

TOWN of ACWORTH, NH

**INSTRUCTIONS TO APPLICANTS APPEALING A DECISION TO
THE ZONING BOARD OF ADJUSTMENT**

**IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT
ATTACHED APPLICATION.**

The board strongly recommends that, before making an appeal, the applicant should become familiar with the Acworth zoning ordinance and with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672 – 677, covering planning and zoning. While the Zoning Board will attempt to assist an applicant where reasonable, it cannot be liable for any errors or omissions which an applicant may make filing an appeal from a decision. If you are unsure as to what to do or how to proceed, please consult an attorney.

TYPES OF APPEALS: Four types of appeals can be made to the Acworth Zoning Board of Adjustment:

- 1) Appeal from an Administrative Decision,
- 2) Special Exception,
- 3) Variance,
- 4) Equitable Waiver of Dimensional Requirements.

1) **APPEAL FROM AN ADMINISTRATIVE DECISION:** If the applicant has been denied a use, such as a building permit, or is affected by a decision regarding the administration of the Acworth zoning ordinance, and the applicant believes that the decision was made in error under the provisions of the ordinance, an appeal of the decision may be made to the Zoning Board of Adjustment within 30 days of the decision. A copy of the Administrative Decision must be attached to the application.

2) **SPECIAL EXCEPTION:** Certain sections of the zoning ordinance provide that a particular or specific use of property in a particular zone may be permitted by special exception, if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. An appeal for a special exception may be granted if it can be shown that the conditions stated in the ordinance are met.

(Note: In the case of an application for a special exception, any supplemental information which the applicant may have, such as a site plan, survey, sub-division plan, subdivision approval or any other pertinent approvals, permits, or engineering studies, will assist in evaluating the application for a special exception. Copies should be attached to the application.)

3) **VARIANCE:** A variance is an authorization, which may be granted under special circumstances, to use property in a way that is not permitted under the strict terms of the zoning ordinance.

A **USE** variance is one that permits a use of the land for a purpose that is not allowed by the zoning ordinance, such as a commercial use in a residential zone.

An AREA variance is one, which involves physical dimensions of the development such as building height, setback, or frontage.

If applying for a variance, there must be some form of determination or decision or action by a board or municipal entity that the proposed use is not permitted under the terms of the town's zoning ordinance unless a variance were to be granted, for example, the denial of a building permit by the Board of Selectmen. A copy of the decision must be attached to this application.

For a variance to be granted, the applicant must show that the proposed use meets all of the conditions listed on the application, specifically that:

- a) Granting the variance would not be contrary to the public interest.
- b) The use is not contrary to either the spirit or the intent of the ordinance.
- c) Granting the variance would do substantial justice.
- d) The proposed use would not diminish surrounding property values
- e) Denial of the variance would result in unnecessary hardship to the owner as defined in the application.

4) **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** The board may grant an equitable waiver only for existing dimensional nonconformities provided the applicant can meet all of the following conditions:

- 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 a legitimate mistake.
- 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.
- d) The cost of correction would far outweigh any public benefit to be gained.

(NOTE: Conditions a and b can be met by demonstrating that the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.)

PROCEDURE:

1. Read these instructions carefully
2. Fill out the application completely, using extra pages and attachments as needed.
3. Attach a complete list of abutters with current mailing addresses. Please note that, for the purposes of notification, holders of conservation, preservation or agricultural restrictions or easements on the property are considered abutters.
4. Enclose the application fee (see schedule). Make check payable to "Town of Acworth".
5. Mail the completed application to the Administrative Assistant, PO Box 37 Acworth, NH 03601 or deliver it to Town Hall.
- 6. The ZBA meets on the first Wednesday of each month at the call of the Chair. Requests for a meeting with the Board must be received by the Town office by noon of the Friday before the first Wednesday of the month. To schedule a public hearing, a complete application must be received by the 15th of the proceeding month.**

Public notice of the hearing will be posted and printed in a newspaper. At least five days before the date of the hearing, notice will be mailed to the applicant, the abutters and to other parties or agencies which the board deems to have an interest. All parties who appear in person or by agent or by counsel will be invited to state reasons why the appeal should or should not be granted.

Once the Board has determined that all necessary information is in hand, and a public hearing has been held, a decision will be made by the conclusion of the next regularly scheduled monthly meeting of the Board. The applicant will be sent a notice of the decision.

APPEAL OF A ZONING BOARD DECISION: The applicant has the right to appeal a decision made by the Board of Adjustment. The selectmen, town board or any party affected also may appeal a decision by the zoning board of adjustment.

To appeal a decision, the Board must be petitioned for a rehearing. The petition is a motion for rehearing 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 should be reversed or is unlawful or unreasonable.

The Board may grant a rehearing if, in its opinion, good reason is stated in the motion for a rehearing. The Board is not required to reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. Procedure requires that a rehearing must have been requested before an appeal can be made to the courts.

When a rehearing is held, the same procedure is followed as for the first hearing, including public notices, notice to abutters and associated fees. See RSA Chapter 677 for more detail on rehearing and appeal procedures. If you are uncertain as to what to do, please consult your attorney.

