ZONING BOARD OF ADJUSTMENT (ZBA)

Town of Freedom
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(603) 539-6323

INSTRUCTIONS AND FORMS FOR APPLICANTS APPEALING TO ZBA
SEE ALSO ZBA RULES OF PROCEDURE DATED 01/25/2011

To view Freedom's Zoning Ordinance, please visit:
www.townoffreedom.net

INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

Important: Read carefully before filling out and submitting an application. Please note that all four types of appeal require you to attach a completed plot plan.

The ZBA strongly recommends that, before making any appeal, you become familiar with the zoning ordinance, and also with New Hampshire Statutes *RSA Chapters 672-677,* covering planning and zoning. Copies of such are available at the Town Office or by downloading from the town's website, www.townoffreedom.net.

Four types of appeals can be made to the ZBA:

1. APPEAL FOR AN ADMINISTRATIVE DECISION
2. APPEAL FOR SPECIAL EXCEPTION
3. APPEAL FOR VARIANCE
4. APPEAL FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

1. APPEAL FOR AN ADMINISTRATIVE DECISION

If you have been denied a building permit or are affected by some other decision regarding the administration of the Freedom Zoning Ordinance, and you believe that **the decision was made in error** under provisions of the ordinance, you may appeal the decision to the ZBA. The appeal will be granted if you can show that the decision was indeed made in error.

When you are **appealing an Administrative Decision,** a copy of the original application including the decision appealed from must be attached to your application. Complete *Section 1:* **Appeal from an Administrative Decision.** Review section of **General Conditions** for all appeals. Attach completed **Plot Plan.**

2. APPEAL FOR 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 the 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.

When you are submitting an application for an **APPEAL FOR SPECIAL EXCEPTION,** you will probably need a 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 to the ZBA. When applying for a **special exception**, you must have some form of determination that your proposed project is not permitted without a special exception. Most often, this determination is denial of a zoning permit. A copy of the original zoning application including the denial must be attached to your application.

Complete *Section 2:* **Appeal for Special Exception.** Review section on **General Conditions** for all appeals. Attach completed **Plot Plan.**

Describe your property: **Submit *twelve copies (fifteen copies for shoreland)* of plot plan, original zoning application with denial and zoning application; see page 7 for a list of requirements.**

3. APPEAL FOR VARIANCE

A variance must be obtained from the ZBA for a use of your property not listed in the Zoning Ordinance for the Zoning district in which your property is located. In addition, a variance must be obtained if your proposed use will not meet the setback/yard requirements, minimum lot size or any other dimensional requirements.

When applying for a **variance**, you must have some form of determination that your proposed use is not permitted without a variance. Most often, this determination is denial of a zoning permit. A copy of the original zoning application including the denial must be attached to your application. Complete *Section 3:* **Appeal for a Variance** as well as **Facts Supporting Appeal for Variance.** Review section on **General Conditions** for all appeals. Attach a completed **Plot Plan.**

For an appeal to be legally granted, **you must show** that your proposed use meets all five of the following conditions:

1. The variance will not be contrary to the public interest.
2. The spirit of the ordinance is observed if the variance is granted.
3. Substantial justice is done by granting the variance.
4. The value of surrounding properties is not diminished if the variance is granted.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

Describe your property: Submit *twelve copies (fifteen copies for shoreland)* of plot plan, original zoning application with denial and zoning application; see page 7 for a list of requirements.
of plot plan; see page 7 for a list of requirements.

4. APPEAL FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

The board may grant an equitable waiver only for existing dimensional nonconformities provided the board makes all of the following findings:

1. The nonconformity was not discovered until after the structure was substantially complete or after a vacant lot in violation 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;
3. The nonconformity does not constitute a public or private nuisance or diminish the value or interfere with the future uses of other property in the area; and
4. The cost of correction would far outweigh any public benefit to be gained.

The owner can meet the requirements in paragraph (1.) and (2.) if the violation has existed for 10 years or more with no enforcement action, including written notices, commenced by the town or by any person directly affected.

Please attach completed **Plot Plan.**

GENERAL INSTRUCTIONS FOR ALL

Please detach and keep these instructions for reference

For any appeal, the appropriate section of the attached form must be completely filled out. The form is intended to be self-explanatory, but be sure that you show:

WHO owns the property? All owners must be listed and there must be signatures of all owners in any areas applicable. (If the applicant is not the owner, the owner must authorize the appeal.)

WHERE the property is located? (Give tax map, lot number, and zoning district.)

