



# CITY OF GARDINER BOARD OF APPEALS

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## VARIANCE APPLICATION

### Type of Variance:

- Standard Variance    Dimensional Requirements Variance    Disability Variance  
 Floodplain    Historic Preservation Commission    Shoreland

### Applicant Information:

Name: \_\_\_\_\_ Tel #: \_\_\_\_\_

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

### Property Owner Information

Property Owner as evidenced by deed recorded:

Deed Book Number \_\_\_\_\_ Page \_\_\_\_\_ Dated \_\_\_\_\_

Name: \_\_\_\_\_ Tel #: \_\_\_\_\_

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

### Property Information:

Location: \_\_\_\_\_

City Tax Map: \_\_\_\_\_ Lot: \_\_\_\_\_ Zoning District \_\_\_\_\_

Lot size (acres): \_\_\_\_\_ Road frontage: \_\_\_\_\_' Shoreland frontage: \_\_\_\_\_'

Existing use of property: \_\_\_\_\_

Abutting Property uses:

North: \_\_\_\_\_ South: \_\_\_\_\_

East: \_\_\_\_\_ West: \_\_\_\_\_

### Variance Description:

Describe variance request in terms of distance, height, lot coverage, lot area & frontage:

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

Applicant's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

Property Owner's Signature: \_\_\_\_\_ Dated: \_\_\_\_\_

The following information is required for your variance appeal:

- Location Map
- Plot Plan
- Engineered Building Plan
- Contour Plan
- Drainage Plan
- Non-Engineered Building Plan
- Landscape Plan
- Street/Road Plan
- Other \_\_\_\_\_

## **SECTION 2 ADMINISTRATION AND ENFORCEMENT**

### **2.4.4 Appeal Procedure**

**2.4.4.1** In all cases, a person aggrieved by a decision of the Code Enforcement Officer or Planning Board shall commence his/her appeal within 30 days after a final decision is made. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

**2.4.4.2** Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within 45 days. The Board of Appeals shall notify the Municipal Officers, Code Enforcement Officer and the Planning Board, at least 14 days in advance, of the time and place of the hearing. The applicant shall publish notice of the hearing not less than 14 days in advance in a newspaper of general circulation in the area.

**2.4.4.3** The applicant shall notify the Code Enforcement Officer and by certified mail the owners of all property within 100 feet of the property involved if the property is in a Residential or Central Business district and 200 feet of the property in all other districts, at least 14 days in advance of the hearing, of the within nature of the appeal and of the time and place of the public hearing, and shall furnish proof of such notification.

**2.4.4.4** The owners of property shall be considered 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 Board of Appeals.

**2.4.4.5** At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.

**2.4.4.6** The Code Enforcement Officer or designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal.

**2.4.4.7** 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 Chairman.

**2.4.4.8** Within 20 days of the public hearing, the Board of Appeals shall reach a decision on an appeal and shall inform, in writing, the appellant, the Code Enforcement Officer, the City Manager, the Mayor and the Chairman of the Planning Board.

**2.4.4.9** Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall forthwith issue a building permit in accordance with the conditions of the approval.

**2.4.4.10** A variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within 1 year of the date on which the appeal is granted, and if the work or change is not substantially completed within 2 years of the date on which the appeal is granted.

**2.4.4.11** If a variance expires, to continue work in progress or to commence construction, a person shall apply for a new variance or the person shall be in violation of this Ordinance.

**2.4.4.12** A variance granted by the Board of Appeals shall be recorded in the Kennebec Register of Deeds within 90 days of the date of written approval of the variance pursuant to 30-A M.R.S.A. Section 4353, Subsection 5. The variance is not valid until it is recorded.

## STANDARD VARIANCE

The Board of Appeals shall hear and decide, upon appeal, in specific cases where a relaxation of the requirements of this Ordinance would not be contrary to the public interest and where a literal enforcement of this Ordinance would result in undue hardship.

