



VARIANCE PROCESS SUMMARY FOR APPLICANTS

The Adirondack Park Agency (the “Agency”) Variance Process Summary is intended to assist the applicant and the public in understanding the steps necessary to take to secure a variance from the Agency. The Agency’s variance procedures are set forth in regulation at 9 NYCRR Section 576.5, and may be found on the Agency’s website at www.apa.ny.gov.

All requests for variances are required to go before the Agency Board to be decided by the Board at a scheduled monthly meeting. The goal of the variance review process is to develop the information that the Agency Board needs in order to make its decision whether to deny, grant, or grant with conditions the requested variance. The criteria that the Agency Board applies to its variance decisions are set forth in 9 NYCRR Sections 576.1 through 576.4.

In the variance process, the burden is on the applicant to submit information that will show that the requested variance should be granted by the Agency Board; the Agency must be persuaded that the health, safety and welfare benefits of the statutory and regulatory standards are outweighed by the adverse consequences to the applicant if the variance were denied. This process requires the weighing of the applicant’s reasonable objectives and the public purpose of the statutory shoreline, density, sign or wastewater treatment system restrictions and the consideration of the following factors:

- Whether the requested variance is the minimum relief necessary;
- Whether granting the variance will create a substantial detriment to adjoining or nearby landowners;
- Whether the difficulty can be obviated by a feasible method other than a variance;
- The manner in which the difficulty arose;
- Whether granting the variance will adversely impact the natural, scenic, and open space resources of the Adirondack Park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts that would not otherwise occur; and
- Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects that will occur; and
- Any additional relevant considerations.

It remains the property owner’s burden to address the variance factors noted above and to provide information in the application. While it is not required, a property owner may find it helpful to have the assistance of professionals outside the Agency in preparing and presenting the application at the hearing.

Agency staff work with the applicant to make sure that sufficient information is provided to the Agency Board for its decision. The public also has the opportunity to participate in the variance process. After the conclusion of the hearing and the preparation of the entire record, staff provides its own analysis of the requested variance, which often includes a recommendation to the Agency Board. All of this information is considered by the Agency Board in making its decision on the requested variance.

THE VARIANCE APPLICATION PROCESS

The first step in the variance process is the submittal of an application to the Agency for review. An application for a variance must be submitted by a person with a legal interest in the land and must contain the signature of the owner of record of the land.

Upon receipt of the application, an Agency staff person is assigned to review it. Based on that review, staff may ask the applicant for additional information. Almost all variance applications will require additional information and a site visit before a hearing can be scheduled.

THE VARIANCE HEARING PROCESS

Agency staff will schedule a public hearing for presentation and discussion of the requested variance. Staff will publish a Notice of Variance Hearing in a local paper that contains information about the requested variance and variance process and sets the hearing date and location. A copy of the notice will also be mailed to the applicant, the property owner (if other than the applicant), landowners within 500 feet of the property, the Adirondack Local Government Review Board, the planning board chairman, and the town supervisor or village mayor. The hearing date will be at least 10 days from the date that the notice is published in the local newspaper.

The Notice of Variance Hearing also offers the opportunity for the public to participate in the variance hearing process. Individuals may provide oral comment at the hearing and/or written comment within a specified period of time. All of these comments will be provided to the Agency Board as part of the information that it receives prior to making a decision on the variance request.

The hearing will be informal and legislative in nature. An Agency staff member who is not involved in the review of the requested variance may preside over the hearing. The Agency may elect to have an independent Administrative Law Judge preside over the hearing. At the hearing, the applicant will describe the variance request in detail and explain how the request complies with the criteria that the Agency Board applies when making a decision on variance requests. Agency staff may ask the applicant questions about the information presented by the applicant. Agency staff may present additional factual testimony and exhibits relating to the factors to be considered by the Agency Board. The applicant may ask Agency staff questions regarding its presentation.

After the applicant and Agency staff have completed their presentations, there will be an opportunity for public comment, and any individual who wants to will be given an opportunity to make a statement. The applicant will have the opportunity to respond to public comment, but is not required to do so. The hearing will be recorded so the complete hearing record can be provided to the Agency Board.

AGENCY BOARD ACTION ON THE VARIANCE REQUEST

Agency Board action on the requested variance must occur within 45 days of the close of the hearing, unless a longer period of time is agreed to between Agency staff and the applicant. In most cases, Agency staff will prepare a written analysis and recommendation to the Agency Board. The applicant will have an opportunity to submit a written response to staff's analysis and recommendation. These statements and public comments are helpful to the Agency Board, since they can draw from all of the facts and analysis that were developed through the application process and the hearing process. Agency staff may also use the statement to provide the Agency Board with a recommendation concerning the variance request, including a recommended draft order denying, granting, or granting with conditions the requested variance.

Prior to Agency Board consideration of the requested variance, Agency staff will send all of the information developed through the application and hearing process, including hearing exhibits and a recording of the hearing, along with written public comments received and any written statements from the applicant and/or Agency staff, to the Agency Board. The public may obtain copies of all of this information from the Agency through the Freedom of Information Law.

The Agency Board considers and makes decisions on variance requests at its regular monthly meeting. Agency meetings usually occur on the second Thursday and Friday of each month at the Agency's headquarters in Ray Brook, New York. The meetings and the Agency Board's deliberations concerning the requested variance are open to the public and can be viewed via webcast on the Agency's website. However, the applicant and other individuals are not allowed to make any public comments to the Agency Board concerning the requested variance. At the end of each meeting, there is a formal public comment period when public comments may be made to the Agency Board.

During the Agency meeting, the record for a requested variance is presented by Agency staff to the Agency Board's Regulatory Programs Committee. Committee members discuss the request, ask staff questions, and vote on a recommendation for the full Agency Board as to how the request should be decided. After the Committee meeting concludes, the full Agency Board convenes to consider and make a decision on the requested variance. Staff may be called upon to present the record to the Agency Board and to respond to questions from members and designees. The Agency Board then votes on whether to deny, approve or approve with conditions the requested variance and will usually direct staff to prepare an order consistent with its decision.

A copy of the Agency Board's order will be sent to the applicant and to any other formal party to the hearing. The public may obtain copies of the order pursuant to the Freedom of Information Law. Any CPLR Article 78 challenge to the Agency Board's order must be filed within 60 days of the date of the order.