



APPLICATION FOR A VARIANCE

Do not write in this space. Case No. Date Filed (signed - ZBA)

To: Board of Adjustment, Town of Waterville Valley

Name of Applicant: Patricia S. Gaudette

Applicant Address: P.O. Box 351, Waterville Valley, NH 03215

Applicant Phone Number: c/o Atty Boldt via 603-279-4158

Applicant E-mail Address: c/o Atty Boldt via cboldt@dtclawyers.com

Owner: Same.

(if same as applicant, write "same")

Location of Property:

101 West Branch Road

(street, number, sub-division and lot number)

NOTE: This application is not complete unless all required statements and information have been made and provided.

Additional information and statements may be supplied on a separate sheet of paper if the space provided is inadequate.

An incomplete application may be grounds for denial.

APPLICATION FOR A VARIANCE

A variance is requested from Article IV Section A.1.e.ii of the Zoning Ordinance to permit the Applicant to renovate and utilize an existing accessory structure of approximately 780 sq. ft. (not counting a full unfinished basement) the foundation of which is located approximately 15 feet from the side boundary line of the Property and the roof eave is located approximately 13 feet from the side boundary line.

Facts in support of granting the variance:

- 1. Granting the variance would not be contrary to the public interest because:

See attached.

2. If the variance were granted, the **spirit** of the ordinance would be observed because:

See attached.

3. Granting the variance would do substantial **justice** because:

See attached.

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:

See attached.

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:

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 because:

See attached.

and:

ii. The proposed use is a reasonable one because:

See attached.

- B. Explain how, 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.

See attached.

Please provide each of the following:

- A completed Application, signed by the Applicant. If the Applicant is not the owner of the property, you must provide a signed letter of authorization or power of attorney, signed by the owner.
- A list of abutters. The accuracy of the list is your responsibility.
- A filing fee of \$200.00. Make your check payable to the Town of Waterville Valley. If you withdraw your Application, or if your Application is denied, you will not receive a refund.
- A fee equal to the Town's costs in providing notice. This charge will be calculated by the Town and will vary based upon the number of abutters. Make your check payable to the Town of Waterville Valley. Failure to pay this cost shall constitute valid grounds for the board to terminate further consideration and to deny the appeal without a public hearing. If you withdraw your Application, or if your Application is denied, you will not receive a refund.

Applicant *Christopher L. Bold, Esq.* Date *10/22/21*
 (signature) *see attached auth. ltr.*

Abutters List for Application for Variance

Name of Applicant: Patricia S. Gaudette

Property Address: 101 West Branch Road

Tax Map: 102

Lot: 002

1. Tax Map: 102 Lot: 2
Patricia S. Gaudette
P.O. Box 351
Waterville Valley, NH 03215

2. Tax Map: 102 Lot: 1
Patrick L. & Denise K. Wynn
141 Scout Lane
North Attleboro, MA 02760

3. Tax Map: 102 Lot: 3
Samuel R. & Rebecca Stockwell
P.O. Box 247
Waterville Valley, NH 03215

4. Tax Map: 102 Lot: 4
Riverbend at Waterville Valley
c/o B&D Stone Property Management
P.O. Box 445
Waterville Valley

5. Tax Map: 102 Lot: 14
Paul A. & Leigh Anne Janell
37 Jackson Circle
Franklin, MA 02038

6. Tax Map: 102 Lot: 24
Matthew N. & Jamie S. Rubin, Trustees of the
Matthew Rubin Trust
120 Commonwealth Ave., Apt. 4
Boston, MA 02116

7. Tax Map: 103 Lot: 28
Town of Waterville Valley
14 Tac Lane
Waterville Valley, NH 03215

8. Tax Map: 110 Lot: 4
US Forest Service White Mountain National Forest
71 White Mountain Drive
Campton, NH 03223

9. Tax Map: 401 Lot: 8
WVSR, LLC
Green Peak Lift Shack
P.O. Box 540
Waterville Valley, NH 03215

10. Tax Map: 401 Lot: 13
WVSR, LLC
Snow Board Shop
P.O. Box 540
Waterville Valley, NH 03215

11. Tax Map: 401 Lot: 14
SBA Towers II, LLC
Attn: Tax Department
Site ID #NH13784
8051 Congress Avenue
Boca Raton, FL 33487

12. Tax Map: 401 Lot: 15
Nextel Communications of the Mid-Atlantic, Inc.
P.O. Box 7911 (NH1426)
Overland Park, KS 66207

13. Christopher L. Boldt, Esq., Applicant's Attorney
Donahue, Tucker & Ciandella, PLLC
164 NH Rte 25, Towle House, Unit 2
Meredith, NH 03253

VARIANCE APPLICATION FOR
PATRICIAL S. GAUDETTE (“**Applicant**”)
101 WEST BRANCH ROAD, TAX MAP LOT NUMBER: 102/002
 (“**the Property**”)

VARIANCE FROM ZONING ORDINANCE ARTICLE IV.A.1.e.ii TO ALLOW THE USE OF AN EXISTING NONCONFORMING ACCESSORY STRUCTURE AS A SHORT TERM RENTAL UNIT.

