

**SHAPLEIGH BOARD OF APPEALS**

**P.O. Box 26**

**Shapleigh, ME 04076**

**INSTRUCTIONS**

(Applicable for all appeals.)

Dear Applicant;

In order for the Board of Appeals to consider a case, the law requires that you present the Board with a completed application and supportive documents. 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.

First, you must provide the Board of Appeals with the factual information required on the form given to you. In addition, you must provide the Board with proof that you have a legal interest in the property about which you are bringing an appeal (such as a registered deed), as well as information about the property, with any details about its dimensional and physical characteristics. It may be helpful to describe the neighboring property as well. 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 Office. Finally, you must include the letter of denial from the Code Enforcement Officer (CEO) or Planning Board so that we may know the basis for your grievance.

Next, you must decide what kind of appeal you wish to bring. Your options are to bring an administrative appeal or a variance appeal. The CEO may give you some guidance in making this decision but, ultimately, it is your decision to make, not the CEO's. What are the differences?

An Administrative Appeal is an appeal from a decision of the CEO or the Planning Board which you think was wrong. You may think it is wrong because you do not agree with how the Ordinance is being interpreted or you may think the Town made some error when processing your permit. On the application you must explain what the decision said, what you want to do with your property, why you think the decision was wrong and what you would like the Board of Appeals to do about it.

A Variance Appeal is an appeal from the denial of a permit because the CEO says you cannot meet one or more of the dimensional standards of the Ordinance, such as setback or lot coverage. On the application you must make clear what dimensional standards you do not meet and by how much you fail to meet them. More importantly, State law requires the Board of Appeals 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 these tests. If you do not prove this to their satisfaction, the Board cannot grant you a variance.

The four tests are:

**1. That the land in question cannot yield a reasonable return unless the variance is granted.**

(“Reasonable return” in the eyes of the court, does not mean maximum return for you or even as high a return as your personal financial circumstances would require in order to profit from developing the property. To prove that you will receive no reasonable return with the variance, you must show that you will be deprived of all beneficial use of your land. You would have to show that the land is not suitable for any use permitted by the zoning ordinance.)

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

(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 topography.)

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

(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.)

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

(You must prove to the Board that the need for a variance is not due to an action taken by you or a prior owner that makes the property non-conforming or more non-conforming.)

Remember, all four tests must be proved to the Board in order for it to grant a variance. If the request before the Board is not essential because there is nothing unique about the property, or it would alter the essential character of the locality, or it is the result of the landowner’s action, or if the land can be used for one or more of the uses permitted in the zone and still yield a reasonable return (not necessarily the maximum economic benefit) then the request for a variance must be denied.

Regardless of which appeal you request, administrative or variance, be sure to complete the application form and provide the Board with documentation of your case. You may also bring to the hearing any witnesses you wish to have present evidence on your behalf about the property in question, any sworn written statements from individuals with personal knowledge of the property and any documentation of previous building permits or variance.

In the event you are granted a variance according to state law you must record the original signed notarized document in the Registry of Deeds, Alfred, Maine within 90 days for the variance to be valid.

Finally, if the granted variance is within the Shoreland zone, the Board must send a copy to the Department of Environmental Protection, Augusta, Maine for any comments and/or objections they may have.

## “UNDUE HARDSHIP” CRITERIA

Maine State Law (Title 30-A M.R.S.A. Section 4353) requires that a Board of Appeals may only grant a variance where strict application of the ordinance to the appellant and his property would cause “undue hardship”. In order for a Board of Appeals to determine if “undue hardship” exists, the applicant must prove that he has met all four of the statutory criteria. The following paragraphs will help you analyze the four criteria.

Criterion 1. The land in question cannot yield a reasonable return unless a variance is granted.  
In order to meet this criterion the applicant must prove that without the granting of the variance he will not be able to realize a reasonable return on his property. Evidence that the property has recently been sold, is presently on the market or is periodically rented, creates a presumption that the appellant is deriving some reasonable economic return from the land. It is important to point out that reasonable return should not be equated with maximum return. The presence of a usable structure (house, camp, garage, dock, boat launch, camp site, picnic table) can also be evidence of reasonable return.

