

**TOWN OF BEDFORD
APPLICATION FOR APPEAL**

To: Board of Adjustment _____ Date Filed: _____

Name of Applicant: _____

Daytime Phone: _____ Evening Phone: _____

Mailing Address: _____

Owner's Name: _____
(If same as applicant, write "same")

Owner's Signature: _____
(Or letter of authorization)

Owner's Mailing Address: _____

Location of Property: _____
(Street number & lot number)

NOTE: Fill in Sections 1, 2, 3, or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheet if the space provided is inadequate. Full names and addresses of all abutters shall be supplied on a separate sheet.

This application is due by the first Tuesday of each month and will be scheduled for the next Zoning Board meeting, the third Tuesday of each month. The application must be accompanied by a site plan of the property and a check for \$100 for residential plans and \$200 for commercial plans and \$5.54 each to notify all abutters and applicant by certified mail. Checks to be made payable to: Town of Bedford (all rehearings granted by the ZBA will also be subject to the above fees).

Any scheduled applicant who has been listed on the public notice and who wishes to request a postponement shall do so within seven working days and notify all abutters of the change or that item will not be heard for six months. The applicant will pay the charges for notifying abutters.

It is necessary that the applicant appear at the hearing. An agent authorized in writing may appear for the applicant. Scale drawings with accurate measurements and dimensions of the subject area must be submitted with the application.

****Where setback is an issue, the applicant shall submit a certified plot plan showing the dimensions of the subject area including proposed structure and exact setback requested. All proposed dimensions and setbacks must have surveyor's updated stamp of approval. Photocopies are not acceptable.****

Received by: _____ Date: _____

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed:

Article:_____ Section:_____ of the Zoning Ordinance in question

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the Zoning Ordinance, Article _____; Section _____. For accessory apartment applications, please address criteria below:

APPLICATION FOR A SPECIAL EXCEPTION FOR ACCESSORY ATTACHED APARTMENTS:

A scaled floor plan with dimensions of apartment and the level of the home where the apartment is to be located must be submitted with the application. All ingress/egress locations (existing and proposed) must be shown on the plan. Outside dimensions of the apartment must not exceed 650 square feet. Please address the following:

- a. An accessory apartment shall be clearly incidental to the primary use of the property for a single dwelling, and such accessory living space shall not exceed 650 sq. ft.

b. An accessory apartment shall either be constructed within or attached to a single dwelling.

c. At least one interior connecting door or other access for persons to pass between the primary residence and the accessory apartment shall be provided.

d. Septic system design/capacity shall be approved by the NH Dept. of Environmental Services.

e. No new entrance or exit to an accessory apartment shall be constructed facing the front of the single dwelling.

f. One parking space shall be provided for an accessory apartment and no new curb cut from the street shall be constructed; and

g. Exterior construction and materials shall be uniform with the single dwelling.

Section 3. APPLICATION FOR A VARIANCE

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

Facts supporting the request:

1. Granting the variance would not be contrary to the **public interest** because: *(In responding to this question, please address: (1) Whether granting the variance would alter the essential character of the locality, and (2) Whether granting the variance would threaten public health, safety or welfare.)*

2. The **spirit** of the ordinance is observed because:

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

4. The **values** of the surrounding properties will not be diminished for the following reasons:

5. Literal enforcement of the provisions of the ordinance would result in an **unnecessary hardship**. Special conditions of the property distinguish it from other properties in the area because:

(A) 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:

(ii) The proposed use is a reasonable one because:

(B) If the criteria in subparagraph (A) above are not established, explain why the property cannot be used in strict conformance with the ordinance and why a variance is therefore necessary to enable a reasonable use of it:

Section 4. APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT

An equitable waiver of a physical layout or dimensional requirement of Article _____; Section _____, of the Zoning Ordinance has occurred as follows: (brief description of dimensional violation, such as, house side setback only 10 feet instead of 25 feet):

Facts Supporting This Request:

(a) The violation was not discovered by any owner, former owner, owner's agent or municipal official until after the structure had been substantially completed:

(b) The violation was not caused by ignorance of the law, misrepresentation or bad faith, but was instead a good faith error in measurement:

(c) The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

(d) Due to the degree of past construction or investment made, the cost of correction so far outweighs any public benefit that it would be inequitable to require that the violation be corrected:

(e) **OR**, In lieu of the findings in (a) and (b) above, the owner may demonstrate that the violation has existed for 10 years or more, and that no enforcement action has been commenced against the violation by the municipality or any person directly affected:

INFORMATION REGARDING APPLICATION FOR APPEAL

TO APPLICANTS:

It is suggested that each applicant purchase a Zoning Ordinance.