I. INTRODUCTION:

The Applicant is seeking relief from the Town’s Zoning Ordinance (“**the Ordinance**”) 20-foot side setback requirement (“**the Setback**”) of Article IV.A.1.e.ii (“**the Section**”) to enable the Applicant to renovate and utilize an existing accessory structure (“**the Structure**”) of approximately 780 sq. ft. (not counting a full unfinished basement) the foundation of which is located approximately 15 feet from the side boundary line of the Property and the roof eave is located approximately 13 feet from that side boundary line.

The Property consists of approximately 1.04 acres per the Town’s tax card and is located in the Low Density Residential District (“**LDR**”) where Short Term Rental Units are an allowed use with a permit from the Town’s Selectmen. The Primary Residence on the Property currently has 4-bedrooms and is serviced by an on-site septic system installed in 1999. As a condition of any approval for this Application, the Applicant will obtain a connection to the Town Sewer System for both the Structure and the Primary Residence. See, Sketch of the Buildings prepared by Applicant using the Town’s Tax Map, a copy of which is attached hereto as **Exhibit A**. See also recent photographs for the Structure, which are attached hereto as **Exhibit B**.

The Applicant seeks to renovate the existing 26’ x 30’ **Structure** into a Short Term Rental Unit with 1 bedroom, 1 bath and a kitchen, with two parking spaces provided in the existing driveway area adjacent to the Structure (“**the Project**”). The size and location of the Structure will not change. This Project is located more than 250 feet from the West Branch of the Mad River and involves no site disturbance so no Shoreland Impact Permit from New Hampshire Department of Environmental Services (“**DES**”) would be required.

The Applicant respectfully requests variance relief from the Section to allow the existing non-conforming Structure to be used as a Short Term Rental Unit, which is generally an allowed use in the LDR.

II. VARIANCE CRITERIA

Pursuant to RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (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, meaning that, owing to special conditions of the property that distinguish it from other properties in the area: 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 the Proposed Use is a reasonable one; or 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. *See* RSA 674:33, I (b).

The Applicant asserts that the application meets each of the variance criteria on the following bases.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691; *see also* Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct us to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Ordinance.

Here, the Applicant seeks relief to renovate the existing non-conforming Structure currently located within the 20-foot Setback from the Property boundary with adjacent Lot 1 (“**the Wynn Property**”) at 81 West Branch Road. Due to the unique front boundary lines between the Property and the Wynn Property, the existing Structure is slightly “in front” of the Wynn Property. Nothing in the proposed use will change that location of the Structure; and there is no change to the level of encroachment into the Setback by the Structure. Since the Ordinance does not contain an express statement of purpose for the Low Density Residential District or for the Setback in general, one can only assume that the intention is to prevent overcrowding of buildings and the preservation of light, air and vegetation. Such general purposes are being preserved by this Project, which does not change the size or location of the Structure. This Project and the use of the Structure as a Short Term Rental Unit otherwise complies with the provisions of the Ordinance, but for the existing encroachment of approximately five to seven feet into the Setback. Accordingly, the Applicant respectfully asserts that the renovation of the Structure is consistent with the implied purpose of the LDR and the provisions of the Ordinance in general.

Therefore, the Project is both consistent with the existing use of the Property and the general purpose of the LDR, and will neither alter the essential character of the neighborhood nor threaten public health, safety, or welfare. Furthermore, the Project must obtain a Permit from Selectmen for use as a Short Term Rental as an allowed use in the LDR; and being an allowed use in the LDR, this use cannot be viewed as altering the essential character of the neighborhood.

Applicant's receipt of such Permit should be a condition of approval of this Application in addition to the condition of connection to the Town Sewer (which in and of itself is in the public interest). Furthermore, the Applicant is willing for the ZBA to impose a condition of approval that additional plantings or fencing be added along the "front angle" of the boundary line to further screen the existing Structure from the Wynn Property.

