

Zoning Board of Adjustment

INSTRUCTIONS TO APPLICANTS MAKING AN APPEAL



2013

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Zoning Board of Adjustment
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INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

(Adopted July 6, 2010, Updated May & August 29, 2013)

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT A SPECIAL EXCEPTION OR VARIANCE APPLICATION

GENERAL

Dublin's Land Use Regulations, with a few exceptions, generally require that the Board of Adjustment review and approve uses on a property which are non-residential in classification and/or constitute multiple uses on a property. (Your home is considered as a use.) The application to the Board of Adjustment is called an "appeal." Since our regulations are comprehensive, you should meet with the Code Enforcement Officer prior to completing an application, so that your application will be complete and properly categorized. In addition, we suggest that you become familiar with the Dublin Land Use Regulations and also the State Statutes (RSAs) covering planning and zoning. Both documents are available for your review at the Dublin Town Hall, and the RSAs are also available online at www.townofdublin.org and <http://www.gencourt.state.nh.us/rsa/html/indexes/> See chapters 672-677.

TYPES OF APPEALS

Three 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.

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.

For a variance to be legally granted, you must show that your proposed use meets **ALL FIVE** of the conditions outlined in NH RSA 674:33, <http://www.gencourt.state.nh.us/rsa/html/LXIV/674/674-33.htm>.

On the next page are explanations of the content to be supplied in your application.

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

The applicant does not have to show that there will be some measurable benefit to the public, but does have to explain how the project will not detract from the ongoing public interest in the existing zoning surrounding the project location. Specific attention must also be paid to the interest of abutters.

2. The spirit of the ordinance is observed.

The proposed project must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or public rights. The applicant must attach drawing, sketches and a written description of how this is achieved.

3. Substantial justice is done.

The applicant has to demonstrate that in addition to compliance with the other four criteria, the project must be essentially transparent to the balance of the other property owners in the zoned space. This doesn't necessarily refer to the physical aspects of the project but has to address activities associated with its implementation and its continuing use which would affect the "quiet enjoyment" of other property owners and visitors to the space.

4. The values of surrounding properties are not diminished.

It is the burden of the applicant to convince the ZBA that the project will not decrease property values. There can be conflicting evidence and differing expert opinions on this issue. There has to be some explanation, quantitative or not, as to why surrounding properties won't be affected.

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

Financial considerations do not constitute a hardship. Unnecessary hardship means because of special conditions of the property that distinguish it from other properties in the area:

- a. there is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - b. the proposed use is a reasonable one.
- Alternatively, unnecessary hardship means that, 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.

By its basic purpose, a Zoning Ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. This hardship is shared in equal proportion by all property owners in a particular zoned space. The "hardships" were established to preserve the nature of the space defined in the ordinances and were approved by the citizens of the Town in an effort to conform to the Town's Master Plan. If it is a use change, it must be proven that if the variance is denied, you would lose use of the space as currently configured. If it is a size issue, reasonable evidence must be presented that there was a cause which couldn't be reasonably predicted for that property and that multiple alternatives to the proposed plan have been considered.

A site visit and recommendations from the Planning Board, Conservation Commission, and the Health Officer may be required (at the discretion of the Board of Adjustment Chairperson) prior to the board hearing on the appeal.

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 will be granted if you can show that the following conditions are met.

1. The proposed use shall be designated in the Table of Use as a special exception use and any applicable requirements for such use contained in Article XII, Section E (Requirements for Granting Special Exceptions) of the ordinance shall be met.
2. The proposed site is an appropriate location for the use. Among the factors the board will consider are: topography, soils, water resources, road access and locations of driveways, condition of existing structures and other relevant characteristics, such as, whether the proposed use is compatible with the surrounding land uses.
3. The proposed use will not adversely affect the value of adjacent property. An adverse effect on adjacent property is one which would limit the use of neighborhood property by causing such problems as excessive noise, traffic, dust, fumes, glare, or other conditions that are associated with the intended use but are not typical of permitted uses within the area.
4. The lot must be of a size, configuration, slope and soil type such that the proposed use is able to comply with all requirements of the zoning ordinance.
5. No hazardous waste shall be disposed of on the property, and provision for the disposition of all waste shall be made without jeopardy, financial or otherwise, to the town of Dublin.
6. Traffic generated by the proposed use must not present a hazard to the neighborhood for either vehicles or pedestrians.

