

TOWN OF BARNSTEAD

ZONING BOARD OF ADJUSTMENT

P.O. BOX 11
CENTER BARNSTEAD, NH 03225
603-269-2299 x 4

APPLICATION FOR APPEAL

INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

IMPORTANT: Read carefully before filling out attached application.
If necessary attach additional sheet.

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

Four types of appeal can be made to the Board of Adjustment:

1. 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.

Recent court rulings have attempted to simplify the demonstration of hardship by defining criteria to help define hardship for **Use Variances** and criteria to help define hardship for **Area Variances**. A **Use Variance** is defined as a variance that allows the landowner to engage in a use of the land that the zoning ordinance prohibits. An **Area Variance** is defined as a variance that is generally made necessary by the physical characteristics of the lot. In contrast to a use variance, an area variance involves a use permitted by the zoning ordinance but grants the landowner an exception from strict compliance with physical standards such as setbacks, frontage requirements, height limitations and lot size restrictions

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 values.
2. Granting the variance would be of benefit to the public interest.
3. Granting the variance would do substantial justice.
4. The proposed use is not contrary to the spirit and intent of the ordinance.
5. 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.

If you are applying for a **Use Variance**, the following criteria must be satisfied to demonstrate hardship:

- a. 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. You will be asked to explain what is unique about the property that makes the specific zoning restriction unreasonable.
- b. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restrictions on the property. You will be asked to explain why the specific restriction on the property is not in conflict with the purpose of the zoning ordinance as defined by RSA 674:17 (See attached RSA table)
- c. The variance would not injure the public or private rights of others. You will be asked to explain the impact of the variance, if granted, on the public or private rights of others.

If you are applying for an **Area Variance**, the following criteria must be satisfied to demonstrate hardship:

- a. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property. You will be asked to explain what is unique about this property that makes the specific zoning restriction unreasonable.
- b. The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. You will be asked to explain why other methods to achieve the desired modification are not reasonable.

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.

2. 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 Barnstead 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 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.

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 (RSA 677:2) of the Board's decision, 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.

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

3. 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 conditions stated in the ordinance are met.

4. Equitable Waiver

This provision was approved by the legislature to address the situations where a good faith error was made in the siting of a building or other dimensional layout issue. When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement the ZBA may grant a waiver only if each of the four findings as outlined in the statute are made: a) lack of discovery; b) honest mistake; c) no diminution in value of surrounding property; and d) the cost of correcting the mistake outweighs any public benefit.

In lieu of the ZBA finding that the violation was not discovered in a timely manner and that the mistake was made in good faith, the owner can meet the first two parts of the four-part test by demonstrating that the violation has existed for ten or more years and that no enforcement action was commenced against the violation during that time by the municipality or by any person directly affected.

Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions. The property is not considered to be a nonconforming use and the waiver does not exempt future use, construction, reconstruction or additions on the property from full compliance with the ordinance. It does not alter the principle that owners of land should understand all land use requirements. The statute does not impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or compliance of property inspected by them.

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 is the property 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?

One (1) copy of the application form must be provided. The following must also be enclosed with the application:

1. Two (2) copies of plot plan, or septic design if applicable.
2. One (1) copy of the letter of denial from the appropriate authority.
3. One (1) copy of any pictures, plans, etc. that may have a bearing on the case.
4. An application fee in the form of a check, made payable to the Town of Barnstead, in the amount of \$50.00 plus \$6.61 each for all the abutters (i.e. \$6.61 X the number of abutters).
5. Postage fee in the form of a check, made payable to the USPS (United States Postal Service), equal to \$5.59 per abutter.

The Board will schedule a public hearing within 30 days of receipt of your properly completed application. Public notice of the hearing will be posted and printed in a 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.

At the public hearing, you or your agent will be requested to present your case to the Board. Presentation of your case will include:

- Identification of the subject property
- Verbal explanation of the modification you desire to make
- Review of your site plan
- Presentation of pictures or architectural plans, if applicable
- Review of your application to the Board, including providing an explanation of how each of the applicable criteria is met.

After the public hearing, the Board will discuss your application and will decide if any additional information is required or if a Site walk to the property by the Board is warranted. **Be advised that in many cases, full consideration of an application by the Board requires more than one Board meeting before a decision is rendered.** Once the Board makes a decision, you and all other parties to the case will be sent a notice of decision.