

**BOARD OF APPEALS
TOWN OF ELIOT
1333 State Road
Eliot, Maine 03903**

REQUEST FOR VARIANCE

Dear Appellant:

The Eliot Board of Appeals (BOA) has prepared this letter to ensure that you are aware of what will be expected of you when you present your case before the Board. In order for the BOA to consider a case, the law requires that you present the Board with a complete application. The purpose of this letter is to provide you with instructions on how to meet your responsibilities, so the Board may hear your case and judge it fairly.

You are requesting a VARIANCE. The BOA is authorized by Section 45-49 (b) of the Eliot Zoning Ordinance to hear and decide cases involving the relaxation of regulations affecting height, area, size of structures, or size of yards or open spaces. The BOA is also authorized to hear and decide cases involving relaxation of the requirements of the Floodplain Management Ordinance by Section IX of that ordinance.

You must provide the Board with all the factual information required on the VARIANCE REQUEST FORM. You must provide the BOA with proof that you have a legal interest in the property. You must describe the property (a plot plan may be useful), describe the variance you seek, and prove that you cannot meet the requirements of the ordinance. If you do not know what zoning district your property is in or specific zoning restrictions on the property, you may obtain this information from the Town Offices.

A REQUEST FOR VARIANCE is an appeal from the denial of a permit because the Code Enforcement Officer says you cannot meet one or more of the standards of the Ordinance. On the application you must make clear what standards you do not meet and by how much you fail to meet them. **YOU MUST ALSO DO SOMETHING ELSE.** State Law requires the BOA to find that you meet four tests before the Board can grant you a variance. You, in turn, bear the burden of **PROVING** to the Board that you actually do meet **ALL** those tests. If you do not prove this to the Board's satisfaction, they do not have any ability to grant you a variance.

What are these tests?

1. That the land in question cannot yield a reasonable return unless a Variance is granted.
2. That the need for a Variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
3. That the granting of a Variance will not alter the essential character of the locality, AND
4. That the hardship is not the result of action taken by the applicant or a prior owner.

How must you apply these tests? The following examples are presented as an aid.

TEST #1: what the Board will be looking for under this test is proof that without a variance you cannot make reasonable use of your property. For example, if you have a single, undeveloped lot only big enough to put a 10'X20' house and septic system without a sideline setback in a developed residential neighborhood, you would be denied a reasonable return on that lot. However, "reasonable return" in the eyes of the law does NOT mean maximum financial return for you or as high a return as your personal financial circumstances would require in order to profit from developing the property. Therefore, the Board of Appeals need not permit you to build as large a house as you might wish if a smaller house could be built without a variance.

TEST #2: The Board will be looking for proof from you that your property, not your personal circumstances, is somehow different from other property in the neighborhood. Differences could include its shape or its topography.

TEST #3: You must prove to the Board that what you propose to do will not change the neighborhood or pose health or safety problems. This is usually the easiest test to meet.

TEST #4: Past history of the property is considered under these criteria. A typical example would be if the prior owner split the lot in question out of a larger parcel and in so doing created a substandard lot. It also depends on whether actions took place before zoning laws took effect. You will, therefore, need to present to the Board the history of how the property was created and developed over the years.

It is your responsibility to PROVE to the BOA that a variance is necessary. You must present evidence to the BOA that you cannot make reasonable use of your land without the variance. The fact that a variance would enhance the desirability of your land is NOT sufficient if you can comply with the ordinance without a variance. You must PROVE you meet all four tests above.

Be sure to complete the application form and provide the Board with documentation of your case. You may bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any written statements from individuals with personal knowledge of the property, and any documentation of previous requests for variances or waivers.

Again, please understand that the BOA does not have to grant your request. You must PROVE that you meet the requirements for a variance. As the BOA is required to uphold the zoning requirements, and the purpose of zoning is to gradually do away with non-conforming conditions, a variance to the zoning requirements requires serious consideration since a variance creates a non-conformance.

In the event you are granted a variance, you MUST record it in the Registry of Deeds within 30 days according to State Law in order for the variance to be valid. Therefore, be sure to obtain a signed form from the Board of Appeals to take to the Registry of Deeds.

Very truly yours,
Chairman, Eliot Board of Appeals

Note: There is a Twenty-Five Dollars (\$25.00) application fee payable at time of submittal. 10 copies and original of the application and associated materials shall be submitted by the appellant. In addition, mailing and newspaper costs shall be chargeable to the appellant (Average \$150 total). See Code Enforcement Officer for actual mailing and newspaper costs prior to hearing. Hearing shall not proceed until all costs associated with the hearing are paid in full.

BOARD OF APPEALS

Zone: _____
Lot Size: _____
Tax Map: _____, Lot: _____
Date: _____

REQUEST FOR VARIANCE

APPLICANT NAME: _____

Home Tel: _____

Work Tel: _____

Fax # : _____

MAILING ADDRESS: _____

TOWN: _____ STATE: _____ ZIP: _____

OWNER OF PROPERTY: _____

LOCATION (ADDRESS) OF PROPERTY: _____

YORK COUNTY REGISTRY: BOOK _____ PAGE _____

Please also include:

1. Site Location Map (Tax Map)
2. Proof of Ownership or Valid Option
3. Proof of Proper Representation (if you will not be appearing at the Public Hearing yourself)

In addition, a sketch plan, scale not less than 1"=20', of the property must accompany this application. It must show 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 peculiarities of the lot in question.

Indicate the part of the Zoning Ordinance to which you are requesting a variance:

Article _____ Section _____ Subsection _____

The undersigned requests the Board of Appeals consider granting a variance as follows:

- a) Nature of Variance: Describe generally the nature of the variance.

- b) Justification for Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the Zoning Ordinance would cause hardship. There are four criteria, which must be met before the Board can find that a hardship exists. Please explain how YOUR situation meets each of the criteria listed on page.

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 the general condition of the neighborhood.

3. The granting of a variance will not alter the essential character of the locality.

4. The hardship is not the result of action taken by the appellant or a prior owner.

(Use additional sheets of paper as necessary)

DATE: _____ **Signed:** _____

Appellant

Date accepted by Town Clerk or CEO: _____