Criterion 2. The need for the variance is due to the unique circumstances of the property and not the general conditions of the neighborhood.

Here the applicant must show that some aspect of his property such as soil conditions, shape or topography is unique to his site and not to the general conditions of the neighborhood. For example, a large glacial boulder in the center of a lot, which would prevent the land from being developed without the granting of a variance, would meet the criterion for uniqueness.

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

As a general rule, if an applicant is requesting a variance to place or expand a residential structure in a residential zone he will meet this criterion. On the other hand, a change of use variance requesting a commercial activity in a residential zone may change the essential character of a locality and would be closely scrutinized.

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

Courts in Maine hold that purchasers of property having either actual or constructive knowledge of the zoning restrictions which affect the use of their property is only one factor to be considered in the self-created hardship analysis. Other actions that could impact this criterion are selling parts of the property and thus either creating a non-conforming lot or making a lot more non-conforming as well as building structures in violation of the CEO’s and/or Planning Board’s instructions.

**SHAPLEIGH BOARD OF APPEALS  
APPLICATION**

Name(s) of Applicant \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Email Address: \_\_\_\_\_ Telephone # \_\_\_\_\_

Physical Location of Property: \_\_\_\_\_

Shapleigh Tax Map # \_\_\_\_\_ Lot # \_\_\_\_\_ Zone \_\_\_\_\_

Is the Property part of a Subdivision? Yes \_\_\_\_\_ No \_\_\_\_\_

**PART 1**

**The undersigned requests; check either A) or B), *but not both*:**

\_\_\_\_\_ **A) Administrative Appeal**

Review of alleged erroneous decision of the Code Enforcement Officer or Planning Board in regard to Application for a Permit denied on \_\_\_\_\_, 20 \_\_\_\_\_. It is the applicant's contention that the following error was made in the determination of the Code Enforcement Officer or Planning Board.

Brief Explanation \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ **B) Variance Appeal**

a) Describe the nature of the variance requested.

Brief Explanation \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SHAPLEIGH BOARD OF APPEALS  
APPLICATION**

b) Justification of Variance.

*In order for a variance to be granted there are four criteria which must be met before the Board of Appeals can find that undue hardship exists. Please explain how your situation meets each of the criterion listed below.*

1. The land in question cannot yield a reasonable return unless the variance is granted.

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

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

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

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**SHAPLEIGH BOARD OF APPEALS  
APPLICATION**

PART 2

List the names of all abutters to your property within 500 feet of all your property lines. This includes land across a body of water and/or in neighboring towns. This information can be found at the Town Office during regular office hours. If necessary use an additional piece of paper.

<u>Tax Map &amp; Lot</u>	<u>Abutter's Name</u>	<u>Mailing Address</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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PART 3

Signature

I, \_\_\_\_\_ hereby attest that all information submitted  
(Please print)

on this application and its supplements is true and correct.

Date \_\_\_\_\_

\_\_\_\_\_  
Appellant(s)

**SHAPLEIGH BOARD OF APPEALS  
APPLICATION**

Note to All Applicants: Application must be completed in its entirety. This includes Sections PART 1 (A), 1(B), 2 and 3.

In addition please attach a copy of the following:

- Registered Deed
- Denial letter from the Code Enforcement Officer
- Property Sketch Plan\*

\* The sketch plan must show accurate dimensions and shape of lot, the size and location of existing buildings and locations and dimensions of proposed buildings or alternation (if applicable) and any natural or topographic peculiarities of the lot in question.

**Board of Appeals Application Fee: \$150\*\*** – Make check payable to the Town of Shapleigh. This must accompany the application.

\*\* The Town of Shapleigh may also bill the applicant for additional expenses that may be incurred in excess of \$150.00. All expenses must be paid for prior to the hearing.

If you are returning the application and fee by mail, please send to:  
Chairman, Board of Appeals, P.O. Box 26, Shapleigh, ME 04076.