

DAMARISCOTTA BOARD OF APPEALS

Dear Applicant for Appeal:

In order for the Board of Appeals 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.

The first thing we recommend is that you review the municipal ordinance and make sure you understand why your permit application was denied. Then you will be prepared to complete the application form given to you. 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 Code Enforcement Officer.

Next, you must provide the Board with the factual information required on the form given to you. Therefore, you must provide the Board of Appeals with proof that you have a legal interest in the property about which you are formulating an appeal, in addition to information about the property, including any details about its physical characteristics. It may be helpful to describe the neighboring property as well, although the Board of Appeals may make a site inspection of the property prior to conducting a public hearing on your appeal (As a matter of State law all site visits are advertised in a newspaper of general circulation. You, as well as the general public, are certainly entitled to accompany board members when they make that site visit).

Then, you must decide what kind of appeal you wish to bring. Your options are to bring an Administrative Appeal, a Variance Appeal, or both. The Code Enforcement Officer may give you some guidance in making this decision, but ultimately it is your decision to make, not the Code Enforcement Officer's. What are the differences?

An **Administrative Appeal** is an appeal from a decision of either the CEO or Planning Board, which you think is a wrong decision. You may think it is wrong because you do not agree with how the ordinance is being interpreted, or you think the Town made some administrative error when processing your permit application. For example, if you have a non-conforming use, you may need to bring an Administrative Appeal to challenge the CEO's interpretation of "expansion". On the application, you must explain what the decision said, what you want to do with your property, how and 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, lot coverage, or parking space requirements. On the application you must illustrate precisely what dimensional standards you do not meet and by how much your proposed project fails to meet them. But you must also do something else. State law requires the Board of Appeals to find that you will experience "undue hardship" if the appeal is not granted. "Undue hardship" is defined by State law. It consists of four (4) tests. You must show that you will meet **ALL** four (4) 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** four tests. If you do not prove this to their satisfaction, the Board does not have the legal authority to grant you a variance.

Those tests are:

1. That the land in question cannot yield a reasonable return unless the 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 taken by the applicant or a prior owner.
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- 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 by 20 foot house and a septic system, without a setback variance in a residential neighborhood, the ordinance has denied you a reasonable return on that residential 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 may legally limit the size of the house you do build to one which yields no more than a reasonable return. The courts have also ruled that family circumstances are not a relevant consideration that the variance is for the property, not for you or your family.
 - 2) What the Board will be looking for is proof from you that your property, NOT your personal circumstances, is somehow different from other property in the neighborhood. Differences could include its shape, its topography, or its unique location.
 - 3) To meet test three, 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) Past history of the property is relevant under this criteria. An example might be one where the prior owner split the lot in question out of a larger parcel, and in doing so created a substandard lot after zoning was enacted. You will, therefore, need to present to the Board the history of how the property was created and developed over the years.

If you think you can meet all four (4) tests, and if you TRULY NEED one or more dimensional variances, you should proceed with a variance appeal.

Although it is unusual to apply for both an Administrative Appeal and a Variance Appeal, you are entitled to do so. You may, for example, want a variance but think that if a variance is not granted, you may still be able to get the result you

want through a change in the interpretation of the ordinance. In this instance, it is best to apply for both at the same time.

Whether you make one or two appeals **BE SURE TO COMPLETE** the application form and provide the Board with as much concrete documentation of your case as you can, keeping in mind the Board will weigh the nature of the evidence submitted and rely on only that evidence it judges substantial, relevant and credible. In addition to any written material submitted with the application, 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 ordinances.

Your appeal must be submitted to the Board of Appeals within thirty (30) days of the issuance of the CEO's decision in order for the appeal to be heard by the Appeals Board. They are not obligated to hear your appeal until you have provided them with all the information requested on the form. You are also required to submit an application fee including a postage fee in order for the application to be judged complete.

In the event that you are granted a variance, you must record the variance in the Registry of Deeds within thirty (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. You should also be advised that in accordance with State Law, the Board of Appeals members have thirty (30) days in which to reconsider their Appeals Board decision to court. Therefore, until the thirty (30) days have expired, you cannot be certain that the Board of Appeals decision is final.

VARIANCE REQUEST CHECK LIST

INFORMATION THAT MUST BE SUBMITTED WITH YOUR APPLICATION PACKAGE TO THE ZONING BOARD OF APPEALS BEFORE A HEARING IS SCHEDULED

WARNING: FAILURE TO SUBMIT ALL OF THE REQUIRED INFORMATION MAY RESULT IN THE CANCELLATION OF YOUR PUBLIC HEARING, MAKING IT NECESSARY FOR YOU TO RE-FILE YOUR APPLICATION.

A. Show right, title or interest in the property by submitting the following:

1. _____ A photo copy of the deed that is registered at the Lincoln County Registry of Deeds.
2. _____ A photo copy of the Assessor's tax card on the property (available at the Town Office), along with a copy of the tax map with the property in question highlighted.

B. Plans of the property showing the following:

1. _____ Dimensions and shape of the lot.
2. _____ The size, location and dimensions of existing building with all dimensions from building(s) to lot line shown.
3. _____ The location(s) and dimensions of proposed buildings or alterations.
4. _____ Any natural or topographic peculiarities of the lot in question.
5. _____ Any surveyors markers.
6. _____ Drawings showing the four elevations of the proposed completed structure with height indicated.

