

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

The board strongly recommends that before making any appeal, you become familiar with the ordinance and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 678.

IMPORTANT:

READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETEING THE APPLICATION

SECTION 1. APPEAL CATEGORIES. The following appeals can be made to the board of adjustment:

A through D below only apply to the Drinking Water Protection ordinance and the Impact Fee ordinance, as well as any future ordinance adopted under RSA 673:16 or 673:21.

A. 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 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 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 proper- ties 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.

B. 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 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.

C. SPECIAL EXCEPTION. Canaan currently (May 2012) does not use special exceptions, so this section should not be used until ordinances contain special exceptions.

Certain sections of the ordinance provide that a particular use of property in a particular district 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.

D. 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 a 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.

E. HISTORIC DISTRICT COMMISSION DECISIONS. Upon written application to the Board of Adjustment, the board will hold a public hearing, hear all testimony and evidence, and provide its decision, which may be the same or different than the Historic District Commission's decision. There is no required application form and all information in the Historic District Commission records associated with the initial decision will be examined. The applicant may provide additional information before or at the public hearing

F. BUILDING PERMITS ON CLASS VI AND CERTAIN PRIVATE ROADS. Upon written application to the Board of Adjustment, the board will hold a public hearing, hear all testimony and evidence, and provide its decision, which may be the same or different than the Selectmen's decision. There is no required application form and all information in the Planning Board's and Selectmen's records associated with the initial decision will be examined. The applicant may provide additional

information before or at the public hearing

SECTION 2. GENERAL REQUIREMENTS. For any appeal related to Section 1, A through D, the application form must be properly filled out. 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?

For all appeals, 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 clerk of the board or to the office of the board of selectmen. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to town of Canaan and remit with your application.

The board will promptly schedule a public hearing upon receipt of your properly completed application. Public notice of the 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 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 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 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.