

CITIZEN'S GUIDE TO APPLY TO THE NEW CASTLE ZONING BOARD OF ADJUSTMENT

The Zoning Board of Adjustment, ZBA, is a minor court for citizens to appeal the application to their property of the New Castle land use regulations and to appeal adverse rulings of an administrator. This guide is a simplified explanation of common situations and is not a legal interpretation. It may help you apply to the ZBA and prepare for presenting your request at a public hearing which must be held to consider your request. The board can discuss your request only at a public hearing.

The ZBA is a group of your neighbors chosen because of their familiarity with local conditions and who have taken the time to learn the regulations and the appeal procedures. You do not have to hire a lawyer and you can present your own case. Most of your fellow citizens do so. But you do have to follow procedures, supply the facts, and make the arguments.

An action of the Planning Board under Subdivision Approval or Site Plan approval is appealable to the ZBA only to the extent you feel there was a misinterpretation of the Zoning Ordinance.

APPLICATION:

You must apply using the correct procedure(s). These are:

1. Application for Variance:

A variance is permission to vary from the zoning ordinance in some specific way for a particular property. This is the most common situation. Perhaps you want to build or alter a building or its use, or you want to continue something that is questioned, and the Building Inspector or the Planning Board has said you can't because the Zoning Ordinance or Building Code forbids it.

You must have been denied permission or approval, or you can not request a variance. Your application for a variance has to specify what town official or board turned you down. You have to identify the regulation you were told you would be violating. You have to provide a description with your application of what you want to do. And you have to briefly explain why the variance should be granted.

For example, you want to build a garage within 3' of your property line and the Building Inspector denied you a building permit because the Zoning Ordinance, ZO, in ZO Section 4.2.1 says buildings must be set back 10', and you feel you can not comply because the only other place you could put the garage is up a steep hill and that is unsafe in the winter.

Your application would 1) be to request a variance from ZO Section 4.2.1 for setbacks, 2) saying the Building Inspector turned you down on such a date, and 3) you want to build within 3' of the lot line, and 4) steep grades prevent using any other plan. The Application for Variance form requires that you provide this information.

2. Appeal from an Administrative Decision:

You feel the Building Inspector or Planning Board made a mistake and that they didn't interpret the ordinance or some regulation correctly, or they had their facts wrong. Your application for Appeal from an Administrative Decision must specify who turned you down, when, and the decision or interpretation you say is in error.

For example, the Building Inspector won't give you a building permit allowing you to have two kitchens. You feel that is an error because there is no regulation stating you can't have two kitchens.

In an Appeal from an Administrative Decision the only issue is whether an error has been made. You can apply for both a Variance and an Appeal from an Administrative Decision if both apply, but they are separate matters.

3. Application for Special Exception:

The Zoning Ordinance specifies uses of your property for which you must get Special Exception approval from the ZBA. Your application should show the proposed use and under which terms of the Zoning Ordinance you are applying.

Acceptance of applications:

File the application, plans, and supporting information with the Selectmen's Office in Town Hall. It will be given to the ZBA chairman who will look at your application for completeness and may call you if you have not filled out the application properly. But filling out the form correctly and completely is your responsibility. If you apply for the wrong procedure, you can't correct the mistake at the public hearing.

The law requires you also submit a list of the abutters to the property. Abutters includes property across the street from yours. If in doubt include a property as abutter. If you leave someone off the list your hearing may be invalid. The town has tax maps identifying each parcel by number and can tell you who owns each parcel. The town notifies each abutter of the hearing to be held on your request. You have to pay a fee with your application to cover posting, notification, and secretarial costs. A list of the abutters along with labels is required.

After your application is accepted as complete, a notice of a hearing on your request is published in the local paper and posted at Town Hall and on the bulletin board outside the Post Office. This is to tell the people in town what you are requesting and when the ZBA will hear your request and listen to comments from interested parties.

HEARINGS:

Meetings: The ZBA usually meets the fourth Thursday of the month; meeting dates are on the town calendar at Town Hall. Your matter will be placed on the agenda of the next meeting scheduled at least 21 days (3 weeks) after your completed application is received at Town Hall.

Panel: The ZBA has five members and a number of alternates who may serve in place of absent members. You are entitled to a five member panel and if there are less than five members present you can ask for a postponement, without prejudice, until there is a full panel. You can opt to proceed with three or four members, but favorable rulings still require three affirmative votes.

Procedures: You make a presentation of your request and present your arguments as to why the Board should grant it. The Board will ask you questions. Then the public is invited to make comments to the Board.

For complex matters, or where additional information is requested by the ZBA, or where the ZBA seeks advice, the original hearing may be continued to one or more later meetings.

Then the hearing is closed to further input and the Board begins deliberations in public. As your case

is considered, possible rulings are discussed by the board. When it appears some consensus has been reached a specific ruling will be moved and voted on. Members are required to announce their reasons for voting for or against the motion.