DESCRIBE the property: Show area, frontage on the road and on the water, side and rear yard setbacks, slopes and natural features if appropriate, vegetation, wells, septic systems, all dimensions and all structures. (Use Plot Plan.)

WHAT do you propose to do? Attach sketches, pictures, construction plans, or whatever may help the proposed use. Include copies of any prior applications concerning the property.

PREPARE A LIST of all names and addresses of all abutting property owners. Have it verified at the town office, and attach it to your application. The accuracy of the printed abutter list is **your** responsibility. If you miss an abutter, the ZBA will have to do the procedure again.

COPIES/PHOTOGRAPHS of color or larger than 11x17 require that twelve copies of each be submitted.

MAIL OR DELIVER 12 collated copies (15 copies for shoreland properties) of the complete Zoning Application, the completed ZBA application, any applicable plot plans, or relevant documentation, and 3 sets of labels containing abutting property owners mailing addresses. All attachments and plans are to be folded to 8 ½ x 11 to the clerk of the ZBA or to the office of the Board of Selectmen. The deadline for submission is listed on the ZBA page of the Freedom website, (www.townoffreedomnh.gov) or call the Town office for the date. Deadlines are firm and cannot be extended. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to "Town of Freedom" and remit with your application.

FEES: $90.00 for residential applications and $100.00 for all others plus the cost of notifying abutters by Certified Mail at $15.00 each, minimum of $50.00.

PUBLIC HEARING: The ZBA will schedule a **public hearing** within 45 days of the receipt of your properly-completed appeal. The ZBA normally meets on the fourth Tuesday of each month at 7:00 PM in the Freedom Town Hall. Public notice of the hearing will be posted and, for new applications, printed in a newspaper. The notice will be mailed to you and to all abutters at least five days before the date of the hearing. You and all other parties are encouraged to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

DECISION: After the public hearing, the ZBA will reach a decision. You will be sent a notice of decision. In granting a variance or special exception, the ZBA may attach such conditions as safeguard as it deems proper. A decision by the ZBA does not constitute final approval for the project. The applicant must then meet with the Zoning Officer and present proof that they have met the conditions of the ZBA. The Zoning Officer will sign the approval portion of the original Zoning application. Only then, may the applicant seek a building permit from the Building Inspector.

APPEAL ZBA DECISION

If you believe the ZBA 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 ZBA for a rehearing. The motion for rehearing must be in the form of a letter to the ZBA. The motion must be made within 30-days of the ZBA's decision, and must set forth all the grounds on which you claim the decision was unlawful or unreasonable.

The ZBA may grant such a rehearing if, in its opinion, a 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 Carroll County Superior Court. When a rehearing is held, the same fees and 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).

The ZBA will decide on the motion for rehearing within 10-days. If the motion is denied you must file your appeal with the Carroll County Superior Court within 30-days of the denial.

DO NOT WRITE IN THIS SPACE
APPLICATION #_____
DATE FILED _____
FEE PAID _____
RECEIVED BY _____

APPLICATION TO THE ZONING BOARD OF ADJUSTMENT

Name of Applicant(s) _____

Mailing Address _____

Telephone Number(s) _____

Property Owner(s) _____
(If same as applicant, write "Same")

Mailing Address _____

Location of Property: Tax Map # _____ Lot # _____ Zoning District _____

Physical Address of Property _____

Name, Address and Map/Lot of all abutters whose property adjoins or is directly across the street or stream from the property of the applicant. Additional pages may be added.

MAP / LOT **NAME and ADDRESS**

_____

_____

_____

_____

_____

_____

This application has been completed in accordance with the Zoning Ordinance of the Town of Freedom.

Date: _____ Signed: _____
Owner (If agent, owner must still sign)

Date: _____ Signed: _____
Owner (If agent, owner must still sign)

Date: _____ Signed: _____
Owner (If agent, owner must still sign)

New Hampshire State law requires the ZBA to hold a hearing within 45-days of the filing of a properly completed application unless the applicant agrees to extend that period. The undersigned hereby waives the 45-day time limit with the understanding this application will be heard within 60-days of the date of filing.

Signed: _____ Signed: _____

Signed: _____ Signed: _____

Attach Plot Plan: Specify **ALL** dimensions, locate wells, septic system, label abutters and all structures.

Note: Attach copy of **Completed Zoning/Building application with Zoning Officer's denial** as well as the **Plot Plan.** 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.

