

APPLICATION FOR A VARIANCE  
ZONING BOARD OF ADJUSTMENT | BRADFORD, NH 03221

APPLICATION RECEIVED DATE: 9/11/20 -KO

CASE NO. 077620

NAME OF APPLICANT: Richard (Rick) Deschenes

MAILING ADDRESS: P.O. Box 214  
Bradford, NH 03221

TELEPHONE NUMBER: (603) 387-1196

PROPERTY OWNER: Same  
(If same as applicant, enter "same")

LOCATION OF PROPERTY: Davis Road

TAX MAP NUMBER: 07 LOT NUMBER: 076

*Variance: If you want to do something which does not conform to Bradford's Zoning Ordinances you can demonstrate that there are special circumstances of the property that distinguish it from other properties similarly zoned, and may apply for a variance.*

*Complete the following sections with as much information as possible. Please use ink or complete electronically. Initial and date each page; sign and date the application in the spaces provided. This application will not be considered unless all required statements have been made. The applicant bears the burden of proof for a variance.*

**THE ZONING BOARD WILL NOT ACCEPT INCOMPLETE OR LATE APPLICATIONS**

Additional information may be supplied on separate sheets if the space provided is inadequate. Applications shall be acceptable only when presented to the Clerk of the Board at the beginning of any regularly scheduled meeting. ONE ORIGINAL AND SIX (6) COPIES OF THE COMPLETED APPLICATION SHALL BE PRESENTED TO THE CLERK. If you have any questions and/or require assistance, attend a regularly scheduled Zoning Board of Adjustment meeting for consultation.

Applicant is fully responsible for researching and knowing all laws which may be applicable and affect the outcome of the Board's decision on the application request. It is important that you read and understand Attachment 1 of this application. The applicant, or an authorized agent or attorney, must appear at the Public Hearing for the Board to take action on the application. The application will be terminated or tabled for failure to appear at a scheduled meeting. If an agent or attorney is designated to represent this application, the applicant must submit a signed Letter of Authorization.

Pay close attention when making the Abutter's List. An abutter is any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. **YOU ARE RESPONSIBLE FOR OBTAINING THE CORRECT OWNER AND MAILING INFORMATION FOR THIS LIST FROM THE TOWN TAX OFFICE.** This information is necessary to properly notify all interested parties with certified notices. Failure to provide complete or correct information on abutters will result in the application being returned and may delay the scheduling of your hearing.

Applicant Initial/Date [Signature] 9-10-20

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Attach a copy of any Administrative Decision, if applicable; for example a denied Building Permit.

**APPLICATION FEES**

All fees shall be paid before a public hearing can be noticed.

**ADMINISTRATIVE & NEWSPAPER NOTICE**

Check made out to Town of Bradford/ZBA: **\$80.00**

**REQUIRED NOTICES (include Applicant, Abutters, Engineers, Easement Holders, etc.)**

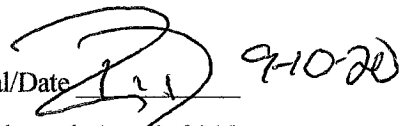
Check made out to Postmaster, Bradford, NH: 8 AT \$ 6.95 EACH SUBTOTAL: \$ 55.60

**TOTAL FEES: \$ 135.60**

ZBA USE ONLY. Comments have been solicited from the Selectmen \_\_, Conservation Commission \_\_, Road Agent \_\_, Police Chief \_\_, Fire Chief \_\_, and Planning Board \_\_ as appropriate.

DATE: \_\_\_\_\_

Applicant Initial/Date

 8/1/18

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New Hampshire state law requires that a number of Variance Criteria be considered before granting a variance. In order for a variance to be granted, each of these criteria must be carefully and thoroughly considered by the Zoning Board.

A variance is requested from Article III, Section D(3) of the Town of Bradford Zoning Ordinance.

What is proposed? Attach sketches, plot plans, pictures, construction plans, or other relevant documentation that explain the proposed use. Include copies of any prior applications concerning the property.

