2) YEARS OF THE DATE WHICH THE VARIANCE OR ADMINISTRATIVE EXCEPTION IS AUTHORIZED.

I HEREBY CERTIFY THAT THE INFORMATION IN THE APPLICATION IS COMPLETE AND CORRECT TO THE BEST OF THE APPLICANT'S KNOWLEDGE AND BELIEF.

SIGNATURE OF APPLICANT	DATE
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## Appeal of a Code Officer Decision

Zoning Chapter 225-72

(1) An appeal may be taken to the Board of Appeals by an aggrieved person from any decision of the Code Enforcement Officer. Such appeal shall be taken within (30) days of the decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty-day requirement.

(2) Such appeal shall be made by filing with the Board of Appeals a written notice of appeal specifying the grounds for such appeal. For a variance appeal the applicant shall submit:

(a) A sketch drawn to scale showing lot lines, location of existing building and other physical features pertinent to the variance request.

(b) A concise written statement stating what variance is requested.

(3) Upon being notified of an appeal, the Code Enforcement Officer shall transmit to the Board all the papers specifying the record of the decision appealed from. Each appeal shall be accompanied by a check for \$50 to cover advertising and administrative costs. If the actual cost of advertising exceeds \$50 the applicant shall pay the balance. The Board of Appeals shall hold a public hearing on the appeal within 45 days.

(4) A copy of each variance request within the shoreland zone, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to action by the Board of Appeals. Any comments received from the Commissioner prior to action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

### B. Procedure on appeal.

(1) At least 10 days prior to the date of the hearing on such appeal, the Board shall cause to be published in one issue in a newspaper of general circulation in the Town a notice which includes:

(a) The name of the person appealing.

(b) A brief description of the property involved.

(c) A brief description of the decision appealed from or the nature of a variance appeal.

(d) The time and place of the Board's hearing.

(2) At least 10 days prior to the date set for hearing, the Board shall give similar written notice to:

(a) All property owners of record whose properties lie within 200 feet of the affected property;

(b) The person making the appeal; and

(c) The Planning Board and any other parties of record.

(3) The notice will be sent by United States Mail, postage prepaid to those persons as listed on the town's tax records.

#### C. Hearings.

(1) The Board may receive any oral or documentary evidence but shall provide as a matter of policy for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examinations as may be required for a full and true disclosure of the facts.

(2) The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman.

(3) At any hearing, a party may be represented by agent or attorney. Hearing shall not be continued to other times except for good cause.

(4) If a party does not attend a hearing and is not otherwise represented, its case will be deemed to have been withdrawn without prejudice to refile the appeal. The filing fee of \$50 will not be refunded to any applicant whose appeal is withdrawn in this manner.

(5) The Code Enforcement Officer or his designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs or other material he deems appropriate for an understanding of the appeal.

(6) The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record.

## Variance Appeal

Zoning Chapter 225-71

Variations and administrative exceptions may be permitted only under the following conditions:

A. Variations may be granted by the Board of Appeals for land use, setbacks, height, minimum lot size, structure size, and open space requirements.

B. The Board of Appeals may grant a disability variance, if the following criteria are met:

(1) A disability variance may be granted to a property owner of a single-family dwelling, which dwelling is the primary year-round residence of the petitioner, for the purpose of making that property accessible to a person with a disability who is living on the property. The Board shall restrict such variations solely to the installation of equipment or the construction of structures necessary for access to or egress from the property by the person with the disability.

(2) The Board may impose conditions on a disability variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property.

(3) For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. § 4553, and the term "structures necessary for access to or egress from the property" is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

(4) Granting of a disability variance shall not cause the area of a dwelling to exceed the maximum permissible lot coverage allowed under this chapter.

C. (Reserved)

*Editor's Note: Former Subsection C, which provided for the grant of administrative exceptions by the Planning Board, was repealed 5-15-2002 STM, Art. 21. For current provisions, see Subsection **B**.*

D. The Board shall not grant a variance (applies to all but disability variations) unless it finds that all the following criteria are met:

(1) The land in question cannot yield a reasonable return unless a variance is granted;

(2) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

(3) The granting of a variance will not alter the essential character of the locality; and

(4) The hardship is not the result of action by the applicant nor a prior owner.

E. The Board shall not grant a disability variance unless it finds that all of the following criteria are met:

- (1) The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood;
- (2) The granting of a variance will not alter the essential character of the locality;
- (3) The hardship is not the result of action taken by the applicant or a prior owner;
- (4) The granting of the variance will not substantially reduce or impair the use of abutting property; and
- (5) The granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

F. (Reserved)

*Editor's Note: Former Subsection F, which provided criteria for the granting of an administrative exception, was repealed 5-15-2002 STM, Art. 21. For current provisions, see Subsection **B**.*

G. The Board shall limit any variances granted as strictly as possible in order to preserve the terms of this chapter as much as possible, and it may impose such conditions to a variance as it deems necessary, to this end.

H. If the Board grants a variance, a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, had been granted and the date of the granting shall be prepared in recordable form. This certificate must be recorded in the Sagadahoc County Registry of Deeds within 90 days of the final written approval of the variance or the variance is void. The variance is not valid until recorded. For the purposes of this chapter the date of the final written approval shall be the date stated on the written approval.