Please give evidence below that your request for a variance meets each of the four criteria for undue hardship. An undue hardship shall mean:

- 1.) That the land in question cannot yield a reasonable return unless a variance is granted;  
and

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

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- 3.) That the granting of a variance will not alter the essential character or the locality;  
and

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- 4.) That the hardship is not the result of action taken by the applicant or a prior owner.

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A financial hardship shall not constitute grounds for granting a variance. A variance shall not be justified unless all four elements of an undue hardship are present in the case. As used in this Ordinance, a variance is authorized only for height, area, and size of structures or size of yards or open spaces. Establishment or expansion otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

## DIMENSIONAL REQUIREMENTS VARIANCE

The Board of Appeals may grant a variance from the dimensional requirements of the zoning ordinance when strict application of the ordinance to the petitioner and petitioner's property would cause a practical difficulty and when the following conditions exist.

Please give evidence below that your request for a variance meets each of the six criteria listed below.

- 1.) The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;

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- 2.) The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

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- 3.) The practical difficulty is not the result of action taken by the petitioner or prior owner;

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- 4.) No other feasible alternative to a variance is available to the petitioner;

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- 5.) The granting of a variance will not unreasonably adversely affect the natural environment; and

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6.) The property is not located in whole or in part within the Shoreland areas as described in 38 M.R.S.A. Section 435.

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As used in Section 2 of the Gardiner Land Use Ordinance, "dimensional requirements" means and is limited to zoning ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in Section 2 of the Gardiner Land Use Ordinance, "practical difficulty" means the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Existing, nonconforming buildings within the Cobbossee Corridor District shall not be required to meet the dimensional standards contained in the Gardiner Land Use Ordinance due to change of use or other circumstances requiring review by the City or the Planning Board. Existing buildings cannot be made more nonconforming.

## **2.4.4 Appeal Procedure**

**2.4.4.1** In all cases, a person aggrieved by a decision of the Code Enforcement Officer, Planning Board, or Historic Preservation Commission shall commence his/her appeal within thirty (30) days after a final decision is made. The appeal shall be filed with the Board of Appeals on forms approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal.

**2.4.4.2** Following the filing of an appeal, the Board of Appeals shall hold a public hearing on the appeal within forty-five (45) days. The Board of Appeals shall notify the Municipal Officers, Code Enforcement Officer, the Chair of the Planning Board, and the applicant at least twenty-eight (28) days in advance, of the time and place of the hearing. If the appeal involves an action of the Planning Board, the Board of Appeals shall also provide the required notice to the members of the Planning Board and the Planner. If the appeal involves a decision of the Historic Preservation Commission, the Board of Appeals shall provide the required notice to the members of the Commission. The applicant shall publish notice of the hearing not less than fourteen (14) days in advance in a newspaper of general circulation in the area. The notice shall include a description of the nature of the appeal and the time and place of the public hearing.

**2.4.4.3** The applicant shall notify by certified mail the owners of all property within one hundred (100) feet of the property involved if the property is in a Residential or Traditional Downtown district and within two hundred (200) feet of the property in all other districts, at least fourteen (14) days in advance of the hearing, of the nature of the appeal and of the time and place of the public hearing, and shall furnish proof of such notification to the Board prior to the public hearing.

**2.4.4.4** The owners of property shall be considered 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 Board of Appeals.

**2.4.4.5** At any hearing, a party may be represented by an agent or attorney. Hearings shall not be continued to other times except for good cause.

**2.4.4.6** The Code Enforcement Officer or designated assistant shall attend all hearings and may present to the Board of Appeals all plans, photographs, or other material he/she deems appropriate for an understanding of the appeal. The Chair of the Planning Board or the Board's representative and/or the Chair of the Historic Preservation Commission or the Commission's representative may attend the hearing dealing with an appeal of their action and may present material they deem necessary for an understanding of their action.

