

1 **Proposed Amendment # 4: Waivers & Variances**

2  
3 **Article IX. Administration & Enforcement**

4  
5 **Section 9.6 Waivers & Variances**

6 The purpose of this section is to allow reasonable development of existing nonconforming lots  
7 and structures. The up to 50% reduction is to ensure that the development is not adversely  
8 impacting adjoining properties, resources, or uses.

9  
10 ~~(A) **Applications & Review Standards.** The Development Review Board may waive application~~  
11 ~~requirements and site plan or conditional use review standards, under Section 5.3 and 5.4 which it~~  
12 ~~determines are not relevant to a particular application.~~

13  
14 (B) **Dimensional Waivers.** The DRB, in association with site plan or conditional use review, or on  
15 appeal of a Zoning Administrator's determination, may reduce minimum district setback requirements  
16 (under Tables 2.1 – 2.8 ) or minimum surface water and wetland setbacks (under Section 3.17) in  
17 accordance with the Act [§ 4414(8)] and the following requirements.

18  
19 (1) A waiver under this section may be granted by the DRB only as necessary to:

20  
21 (a) Allow for the reasonable development and use of a pre-existing nonconforming lot under  
22 Section 3.7(C).

23 (b) Allow for an addition or improvement to a pre-existing nonconforming structure under Section  
24 3.8(B).

25 (c) Comply with federal or state public health, safety, access and disability standards.

26 (d) Allow for the siting of renewable energy structures.

27  
28 (2) A waiver request, including information regarding the specific circumstances, need and justification  
29 for the waiver shall be submitted in writing with the application for conditional use review.

30  
31 (3) The minimum required setback distance shall be reduced by no more than 50% under this provision.  
32 A minimum setback distance of 10 feet shall be maintained. Variance approval under Subsection  
33 (C) shall be required for any further reduction in dimensional requirements.

34  
35 (4) In granting a waiver under this section, the DRB shall find, based upon clear and convincing  
36 evidence of a specific need and circumstances that:

37  
38 (a) Due to physical site, lot area or lot line constraints, no reasonable alternative exists for siting  
39 the structure, addition or improvement outside of the required setback area.

40  
41 (b) The reduced setback is not contrary to public health, safety and welfare, clearly stated  
42 objectives and policies of the Bolton Town Plan, or the intent of these regulations.

43  
44 (c) The waiver represents the minimum setback reduction necessary to allow for the proposed  
45 development.

46  
47 (d) Any potential adverse impacts resulting from reduced setbacks on adjoining properties, rights-  
48 of-way, surface waters or wetlands shall be mitigated through site design, landscaping and  
49 screening, additional buffering or other accepted mitigation measures.

50  
51 (C) The Development Review Board shall hear and decide requests for variances in accordance with the  
52 Act [§ 4469(a)] and appeal procedures under Section 9.5. A variance may be granted upon approval of  
53 the Development Review Board only if literal enforcement of these regulations will result in an undue

*Bolton Land Use and Development Regulations Proposed Amendments*

1 hardship to the appellant. The Board may grant a variance, and render a decision in favor of the  
2 appellant, only if **all** of the following facts are found, and the findings are specified in its written decision:  
3

- 4 (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or  
5 shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to  
6 the particular property, and that unnecessary hardship is due to these conditions and not the  
7 circumstances or conditions generally created by the provisions of these regulations in the  
8 neighborhood or district in which the property is located.  
9
- 10 (2) Because of such physical circumstances and conditions, there is no possibility that the property can  
11 be developed in strict conformity with the provisions of the zoning regulation and that the  
12 authorization of a variance is necessary to enable the reasonable use of the property.  
13
- 14 (3) The unnecessary hardship has not been created by the appellant.  
15
- 16 (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in  
17 which the property is located, substantially or permanently impair the appropriate use or  
18 development of adjacent property, reduce access to renewable energy resources, or be detrimental to  
19 the public welfare.  
20
- 21 (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the  
22 least deviation possible from these regulations and from the plan.  
23

24 (D) **Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a  
25 renewable energy resource structure (solar structure, wind generator, and other similar renewable energy  
26 structures), in accordance with the Act [§ 4496(b)], the Board may grant such variance only if **all** of the  
27 following facts are found in the affirmative and specified in its written decision:  
28

- 29 (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy  
30 resource structure in conformance with these regulations.  
31
- 32 (2) The hardship was not created by the appellant.  
33
- 34 (3) The variance, if authorized, will not alter the essential character of the neighborhood or district in  
35 which the property is located, substantially or permanently impair the appropriate use or  
36 development of adjacent property, reduce access to renewable energy resources, or be detrimental to  
37 the public welfare.  
38
- 39 (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the  
40 least deviation possible from these regulations and from the plan.  
41

42 (E) **Variations within Flood Hazard Areas.** In addition to requirements under Subsection (A),  
43 variances for development within a Flood Hazard Overlay District shall be granted by the Development  
44 Review Board only in accordance with all of the following, as required under the Act [§ 4424(E)]:  
45

- 46 (1) The criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance  
47 Program.  
48
- 49 (2) A determination that during the base flood discharge, the variance will not result in increased flood  
50 levels.  
51
- 52 (3) A determination that the structure or other development is protected by methods that minimize flood  
53 damages during the base flood and will result in no additional threats to public safety, extraordinary  
54 public expenditures, or nuisances.

*Bolton Land Use and Development Regulations Proposed Amendments*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

- (4) The determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Any variance issued within a Flood Hazard Area Overlay District shall include as part of the written decision, over the signature of a town official, the statement that: “The issuance of a variance to construct a structure below the base flood elevation increases risks to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 if coverage.” Such notification shall be maintained with a record of all variance actions. [Amended effective 8/9/2010.]
- (F) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the town plan currently in effect.