Because the proposal neither threatens to alter the essential character of the neighborhood, nor threatens the public health, safety, and welfare, the Applicant respectfully requests that the ZBA find that granting this Application will not be contrary to the public interest under the required standard set forth in the case law referenced above.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variances observe the spirit of the underlying ordinance provisions involved. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691.

As discussed above, this Variance Application for the Project is consistent with the spirit of the Ordinance because of the reasons and conditions stated in Section 1. Accordingly, the Applicant respectfully requests that the ZBA find that by granting this Application, the spirit of the ordinance is observed.

3. Substantial justice is done.

As noted in Malachy Glen, "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." Malachy Glen, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, there is a clear loss to the Applicant that is not outweighed by any gain to the community if this Variance is denied. Because of the location of the existing non-conforming Structure, this Variance Application will allow the Applicant to make reasonable, appropriate use of the Property in compliance with the other provisions of the Ordinance and without negative impact to the abutters or the neighborhood. Therefore, given the factors listed above, the Applicant respectfully urges this Board to find that granting this Application would do substantial justice while denying this variance would be a substantial injustice in light of the circumstances set forth above.

4. The proposal will not diminish surrounding property values.

Given the location, size, and minimal nature of the encroachment of the Structure, the abutting Wynn Property to the South will not be impacted by the grant of this Application to allow occupation of a structure located partially within the side setback – especially in light of the suggested conditions set forth above. The abutters to the North and across West Branch Road are relatively far removed from the Structure. Accordingly, the Applicant respectfully asserts that none of the surrounding parcels would suffer any diminution in value as a result of granting this Variance for the Garage. Therefore, the Applicant respectfully requests that the ZBA find that the requested Variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

As set forth in the provisions of RSA 674:33, I, there are two options by which a ZBA can find that an unnecessary hardship exists:

(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.

or,

(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.

(A) The Applicant submits that Option A for demonstrating unnecessary hardship is met.

The “special conditions” of the Property for purposes of this Variance Application include its size, unusual shape, and “as built” condition of the Property – including both the size and non-conforming location of the existing non-conforming Structure, the availability of existing driveway for required parking, and the more the double the amount of required acreage for the LDR. Due do these special conditions, the Setback prohibits the proposed reasonable use of the Structure for a use that is allowed in the LDR.

As noted above, there is no express stated purpose of the Setback; but any implied purposes are not violated by this Project. Moreover, such implied purposes cannot be used to prevent a property owner from making a reasonable use of a Property – especially one allowed by the terms of the Ordinance on the Property via a Permit from the Selectmen. Because of the Property’s special characteristics and the fact that Applicant’s Project as a whole can obtain the necessary Permit from the Selectmen and connection to the Town Sewer, there is no fair and substantial

relationship between the implied purposes of the Setback and its application to this Property for this Project. This is particularly true because the Property's existing Structure already encroaches upon the Setback.

Therefore, an unnecessary hardship exists because, due to the special conditions of the Property, there is no substantial relationship between the purpose of the Setback and application of the Setback to the Property or the Project; and the Project are reasonable since the desired Short Term Rental use of the existing structure is an allowed use in the LDR under the Ordinance. See, Vigeant v. Town of Hudson, 151 N.H. 747 (2005):

When an area variance is sought, the proposed project is presumed reasonable if it is permitted under the Town's applicable zoning ordinance....If the use is allowed, an area variance may not be denied because the ZBA disagrees with the proposed use of the property.

Id., at 752 – 753.

The Applicant respectfully reminds the ZBA that the mere fact that the Applicant is seeking the variance from the express provision of the Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007); see also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“mere conflict with the terms of the ordinance is insufficient”). The ZBA, therefore, cannot deny the variance request for the very reasons that the proposal require the requested variances under the Ordinance.

Accordingly, the Applicant respectfully requests that the ZBA find that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Applicant respectfully concludes that all 5 criteria for the Variance requested have been met so that this Variance Application should be granted.

LETTER OF AUTHORIZATION

I, Patricia S. Gaudette, as owner of the Property located at 101 West Branch Road, Tax Map 102, Lot 002 in Waterville Valley, New Hampshire, hereby authorize, Christopher L. Boldt, Esq. of Donahue, Tucker and Ciandella, PLLC, as my attorneys, to execute all land use applications seeking any required relief from the Waterville Valley Land Use Boards and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of Variance Application.

Dated: 10/4/21


Patricia S. Gaudette







tabbles® EXHIBIT
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Gaudette, 101
W. Branch Rd.

