

WHAT IS A VARIANCE?

Variances are exceptions made to current laws which can apply in certain cases if specific criteria are met. For example, a variance is required to obtain a building permit for construction, renovation or modification work that does not meet zoning requirements.

TYPES OF VARIANCES

1. Proposed use of land that would not be permitted otherwise under the zoning by-law

No list of permitted uses can take into account every possible situation. The law consequently provides for the authority to recognize a use as comparable or compatible if it maintains the general intent of a particular designation.

For example, a property owner might propose establishing a seniors' home in an "Institutional 1" zone although this specific use **was not provided for in the zoning by-law**. This use could be allowed if it maintains the intent prescribed for the zone in question.

2. Any reasonable exemption to the provisions of the zoning by-law

A zoning by-law sets out the minimum standards in relation to building setback from property lines, building height, the percentage of a lot occupied by a building, the required number of parking spaces, etc.

For example, the minimum distance to be maintained between a property line and a building (minimum lateral setback) for a single-family dwelling might be 1.2 meters. If an applicant has only 0.5 meters due to a steep slope or the presence of trees, the Commission could consider granting a minor variance.

STEPS IN APPLYING FOR A VARIANCE

1- Application

- Submit a written application to a Northwest Regional Service Commission development officer.
- Present a detailed site plan.
- Pay the required fee (see fact sheet "4- Rates – Permits and Services").

2- Review of application

- The Commission staff study the application and makes a recommendation for the commissioners.
- The application is entered into the agenda of the Commission's next meeting, the deadline for which is the last business day of the preceding month.

The commissioners meet once a month, usually on the third Wednesday. If, for example, an application is filed on the second Tuesday of a given month, it is then heard on the third Wednesday of the following month. This year's meeting schedule is posted on the Commission website at www.csrno.ca.

3- Notification

- Notice advising of the application's content is sent out to all neighbouring property owners located within either 60 meters or 100 meters, depending on the nature of services (public or private).

4- Hearing

- The applicant is invited to present his application and associated arguments before the commissioners.

5- Decision

- The commissioners are permitted to rule on the application only as presented to them. They may refuse the application, approve the application or approve the application subject to certain conditions.
- Written notice of the commissioners' decision is forwarded to the applicant within five days following the meeting. The applicant may also telephone the day after the meeting to find out the results.
- Conditions may be imposed. For example, the commissioners may require that the applicant erect a vegetation screen (hedge) or fence along a lateral property line subject to the variance.
- Should the commissioners rule that more information is needed, they may also postpone their decision until a future meeting.
- Applicants who disagree with a decision of the Northwest Regional Service Commission may file an appeal with the New Brunswick Assessment and Planning Appeal Board.

Variance applications are reviewed on a case-by-case basis since every project is unique.



AUTHORITY

Decisions concerning variance applications are based on section 35 of the *Community Planning Act*, along with subsections 77(2.4) applicable to rural plans and subsection 46(1) and paragraph 77(8b) to subdivision. These provisions authorize the Commission to allow reasonable variances to the by-law requirements. Decisions may be subject to conditions.

COMMISSIONERS

The Northwest Regional Service Commission has 16 members representing the region's various municipalities and local service districts who oversee the Commission's staff. The members meet at least once a month in the Commission boardroom located at 36 Court Street in Edmundston.

DURATION OF VARIANCE

There is no specific standard dictating the duration of a variance. This should not be interpreted as meaning that variances are granted permanently. Amendment of zoning by-laws or the municipal or rural plan could result in modification of land use standards, requiring reapplication.

The Northwest Regional Service Commission may also, under certain circumstances, impose a time limit for completing the applicable work.

CONSIDERATIONS

In making an informed decision, the staff and commissioners consider the following arguments as recognized in the *Act*:

- The variance should be minor in nature (in terms of its description, effects or scope).
- The variance must comply with the principles of the municipal or rural plan.
- The land (property) must present special or different circumstances compared to nearby properties.
- Measures must be taken to avoid and mitigate any adverse impact of the variance.
- The variance granted should not jeopardize public health or safety or cause damage to adjacent land or property.
- The anticipated use should not compromise the intent of permitted uses in the zone to the point of being deemed non-compliant.
- The applicant must demonstrate suffering of serious harm due to enforcement of the zoning regulations.
- The variance must not infringe on the enjoyment by neighbouring property owners of their property rights.