**2.4.4.7** 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 Chair.

**2.4.4.8** Within twenty (20) days of the public hearing, the Board of Appeals shall reach a decision on an appeal. Within seven (7) days of making its decision, the Board shall inform, in writing, the appellant, the Code Enforcement Officer, the City Manager, the Mayor and the Chairman of the

Planning Board of its decision. The Board shall also notify the Chair of the Historic Preservation Commission if the appeal involves a decision of the Commission.

**2.4.4.9** Upon notification of the granting of an appeal by the Board of Appeals, the Code Enforcement Officer shall forthwith issue a building permit in accordance with the conditions of the approval.

**2.4.4.10** A variance under the provisions of this Ordinance secured by vote of the Board of Appeals shall expire if the work or change involved is not commenced within 1 year of the date on which the appeal is granted, and if the work or change is not substantially completed within 2 years of the date on which the appeal is granted.

**2.4.4.11** If a variance expires, to continue work in progress or to commence construction, a person shall apply for a new variance or the person shall be in violation of this Ordinance.

**2.4.4.12** A variance granted by the Board of Appeals shall be recorded in the Kennebec Register of Deeds within 90 days of the date of written approval of the variance pursuant to 30-A M.R.S.A. Section 4353, Subsection 5. The variance is not valid until it is recorded.

## **2.4.5 Powers and Duties**

### **2.4.5.1 Administrative Appeals**

The Board of Appeals shall hear and decide where it is alleged there is an error in any order, requirement, decision, or determination made by the Code Enforcement Officer in the enforcement of this Ordinance or in the City's adopted building code. The Board may waive any portion of the building code only if such waiver (s) fully complies with good, sound engineering practices. If a waiver is granted, the waiver shall only apply to that particular project. The action of the Code Enforcement Officer may be modified or reversed by the Board of Appeals, or a waiver granted from the building code, by a concurring vote of at least 4 members of the Board.

### **2.4.5.2 Planning Board and Historic Preservation Commission Appeals**

The Board of Appeals shall hear and decide the appeal of any person aggrieved by the final action of the Planning Board or Historic Preservation Commission with respect to a Planning Board review, site review, subdivision review or certificate of appropriateness in accordance with the following procedure:

**2.4.5.2.1** The appeal shall be limited to a review of the action of the Planning Board or Historic Preservation Commission with respect to the record of the hearing before the Planning Board or the Historic Preservation Commission. No new evidence may be introduced by any party except as provided below:

**2.4.5.2.1.1** The Board of Appeals may take evidence with respect to the standing of any party to maintain an application or appeal.



**2.4.5.2.1.2** By agreement of all parties, the Board of Appeals may receive additional materials necessary to complete the record of action taken by the Planning Board or Historic Preservation Commission, not included in the record as forwarded by the Planning Board or Commission.

**2.4.5.2.2** Conditions attached to approval of a Planning Board, site plan or Subdivision application or Certificate of Appropriateness may be appealed.

**2.4.5.2.3** The Board of Appeals may modify or reverse the action of the Planning Board or Historic Preservation Commission only where the Board of Appeals finds that the action of the Planning Board or Commission is clearly contrary to the applicable ordinance. The parties appealing the action of the Planning Board or Historic Preservation Commission shall have the burden of persuasion as to all issues on appeal.

**2.4.5.2.4** In the event that the Board of Appeals finds that the action of the Planning Board or Historic Preservation Commission fails to address required issues under the applicable ordinance, or that the decision or record of proceedings before the Planning Board or Commission as forwarded to the Board of Appeals is incomplete, the Board of Appeals shall refer the matter back to the Planning Board or Commission for further proceedings or completion of the decision or record, as appropriate. Upon referral back by the Board of Appeals, the Planning Board or Commission shall complete necessary further proceedings within 60 days. No matter appealed to the Board of Appeals shall be referred back to the Planning Board or Commission more than twice, over the objection of any party.