The Applicant proposes to construct a single-family, two-story dwelling on the subject property, which is currently a vacant lot of land. The proposed dwelling shall have a footprint of approximately four-hundred and sixty eight (468 SF) square feet, with a proposed width of eighteen (18') feet and proposed length of twenty-six (26') feet. Additionally, the proposed dwelling shall have a wrap-around deck of a width of four (4') feet on three sides of the dwelling, and a width of eight (8') feet on the northeasterly front of the dwelling, on the side facing Lake Massasecum. A plan of the proposed dwelling (including all setbacks and topographical features associated with the subject property) is attached hereto as Exhibit A.

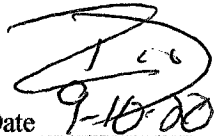
Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. Attach survey plan, plot plan, etc.

The subject property is owned by Richard (Rick) Deschenes by virtue of Warranty Deed dated May 21, 2018 and recorded in the Merrimack County Registry of Deeds at Book 3595, Page 865.

The subject property is a 1.93 acre parcel of vacant land located in the rural residential zone. The subject property is a waterfront parcel abutting Lake Massasecum, with about sixty (60') feet, more or less, of frontage along said lake. The subject property is located on Davis Road, a Class V public highway.

The subject property is unique when compared to surrounding properties because of its dimensions, topography, and location. The subject property is a unique shape, with a small portion of the lot abutting Lake Masasecum, and the vast majority of the lot abutting neighboring parcels. The subject property contains a significant amount of poorly drained wetlands, said wetlands constituting a majority of the lot. Further, while the subject property is located on Davis Road, the subject property does not have direct frontage on Davis Road. Rather, the subject property is accessible via easement to Davis Road, and therefore appears landlocked when simply viewed on a map. Abutting properties share the easement right of way that provides access to the subject parcel. The existing right of way easement serving these abutting lots and the subject lot runs almost the entire length of the easterly portion of the subject property.

As a direct result of the dimensions, topography, and location of the subject property, the parcel has a significantly reduced buildable area. The area of the subject lot that may logistically be built upon due to its physical features is not compliant with the buildable area established by the zoning ordinance when taking all setbacks into consideration. As a result, the Applicant requires a variance in order to build a reasonable structure on the subject lot. Please see attached addendum for additional information.

  
Applicant Initial/Date RD 9-10-00

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The Zoning Board must determine that the variance request satisfies the following 5 criteria. ***Please note that all criteria must be satisfied in order for a variance to be granted.*** Please provide a written response along with any other supporting documentation for each of the following criteria. ***Use a full page for each criteria.*** Attach additional pages if necessary. Failure to satisfactorily prove any single criteria will result in denial of the application.

***Please use one page per criteria. Please explain how and/or why:***

- 1. The variance will not be contrary to the public interest because;**  
For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives. For instance:  
Will the proposal alter the essential character of the neighborhood?  
Will it threaten the public's health, safety or welfare?
- 2. If the variance were granted, the spirit of the Bradford Zoning Ordinance would be observed because;**  
It is in the public's interest to uphold the spirit of the ordinance, this criteria is often linked to the first.  
Explain how the request will uphold the spirit and goals of the town's zoning laws.
- 3. The proposal would result in substantial justice being done because;**  
It must be demonstrated that any loss suffered by the general public would be so minimal that it is outweighed by the gain to the applicant. A test for this would be to demonstrate that the proposal is consistent with current uses in the area.
- 4. If the variance were granted, the value of surrounding properties will not be diminished because;**  
Meeting this condition seems fairly obvious, but there are many factors that can influence property values. It must be demonstrated that the proposal will have no negative impact on the value of neighboring properties.
- 5. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship;**
  - a) Explain any special conditions of this property that distinguish it from other properties in the area.
  - b) Explain how this property is different in a meaningful way from other properties in the area.
  - c) Explain how this property is burdened more severely than others by the zoning restrictions.
  - d) Given the special conditions of this property, explain how the proposed use is a reasonable one.

