

CITY/TOWN OF \_\_\_\_\_

BOARD OF APPEALS  
APPLICATION FOR VARIANCE

**A. General Information**

1. Name of Applicant: \_\_\_\_\_.
2. Mailing Address: \_\_\_\_\_.
3. City or Town: \_\_\_\_\_ State: \_\_\_\_\_.
4. Telephone: \_\_\_\_\_.
5. Name of Property Owner (if different from applicant): \_\_\_\_\_  
\_\_\_\_\_.
6. Location of property for which variance is requested (street/road address): \_\_\_\_\_  
\_\_\_\_\_.
7. Zoning district in which property is located: \_\_\_\_\_.
8. Tax map and lot number of subject property: Map \_\_\_\_\_, Lot \_\_\_\_\_.
9. The applicant has the following legal interest in the subject property (deed, purchase and sale agreement, lease, option agreement or other – circle appropriate one and attach copy).

**B. Reasons/Supporting Information for Variance.**

1. The applicant proposes the following building, structure, use or activity on the subject property: \_\_\_\_\_  
\_\_\_\_\_.
2. The applicant seeks a variance(s) from the following dimensional standard(s):  
\_\_\_\_\_  
\_\_\_\_\_ which is/are contained in section(s) \_\_\_\_\_  
\_\_\_\_\_ of the Zoning Ordinance.
3. The lot is currently being used for the following: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

d. The hardship is not the result of action taken by the applicant or a prior owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2. **Disability Variance.** The Board of Appeals may grant a variance to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this provision solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. For the purposes of this provision, a disability has the same meaning as a physical or mental handicap under the Maine Human Rights Act 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.

**Please answer the following questions to explain why you believe that the subject property meets each of the following criteria for this type of variance:**

- a. Does a person with a disability reside in the dwelling? \_\_\_\_\_.
- b. Does a person with a disability regularly use the dwelling? \_\_\_\_\_.
- c. Is the installation of equipment or the construction of structures proposed under this application necessary for access to or egress from the dwelling by the person with the disability? (Explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
- d. Does the disability have a known duration? \_\_\_\_\_. If so, what is that duration? \_\_\_\_\_.

3. **Set-back variance for single-family dwellings.** (Available only where the municipality has adopted an ordinance that permits the Board to grant a set-back variance for a single-family dwelling.) An ordinance adopted under this provision may permit a variance from a set-back requirement only when strict

application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty, which means that the application meets each of the criteria listed below.

(As used in this provision, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements. As used in this provision, "practical difficulty" means that 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.)

**Please explain why you believe that the subject property meets each of the following criteria for this type of variance:**

- a. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- b. 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- c. The practical difficulty is not the result of action taken by the petitioner or a prior owner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- d. No other feasible alternative to a variance is available to the petitioner: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- e. The granting of a variance will not unreasonably adversely affect the natural environment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;
- f. The property is not located in whole or in part within shoreland areas as described in Title 38, § 435: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

## EXPANDING NONCONFORMING STRUCTURES REVISITED

(from *Maine Townsman*, "Legal Notes," December 1998)

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In a December 1995 *Maine Townsman* Legal Note ("Expansion of Nonconforming Structures"), we posed the following question:

Our zoning ordinance permits the expansion of nonconforming structures provided there is no "increase" in nonconformity. Does this mean that no part of a structure within a required setback may be expanded in any direction, including sideways or upward, or simply that the expansion may not further reduce the existing setback?

The Maine Supreme Court has now answered this question, but not in the way we had predicted. In *Lewis v. Town of Rockport*, 1998 ME 144, an abutter appealed the Zoning Board's approval of an addition to a building that already encroached on the required sideyard setback and exceeded the maximum allowable height. The Board's reasoning was that as long as the addition did not encroach beyond the current "limit of nonconformance" (the extent to which the existing building was nonconforming), the addition would be "no more nonconforming," as the ordinance specified. The Law Court, however, found this reasoning "unconvincing."

Noting that the phrase "no more nonconforming" was undefined in Rockport's ordinance, and citing its longstanding rule that ordinance provisions governing nonconformities should be strictly construed, the Court stated flatly, "Any modification of or addition to a building that would increase the square footage of nonconforming space within the building, even if it would not increase the linear extent of nonconformance, does make the building more nonconforming."

The *Lewis* case has important consequences for planning boards and boards of appeals in interpreting zoning ordinances generally, many of which incorporate the concept of expansion of nonconforming structures and allow it as long as the expansion creates no greater nonconformity. However, unless an ordinance defines "no more nonconforming" (or a similar standard) more liberally, the restrictive *Lewis* definition will control.

The Court's decision could affect interpretation of shoreland zoning ordinances as well. While *Lewis* did not directly address the expansion of nonconforming structures under shoreland zoning, a possible reading of *Lewis* is that for an expansion under the 30% rule (for structures or portions of structures within the required water setback), no lateral or vertical expansion along the most nonconforming portion of the structure is permitted. This runs counter to the longtime interpretation – by both DEP and municipalities – that expansion is allowed along a structure to the extent of any grandfathered encroachment into the required setback. The phrase "increase in nonconformity" is not defined in the shoreland zoning statute or the State's minimum shoreland guidelines, however, so the *Lewis* definition threatens the continued validity of this traditional interpretation.

In light of *Lewis*, boards should be careful in applying ordinance provisions governing expansion of nonconforming structures. Boards may wish to recommend that their legislative bodies adopt a more flexible definition of "no more nonconforming" (or a similar standard) if the municipality wants to avoid the result in the *Lewis* case. For shoreland zoning ordinances, DEP is proposing a change to the State's minimum shoreland guidelines that would provide a more liberal standard for municipalities wishing to incorporate it into their ordinances. On the other hand, it is not necessary to amend local ordinances to add a definition – some municipalities may agree with the result in *Lewis* and not want to liberalize their ordinances.

(By J.N.K.)