Some uses may be allowed by special exception provided they satisfy the above criteria; plus, must satisfy the relevant conditions set forth in Article XII, Section E (Requirements for Granting Specific Special Exceptions). If not, then a variance may be required.

A site visit and recommendations from the Planning Board, Conservation Commission, and Health Officer may be required (at the discretion of the Board of Adjustment Chairman) prior to the board hearing on the appeal.

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 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 Adjustment. The appeal will be granted if you 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.

THE APPLICATION FORM

For any appeal, the application form must be properly completed. The application form is intended to be self-explanatory, but please be sure you show the following information.

- Applicant's Name
- Applicant's address
- Property owner's name (if different from the applicant's name)
- Property location (street name and number; map and lot numbers)
- Describe the property. Attach information which describes the property, such as area, frontage, side and rear lot lines, slopes and natural features, etc.
- Describe what you propose to do. Attach sketches, plot plans, pictures, construction plans or other information that may help explain the proposed use.
- Explain why your proposed use requires an appeal to the Board of Adjustment.
- Explain why the Board of Adjustment should grant your appeal.

APPLICATION FEES

A fee will be charged sufficient to cover the Board of Adjustment's administrative fee and the mailing of legally-required notices. The cost for placing a notice in the local paper will be charged to the applicant. The Board of Adjustment is authorized to select and retain outside technical, investigative, or legal assistance when the board deems such assistance to be necessary to properly evaluate any application. The board is also authorized to impose reasonable fees and costs upon the applicant for expense of such consultant, investigative or legal services.

PUBLIC HEARING

The board will review your application and will schedule a public hearing within 30 days of their vote to accept the application as complete. Public notices of the hearing will be posted and printed in the newspaper, and notice will be mailed to you, to all abutters, to any professionals who have helped prepare your plan, and to other parties who 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 will reach a decision. You will be sent a notice of the 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 board. The motion must be made within 30 days after the decision is filed and first becomes available for public inspection at Dublin Town Hall, 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, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

See RSA Chapter 677 for more details on rehearing and appeal procedures.

CHECKLIST FOR APPLYING TO THE BOARD OF ADJUSTMENT

- Find out if you need a variance or special exception and the exact Article and Section of the Zoning Ordinance from which you seek relief. See attached instructions.
- Fill out the application form completely.
- If you are not the owner of the property, you must obtain a notarized letter from the property owner authorizing you to submit an application on their behalf.

Provide the following with your application:

- ☐ Names and addresses of all abutters, including the name and the address of the owner if he/she is not the applicant. The names can be obtained at the Town Office. Accuracy of the list is your responsibility. Per RSA 672:3 an abutter means any person whose property adjoins or is directly across the street or stream from the land under consideration by the local land use board.
- ☐ A copy of the denial that forms the basis for your application. This will usually be the Code Enforcement Officer's denial of your recent request for a building permit, his routing slip, or the Planning Board's denial letter of your request for subdivision or site plan approval.
- ☐ A clear set of plans drawn to scale that shows what you propose to do, including dimensions and square footage. Show each elevation (front, side, rear) to which improvements are proposed.
- ☐ A copy of the Tax Map showing abutters
- ☐ A copy of your Tax card
- ☐ A site plan that includes the entire property showing accurate distance of existing and proposed structures to property lines and hydrological features (such as wetlands, streams or bodies of water)

Send or bring the completed application, the abutters list and all other required information to the Town Office. You will need to provide a check prior to your hearing. The secretary will send you an invoice. The check should be made out to the Town of Dublin for \$30.00 filing fee, plus the actual cost of the newspaper notice, plus \$6.11 for each person who was notified including each name on the abutter's list, professionals involved, anyone the board designates and yourself.

- Your case will not be heard until all information is received and all fees are paid.
- Your completed application must arrive no later than 14 days before the next monthly meeting for your application to be reviewed at that meeting. Meetings are generally held on the fourth Thursday of every month based on activity.

- You must attend the public hearing to state your case. If you or someone authorized to speak for you does not appear, your case will not be heard and your appeal will not be considered.