**The Applicant has the burden of proof.** Applicants should be prepared to present information pertinent to the variance being requested. To obtain a legally granted variance, you must demonstrate/prove that the proposal satisfies **all five** of the variance criteria.

Applicant Initial/Date  9-10-20

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**Certification:**

I hereby certify that;

RD I have read and understand the instructions for completing the application for a variance.

RD I have completed this application as completely and fully as possible.

RD I have attached all evidence including sketches that I intend to discuss at the Public Hearing on this application.

RD I understand that if this application is incomplete, it will be returned within a reasonable time following its submission and that this may delay the scheduling of the Public Hearing.

RD I understand that I must appear in person at the Public Hearing to present and discuss this application. If I cannot appear in person, I will notify the Chair of the ZBA, in writing, designating the individual who will appear for me.

RD The ZBA has permission to enter this property in order to conduct scheduled site walks upon reasonable prior notice.

RD My application for a variance and supporting information is honest and truthful to the best of my knowledge.

Applicant signature: \_\_\_\_\_

Date: 9-10-20

**Excerpt from NH Zoning Law – Variances Section 674:33 Powers of Zoning Board of Adjustment**

*I. The zoning board of adjustment shall have the power to:*

*... Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:*

- (1) The variance will not be contrary to the public interest;*
- (2) The spirit of the ordinance is observed;*
- (3) Substantial justice is done;*
- (4) The values of surrounding properties are not diminished; and*
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.*

*(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:*

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and*
- (ii) The proposed use is a reasonable one.*

*(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

*The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.*

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**SAMPLE ABUTTER LIST**

<b>APPLICANT NAME:</b> Richard (Rick) Deschenes		
<b>DATE:</b>	<b>Case Number:</b>	<b>Map/Lot No.</b> 07/076
<b>ABUTTERS LIST</b>		
<b>FULL NAME AND ADDRESS FROM CURRENT TAX BLOTTER</b>		
<b>TAX MAP/LOT NO.</b>	<b>NAME</b>	<b>MAILING ADDRESS</b>
07-075	Jon and Amy Cook	62 Davis Road Bradford, NH 03221
07-078	Thomas and Judith Marshall	60 Davis Road Bradford, NH 03221
11-079; 11-078	Sandra J. Staiti	106 Plain Road Wayland, MA 01778
11-076	LMC Bradford LLC	74 North Main Street Concord, NH 03301
07-077	Richard Deschenes (also applicant)	P.O. Box 214 Bradford, NH 03221
	Elizabeth J. Nolin, Esq. Nolin Law, PLLC	P.O. Box 87 Nottingham, NH 03290
	Dan Higginson Higginson Land Services	76 Patterson Hill Road Henniker, NH 03242
	Town of Bradford Selectmen's Office	P.O. Box 435 Bradford, NH 03221

Complete Abutter List submitted with this Application

Applicant Initial/Date *RD* 8-10-20

1.) Granting the Variance will not be Contrary to the Public Interest

The first step in analyzing whether a variance is contrary to the public interest is to examine the applicable zoning Ordinance.<sup>1</sup> To be contrary to the public interest, the variance must unduly, and in a marked degree, conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives.<sup>2</sup> One way to determine whether granting a variance would violate basic zoning objectives is to evaluate whether it would alter the essential character of the locality.<sup>3</sup> Another approach to determining whether the variance would violate basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare.<sup>4</sup>

In this case, the proposed variance is not contrary to the public interest because it does not unduly conflict with the Ordinance such that it violates the Ordinance's basic zoning objectives. In other words, the proposed development of a single family dwelling with a footprint of less than five hundred (500 SF) square feet on the subject property is not contrary to the public interest because the proposed development is consistent with the zoning of the subject property; is consistent with the essential character of the surrounding locality; and the proposed development in no way threatens the public health, safety, or welfare.

a.) The proposed use would not alter the essential character of the locality.

The subject property lies within the rural residential, as indicated on the property tax card and the Town of Bradford zoning maps. The proposed single- family home is appropriate for such a zone. Further, the proposed improvements are consistent with other existing residential uses in the surrounding rural residential zone, particularly when considering the proposed size of the dwelling.

