



# TOWN OF KITTERY

## Code Enforcement Office

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1305  
 Fax: (207) 439-6806

### ZBA APPLICATION: VARIANCE APPEAL

**THIS SECTION TO BE COMPLETED BY TOWN OFFICE:**

<input type="checkbox"/> 10 Copies of Materials  <input type="checkbox"/> Date and Time of receipt: _____	<input type="checkbox"/> Date Application Determined Complete: _____  <input type="checkbox"/> Date Set For Hearing: _____	Fee for Variance Appeal:  <input type="checkbox"/> \$50.00  Date Paid: _____
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Appealing Ordinance Standards of: Title: \_\_\_\_\_ Chapter: \_\_\_\_\_ Section: \_\_\_\_\_ Page: \_\_\_\_\_

PROPERTY DESCRIPTION	Parcel ID	Map	Lot	Zoning District	Total Land Area
	Physical Address				

PROPERTY OWNER'S INFORMATION	Name	Mailing Address
	Phone	
	Fax	
	Email	

APPLICANT'S AGENT INFORMATION	Name	Name of Business
	Phone	
	Fax	Mailing Address
	Email	

Date of CEO Decision:		Date Appeal Filed:	
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<b>APPEAL DESCRIPTION</b>	<b>Provide a Brief Narrative of the Project Plan:</b>
<b>Describe Your Appeal Request:</b>	

**16.04.050.b. Variance Appeals.** To hear and decide, upon appeal, in specific cases such variance from the terms of this title as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provision of this title would result in unnecessary hardship. In granting any variance, the ZBA shall prescribe conditions and safeguards as are appropriate under this title. In accordance with MRSA, Title 30-A, paragraph 4353(4), or subsequent amendments or revisions thereto, variance may only be granted where:

- i. Such hardship exists that the land in question cannot yield a reasonable return unless the variance is granted; and
- ii. Such hardship is due to the unique circumstances of the property and not to the general conditions of the neighborhood; and
- iii. Granting of such variance will not alter the essential character of the locality; and
- iv. Such hardship is not the result of action taken by the applicant or prior owner.

**Please explain why a variance should be granted in accordance to:**

(Please complete the entire section. If more space is needed for your explanation please attach to application)

**i. Such hardship exists that the land in question cannot yield a reasonable return unless the variance is granted**

**ii. Such hardship is due to the unique circumstances of the property and not to the general conditions of the neighborhood**

**iii. Granting of such variance will not alter the essential character of the locality**

**iv. Such hardship is not the result of action taken by the applicant or prior owner.**

# Variance Appeal Requirements

Appeal applicants will not be scheduled for a hearing without the following:

❑ **Completed Application with Plot Plans**

Incomplete applications are not accepted

❑ **10 sets of copies of all materials that you will use to support your appeal.**

All written support documentation must be submitted 14 days prior to the scheduled hearing date.

❑ **Payment of the variance application fee.**

## Excerpt From

### *Town of Kittery Municipal Code Title 16: Land Use and Development Code*

#### *Chapter 24: APPEALS, SPECIAL EXCEPTIONS AND VARIANCES*

#### Relevant to Variances

**Sections:**

**16.24.010 Purpose.**

**16.24.030 CEO decision appeal.**

**16.24.040 Types of appeals.**

**16.24.050 Appeal procedures.**

**16.24.060 Basis for decision.**

**16.24.010 Purpose.**

This chapter delineates the requirements and processes for filing appeals when a party believes they have a grievance under this title and state statutes; or seeks the granting of a special exception as found in Chapter 16.12; as well as variances to the standards contained herein. (Land use and dev. code § 6.1, 1994)

**16.24.030 CEO decision appeal.**

An appeal from a decision of the code enforcement officer may be taken to the zoning board of appeals and thence, if necessary, to the Superior Court, in accordance with Title 30-A, MRSA Section 2691 and the Maine Rules of Civil Procedure, Rule 80B. (Land use and dev. code § 6.1.2, 1994)

**16.24.040 Types of appeals.**

For the purposes of this chapter an appeal is to mean any of the following:

- A. Administrative appeal;
- B. Variance appeal; or
- C. Miscellaneous appeal.

(Land use and dev. code § 6.1.3, 1994)

**16.24.050 Appeal procedures.**

A. Initiative Procedures.

1. Variance or miscellaneous appeals and requests for special exceptions must be made by the property owner or duly authorized agent.
2. In all cases, a person aggrieved by a decision of the code enforcement officer must commence appeal within thirty (30) days of the date of notification to the applicant of the decision made by the CEO. Notwithstanding the above time limit, a person aggrieved by a decision of the code enforcement officer to issue a building/related activity permit must commence appeal within thirty (30) days of the date that the decision is publicly posted at the Kittery municipal offices. The appeal must be filed with the code enforcement officer or designee on forms approved by the zoning board of appeals, and the appellant must specifically set forth on such form(s) the grounds for such appeal (i.e., claimed interpretation of this title and reasons why the appeal should be granted). Incomplete applications for appeals/requests must not be accepted. The code enforcement officer or designee shall note on the appeal the date of filing.
3. Layout or plot plans shall be submitted with requests for special exceptions and all appeals. Plans shall be drawn to scale, showing the location and dimensions of the lot, existing and proposed buildings and other structures, and, parking areas indicating individual spaces, traffic access and circulation drives, open spaces, landscaping, lighting and such other information as may be necessary to provide for the administration of this title.
4. At any time between the initial CEO acceptance of an appeal/request and final approval or denial of the appeal/request by the ZBA, ZBA members or associate members shall have access to the subject property not including building interiors, without obtaining prior permission, written or oral, from the property owner or applicant.