### **2.4.5.3 Variance**

**2.4.5.3.1** The Board of Appeals shall hear and decide, upon appeal, in specific cases where a relaxation of the requirements of this Ordinance would not be contrary to the public interest and where a literal enforcement of this Ordinance would result in undue hardship. An undue hardship shall mean:

**2.4.5.3.1.1** That the land in question cannot yield a reasonable return unless a variance is granted; and

**2.4.5.3.1.2** That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and

**2.4.5.3.1.3** That the granting of a variance will not alter the essential character or the locality; and

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

**2.4.5.3.2** A financial hardship shall not constitute grounds for granting a variance. A variance shall not be justified unless all four elements of an undue hardship are present in the case. As used in this Ordinance, a variance is authorized only for height, area, and size of structures or size of yards or open spaces. Establishment or expansion otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. The Board of Appeals shall grant a variance only by

concurring vote of at least 4 members and in so doing, may prescribe such conditions and safeguards as are appropriate under this Ordinance.

#### **2.4.5.4 Dimensional Requirements Variance**

**2.4.5.4.1** The Board of Appeals may grant a variance from the dimensional requirements of the zoning ordinance when strict application of the ordinance to the petitioner and petitioner's property would cause a practical difficulty and when the following conditions exist:

**2.4.5.4.1.1** The need for a variance is due to the unique circumstances of the property and not the general condition of the neighborhood;

**2.4.5.4.1.2** The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

**2.4.5.4.1.3** The practical difficulty is not the result of action taken by the petitioner or prior owner;

**2.4.5.4.1.4** No other feasible alternative to a variance is available to the petitioner;

**2.4.5.4.1.5** The granting of a variance will not unreasonably adversely affect the natural environment; and

**2.4.5.4.1.6** The property is not located in whole or in part within the shoreland areas as described in 38 M.R.S.A. Section 435.

**2.4.5.4.2** As used in this subsection only, "dimensional requirements" means and is limited to zoning ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

**2.4.5.4.3** As used in this subsection, "practical difficulty" means the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

**2.4.5.4.4** Existing, nonconforming buildings within the Cobbossee Corridor District shall not be required to meet the dimensional standards contained in this Ordinance due to change of use or other circumstances requiring review by the City or the Planning Board. Existing buildings cannot be made more nonconforming.

#### **2.4.5.5 Disability Variance**

**2.4.5.5.1** The code enforcement officer may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or

egress from the dwelling for the person with a disability. The code enforcement officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling. *(Adopted August 19, 2015/Effective September 19, 2015)*

For the purposes of this subsection, a disability has the same meaning as a physical or mental disability under 5 M.R.S.A. Section 4553-A, 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.

#### **2.4.5.6 Floodplain Management Appeals and Variances**

**2.4.5.6.1** In addition to the above-mentioned provisions of 2.4.5.3, the following shall also apply in cases involving requests for variances from the requirements of the Floodplain Management section of this Ordinance.

**2.4.5.6.2** A variance shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

**2.4.5.6.3** A variance shall be granted only upon:

**2.4.5.6.3.1** A showing of good and sufficient cause; and

**2.4.5.6.3.2** A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety or public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and

**2.4.5.6.3.3** A showing that the existence of the variance will not conflict with other state, federal or local laws or ordinances; and

**2.4.5.6.3.4** A determination that failure to grant the variance would result in "undue hardship."

**2.4.5.6.4** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance, as it deems necessary.

**2.4.5.6.5** Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that all criteria for a variance in 2.4.5.6.3 and 15.6.11 are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

**2.4.5.6.6** Variances may be issued for the repair, reconstruction, rehabilitation or restoration of historic structures upon determination that the development meets all the criteria for a variance as contained in 2.4.5.6.3 and the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

**2.4.5.6.7** If a variance is granted, the Board of Appeals shall notify the applicant in writing over the signature of the Chairman of the Board of Appeals that:

**2.4.5.6.7.1** The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;

**2.4.5.6.7.2** Such construction below the base flood level increases risks to life and property; and

**2.4.5.6.7.3** The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the city against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the city from any claims the applicant may have against the city that are related to the use of land located in a floodplain.