The locality surrounding the subject property consists of other smaller lots improved with single- family residences. The surrounding lots are improved with dwellings of varying sizes, but are typically two to four bedrooms in size, multi- story, with decks, porches, or similar features. The proposed structure is consistent with surrounding dwellings in terms of size, features, height, exterior appearance, and is generally appropriate for the lot size upon which it shall be constructed.

As the proposed dwelling is consistent with the essential character of the surrounding properties and general surrounding locality, the proposed use would not alter the essential character of the locality.

b.) Granting the Variance does not threaten the public health, safety, or welfare.

The proposed improvements do not threaten the public health, safety, or welfare.

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<sup>1</sup> Chester, 152 N.H. at 581.

<sup>2</sup> Chester, 152 N.H. at 581.

<sup>3</sup> Chester, 152 N.H. at 581; Harrington v. Town of Warner, 152 N.H. 74, 78 (2005); Harborside Associates, LP v. Parade Residence Hotel, LLC, 162 N.H. 508, 515 (2011).

<sup>4</sup> Chester, 152 N.H. at 581; Harborside, 162 N.H. at 515.



The proposed development shall exclusively include the construction of a single family dwelling with deck. There are no public health, safety, or welfare concerns associated with this proposed development as there is no use of chemicals, hazardous materials or waste products, or the like.

All construction of the proposed dwelling shall be done in accordance with New Hampshire standards, laws, and regulations, and therefore shall impose no public health, safety, or welfare concerns.

As the proposed construction is standard construction of a small, single family dwelling, the granting of this variance shall in no way threaten the public health, safety, or welfare. Further, as the proposed development would not alter the essential character of the locality, granting the variance would not be contrary to the public interest.

## 2.) Granting the Variance Will Observe the Spirit of the Ordinance

The requirement that the variance not be "contrary to the public interest" is "related to the requirement that the variance be consistent with the spirit of the ordinance."<sup>5</sup> "The public interests are protected by standards which prohibit the granting of a variance inconsistent with the purpose and intent of the ordinance, which require that variances be consistent with the spirit of the ordinance, or which permit only variances that are in the public interest."<sup>6</sup>

In this case, the spirit of the Ordinance is observed in the granting of the variance because the proposed use is consistent with other uses in the subject property's rural residential zone and in keeping with the essential character of the neighborhood. Additionally, it does not pose threat to the public health, safety, or welfare. For these reasons, granting the variance will observe the spirit of the Ordinance.

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<sup>5</sup> *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005).

<sup>6</sup> *Id.* at 581, 883 A.2d 1034 (quotation omitted). *Nine A, LLC v Town of Chesterfield*, 157 NH 361, 366 (2008).

### 3.) By Granting the Variance, Substantial Justice is Done.

Perhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.<sup>7</sup> In other words, if the general public would realize no appreciable gain from a denial of the variance, that would be an injustice.<sup>8</sup>

In this case, the general public does not realize any appreciable gain from the denial of this variance. The proposed development is appropriate for the subject property's rural residential zone and the area's present and existing uses. Additionally, the proposed development poses no health, safety, or wellness threats to the general public. In fact, the general public would receive a benefit through the approval of this variance request because the construction of the proposed improvements on the subject property will increase the subject property's value and subsequent real estate taxes. For these reasons, the general public would realize no appreciable gain from denying this variance application.

In contrast, the applicant would realize significant loss from the denial of the variance application. The approval of this variance request shall permit the applicant to develop the subject lot and erect a reasonable-sized dwelling upon the property. As such, the applicant will be able to the enjoy and use the subject lot in a livable, safe, and reasonable dwelling. As the subject property is a lakefront property, and the location where the applicants intend to retire to as a primary residence, the ability of the applicant to enjoy the property with the proposed improvement is a significant benefit to the property owner.

