

## TESTS FOR GRANTING AREA VARIANCES

### BE VERY SPECIFIC WHEN ANSWERING THESE QUESTIONS

"Area variance" shall mean the authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

(Town Law Section 267, subsection 1.(b)).

In deciding whether to grant an area variance, the Zoning Board of Appeals takes into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. (Town Law Section 267-b, subsection 3.(b)).

To enable the Zoning Board of Appeals to grant an area variance, the applicant must present substantial evidence concerning the following topics by providing supporting evidence for each. Attach additional sheets if necessary.

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

NO; THE RETAINING WALL AND STAIR STRUCTURE IS EXISTING. NO CHANGES WILL TAKE PLACE.

- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

NO; THE LOT LINE IS BEING ADJUSTED TO BETTER CONFORM TO THE TOWN CODE.

- (3) Whether the requested area variance is substantial.

YES; THE PROPERTY CANNOT BETTER CONFORM TO THE ZONING CODE WITHOUT THE LOT LINE ADJUSTMENT. BY ADJUSTING THE LOT LINE, A SECOND DRIVEWAY IS BEING CREATED FOR PROPERTY #3818 AND WILL BE USED BY #3822 TO ACCESS LOWER LEVEL THROUGH AN EASEMENT.

- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

NO; NO CONSTRUCTION IS TAKING PLACE FOR THIS ACTION.

- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

YES; IT IS THE OWNER'S DECISION TO ADJUST THE LOT LINE. HOWEVER; IT IS BEING DONE TO BETTER CONFORM THE PROPERTY TO TOWN ZONING.

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- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

NO; THE DRIVEWAY IS EXISTING. NO CHANGES WILL TAKE PLACE.

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- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

NO; THE LOT LINE IS BEING ADJUSTED TO BETTER CONFORM TO THE TOWN CODE.  
THE DRIVEWAY IS EXISTING.

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- (3) Whether the requested area variance is substantial.

YES; THE PROPERTY CANNOT BETTER CONFORM TO THE TOWN CODE WITHOUT THE  
LOT LINE ADJUSTMENT. ACCESS TO LOWER LEVEL OF #3822 THROUGH AN EASEMENT  
A SECOND DRIVEWAY IS BEING CREATED FOR PROPERTY #3822 TO ACCESS THE  
MAIN FLOOR OF THE DWELLING.

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- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

NO; EROSION AND SEDIMENT WILL BE CONTROLLED DURING CONSTRUCTION AND A  
RAIN GARDEN WILL BE USED TO TREAT ADDITIONAL RUNOFF FROM THE SITE.

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- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

YES; IT IS THE OWNER'S DECISION TO ADJUST THE LOT LINE. HOWEVER; IT  
IS BEING DONE TO BETTER CONFORM THE PROPERTY TO TOWN ZONING. IT IS THE  
OWNERS DECISION TO PROVIDE ACCESS TO MAIN LEVEL OF THE BUILDING DUE TO  
PHYSICAL DISABILITY.

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To enable the Zoning Board of Appeals to grant an area variance, the applicant must present substantial evidence concerning the following topics by providing supporting evidence for each. Attach additional sheets if necessary.

- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

NO, SEVERAL HOUSES IN THIS NEIGHBORHOOD ENCROACH ON THE FRONT SETBACK.  
THE PROPERTY TO THE NORTH, #3818 IS OWNED BY THE SAME OWNER. OWNER  
INTENDS TO SELL #3818 TO THE HIS DAUGHTER AFTER THE NEW HOUSE IS BUILT.  
GIVEN THE GEOGRAPHY THE VIEW FROM BOTH PROPERTIES IS TOWARD THE NORTHEAST.

- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

NO, THE INTENT IS TO ACCESS THE DRIVEWAY AND GARAGE AT THE SAME LEVEL  
AS THE LIVING FLOOR OF THE HOUSE. THE OWNER REQUIRES GROUND FLOOR ACCESS  
DUE TO RECENT DISABILITY LIMITING THE ABILITY TO CLIMB STAIRS. THE HOUSE  
IS CONSTRAINED BY VEGETATION AND STEEP SLOPES AT THE REAR.

- (3) Whether the requested area variance is substantial.

YES, THE VARIANCE IS REQUIRED TO CONSTRUCT A DECK AT THE FRONT OF A NEW  
MODESTLY SIZED HOUSE AND PROVIDE ENJOYMENT OF THE LAKE VIEW.

- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

NO, THE NEW HOUSE AND DECK WILL BE LOCATED ON AN EXISTING RESIDENTIAL  
LOT WITH NO IMPACT TO THE ROAD OR INFRASTRUCTURE. A CREEK LOCATED  
AT THE SOUTH OF THE PROERTY WILL REMAIN UNDISTURBED AND PROTECTED  
DURING CONSTRUCTION.

- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

YES, IT IS THE OWNER'S DECISION TO TEAR-DOWN AND REBUILD THIS HOUSE.  
HOWEVER, THE PLACEMENT OF THE HOME IS NECESSARY DUE TO THE OWNER'S  
DISABILITY AND ACCESSIBILITY NEEDS. IT IS THE OWNER'S OPINION THAT THIS  
SHOULD ALLOW THE BOARD FROM GRANTING THIS VARIANCE.

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NO; THE DRIVEWAY IS EXISTING. NO CHANGES WILL TAKE PLACE.

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- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

NO; THE LOT LINE IS BEING ADJUSTED TO BETTER CONFORM TO THE TOWN CODE.  
THE DRIVEWAY IS EXISTING.

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- (1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

NO; THE HOUSE WILL BE CONSTRUCTED IN A MANNER THAT IS CONSISTENT WITH OTHER HOMES IN THE AREA. THE LOT IS SIZED APPROPRIATELY TO ACCOMODATE A SINGLE FAMILY STRUCTURE.

- (2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

NO; THE LOCATION OF THE HOUSE IS CONSTRAINED BY STEEP SLOPES AND THE REQUIRED ACCESS TO THE NEW DWELLING.

- (3) Whether the requested area variance is substantial.

YES; DUE TO THE OWNER'S DISABILITY, BUILDING A HOME TO BETTER ACCOMODATE HIS ACCESSIBILITY NEEDS IS CRITICAL.

- (4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

NO; THE CREEK LOCATED ON THE PROPERTY WILL REMAIN UNDISTRUBED AND PROTECTED DURING CONSTRUCTION. RUNOFF WILL BE TREATED THROUGH A RAIN GARDEN BEFORE DISCHARGING INTO THE CREEK.

- (5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.

YES; IT IS THE OWNER'S DECISION TO TEAR-DOWN AND REBUILD THE HOUSE. HOWEVER; THE PARTICULAR PLACEMENT OF THE HOUSE IN THE PROXIMTY OF THE CREEK IS NECESSARY DUE TO STEEP SLOPES.