

SECTION XV
BOARD OF ADJUSTMENT

15.1 POWERS

The Board of Adjustment shall have the powers and duties specifically granted to it under RSA 674:33.

15.2 MEMBERSHIP

The Board of Adjustment shall consist of five regular members and up to three alternate members who shall be appointed by the Board of Selectmen and be residents of the community as provided by the New Hampshire Revised Statutes Annotated under RSA 673:3 and 673:6. Each person shall be appointed to a term ending three years from the date of expiration of the term of his/her predecessor and a person appointed to fill a vacancy shall be appointed for the unexpired term.

15.3 RULES

The Board of Adjustment shall adopt rules and regulations governing meetings, hearings, fees, and other matters for the proper functioning of the Board. The Board shall adopt its own rules of procedure and shall keep a record of its proceedings showing the vote, indicating such fact and shall keep records of its examinations and other official actions. Every rule or regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board shall immediately be filed in the office of the Board and become a matter of public record.

15.4 MEETINGS

Meetings of the Board of Adjustment shall be held upon the call of the Chairperson. All meetings shall be open to the public.

15.5 APPLICATIONS

Applications appealing an administrative decision, seeking a special exception, or requesting a variance shall be in writing, shall be signed by the property owner/applicant, shall be accompanied by such fees as the Board deems necessary to defray its costs in processing the application, and shall be accompanied by a drawn to scale plan of the property in question. The property plan shall contain such information as the Board determines to be necessary for it to reach a decision. In appropriate cases, the Board may require that the plan be prepared by a registered professional engineer or registered land surveyor. The application shall list the name and current mailing addresses of each abutter to the property in question.

15.6 HEARING NOTICE

The Board of Adjustment shall hold a public hearing on each application within a reasonable time as specified in its rules. Notice thereof shall be given as follows:

15.6.1 Mail: The applicant and all abutters shall be notified of the public hearing by certified mail, return receipt requested, stating the time and place of the hearing, and such notice shall be given not less than five days nor more than thirty days before the date fixed for the hearing of the appeal.

15.6.2 Public Notice: A public notice of the hearing shall be posted at the Town Hall and one other public place and shall be published in a newspaper with a general circulation in the area, not less than five nor more than thirty days before the date fixed for the hearing of the appeal.

15.6.3 Costs: The cost of advertising and the cost of mailing the notices of hearing shall be payable prior to the hearing by the person making the appeal. In no event shall the costs be less than two dollars (\$2.00).

15.7 HEARINGS

Hearings before the Board shall be conducted by the Chairperson, or, in his/her absence the Acting Chairperson, who may administer oaths and compel the attendance of witnesses.

15.7.1 Burden: At all hearings before the Board, the burden shall be upon the applicant to establish that the administrative decision appealed from is erroneous; or to show that the applicant has met the conditions established for a special exception; or to show that the applicant has met the criteria for granting a variance.

15.7.2 Testimony: The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear other persons as it deems appropriate.

15.7.3 Decisions: The Board in accordance with the provisions of this Ordinance may reverse or affirm, wholly or partly, or may modify any such order, requirements, decision or determination made by the Building Inspector. The concurring vote of three members of the Board shall be necessary to reverse or modify any order, requirement, decision or determination of the Building Inspector or to decide in favor of the appellant on any matter upon which it is required to pass or to effect any variance from the strict applications of the provisions of this Ordinance.

15.8 SCOPE OF REVIEW

The Board of Adjustment shall hear and decide appeals from the decisions or orders of the Building Inspector, requests for special exceptions as provided for in this Ordinance, and requests for variances to the terms of this Ordinance in accordance with the provisions delineated herein.

15.8.1 Administrative Appeals: The Board shall hear and decide appeals from the decisions or orders of the Building Inspector concerning the administration or enforcement of this Ordinance.

15.8.2 Special Exceptions: The Board shall hear and decide requests for special exceptions provided for in this Ordinance. The Board shall grant requests for special exceptions which are in harmony with the general purpose and intent of this Ordinance and meet the standards of this subsection. Appropriate conditions as set forth in subsection 15.8.2 (b) may be placed on special exception approvals when necessary. The Board shall deny requests for special exceptions that do not meet the standards of this Section.

