

DEERING ZONING BOARD OF ADJUSTMENT

762 Deering Center Road

Deering, N.H. 03244

INFORMATION PACKET

This packet contains the background information and forms necessary for filing an application for either a variance, appeal from an administrative decision, special exception, or equitable waiver of dimensional requirements. Ordinarily a building permit must be denied prior to applying for a variance. It is important that the necessary forms are completed accurately.

In addition, the following are necessary before a completed filing can occur:

1. A filing fee of \$125.00 plus \$6.00 for each abutter, not including the applicant, must be submitted to the ZBA along with forms.
2. A complete list of abutters' names and mailing addresses must be submitted along with the other forms. **It is very important that the name of each and every owner of abutting property, including all joint owners (e.g., spouses) be included. Failure to list all owners may result in any decision rendered by the ZBA being declared invalid. Remember, it is the applicant's responsibility to ensure that accurate names and addresses are submitted.**
3. An accurate site plan showing property boundaries, locations of existing buildings, current setbacks from property lines and proposed changes, must be included with the filing. (See Deering Zoning Ordinance paragraph 4.4 g for details.)

Your complete filing package should be delivered to the Zoning Administrator or the Selectmen's Office, who will then deliver the material to the ZBA for action. You will be notified of the hearing date as soon as possible. To expedite scheduling, please submit your application by the date recommended on a ZBA calendar posted in the town office. It is important that you not attempt to contact members of the ZBA directly, as **all interaction between individuals and the Board must be through the formal meeting process.** All questions regarding pending applications or the zoning process should be discussed with the Zoning Administrator.

Prior to submitting an appeal, you may discuss your situation with members of the ZBA by requesting a conference at a regular meeting of the Board. Such a preliminary conference may be extremely useful in determining which zoning provisions apply to your case and what is needed for the site plan required with the application.

Thank you,

Zoning Board of Adjustment

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INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT THE ATTACHED APPLICATION.

The board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with the New Hampshire Revised Statutes (RSA) Title LXIV, Chapters 672-677, covering planning and zoning, as well as the Deering ZBA's Bylaws.¹

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 values.
2. Granting the variance would 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 when the following conditions exist:²

For a "Use Variance" (a request to change from a permitted to a non-permitted use, *e.g.*, from a single family residence to a four-unit apartment house):

- a. The restriction, when applied to the applicant's property, interferes with his or her reasonable use of the property, considering its unique setting in its environment;
- b. No fair and substantial relationship exists between the general purposes of the ordinance and the specific restriction; and
- c. The variance would not injure the public or private rights of others.

For an "Area Variance" (*e.g.*, a request to waive dimensional requirements such as frontage, acreage or setbacks):

- a. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.
 - 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.
4. Granting the variance would do substantial justice.
 5. The proposed use is not contrary to the spirit of the ordinance.

¹ The Zoning Ordinance and the Bylaws are available for downloading on the Town of Deering's official web site. (www.deering.nh.us). Copies may also be obtained from the Zoning Administrator.

² See the NH Supreme Court's opinion in *Boccia v. City of Portsmouth*, decided May 25, 2004. A copy may be downloaded from the Internet (www.courts.state.nh.us/supreme/opinions/2004/bocci072.htm) or obtained from the Zoning Administrator.

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 Deering 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 within 30 days. 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.

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.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS: The board may grant an equitable waiver only for existing dimensional nonconformities provided 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? Many properties are owned jointly (e.g., by husband and wife); in such cases, all should sign the application. If the applicant is not the owner (or is not the only owner) of the property in question, the applicant must present to the board notarized written consent to apply from the all owners of the property.

WHERE is the property located? Include lot number.

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

WHAT do you propose to do? Attach detailed sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property. **All applications for variance, special exception or equitable waiver of dimensional**

requirement must include a scale drawing sufficient to show dimensions of the property, distances of existing and proposed structures from the boundary lines and any other features pertinent to the application. It is not necessary in all cases for submissions to be prepared by professional engineers; however, the applicant should discuss this with the Zoning Administrator.

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

Prepare a list of all abutting property owners, have it verified at the town office, and attach it to your application. In determining who must be on this list, an “abutting property owner” means a person or entity whose property adjoins or is across a street or stream from the property to be affected by the application. If you have any difficulty, consult the assessor’s office, but the accuracy of the list is your responsibility. If your property has frontage on Deering Lake, or other “great pond”, or a navigable stream, the State of New Hampshire is considered an abutter. Please remember that all owners, including joint owners (e.g., spouses) must be listed. Failure to list all owners may result in any decision rendered by the ZBA being declared invalid.

Mail or deliver the completed application, with all attachments, to the Zoning Administrator or to the office of the Board of Selectmen. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to: The Town of Deering.

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 local 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 will reach a decision. You 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 board. The motion **must be made within 30 days** after the decision is made, 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 and the standard fee schedule shall apply.

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

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APPLICATION FOR APPEAL

TO: ZONING BOARD OF ADJUSTMENT
Town of Deering New Hampshire

<p>Do not write in this space.</p> <p>Case # _____</p> <p>Date filed: _____</p>
--

Name of Applicant _____

Address _____

Owner of Property Concerned _____
(if same as Applicant, write "same")

Address _____
(if same as Applicant, write "same")

Location of Property _____
(plate, block, lot #, street)

Description of Property _____
(give length of frontage, side & rear yards on a plot plan attached with application)

Proposed Use or Existing Use Affected _____

Fill out Section 1, 2, 3, or 4; use additional sheets of paper, if necessary.

SECTION 1 APPEAL FROM AN ADMINISTRATIVE DECISION

The undersigned alleges that an error has been made in the decision, determination or requirement, by the Zoning Enforcement Officer on [date]_____ to _____ in relation to paragraph ____ of the Zoning Ordinance and hereby appeals said decision.

SECTION 2 APPLICATION FOR SPECIAL EXCEPTION

The undersigned hereby requests a special exception as provided in paragraph ____ of the Zoning Ordinance.

SECTION 3 APPLICATION FOR VARIANCE

The undersigned hereby requests a variance to the terms of paragraph ____ and asks that said terms be waived to permit _____

The undersigned alleges that the following circumstances exist which prevent the proper enjoyment of his land under the strict terms of the Zoning Ordinance. Explain on a separate sheet of paper how each of the five conditions set forth in the "Instructions to Applicants" applies. _____

SECTION 4 APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested paragraph ____ 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 by 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 violation was not an outcome of ignorance of the law or bad faith but resulted from a 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 _____

SECTION 5 ADDITIONAL REQUIREMENTS

1. Filing fee of \$125.00 plus \$6.00 for each abutter, not including the applicant, must be submitted.
2. A complete list of abutters' names and addresses must be attached.

Applicant (print or type) _____
Signature _____
Date _____

Revised 1/06