

INSTRUCTIONS TO APPLICANTS APPEALING TO THE
ANDOVER ZONING BOARD OF ADJUSTMENT

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- 678, covering planning and zoning.

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY
BEFORE FILLING OUT AN APPLICATION

Forms, the Zoning Ordinance and other documents are available at town hall or may be downloaded from the ZBA website at <http://www.andover.nh.us/ZBA-WEB/ZBA.html>.

For all appeals, the appropriate application form must be properly and completely filled out and all required materials submitted with the application. An application will not be acted on until it is complete. 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? This should be an explanation of the facts supporting your application, not simply a conclusion that your application meets the requirements.

You must submit a list of all abutters, including the tax map and lot number and name and address of the owner(s). If there is more than one owner at different addresses, each owner must be listed and notified. "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration ..."

You may have the town provide a list of all abutting property owners from its computer records. The town's list of abutters is provided to you as a convenience to you only, and may be incomplete or reflect inaccuracies in the town's records. **You are responsible for the completeness and accuracy of the abutters list associated with your application.**

Alternatively, you may prepare the list yourself. If you have any difficulty, consult the assessor's office, but the accuracy of the list is your responsibility.

The application fee and estimated fee for newspaper publication **must** be submitted with your application, as well as the fee for abutters' notifications if you prepare your own abutters list. If you

have the town prepare the abutters' list, you will be billed for the appropriate notifications fee. Fees are listed on the attachment to these instructions. All fees must be paid before a hearing will be scheduled and notifications are made. Make check payable to the town of Andover and remit with your application.

Deliver the completed application to the Selectmen's Office at Andover Town Hall, with all attachments, or mail it to the Zoning Board of Adjustment at Town of Andover, P.O. Box 61, Andover NH 03216

The board will schedule a public hearing upon receipt of your **fully completed application** and payment of required fees, including notices to abutters fees. Public notice of the hearing will be posted and printed in a newspaper and notice will be mailed to you and to all abutters you have identified in your application 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. It may postpone making the decision to give the board adequate time to review and consider review of the materials provided in the application or at the hearing. You 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 of the 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 within the required time 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.

Four types of appeals can be made to the board of adjustment:

I. 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. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.

4. The proposed use would not diminish surrounding **property values**.
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. RSA 674:33 (b) (5) provides the criteria for establishing 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; and
 - (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.

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.

II. 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 Andover 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.

III. 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 need a determination from the Planning Board that the proposed site is an appropriate location for the proposed use and such other Planning Board determinations as are set out in the Andover Zoning Ordinance. 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.

IV. 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 good faith error in measurement or calculation;

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.

**Andover Zoning Board of Adjustment
Fee Schedule
Adopted 9/17/2013**

Application for:

Appeal from an Administrative Decision	\$50
Special Exception	\$50
Variance	\$50
Equitable Waiver of Dimensional Requirements	\$50
Certified Mail Notice to Abutters or Towns- each	\$7.50
Non-Certified mailed notices to towns- each	\$1.00
Newspaper Notices- estimated cost to be collected with application (actual cost if greater will be billed, if lower refunded if over \$5)	\$125
Printed Copies of Zoning Ordinance	\$10
Downloadable Copies of Zoning Ordinance Available at www.andover.nh.us	NO CHARGE