

INSTRUCTION TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

**IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT
ATTACHED APPLICATION**

The board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with the New Hampshire Statutes TITLE LXI, RSA Chapters 672-677, covering planning and zoning.

Four types of appeals can be made to the board of adjustment:

VARIANCE: A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the zoning ordinance. For a variance to be legally granted, you must show that your proposed use meets *all five* of the following conditions:

1. The proposed use would not diminish surrounding property clause.
2. Granting the variance must not be contrary to the public interest
3. Denial of the variance would result in unnecessary hardship to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner. The NH Supreme Court has established a new test for unnecessary hardship consisting of 3 elements:
 - a. That the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;
 - b. That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and
 - c. That the variance would not injure the public or private rights of others¹
4. Granting the variance would do substantial justice
5. The proposed use is not contrary to the spirit of the ordinance.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often, this determination is a denial of a building permit. A copy of the determination must be attached to your application.

APPEAL FROM AN ADMINISTRATIVE DECISION: If you have been denied a building permit or are affected by some other decision regarding the administration of the Danbury zoning ordinance, and you believe that the decision was made in error under the provisions of the ordinance, you may appeal the decision to the board of adjustments. The appeal will be granted if you can show that the decision was indeed made in error. If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

¹ - "2001 Land Use Law Update", Atty. Tim Bates, NH OSP Annual Planning and Zoning Conference. May 12,2001, pg. 1

SPECIAL EXCEPTION: Certain sections of the zoning ordinance provide that a particular use of property in a particular zone, will be permitted by special exception if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception may be granted if you can show that the conditions stated in the ordinance are met. If you are applying for a special exception, you may also need site plan or subdivision approval, or both, from the planning board. In some cases you may apply for a Special Exception without going to the Planning Board. In cases where no planning board approval is needed, presenting a site plan to the planning board may assist in relating the proposal to the overall zoning. This should be done before you apply for the special exception.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS: The board may grant an equitable waiver only for existing dimensional nonconformities provided that the applicant can meet the required standards.

- a. The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.
- b. The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake;

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

- c. The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; and
- d. The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (a) and (b), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property? If the applicant is not the owner, this must be explained.

WHERE the property is located?

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc.

WHAT do you propose to do? Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property.

WHY does your proposed use require an appeal to the board of adjustment?

WHY should the appeal be granted?

Prepare a list of abutting property owners, have it verified at the Town Clerk, or Selectman's Office and attach it to your application. If you have any difficulty, consult the Selectmen's Office, but the accuracy of the list is your responsibility.

Mail or deliver the completed application, with all attachments to the Selectmen's Office. A \$50 application fee payable to the Town of Danbury is due when you remit your application to the Selectmen's Office.

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

The board will schedule a public hearing within 30 days of receipt of your properly completed application. A application must be filled out completely and the \$50.00 application fee has been paid to the Town of Danbury Selectman’s Office, a list of abutters has been submitted and all fees are paid for certified mailings of notice to abutters and the fee for public notice in the newspaper has been paid with a check payable to Town of Danbury ZBA. Public notice of the hearing will be posted and printed in the Concord Monitor newspaper, and notice will be mailed to you and to all abutters and to other parties whom the board may deem to have an interest, at least five days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the board may reach a decision or schedule another public meeting to reach a decision. The applicant and all other parties to the case will be sent a notice of decision.

If you believe the board’s decision is wrong, you have the right to appeal. The selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the board for a rehearing. The motion for rehearing may be in the form of a letter to the Town of Danbury ZBA. The motion must be made within 30 days after the decision is filed and first becomes available for public inspection in the ZBA or Town Clerk’s Office and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The board may grant such a rehearing if, in its opinion, good reason is stated in the motion. The board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested one before you can appeal to the courts. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters at the appellant’s expense.

See RSA Chapter 677 for more detail on rehearing and appeal procedures

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

Town of Danbury Zoning Board of Adjustment
23 High Street
Danbury NH 03230

APPLICATION FOR APPEAL

To: Board of Adjustment, Town of Danbury

Name of applicant: _____

Address: _____

E-mail address: _____

Phone: _____

Owner: _____
(if same as applicant, write "same")

Location of property _____
(street, number, sub-division & lot number)

NOTE: Fill in Section 1, 2, 3 or 4 as appropriate. This application is not acceptable unless all required statement have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

Section 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provision of the zoning ordinance: Decision of the enforcement officer to be reviewed _____

Number _____ Date _____ Article _____ Section _____ of the zoning ordinance in question: _____

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

Section 2: APPLICATION FOR A SPECIAL EXCEPTION

Description of the proposed use showing justification for a special exception as specified in the zoning ordinance Article _____ Section _____

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

Section 3: APPLICATION FOR A VARIANCE

A variance is requested from Article _____ Section _____ of the zoning ordinance to permit: _____

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because: _____

2. Granting the variance would not be contrary to the public interest because: _____

3. Denial of the variance would result in unnecessary hardship to the owner because:

- a. The zoning restricting as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that: _____

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

b. That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because: _____

c. The variance would not injure the public or private rights of others since: _____

4. Granting the variance would do substantial justice because: _____

5. The use is not contrary to the spirit of the ordinance because: _____

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

Section 4: APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from Article ____ Section ____ of the zoning ordinance to permit: _____

- 1. Does the request involve a dimensional requirement, not a use restriction? () YES () NO
- 2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced the town _____

- or -

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser _____

and how the violations was not an outcome of ignorance of the law or bad faith but resulted from a

ZBA USE ONLY

NAME _____

CASE # _____ Date Filed # _____ ZBA signature _____

legitimate mistake _____

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area _____

4. Explain how the cost of correction far outweighs any public benefit to be gained _____

Applicant _____ Date _____
(Signature)