C. Additional information required:

1. _____ The application form will include the names and current mailing addresses of all property owners within five hundred (500) feet of the property in question. ***Please be sure to include Map, Block & Lot numbers for each abutter.**
2. _____ At the time of filing the application, a **\$50 filing fee, plus postage costs and \$35.00 Public Hearing posting in the Lincoln County News** fee shall be paid. Checks must be made out to the Town of Damariscotta.
3. _____ Failure to submit any item may result in the cancellation of your public hearing and will delay the ZBA decision.
4. _____ You will be notified of the date and time of the hearing. It is your responsibility to provide notice to the abutters via certified mail return receipt and provide proof to the Appeals Board

DAMARISCOTTA BOARD OF APPEALS
Request for Variance Application

Name of Applicant _____

Applicant's Mailing Address _____

City or Town _____ State _____ Zip Code _____

Phone (Home) _____ (Work) _____ (Cell) _____

Name of Property Owner _____

Location of property for which Variance is requested (street/ road address):

Map _____ Block _____ Lot _____ Zone _____ Shoreland _____ Resource Protection _____

Existing Use: _____

Proposed Use: _____

Details of any Easements or Restrictions: _____

Please Attach:

1. A detailed site plan, plot plan, subdivision map, or plan relevant to your appeal pursuant to Article 11 of the Damariscotta Land Use Ordinance. It should show dimensions and shape of the lot, size and locations of existing buildings, locations and dimensions of proposed buildings, or alterations, and any natural or topographic peculiarities of the lot in question.
2. Copies of any official decisions or required permits (note pending applications) of federal, State or local agencies regarding use of this property.
3. Names and addresses of all abutters of properties within 500 feet of applicant's property.
4. Demonstration of right, title and interest in the property. If applicant is not the owner, submit a signed letter from the owner authorizing the representation.

Please Note:

1. All applications must be filed in accordance with procedure prescribed in Article 11 of the Damariscotta Land Use Ordinance.
2. All applications must conform to the Damariscotta Land Use Ordinance and all applicable local, State and federal ordinances.
3. Appeals Board approval is required before any building permits shall be issued.
4. Fee must accompany application.

Reasons/ Supporting Information for Variance

1. The applicant proposes the following building, structure, use or activity on the subject property:

2. The applicant seeks a variance(s) from the following dimensional standard(s):

_____ which is/ are contained in section(s): _____ of the Land Use Ordinance.
3. The lot is currently being used for the following: _____

4. The conditions and character of the neighborhood are: _____

5. The applicant requests the following type of Variance (check appropriate one):
 - a. _____ Undue Hardship Variance (30-A M.R.S.A. § 4353(4));
 - b. _____ Disability Variance (30-A M.R.S.A. § 4353(4-A)).

The applicant shall complete the appropriate section below for the particular type of variance sought:

1. **Undue Hardship Dimensional Variance.** The Board of Appeals may grant a Variance only for lot size, lot coverage and setbacks and only where strict application of the ordinance, or a provision thereof, to the petitioner and the petitioner's property would cause undue hardship, which means that the application meets each of the criteria listed below.

Please explain why you believe that the subject property meets each of the following criteria for this type of Variance:

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

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

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

- d. The hardship is not the result of action taken by the applicant or a prior owner.
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2. **Disability Variance.** The Board of Appeal may grant a Variance to an owner of a single-family dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any Variance granted under this provision solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the Variance, including limiting the Variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this provision, a disability has the same meaning as a physical or mental handicap under the Maine Human Rights Act and the term “structures necessary for access to or egress from the dwelling” is defined to include railing, wall or roof systems necessary for the safety or effectiveness of the structure.

Please answer the following questions to explain why you believe that the subject property meets each of the following criteria for this type of Variance:

- a. Does a person with a disability reside in the dwelling? _____
- b. Does a person with a disability regularly use the dwelling? _____
- c. Is the installation of equipment or the construction of structures proposed under this application necessary for access to or egress from the dwelling by the person with the disability? (Explain)

- d. Does the disability have a known duration? _____ If so, what is that duration? _____

In connection with my appeal for approval for a Variance I hereby state that the proposed use at the property described as Map _____, Block _____, Lot _____:

- 1. Will meet the definition and specific requirements set forth in the Damariscotta Land Use Ordinance for such particular use;
- 2. Will not have a significant detrimental effect on the use and peaceful enjoyment of abutting property as a result of noise, vibrations, fumes, odor, dust, light, glare or other cause;
- 3. Will not have a significant adverse effect on adjacent or nearby property values;
- 4. Will not result in significant hazards to pedestrian or vehicular traffic or significant traffic congestion;
- 5. Will not result in significant fire danger;
- 6. Will not result in significant flood hazards or flood damage, drainage problems, ground or surface water contamination or soil erosion.

Note to Appellant: This form should be returned to the Damariscotta Town Clerk at the Damariscotta Town Office. You will be notified in writing of the hearing date.

To the best of my knowledge, all information submitted on this application is correct.

Signed: _____ Date: _____

Printed Name: _____

Applicant: Return this form to the Damariscotta Town Clerk at the Damariscotta Town Office, along with:

Application Fee: \$ 50 Advertising Fee: \$ 35 Date Rec'd: _____ By: _____