- B. Hearing and Notice. Before taking any action on any appeal/request, the zoning board of appeals shall hold a public hearing. In all such hearings, the code enforcement officer or designee shall notify by mail at least seven and not more than fourteen (14) days prior to the scheduled hearing date, the abutting property owners for which an

appeal/request is made, of the nature of the appeal/request and of the time and place of the public hearing thereon. Notice of all such actions shall also be published in a newspaper of general circulation at least seven days prior to the public hearing.

- C. Owner Identity. For the purposes of this section, the owners of property shall be considered to be the parties listed by the tax assessor for the town as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing or invalidate any action by the zoning board of appeals.
- D. Notification and Timing Constraints. Following the filing of an appeal/request, the code enforcement officer or designee shall notify forthwith the zoning board of appeals, conservation commission and planning board, and the appeal/request shall be in order for hearing at a subsequent meeting of the zoning board of appeals following by at least ten (10) days mailing of notices but within thirty (30) days of the appeal/request.
- E. ZBA Decisions. Written notice of the decision of the zoning board of appeals shall be sent to the appellant/requester, the code enforcement officer, conservation commission, planning board and municipal officers within thirty (30) days of the date of the hearing of the appeal or request and within seven days of the decision. The vote of each member shall be part of the record. The written notice of the decision of the zoning board of appeals shall include the statement of findings. In the case of denials, the statement of findings shall include the reason for the denial.
- F. Order of Review.
  - 1. Where a special exception or appeal is necessary as an integral part of a development review process, zoning board of appeals action shall be encouraged prior to planning board review. The findings of the zoning board of appeals as well as any file material shall be made available to the planning board.
  - 2. The planning board may give approval to the preliminary plan as an overall development prior to the applicant filing an appeal/request. If a special exception to zoning is required and the zoning board of appeals has denied a special exception, then the planning board shall cease deliberations until such time the conditions denying the special exception have been rectified. The findings of the planning board as well as any file material shall be made available to the zoning board of appeals.
- H. Venue and Representation. At any hearing, a party may appear by agent or attorney. Hearings may be continued to other times/places.
- I. Code Enforcement Officer Attendance. The CEO or designated assistant shall attend all hearings and may present to the ZBA all plans, photographs, or other material the CEO deems appropriate for an understanding of the appeal/request.
- J. Appellant's Case First. The appellant's case shall be heard first. To maintain orderly procedure, each side shall proceed without interruption. Questions may be asked through the chair. All persons at the hearing shall abide by the order of the chairperson.
- K. Expiration of Approval.
  - i. Approvals granted under the provisions of this chapter shall expire if work or change in use involved is not commenced within six months of the date on which approval is granted, or if the work or change in use is not substantially completed within one year of the date on which such approval is granted, unless as otherwise provided for in the approval decision.
  - ii. When circumstances are such that a plan with an approved appeal or special exception is required to be reviewed by another agency (e.g., DEP, planning board, KPA), any period the plan is at that agency, from time of submission to time of decision inclusive, verified by recorded documentation, shall not be counted as part of the cumulative time periods described in the section above.
- L. Second Appeals/Requests. If the zoning board of appeals shall deny an appeal/request, a second appeal/request of a similar nature shall not be brought before the ZBA within one year from the date of original denial, unless the appellant shall submit new evidence and the ZBA, by formal action, decides the evidence is significant and warrants a new hearing, or unless the ZBA finds in its sole and exclusive judgment that an error or mistake of law or misunderstanding of facts shall have been made.
- M. Fees. The appellant shall pay a fee for filing an appeal or special exception request in an amount as set by the town council. (See Appendix J fee schedule.) (Ord. 3a-07 (part); Ord. 7-06; Ord. 9-96 § 4; land use and dev. code § 6.2, 1994)

**16.24.060 Basis for decision.**

- A. Conditions. In hearing appeals/requests under this section, the zoning board of appeals shall determine:
  - i. That the proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use districts;

- ii. That the use will not prevent the orderly and reasonable use of permitted or legally established uses in the district wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use district;
  - iii. That the safety, the health, and the welfare of the town will not be adversely affected by the proposed use and its location; and
  - iv. That the use will be in harmony with and promote the general purposes and intent of this title.
- B. Factors for Consideration. In making such determination, the zoning board of appeals shall also give consideration, among other things, to:
- 1. The character of the existing and probable development of uses in the district and the peculiar suitability of such district for the location of any of such uses;
  - 2. The conservation of property values and the encouragement of the most appropriate uses of land;
  - 3. The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;
  - 4. The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use);
  - 5. Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;
  - 6. Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;
  - 7. Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the town or by other competent governmental agency;
  - 8. The necessity for paved off-street parking;
  - 9. Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used therefor, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of person upon such plot;
  - 10. Whether the use, or the structures to be used therefor, will cause an overcrowding of land or undue concentration of population; or, unsightly storage of equipment, vehicles, or other materials;
  - 11. Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;
  - 12. Whether the proposed use will be adequately screened and buffered from contiguous properties;
  - 13. The assurance of adequate landscaping, grading, and provision for natural drainage;
  - 14. Whether the proposed use will provide for adequate pedestrian circulation;
  - 15. Whether the proposed use anticipates and eliminates potential nuisances created by its location;
  - 16. The satisfactory compliance with all applicable performance standard criteria contained in Chapter 16.32.
- D. Outstanding Violations. No variance or special exception may be granted for premises on which outstanding violations of this title exist, unless the effect of such variance or special exception would remedy all such violations. (Land use and dev. code § 6.3, 1994)