Complete Section 1, 2, 3 or 4.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provision of Article _____ Section _____of the Zoning Ordinance in question describe decision of the officer to be reviewed:

_____

_____

_____

Also submit a **Plot Plan – see page 7.**

Section 2. APPEAL FOR SPECIAL EXCEPTION

Describe proposed use requiring a special exception from Article _____ Section _____of the Zoning Ordinance:

_____

_____

_____

Also continue to **Page 6**; submit a **Plot Plan – see page 7.**

Section 3. APPEAL FOR VARIANCE

A variance is requested from Article _____ Section _____ of the Zoning Ordinance to permit:

_____

_____

_____

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public **interest** because:

_____

_____

_____

2. If the variance were granted, the **spirit** of the ordinance would be observed because:

_____

_____

_____

3. Granting the variance would do substantial **justice** because:

_____

_____

_____

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:

_____

_____

_____

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:

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 because:

_____

_____

_____

And;

ii. The proposed use is a reasonable one because:

_____

_____

_____

B. Explain how, 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 properties 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.

_____

_____

_____

Also continue to **Page 6**; submit a **Plot Plan - see page 7.**

NOTE TO APPLICANT AND ZONING BOARD REGARDING THE UNNECESSARY HARDSHIP TEST*: If the above criteria for unnecessary hardship cannot be met, then the Zoning Board can still find unnecessary hardship if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, (a) the property cannot be reasonably used in strict conformance with the ordinance, and (b) a variance is therefore necessary to enable a reasonable use of the property. See VARIANCE WORKSHEET and RSA 674:33,I(b).*

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 If you answer "No", you are not entitled to an equitable waiver of dimensional requirement. These waivers may not be granted from use restrictions.

2. Explain how the violation has existed for 10-years or more with no enforcement action, including written notices, being commenced by the town or by any person directly affected:

_____

_____

_____

OR

If the violation has not existed for 10-years without enforcement action, you must:

A. 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:

_____

_____

and;

B. Explain how the nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake:

_____

_____

Also, you must:

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:

_____

_____

_____

PLOT PLAN GUIDELINES

A) Submit a plan drawn to scale, 1" = 20', font must be at least 8 pt., showing a minimum of the following:

- ❑ Property lines and distances
- ❑ Setbacks for front, side and rear yards
- ❑ Show all existing and proposed buildings
- ❑ Wells
- ❑ Septic tank and leach field
- ❑ Indicate building dimensions to overhang
- ❑ Height of buildings
- ❑ Indicate all structures with dimensions including but not limited to:
  - Porches
  - Sheds
  - Decks
  - Garages
  - Stoops
  - Retaining walls
  - Patios
  - Impervious surfaces within 150' of the shoreline
  - Unique features
- ❑ Water reference line (Ossipee Lake elevation 407')
- ❑ Road names
- ❑ Abutters names in proximity to property

B) If seeking special exception or variance in the shorefront district you must include:

- ❑ Fill – Temporary or Permanent
- ❑ Cut – Temporary or Permanent
- ❑ Tree removal
- ❑ Erosion control
- ❑ Docks
- ❑ Stairs
- ❑ Contours – Temporary or Permanent
- ❑ Retaining walls – Temporary or Permanent
- ❑ Lake level (Ossipee Lake elevation 407')

C) Lots under 5 acres:

Total area of lot in square feet _____
Square feet of lot coverage (including all structures) _____
% of lot covered _____

D) In addition to the list above it is your option to submit:

- ❑ Photographs
- ❑ Abutter's letters

I assume full responsibility for the accuracy of all plans and supporting information submitted with this application. I understand that I may be required to move/remove any improvement if an exact determination of any aspects of this application are found to be false or inaccurate.

I am aware that a state shoreland permit is required prior to initiating many types of construction, excavation or filling activities within the protected shoreland and any variance granted by the Freedom ZBA is contingent on approval and issuance of a permit from the NHDES (if applicable). The approved permit needs to be supplied to the Freedom Zoning Officer prior to any activity.

By signing this application, you grant permission for Zoning Board Members to access your property for purposes of this application process.

_____	_____
Property Owner/ Authorized Agent	Date
_____	_____
Property Owner/ Authorized Agent	Date
_____	_____
Property Owner/ Authorized Agent	Date
_____	_____
Property Owner/ Authorized Agent	Date

Before planning or undertaking any construction, excavation or filling within the protected shoreland, contact NHDES:

Visit the DES web site below to determine if your property comes under the protection of the Comprehensive Shoreland Protection Act (CSPA). Read DES fact sheet, water bodies Under the Protection of the CSPA.

NH Department of Environmental Services
Wetlands Bureau
603-271-2147
www.des.nh.gov