

BOARD OF ADJUSTMENT

Town of Atkinson

21 Academy Avenue

Atkinson, New Hampshire 03811

Tel. (603) 362-5761 – FAX (603) 362-5305

INSTRUCTIONS TO APPLICANTS APPEALING TO THE ATKINSON ZONING BOARD OF ADJUSTMENT

IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION.

The instructional information provided in the application is provided only for the convenience of the applicant and is not necessarily complete nor should it be considered a substitute for independent legal counsel where appropriate. If any information contained herein conflicts with the current versions of the Zoning Ordinance of the Town of Atkinson and/or the RSA's of the State of New Hampshire, those documents shall apply.

The final responsibility for a complete and accurate application shall in all cases lie solely with the applicant.

The Board STRONGLY RECOMMENDS THAT, before making any appeal, you become familiar with the latest Atkinson Zoning Ordinance and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677 covering planning and zoning.

Four Types of appeals can be made to the Board of Adjustment:

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 Atkinson 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 being appealed must be attached to the application.

The board will consider incomplete and may refuse to accept or hear an application that does not have this written decision attached.

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. Alternatively, if ALL conditions required by the ordinance have not been shown to be met, the Board MUST deny your request.

Application for Special Exception DOES NOT require completion of the 5 conditions.

The board may consider incomplete and may refuse to accept or hear an application that does not have this properly completed written determination attached.

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.

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:

The proposed use would not diminish surrounding property values.

Granting the Variance must not be contrary to the public interest.

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. The NH Supreme Court has established a new test for unnecessary hardship consisting of 3 criteria to be met for a use variance and 2 criteria to be met for an area variance. (If you require both an area variance and a use variance, both must be filled out on the application.)

Use Variance Elements:

That the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;

That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and

That the variance would not injure the public or private rights of others.

Area Variance Elements:

An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property.

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.

Granting the Variance would do substantial justice.

The proposed use is not contrary to the spirit of the ordinance.

If you are applying for a variance, you must first have some form of determination that your proposed use or alteration of land/structure is not permitted without a variance. Most often, this determination is a denial of

a building permit from a Town official. A copy of the determination by a Town official must be attached to your application.

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.

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;

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:

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

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 application, the form **MUST** be properly filled out and signed by the appropriate Inspecting or Administrative Officer (i.e. Building, Health or Fire Inspector) or the Planning Board. 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? Map and Lot #'s must be included.

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?

Completion of the application is the sole responsibility of the applicant. As each application is unique, the Board of Adjustment Clerk CANNOT complete these conditions for the applicant.

Prepare a list of all abutting property owners, names, addresses and Map &

Lot #'s must be furnished. Up to date information can be obtained in the Assessor's Office. (Abutter means any person whose property is located in NH and adjoins or is directly across the street or stream from the land under consideration by the local land use board).

The assistance of the Planning Board/Board of Adjustment clerk is provided as a courtesy only, should the applicant request it. If you have any difficulty, CONSULT THE ASSESSOR'S OFFICE, but the accuracy of the list is your responsibility.

Regular meetings of the Atkinson Zoning Board of Adjustment are held on the 2nd Wednesday of every month with public hearings beginning at 8:00 P.M.

Mail or deliver the completed application, with all attachments to the Board of Adjustment Clerk or to the office of the board of selectmen. An application fee of \$25.00 plus public notification fee of \$5.00 per abutter, plus applicant, is due and payable with application.

In order to provide sufficient time to comply with statutory posting and notification requirements a properly completed application should be received 15 days prior to the monthly meeting you wish your appeal to be heard.

Public Notice of 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 (5) 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 Hearings, 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 has similar rights to appeal the decision of your case.

TO APPEAL a Zoning Board decision, you must first ask the Board for a rehearing as allowed under RSA 677:2. The motion for rehearing may be in the form of a letter to the Board. You or any person/party to the action or proceedings of the Board of Adjustment may ask for a rehearing which must be made WITHIN 30 DAYS of the date of the Board's decision letter and must set forth in detail all 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. Whether or not a rehearing is held, you MUST HAVE REQUESTED ONE BEFORE YOU CAN APPEAL TO THE COURTS.

Whether or not 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 details on REHEARING AND APPEAL PROCEDURES.

APPLICATION FOR APPEAL

Do not write in this space.

DATE FILED _____

NAME OF APPLICANT_____

ADDRESS_____

SUBJECT LOCATION_____Map____Lot____

OWNER_____Phone_____

(if same as applicant, write "same")

NOTE: Fill in Section 1,2 or 3 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed_____

Number_____ Date_____

Article_____Section_____of the Zoning Ordinance in question:

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____

Section_____

Section 3. APPLICATION FOR VARIANCE

A Variance is requested from Article _____Section_____of the Zoning Ordinance to permit:

Facts supporting this request:

The proposed use would not diminish surrounding property values because:

Granting the variance would be of benefit to the public interest because:

Denial of the variance would result in unnecessary hardship to the owner. **(See below for questions to answer)**

For applicants seeking an Area Variance, complete the following two questions in order to demonstrate hardship:

An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property as described below:

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 because:

For applicants seeking a Use Variance, complete the following three questions in order to demonstrate hardship:

the zoning restriction as applied interferes with a landowner's reasonable use of the property, considering the unique setting of the property in its environment because:

no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

the variance would not injure the public or private rights of others because:

Granting the variance would do substantial justice because:

The use is not contrary to the spirit of the ordinance because:

Section 4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from Article _____ Section _____ 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

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 _____

Applicant _____ Date _____

Owner_____

APPLICATION MUST BE COMPLETED IN FULL, ATTACH LIST OF ABUTTERS as per application instructions. The cost of notice, whether mailed, posted or published shall be paid in advance by the applicant.

APPLICATION MUST BE FILED 15 DAYS PRIOR TO THE MONTHLY MEETING YOU WISH YOUR APPEAL TO BE HEARD. Contact Zoning Board Clerk for exact cut-off date.

Comments by Denying Board or Individual:

Title:_____Signature_____

NAMES AND ADDRESS OF ABUTTERS

NOTE: According to State Law (RSA 676:4b), the names and mailing addresses of all abutters must be those indicated in Town records not more than 5 days before the day of filing this application.

1. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

2. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

3. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

4. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

5. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

6. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

7. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

8. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

9. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

10. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

11. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

12. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

13. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

14. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

15. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

16. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

17. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

18. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

19. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____

20. Map_____Lot_____

Name_____

Address_____

Town_____State_____Zip_____