



BOARD OF APPEALS  
APPLICATION FOR HEARING

1. Name of Applicant or Appellant: \_\_\_\_\_
2. Address: \_\_\_\_\_
3. Location of Property \_\_\_\_\_
4. Nature of application or appeal: \_\_\_\_\_  
\_\_\_\_\_
5. Applicable Section of the Building, Zoning Bylaw: \_\_\_\_\_  
\_\_\_\_\_
6. Date of Denial by Building Inspector, Planning Board, or Zoning Administrator:  
\_\_\_\_\_
7. Applicant must supply a list, certified by the Board of Assessors, of current abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list. ATTACH LIST TO APPLICATION.
8. Applicant is to supply a linen copy and four (4) copies of plot plan with this application.

I hereby request a hearing before the Appeals Board of the Town of Essex with reference to the above noted application or appeal.

Signature(s) of Appellant(s):

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

Received from the above applicant, the sum of \$ \_\_\_\_\_ to apply against advertising costs. (Deposit of \$100.00 is requested). Payment for any additional costs for expenses must be remitted prior to any decision being rendered.

Date: \_\_\_\_\_

\_\_\_\_\_  
Town Clerk

## ESSEX BOARD OF APPEALS

### Guidelines for applicants and Procedures of the Board

The Board of Appeals has adopted the following guidelines and procedures for the consideration and processing of applications for a variance. The Board expects that these guidelines and procedures will lead to a better understanding by the public and applicants appearing before the Board as to the laws which are applicable to the granting of variances from the Town's zoning by-laws.

The zoning by-laws of the town establish a certain character for the nature of the town and the development of its vacant land. These by-laws are relied upon by individuals purchasing property in the town and should be strictly adhered to unless extraordinary circumstances exist which justify a departure from the strict application of the by-laws in certain cases.

#### Law Applicable to the granting of variances

The Board of Appeals in considering applications for a variance from the strict application of the Town's zoning by-laws must follow the provisions of the by-laws which apply to the variance procedure and which follow the requirements the Massachusetts law as set forth in our statutes as they have been interpreted by our courts.

Chapter 40A, section 10 of the Massachusetts General Laws grants the power to the Board of Appeals to grant a variance from the terms of the applicable zoning ordinance or by-law where the Board specifically finds that owing to circumstances relating to the soil conditions, shape or topography of the land or structures and especially affecting the land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance or by-law.

No person has a legal right to a variance and they are to be granted sparingly. Damaskos v. Board of Appeal of Boston, 359 Mass.55 (1971). The test is not whether the variance is simply "desirable", Martin v. Board of Appeals of Yarmouth, 20 Mass. App.Ct.972 (1985), but whether it is justified, that is, whether there is evidence to show that the statutory prerequisites have been met.

Assuming that a zoning ordinance or bylaw is legally sound no person is entitled as of right to a variance by its terms. As the Supreme Judicial Court of the Commonwealth has said: "A landowner in a zoning district has a right to expect that zoning ordinances shall have a fair degree of permanency." Everpure Ice Mfg. Co. v. Board of Appeals of Lawrence, 324 Mass.433. A landowner is not entitled to a variance in order to subdivide parcels which would contain less than minimum required frontage and area. Howland v. Acting Superintendent of Buildings and Inspector of Buildings of Cambridge, 328 Mass. 144 (1951).

Variations are not normally available to remedy deficiencies in frontage and area. Warren v. Board of Appeals of Amherst, 383 Mass. 1. A variance is not warranted unless the evidence establishes that conditions affecting the property in question do no affect the zoning district generally. Twomey v. Bord o Appeals of Worcester, 347 Mass. 684 (1964).

A deficiency in the frontage of a lot is not a circumstance relating to the soil conditions, shape or topography of the land that will satisfy one of the several statutory prerequisites for a variance.

The finding of substantial hardship, financial or otherwise, is a condition precedent to the granting of a variance. Spaulding v. Board of Appeals of Leicester, 334 Mass.688. That an applicant might otherwise be deprived of a potential advantage does not constitute such substantial hardship as to entitle him to a variance. Bruzzese v. Board of Appeals of Hingham, 343 Mass. 421(1962).

The fact that a structure has been built in violation of the zoning laws is not "hardship," warranting a variance. An owner cannot use his violation as a fulcrum to lift the restriction of the by-laws. Smith v. Zoning Board of Appeals of Scituate, 347 Mass. 755(1964). A lot cannot qualify for a variance if the circumstance creating the hardship is itself the result of a transfer that violates in some respects applicable zoning requirements for buildable lots. Raia v. Board of Appeals of North Reading, 4 Mass. App Ct. 318, 322.

In order to grant a variance a board of appeals must find an absence of "substantial detriment to the public good", and that the variance may be granted "without nullifying or substantially derogating from the intent or purpose" of the ordinance or bylaw. See Cavanaugh v. DiFlumera, 9 Mass. App.Ct. 396. If relief were denied on the basis of a slight or insubstantial departure from the goals of the bylaw, the prohibition of the grant of a variance would approach confiscation by depriving the property owner of virtually all practical use of his property. Cavanaugh, supra.