**2.4.5.6.8** The Board of Appeals shall submit to the Code Enforcement Officer and Planning Board a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.

#### **2.4.5.7 Historic Preservation Appeals**

Variances may be issued for the reconstruction, the rehabilitation or restoration of structures listed on the National Register of Historic Places, or on the State Inventory of Historic Places without regard to the variance procedures set forth above.

#### **2.4.5.8 Shoreland Zoning Appeals**

**2.4.5.8.1** Variance requests for property located in a Shoreland, Resource Protection, or Shoreland Overlay District shall meet the following conditions:

**2.4.5.8.1.1** Variances may be granted only from dimensional requirements including, but not limited to, lot width, structure height, percent of lot coverage, and set back requirements.

**2.4.5.8.1.2** Variances shall not be granted for establishment of any uses otherwise prohibited by this Ordinance.

**2.4.5.8.1.3** The Board shall not grant a variance unless it finds that the strict application of the terms of this ordinance would result in undue hardship. The term "undue hardship" shall mean:

**2.4.5.8.1.3.1** That the land in question cannot yield a reasonable return unless a variance is granted:

**2.4.5.8.1.3.2** That the need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; and

**2.4.5.8.1.3.3** That the granting of variance will not alter the essential character of the locality; and

**2.4.5.8.1.3.4** That the hardship is not the result of action taken by the applicant or prior owner.

**2.4.5.8.2** A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least 20 days prior to the action by the Board of Appeals. Any comments received from the Commissioner prior to the action by the Board of Appeals shall be made part of the record and shall be taken into consideration by the Board of Appeals.

**2.4.5.8.3** A copy of all variances granted by the Board of Appeals shall be submitted to the Department of Environmental Protection within 7 days of the decision.

*Appellant must place a legal ad in the  
Kennebec Journal not less than 14 days in  
advance of the public hearing.*

## **SAMPLE LEGAL AD FOR KJ**

**City of Gardiner  
Board of Appeals Meeting  
Tuesday, *Date* @ 6:00 PM  
Gardiner City Hall Council Chambers**  
The City of Gardiner, Board of Appeals  
will hold a public hearing on Tuesday,  
*date* at 6:00 P.M. in the City Hall Council  
Chambers to hear a Dimensional Variance  
Appeal submitted by *Appellant(s)*,  
requesting a variance of *fifty-five feet (55')*  
*from a seventy-five foot (75')* minimum  
side setback requirement to *activity*. The  
property, located at *address*, City Tax Map  
*000* Lot *000*, is in the *High Density*  
*Residential (HDR) Zoning District*.

The public is invited to attend and offer  
oral or written comment at the public  
meeting. A copy of the applications may  
be viewed during City Hall Business  
hours at the Planning and Code  
Enforcement Office.

Timeline: The Appellant must notify abutters within 100' of property by certified mail at least 14 days in advance of the public hearing.

## Sample Abutter Letter

Date: *Date*  
To: *Abutters of address*  
From: *Appellant(s) Name(s)*  
Subject: *Dimensional Variance*

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The City of Gardiner, Board of Appeals will hold a public hearing on Tuesday, *date* at 6:00 P.M. in the City Hall Council Chambers to hear a Dimensional Variance appeal submitted by *Appellant(s) Name(s)*, requesting a variance of *fifty-five feet (55')* from a *seventy-five foot (75')* minimum side setback requirement to. The property, located at *address*, City Tax Map *000* Lot *000*, is in the *High Density Residential (HDR)* Zoning District.

The public is invited to attend and offer oral or written comment at the public meeting. A copy of the applications may be viewed during City Hall Business hours at the Planning and Code Enforcement Office.

Sincerely,

*Appellant(s) Name(s)*