

INSTRUCTION TO APPLICANTS TO THE WATERVILLE VALLEY

BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS BEFORE FILLING OUT ATTACHED APPLICATION

The board strongly recommends that before making any application, you become familiar with the current Waterville Valley zoning ordinance, the ZBA Rules of Procedure, and the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-678, covering planning and zoning.

Four types of applications can be made to the board of adjustment: (1) a Variance; (2) an Appeal from an Administrative Decision or Planning Board Decision interpreting the zoning ordinance; (3) a Special Exception; and (4) an Equitable Waiver of Dimensional Requirements. Details of each type of application appear on the following pages.

The application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you include:

WHO owns the property? If the applicant is not the owner, this must be explained.

WHERE is the property located?

LIST OF ABUTTERS and those individuals/entities who hold a conservation, preservation or agricultural preservation easement or restrictions on the property

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 the proposed use require an appeal to the board of adjustment?

WHY should the appeal be granted?

Mail or deliver the completed application, with all attachments to the Town Manager. The board will promptly schedule a public hearing upon receipt of your application and your payment of the Town's notice costs. Public notice of the hearing will be posted and printed in the newspaper and 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 will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted. If you will not be attending the hearing and an agent or counsel is appearing on your behalf, you must submit a letter of authorization or power of attorney.

After the hearing the board will reach a decision. You will be sent a notice of the decision.

If you believe the 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.

The board may grant 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 hearing is held, you must have requested one before you can appeal to the courts. If the board decides to hold a rehearing, 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.

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 ordinance. For a variance 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.
3. Substantial justice is done.
4. The values of surrounding properties are not diminished.
5. Literal enforcement of the provisions of the ordinance would result in an 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 that 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 properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable 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 from the Building Inspector.

Please provide each of the following:

- ☐ A completed Application, signed by the Applicant. If the Applicant is not the owner of the property, you must provide a signed letter of authorization or power of attorney, signed by the owner.
- ☐ A list of abutters. The accuracy of the list is your responsibility.
- ☐ A filing fee of \$200.00. Make your check payable to the Town of Waterville Valley. If you withdraw your Application, or if your Application is denied, you will not receive a refund.
- ☐ A fee equal to the Town’s costs in providing notice. This charge will be calculated by the Town and will vary based upon the number of abutters. Make your check payable to the Town of Waterville Valley. Failure to pay this cost shall constitute valid grounds for the board to terminate further consideration and to deny the appeal without a public hearing. If you withdraw your Application, or if your Application is denied, you will not receive a refund.

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 Waterville Valley zoning 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.

Please provide each of the following:

- ☐ A completed Application, signed by the Applicant. If the Applicant is not the owner of the property, you must provide a signed letter of authorization or power of attorney, signed by the owner.
- ☐ A copy of the decision which you believe is in error.
- ☐ A list of abutters. The accuracy of the list is your responsibility.
- ☐ A filing fee of \$200.00. Make your check payable to the Town of Waterville Valley. If you withdraw your Application, or if your Application is denied, you will not receive a refund.
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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 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.

If you are applying for a special exception, you may also need 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.

Please provide each of the following:

- ☐ A completed Application, signed by the Applicant. If the Applicant is not the owner of the property, you must provide a signed letter of authorization or power of attorney, signed by the owner.
- ☐ A list of reasons you believe that the conditions of the special exception have been met.
- ☐ A list of abutters. The accuracy of the list is your responsibility.
- ☐ A filing fee of \$200.00. Make your check payable to the Town of Waterville Valley. If you withdraw your Application, or if your Application is denied, you will not receive a refund.
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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 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 the 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 with no enforcement action, including written notice, commenced by the town.

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