

# INSTRUCTIONS TO APPLICANTS APPEALING TO THE TOWN OF JEFFERSON, NH BOARD OF ADJUSTMENT

## ***IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION***

The Board of Adjustment strongly recommends that, before making any appeal, you become familiar with the Land Use Ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

### **Three 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 Land use 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 be to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner. Hardship, as the term applies to land use, 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 land use restrictions. Hardship, under land use law, has nothing to do with the physical or economical condition of the owner.
4. Granting the variance would do substantial justice.
5. The proposed use is not contrary to the spirit of the ordinance.

#### **(2) *APPEAL FROM AN ADMINSTRATIVE DECISION***

If you have been denied a permit, or are affected by some other decision regarding the administration of the Jefferson Land Use 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 in error.

### **(3) SPECIAL EXCEPTION**

Certain sections of the Land Use Ordinance provide that a particular use of property will be permitted by special exception if specific conditions are met. Such conditions might be water supply, sewage disposal, roads, parking area, fire and safety considerations, etc.

#### **Completing the Application Form for an Appeal**

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 permit to build. ***A copy of the determination must be attached to your application.***

If you are appealing an ***administrative decision***, ***a copy of the decision being appealed must be attached to your application.***

If you are applying for a ***special exception***, ***you will probably need a site plan or subdivision approval, or both, from the Jefferson 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 land use. ***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 the following:

1. WHO owns the property? If the applicant is not the owner, this must be explained.
2. WHERE is the property located?
3. DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc.
4. 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.
5. WHY does your proposed use require an appeal to the Board of Adjustment? And 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. If you have any difficulty, consult the assessor's office, but the accuracy of the list is your responsibility.

Mail or deliver the completed application, with all attachments to the office of the Board of Selectmen. A fee is charged to cover the cost of preparing and mailing the legally required notices. Make a check payable to the Town of Jefferson, NH and remit it with your application.

### What happens after you have submitted an application?

The Board of Adjustment 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 the *Coos Democrat*. A notice will be mailed to you and 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 written notice of decision.

If you believe the board's decision is wrong, you have the right to appeal the decision. The selectmen, or any party affected, have similar rights to appeal the decision in your case.

To appeal the board's decision, 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 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 could be created by not doing so. If 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.

Whether or not a rehearing is granted, you must have requested one before you can appeal to the courts.