

# INSTRUCTIONS FOR APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

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

**The Board strongly recommends that, before making an appeal, you become familiar with the Zoning Ordinances and also with the New Hampshire Statutes, Title LXIV, RSA Chapters 672-677, covering planning and zoning. Copies of these are available for your inspection at the Offices of the Selectmen, Town of Francestown, and the Bixby Library.**

FEE: The fee for filing an application is \$100.00 to cover the cost of administration, newspaper notification and certified mailings. If you have more than of eight (8) abutters, please add \$2.67 for each additional abutter. Check should be made payable to the Town of Francestown and remitted with your application to the Selectmen's Office or Board of Adjustment.

For any appeal, the application form must be properly filled out and applicable attachments included. 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? Include the street address and tax map number.

**DESCRIBE** the property. Give area, frontage, side and rear lines, slopes and natural features, etc. **It is the responsibility of the applicant to know the exact property lines. If this is in question, the property owner needs to have the property surveyed.**

**WHAT** do you propose to do? Attach sketches, plot plans, pictures, construction plans or additional items that may help explain the proposed use. **It is strongly recommended that plot plans, whenever appropriate, be included with your application.** Include copies of any prior applications concerning the property.

**PREPARE** a list of all abutting property owners, verify it at the Town Offices and attached it to your application. If you have any difficulty, consult the Selectmen or the Town Clerk. However, the accuracy of the list is **YOUR** responsibility. **Be sure that your list of abutters is current.**

**MAIL or DELIVER** the completed application with all attachments, to the Office of Selectmen, Town of Francestown, or to Charles M. Pyle, Chairman Francestown Board of Adjustment, 1237 New Boston Road, Francestown, NH 03043.

The Francestown Board of Adjustment will schedule a public hearing upon receipt of your properly completed application. A public notice will be posted on the bulletin boards of the Francestown Post Office, Francestown Town Hall and the Francestown Village Store, and printed in the Peterborough Transcript. Notice will also be mailed to you and to all abutters as well as to other local Boards whom the ZBA may deem to have an interest, at least five days before the date of the hearing. You and all other parties may appear in person, or by agent or counsel, to state the reasons why the appeal should or should not be granted.

After the public hearing, the Board will reach a decision, which will be posted. You will be mailed a copy of the notice of decision.

## 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 Frankestown Zoning Ordinances, and you believe that the decision was made in error under the provisions of the ordinance, you may appeal the decision to the Frankestown 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 must be attached to your application.

### APPEAL FOR SPECIAL EXCEPTION:

Certain sections of the Zoning Ordinances provide that a particular use of property in a particular zone will be permitted by **Special Exception**, if specified conditions are met. There may be general conditions for **Special Exception**, as well as specific conditions for a particular use. Your appeal will be granted, if you can show that the conditions stated in the Ordinances are met.

If you are applying for a **Special Exception**, you may also need a site plan review from the Frankestown 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 overall zoning. This should be done **before** you apply for a **Special Exception**. You may request a joint meeting of the Planning Board and the Zoning Board of Adjustment.

In addition to specific conditions contained in Zoning Ordinances, please refer to the additional conditions contained in sections 7.1 and 7.1.2 of the Frankestown Zoning Ordinance.

### APPLICATION FOR 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 Ordinances. For a **Variance** to be granted, you must show that your proposed action meets **all five** of the following conditions:

1. The proposed use would not diminish the surrounding **property values**.
2. Granting the variance would be of benefit to the **public interest**.
3. 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 that distinguish it from other properties under similar zoning restrictions. The NH Supreme Court has established a test for unnecessary hardship. If you are applying for a **use variance** (a **use variance** will allow applicant to undertake a use which the zoning ordinance prohibits), please use *criteria a through c*:
  - a. 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;
  - b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; **and**
  - c. that the variance would not injure the public or private rights of others.If you are applying for an **area variance** (an **area variance** is made necessary by the physical characteristic of the lot and authorizes a deviation from restrictions such as, but not limited to, building size or height, setbacks, frontage, placement, lot size, etc.,) please use *criteria d & e*:

- d. special conditions of the property make an area variance unnecessary in order to allow the applicant to construct the development as designed; **and**
  - e. the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial hardship
4. Granting the Variance would do **substantial justice**.
  5. 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 is not permitted without a variance. A copy of this determination must be attached to your application.

#### **APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:**

The Board may grant an **Equitable Waiver** only for existing dimensional non-conformities provided that applicant can meet the required standards:

1. The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot had been transferred to a bona fide purchaser;
2. 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 grant the waiver if it finds:

3. The nonconformity does not constitute a public or private nuisance or diminish the value or
4. The cost of correction would far outweigh any public benefit to be gained.

NOTE: In lieu of the requirements of standards 1. and 2. above, you may meet these conditions by demonstrating that the violation has existed for ten or more years and that no enforcement action was commenced against the violation during that time by the municipality or by any person directly affected.

#### **APPEAL OF DECISION:**

If you believe the Board's decision is wrong, you have the right to appeal. The Selectmen or any parties 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 made in the form of a letter to the Board. The motion must be made within 30 days after the decision has been made, beginning with the date following the date of the Board's vote, and must set forth the grounds on which it is claimed that 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.

*Revised 7/2005*