

ZONING BOARD OF ADJUSTMENT

TOWN OF SPRINGFIELD



759 MAIN STREET, PO BOX 22
SPRINGFIELD, NEW HAMPSHIRE 03284-0022
PHONE (603)763-4805 FAX (603)763-3336
www.springfieldnh.net

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT AN APPLICATION. The board strongly recommends that, before making any appeal, you become familiar with the Springfield Zoning Ordinance, and also with the New Hampshire Statutes RSA Chapters 672- 677, covering planning and zoning. Because the Zoning Board of Adjustment is a quasi-judicial board it is important that you do not contact board members outside of a duly-notified public meeting.

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:

- A. The variance will not be contrary to the public interest, and
- B. The spirit of the ordinance is observed, and
- C. Substantial justice is done, and
- D. The values of surrounding properties are not diminished, and
- E. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

An applicant can demonstrate unnecessary **hardship** by establishing that:

1. No fair and substantial relationship exists between the general public purpose of the ordinance and the specific application of that provision to the property, and
2. The proposed use is a reasonable one.
3. If the criteria (1) and (2) above 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 necessary to enable a reasonable use of it.

If you are applying for a variance, you must first have some form of determination that your proposal 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.**

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EQUITABLE WAIVER: When a lot or structure is discovered to be in violation of a physical layout or dimensional requirement imposed by the Zoning Ordinance, an equitable waiver shall be granted if the property owner proves the following:

- A. That the violation was not discovered to be in violation until after substantial completion or subdivision and sale
- B. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, or bad faith on the part of any owner or representative, but was caused by either:
 1. a good faith error in measurement or calculation made by an owner or owner's agent, or
 2. by an error in ordinance interpretation made by a municipal official who issued the permit that should not have been issued.
- C. That the physical or dimensional violation does not constitute a public or private nuisance, does not diminish the value of other property in the area, and does not interfere with or adversely affect any present or permissible future uses of other property; and
- D. That due to the investment made in ignorance of facts constituting the violation, the cost of correcting it so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.

Notwithstanding, in lieu of the findings required in A through D above, the Equitable Waiver shall be granted if the owner demonstrates to the satisfaction of the Board that:

- A. The violation has existed for ten (10) years or more, and
- B. No enforcement action, including written notice of violation, has been commenced against the violation by the municipality or by any person directly affected.

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 Springfield 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.

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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.

If you are applying for a special exception, you may also need site plan or subdivision approval, or both, from the Planning Board. Even in those cases where no Planning Board approval is needed, presenting a site plan to the Planning Board will assist in relating the proposal to the overall zoning. **This should be done before you apply for a special exception.**



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? Include tax map # and lot #.
- 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. **All applications for variance and special exception 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 read the application notes on page 10 of the ZBA's Rules of Procedure.**
- Why does your proposed use require an appeal to the board of adjustment?
- Why should the appeal be granted?

If you need to submit multiple applications pertaining to a single proposed use at a single property, you may fill out the general information on page one, attach multiple sheets explaining the facts of each request, provide a single list of abutters and pay a single application fee.

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ABUTTER LIST: The abutter list must include the name and address of:

1. the applicant
2. the property owner or owners
3. every owner of property which touches any lot involved in the application (even at a corner) or is directly or diagonally across a road, stream, river or railway right-of-way from a lot involved in the application, and
4. the holders of any conservation, preservation, or agricultural preservation restrictions on any of the lots involved in the application.

Include the lot numbers of all the abutting lots owned by each abutter.

You must also provide the abutter list (without the lot numbers) on three sets of adhesive mailing labels, no larger than 1 ½ x 3 ¼ inches.

It is your responsibility to provide an accurate abutter list. A Zoning Board decision that is made without notifying all abutters may not be valid, and an abutter who was not properly notified may be able to have the decision overturned.

There are several ways to prepare an abutter list. The most common are:

- 1) Consult the Sullivan County Registry of Deeds. Start with the deed, survey, or plot plan for the lot or lots involved in the application.
 - a. Find the owners of all the abutting lots. Some of them might have been subdivided, so you should also check their site plans. You can also check whether there are any conservation, preservation or agricultural preservation restrictions on any of these lots.
 - b. Consult the Springfield Town Office to check whether the town has any record of any of the abutting lots having been sold or subdivided more recently than the records in the Registry were updated.
- 2) Consult the Springfield Town Office. The town tax maps are not really designed to be used for abutter information, and there is no guarantee that the abutters shown on the tax maps are correct. However, if you want to take the risk:
 - a. Find the lots you're interested in and their abutting lots from the tax maps and the owners of those lots from the printed owner lists.

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- b. Since the printed owner lists might not be up to date, check the owner information with the Town Clerk, who can look up the latest information in the Town's tax database.
- c. The Town of Springfield only has lot and owner information for lots in Springfield, so if the lot you are interested in has abutting lots in a neighboring town, you will have to go to the Town Hall in that town or to the county registry. The Town doesn't have complete information about conservation, preservation or agricultural preservation restrictions (unless they are held by the Town), so you are on your own there.

Mail or deliver the completed application, with all attachments to the Office of the Board of Selectmen at least **15 days** before the next scheduled hearing date. The application fee is \$100 plus \$6 for each abutter. Make your check payable to **Town of Springfield** and include it with your application.

Upon receipt of your properly-completed application the board will promptly schedule a **public hearing**. 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. The applicant shall have the burden of proving any historical facts relevant to an appeal before the Board.

After the **public hearing**, the board will deliberate and reach a decision. You will be sent a **Notice of Decision**.

Appeal and rehearing

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 in the board'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. See RSA Chapter 677 for more detail on rehearing and appeal procedures.