1. Application for a Variance Hearing:

The ZBA has the authority to allow you to vary from the requirements of the Zoning Ordinance. A variance is in effect spot zoning and it specifically applies to just your property. It has to be justified on conditions specific to your property, not somebody else's at some time in the past. The Zoning Ordinances can not anticipate every specific condition. If the application of the ordinance to a specific case was not anticipated or considered, New Hampshire law recognizes that a local board familiar with both local conditions and local ordinances can best consider permitting some deviation from the requirements.

Variances are only issued when the ZBA determines that a strict interpretation of the Zoning Ordinance would not be warranted. However New Hampshire case law and the Zoning Ordinance provide the ZBA with quite specific criteria to follow for it to permit variances.

There is still room for subjective determination, but the criteria to permit variances are quite specific and demanding. Before applying you should study the criteria the board must follow in considering your request. While the board will listen to you and your neighbors, the board must make its decision only on the specific criteria as applied to the physical facts of your situation. Since a variation continues forever the Board can not give consideration to your personal situation or family needs.

There are five criteria for a variance and you must demonstrate to the board that you meet all five of them. The fact that nobody objects doesn't relieve you from having to meet the criteria. The five criteria are:

1) No diminution of property values.

If what you propose will reduce other people's property values, it is not fair for the ZBA to give you permission to break the rules. Your and your neighbor's dislikes or personal preferences do not establish whether property values will be diminished or increased by what you propose.

b) Granting the variance would benefit the public interest.

Public interest is that of New Castle residents. The Zoning Ordinance provides for public health and safety and the harmonious use of land in ways acceptable to the community and your neighbors who can expect the Zoning Ordinance to normally be upheld. Your request must enhance the public interest, not detract from it.

3) Denial of the variance would be an unnecessary hardship to the owner.

It is necessary you adequately demonstrate the hardship suffered from a literal interpretation of the regulations. This is typically the most difficult hurdle for variance appeals. There has to be some significant hardship associated with your property or its history, which is peculiar to your specific property, independent of you and your family.

The land use rules are for the benefit of the entire town. It makes no difference in our determination if you want the request for your convenience, to make money, or to save money.

If there are reasonable alternates which don't require a variance, you should consider them before applying. The board will judge any hardship in the context of possible alternatives.

d) Substantial justice.

To require a hardship be endured that is not outweighed by some gain to the public interest would be an injustice. The board has the responsibility to make the judgment of substantial justice. Some hardships may have to remain hardships.

5) Not contrary to the spirit of the ordinance.

The ordinances are intended to make things better for the Town and provide for harmonious uses. Your neighbors and others have the right to expect the Zoning Ordinances will normally be complied with. If your request is contrary to the spirit of the ordinance, the ZBA must deny your request. The Master Plan and the history of the changes to the Zoning Ordinance are some factors the ZBA uses in deciding the spirit of the ordinance.

2. Appeal from an Administrative Ruling Hearing:

These are rare. Remember, the issue to be heard is only one of error. This may be a factual error - building or lot size - or a difference of opinion on how to interpret a regulation. There are no specific criteria. You have to convince the ZBA an error was made.

3. Application for a Special Exception Hearing:

Special Exceptions have different criteria than variances. All Special Exceptions are subject to the general criteria of ZO Section 4.3. Additional criteria are in the individual zoning provisions mandating Special Exception approval. If the criteria are met the ZBA must approve.

The Special Exception criteria are factual, but are somewhat subjective. The purpose of Special Exception is to provide for orderly consideration of the subjective criteria by an independent group.

DECISIONS:

The ZBA may reach a decision the night of the hearing. Or if members want time to digest the information received, deliberations and/or a vote may be postponed to a subsequent meeting, to be announced at the time of postponement.

Conditions: The ZBA may impose conditions as part of any hearing decision. For instance, you may say, "if I can't build my house closer to line A, I'll have to expand towards B, which is permissible but is harmful to others or far less desirable." The ZBA in giving you permission to build towards A may condition its approval on your not later also building towards B.

Your argument for a variance may better meet the criteria if you anticipate any negative aspects and propose ways to minimize or offset the negative aspects.

REHEARING:

Any ruling of the ZBA may be questioned by the applicant or any interested party on the grounds of error by the ZBA or the discovery of significant new information. A request for a rehearing must be filed in writing within any time limits prescribed by law, now 20 days. The ZBA will consider the request and may deny it or will rehear the application.

There are few requests for rehearings. Most are submitted by lawyers as a further appeal may be filed in Superior Court only after a request for rehearing has been acted on.

REFERENCE MATERIAL:

The New Castle Land Use Regulations consist of the Zoning Ordinance, Building Code Ordinance, Subdivision Regulations, and Site Plan Regulations; they are bound together and copies may be purchased at the Town Hall or examined at the Town Hall or Library.

There is also ZBA Handbook (The Board of Adjustment in New Hampshire) which is used as a guide by the board. Copies of these may be examined at the Town Hall or the Library.

The Building Code Regulations adopt the 2009 IBC & IRC. A copy is available for inspection at Town Hall.

ZBA and Planning Board minutes are on file with the Town Clerk.