For these reasons, substantial justice is done if the variance is granted because the applicant will be able to fully utilize, lease, and enjoy the subject property in a reasonable manner, and the general public will realize no appreciable loss as a result.

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<sup>7</sup> *Malachy*, 155 N.H. at 109; *Harborside*, 162 N.H. at 515.

<sup>8</sup> *Lone Pine Hunters' Club*, 149 N.H. at 670; *Malachy*, 155 NH at 109.

4.) Granting the Variance Will Not Diminish the Values of Surrounding Properties.

Surrounding property values will not diminish as a result of the variance because the proposed improvements are consistent with other dwellings and improvements in the area. Additionally, the proposed residential improvements are consistent with other uses in the area in terms of size, location on the lot, exterior appearance, and types of improvement.

No noise, traffic, or environmental issues need be considered in this matter due to the inherently residential nature of the proposed improvements. The proposed dwelling shall not be unreasonably close to and/or burdensome to abutters, as the proposed structure satisfies all side setbacks.

For these reasons, the granting of the variance will not diminish the values of surrounding properties.

5.) Special Conditions Exist Such That Literal Enforcement of the Ordinance Results in Unnecessary Hardship.

Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship to the applicant because, owing to special conditions of the subject property that distinguish it from other properties in the area, the subject property cannot be reasonably used in strict conformance with the Ordinance.

The subject property is a unique lot in its surroundings, consisting of 1.93 acres with unique dimensions, topography, and location. Although a large parcel in terms of acreage, the subject lot has only sixty (60') feet of shoreline along Lake Massasecum. The vast majority of the subject lot is set back from the lake and to the rear of abutting parcels. The majority of the subject parcel, particularly on the southeasterly side, consists of poorly drained wetlands and woodlands.

Additionally, the subject lot is encumbered by existing rights of way and driveways serving the subject property and abutting lots. The existing rights of way and driveway cover the majority of the buildable portion of the subject lot, as shown on the plan attached hereto as Exhibit A.

The ordinance requires the following requirements, for which the applicant seeks a variance: minimum distance from any building to an abutter's property line shall be thirty (30) feet. Given the unique topographical features of the subject property, there is no way the property owners can construct a reasonable dwelling in strict conformance with these ordinance requirements.

The unique location, dimensions, and features of the subject property create a situation where there is no buildable area on the subject lot within which a usable, reasonable structure could be erected. Due to the presence of significant poorly drained wetlands and the location of the existing rights of way, the only reasonable portion of the subject lot upon which a dwelling could be constructed is at the northeasterly portion of the lot, with frontage upon Lake Massasecum. This portion of the lot has dimensions of approximately sixty (60') feet wide and seventy (70') feet long. It is mathematically impossible to observe the abutter setback requirements in these dimensions, as the combined abutter setbacks alone require sixty (60') feet in width, the total area of the buildable portion. For this reason, a variance is necessary to construct any dwelling on the property.

The proposed improvements to the subject property are reasonable, as it is reasonable for a property owner to wish to improve a residentially zoned lot with a single- family home that is consistent with other homes in the surrounding locality. Additionally, the proposed dwelling shall have a footprint of less than five hundred (500 SF) square feet, making the proposed dwelling smaller than surrounding structures and therefore reasonable within its surroundings.

In light of these facts, it is clear the subject property cannot be reasonably used in strict

conformity with the Ordinance. There is no buildable area on the subject lot to accommodate any dwelling that complies with the setback requirements of the ordinance in mathematical terms. It would be an unreasonable burden to require the property owners comply with all setback requirements because that would require the property owners to, in fact, construct no reasonable dwelling on the property at all. This is therefore an unreasonable burden to place on any subject property owner, particularly when taking into account the surrounding properties, dwellings, and placements of those dwellings on surrounding properties. The burden arises directly from the nature and dimension of the subject property; and as such, it would be unreasonable to require the applicant to strictly comply with the permitted uses under the Ordinance.

For these reasons, special conditions exist on the subject property such that strict observation and literal enforcement of the Ordinance result in unnecessary hardship on the applicant.

EXHIBIT A

