



Board of Health

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PROCEDURE FOR VARIANCE REQUESTS – STATE OR SHERBORN REGULATIONS

Both State (Title 5) and Sherborn Board of Health regulations have provisions for Variances. This is particularly intended to provide for situations where *existing* subsurface sewage disposal systems or wells need to be reconstructed or repaired, but cannot meet the present day technical requirements for design. Variances are *not* intended for new construction, which is expected to comply fully with both Board of Health and State regulations. These regulations have been adopted in order to preserve a healthy and safe water supply, protect the surface waters, and preserve a sanitary living environment, free from sources of filth and disease. Variance(s) may only be granted in cases where there would be MANIFEST INJUSTICE to the applicant not to do so, AND provided that the same degree of ENVIRONMENTAL PROTECTION is provided without strict application of the particular provision(s) of the regulations requested to be waived. Variances are not usually granted in cases where the requirements of the Board of Health can be met.

1. Along with the application and plans, the applicant must submit the Variance Request IN WRITING, along with an additional fee of \$100.00 for a variance from the local Board of Health regulations alone, or \$150.00 if a Title 5 variance or Local Upgrade Approval is needed. The request shall include the specific regulation being requested to be waived, and must state how *manifest injustice* will result if the waiver is not granted. The measures being proposed to provide for *equal environmental protection* must be described. Please note that if State approval of the variance is also needed, the Commonwealth of Massachusetts collects a separate fee at the time of that submission.
2. Upon receipt of such a request, the Board of Health will schedule the HEARING and will advise the applicant, in writing, of the date, time and place of the Hearing. [NOTE: No Hearing date for a variance shall be scheduled until a Negative Determination or Order of Conditions from the Sherborn Conservation Commission has been received by the Board of Health.]
3. The APPLICANT must request and obtain a *Certified List of Abutters* from the Sherborn Board of Assessors. This list must be presented to the Board of Health when the Hearing is opened.
4. The APPLICANT must notify all of the abutters by *Certified Mail*, with *Return Receipts Requested* of the following:
 - (a) The *date, time, and place* of the Variance Hearing with the Board of Health.
 - (b) A complete *description* of the location of the property involved (street address).
 - (c) The specific *variance(s) being requested* and the *reason* for the request(s).

The abutters must receive notice at least TEN (10) DAYS prior to the Variance Hearing. RETURN RECEIPTS (green cards) signed by the abutters shall be submitted to the Board of Health immediately after the Hearing is opened, along with the certified abutter list (see #3 above) and a copy of the abutter notification letter.

NOTICE

The applicant is required to submit a certified mail return receipt (green card) for every abutter, showing a receipt date of at least 10 days prior to the Hearing date, at the Hearing. If any green card is not returned, it is the applicant's responsibility to obtain the original envelope back from the Post Office. That original, unopened envelope may be submitted at the Hearing in lieu of the certified mail return receipt (green card). The Hearing can not go forward and will be rescheduled, requiring further abutter notification by certified mail, if proof of complete abutter notification is not provided.

5. The Board of Health may only grant variances under the following conditions:

The Board of Health may vary the application of any provision of its regulations or of Title 5 (except where expressly forbidden) with respect to any particular case, when, in its opinion:

 - (a) the enforcement thereof would do manifest injustice; and
 - (b) the applicant has proven that the same degree of environmental protection required under the regulations or Title 5 can be achieved without strict application of the particular provision.

PROCEDURE AFTER VARIANCE HEARING

Variations to Local Regulations only:

1. Any Variance granted or denied shall be in writing and shall be conspicuously posted for thirty (30) days following its issuance and shall be available to the public at all reasonable hours in the office of the Board of Health while it is in effect.
2. A copy of each Variance shall be filed with the Sherborn Town Clerk.

State (Title 5) Variations:

1. Notice of the approval of the Variance shall be filed with the Department of Environmental Protection (DEP) shall be filed by the applicant. The applicant must obtain, through their engineer, the appropriate DEP Variance application and transmittal forms. These forms must be completed in full and a copy of each submitted to the Board of Health.
2. Upon receipt of copies of the State variance application and transmittal forms, the Board of Health Administrative Assistant will provide the applicant with a copy of the certified list of abutters and certified mail return receipts (green cards), as submitted to the Board of Health when the Variance Hearing was opened. Those items must be included with the DEP application in the submission to the State. Any plans required for the State submission should be obtained by the applicant from the engineer. The applicant or engineer will mail the submission to the State. It is recommended that the submission be sent by certified mail with return receipt requested.
3. If the DEP approves the requested State variance(s), the applicant and Board of Health will receive a letter advising of the approval. Upon receipt of such an approval, or if thirty (30) days elapse without DEP comment, the plan will again go before the Board of Health for final plan approval.
4. Notice of any grant of a Title 5 Variance shall be posted in a conspicuous public place for thirty (30) days after its issuance. No permit will be issued until this time has elapsed.