(a) Special Exceptions shall meet the following standards:

- 1) Standards provided by this Ordinance for the particular use permitted by special exception.
- 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.
- 3) No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.
- 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.
- 5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.
- 6) No significant increase of storm water runoff onto adjacent property or streets.
- 7) An appropriate location for the proposed use.

- 8) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.
 - 9) In the public interest and in the spirit of the ordinance.
- (b) Special exception approvals may be subject to appropriate conditions including the following:
- 1) Front, side, or rear yards in excess of the minimum requirements of this Ordinance.
 - 2) Screening of the premises from the street or adjacent property by walls, fences, or other devices.
 - 3) Modification of the exterior features or buildings or other structures.
 - 4) Reasonable limitations on the number of occupants and methods and times of operation.
 - 5) Grading of the premises for proper drainage.
 - 6) Regulation of design of access drives, sidewalks, and other traffic features.
 - 7) Regulation of the number, size, and lighting of signs more stringent than the requirements of this Ordinance.

15.8.3 Variances: The Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that all five conditions for a variance have been met. Testimony shall be allowed in accordance with the provisions of 15.7.2 of this Section.

- (a) No variance shall be granted unless all of the following conditions are met.
- 1) No decrease in the value of surrounding properties would be suffered.
 - 2) Granting the variance would not be contrary to the public interest.
 - 3) By granting the variance, substantial justice would be done.
 - 4) The spirit and intent of the Ordinance will not be broken by granting the variance.
 - 5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
- (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.
 - (ii) The proposed use is a reasonable one.
- (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.

The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply when the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

15.8.4 Equitable Waivers: The Board shall hear and decide requests for equitable waivers when a lot or structure thereupon, is discovered to be in violation of dimensional requirements imposed by the Zoning Ordinance. To grant equitable waivers to the dimensional requirements of the Zoning Ordinance, the applicant must prove to the Board’s satisfaction each and every element of the following:

- (a) That the violation was unknown to the owner, owner’s predecessors, owner’s agent or representative, or municipal official, until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been conveyed to a bona fide purchaser for value (i.e. an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value);
- (b) That the violation was caused by a good faith error in measurement or calculation by an owner or agent or an error in interpretation of the Ordinance or its applicability by a municipal official in the process of issuing a permit, while that official was acting within the scope of his/her authority;
- (c) That no public or private nuisance may be created by the violation;
- (d) That there will be no diminution in the value of other property in the area;
- (e) That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and
- (f) That due to the degree of past construction or investment, the cost to correct the violation so far outweighs the public benefit to be gained that it would be inequitable to require the violation to be corrected.

In lieu of the findings required by the Board under subparagraphs (a) and (b) above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more and no enforcement action, including written notice of violation, has been initiated regarding the violation by the Town or anyone directly affected by the violation.

Waivers shall be granted under this section only from physical layout, mathematical, or dimensional requirements (e.g. setbacks, frontage or area), and not from use restrictions. An equitable waiver granted under this section shall not be construed as a non-conforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

15.9 FINDINGS OF FACT

The Board of Adjustment shall present findings of fact for all its decisions and shall enter such findings in its records.

15.10 REPRESENTATIONS

Representations made at the public hearing or material submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking, or use which are subject to regulation pursuant to subsection 15.8.2 or 15.8.3 shall be deemed conditions upon such special exception or variance.

15.11 MODIFICATIONS

The granting of any appeal by the Board shall not exempt the applicant from any provision of this Ordinance not specifically ruled upon by the Board or specifically set forth as expected in this particular case from a provision of this Ordinance. It shall be unlawful for any owner or person to reconstruct, convert or alter a structure or change the use, increase the intensity of use, or extend or displace the use of any building, other structure or lot, or change any required limitations or special conditions imposed by the Board in authorizing a special exception or variance without appealing to the Board as a new case over which the Board shall have complete administrative power to deny, approve or modify.

15.12 EXPIRATION OF SPECIAL EXCEPTIONS AND VARIANCES

Unless otherwise specified in the decision granting the special exception or variance in questions, a special exception or variance granted by the Zoning Board of Adjustment shall expire if:

- (a) The special exception or variance is not used within two years following the date of a final decision granting such special exception or variance; or
- (b) The special exception or variance is discontinued for a period of two years or more following the date of the final decision granting such special exception or variances.

The provisions of paragraph 15.12 shall apply only to special exceptions and variances granted after the effective date of this paragraph.