Before investing your time and money (and the Board of Adjustment's time) on an Application for Appeal, you should pause to concern yourself with the laws and conditions under which the Board of Adjustment operates. The following points are brought out to guide your decision in whether or not to make an appeal.

The Board of Adjustment has authority to act in four distinct categories, each of which will be discussed separately.

1. Appeal from Administrative Decision: The Board of Adjustment decides cases where a claim is made that the Zoning Administrator has incorrectly interpreted a district boundary or the exact meaning of an article or term within the Zoning Ordinance. For example, most ordinances contain terms that may have several interpretations and are, therefore, open to question. An honest difference of opinion may easily occur as to the exact meaning when applied to specific circumstances. In another situation, a person may, rightly or wrongly, question the administrator's reasons for withholding a permit. Because the Board of Adjustment has the power to referee such cases, every person is afforded a quick hearing and decision without the expense of going to court.
2. Special Exceptions: A special exception is an allowable use of the property expressly permitted by the Zoning Ordinance when the conditions appurtenant to it are met. Under this authority, the Board of Adjustment has the power to grant those exceptions which are clearly specified in the Bedford Zoning Ordinance. These exceptions are listed as "Special Exception Uses" in each district, and the criteria for granting them are also outlined in the Ordinance.
3. Variances: A variance is permission granted to use a specific piece of property in a manner not otherwise allowed by the Zoning Ordinance. Variances are included in a zoning ordinance to prevent the ordinance from becoming confiscatory or unduly oppressive as applied to individual properties with unique situations. A variance may be granted by the Board of Adjustment only if all of the following five standards are met:
 - a. Granting the variance will not be contrary to the public interest.
 - b. The use must not be contrary to the spirit of the ordinance. In general, zoning provisions must promote the health, safety or general welfare of a community. They do this by lessening congestion in the streets, protecting from fire and other dangers, and providing for adequate light and air. In deciding whether or not a variance will violate the spirit and intent of the ordinance, the Board must determine the legal purpose the section of the ordinance serves. For instance, a zoning ordinance might control building heights to protect adjoining property from the loss of light and air.
 - c. By granting the variance substantial justice would be done. It is important to set up rules that can measure justice. Each case must be individually determined by the Board members. Perhaps the only guiding rule is that any loss to the individual that is

not outweighed by a gain to the general public is an injustice.

d. No diminution in value of surrounding properties would be suffered. The public hearing provides opportunity for abutters to state how the proposed variance would affect their property and allows the Board to weigh these opinions along with its own understanding of the situation.

e. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(A) For the purposes of this subparagraph, “unnecessary hardship” means that, owing to the 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 purpose of ordinance 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 a reasonable use of it.

The definition of “unnecessary hardship” set forth in subparagraph (c) shall apply whether the provision of the ordinances from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use. Or any other requirement of the ordinance. (Per RSA 674:33 I. (b) (5).)

4. Equitable Waiver: The Board of Adjustment decides cases where a claim is made that a physical layout or dimensional requirement should be waived for existing or substantially completed structures that either have been in existence for 10 years or more without enforcement action or where there has been a good faith error in measurement, the violation does not constitute a public or private nuisance, does not diminish property values, does not affect present or future permissible uses and the cost of correcting the violation outweighs the public benefit gained by the correction.

BEDFORD ZBA STANDING ORDER # 1

For public hearing on July 15, 1997 to be added to the Rules of Procedure.

The granting by the Board of any application for a variance, special exception, or administrative appeal is expressly conditioned upon strict conformity by the applicant with the plans, descriptions and /or measurements submitted to the Board. When ruling upon an application, the Board, in its discretion, may vote to approve a motion to waive this Standing Order; however, in the absence of passage of such a motion, this Standing Order shall be in full force and effect.