

PETITION FOR VARIANCE FROM ZONING ORDINANCE

Case # _____
For ZBA use only

Property Owner: _____

Applicant (if different): _____

Description of Property: North Hampton Tax Map #: _____ Lot # _____

A. Existing Variances or Special Exceptions:

Are there any existing Variances or Special Exceptions on the property?

Yes No If yes, please explain when and why such was required:

B. Previous Denials:

Has an application for a Variance or Special Exception on this property ever been denied? (If you are unsure of the answer to this question, please ask the Planning and Zoning Administrator) Yes No If yes, please explain when and why:

C. Material Differences if Previously Denied: If you were denied previously, state how this particular application and use proposed is now materially different from that which was denied: _____

D. Proposed Use:

Please explain why you need a variance: _____

E. Applicable Zoning Ordinance Provision:

This application is for Variance to the following Ordinance Article(s) and Section(s): _____

F. Additional Actions:

1. Does your proposed use also require Subdivision Approval by the Planning Board? Yes No
2. Does your proposed use also require a Site Plan Approval by the Planning Board? Yes No
3. Is this application required as a prerequisite to, or otherwise necessary for, a Site Plan Approval by the Planning Board? Yes No

G. Criteria your application must meet for a Variance:

A variance is an authorization, which may be granted under unique circumstances to use your property in a way that is not permitted under the strict terms of the North Hampton Zoning Ordinance. The Board shall hear and decide applications for variance from the terms of the Ordinance if (see RSA 674:33):

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;
3. Substantial justice is done;
4. The values of surrounding properties are not diminished; and
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

a. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.

b. If the criteria in subparagraph (a) 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 of it.

The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.¹

¹ The Legislature's Statement of Intent: The intent of ... this act is to eliminate the separate "unnecessary hardship" standard for "area" variances, as established by the New Hampshire supreme court in the case of *Boccia v. City of Portsmouth*, 155 N.H. 84 (2004), and to provide that the unnecessary hardship standard shall be deemed satisfied, in both use and area variance cases, if the applicant meets the standards established in *Simplex Technologies v. Town of Newington*, 145 N.H. 727 (2001), as those standards have been interpreted by subsequent decisions of the supreme court. If the applicant fails to meet those standards, an unnecessary hardship shall be deemed to exist only if the applicant meets the standards prevailing prior to the *Simplex* decision, as exemplified by cases such as *Governor's Island Club, Inc. v. Town of Gilford*, 124 N.H. 126 (1983). SB 147 FN 307:5

North Hampton Zoning Board of Adjustment

The applicant has the burden of proof. Applicants should be prepared to present information pertinent to the variance being requested. To obtain a legally granted variance, you must demonstrate/prove that your proposal satisfies ALL five of the variance criteria. *(Note: The applicant may want to review the Board's Form 6, Variance Worksheet, in preparation of a variance application).*

CERTIFICATION: I hereby certify that:

- _____ I have read the instructions for completing this application for Variance.
- _____ I have completed this application as completely and fully as possible.
- _____ I have completed the checklist provided in the instructions and have attached all evidence, including plans or sketches that I intend to discuss at the Public Hearing on the application.
- _____ I understand that if this application is incomplete, it will be returned within a reasonable time following its submission, and that this may delay the scheduling of a Public Hearing.
- _____ I understand that I must appear in person at the Public Hearing to present and discuss this application. If I cannot appear in person, I will notify the Chair of the ZBA, in writing, designating the name of the individual who will appear for me.
- _____ The ZBA has permission to enter the property in order to conduct scheduled site walks upon reasonable prior notice.

Initials

Applicant's Signature: _____ **Date:** _____

Agent or Legal Counsel's Signature: _____ **Date:** _____