

**INSTRUCTIONS TO APPLICANTS SEEKING RELIEF FROM
THE GILFORD ZONING BOARD OF ADJUSTMENT**

Revised 2011

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

The board strongly recommends that, before making any application, you become familiar with the Town of Gilford Zoning Ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

Four types of applications can be made to the Gilford Zoning Board of Adjustment:

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. In order to apply for a variance, you must prove a “hardship”. A “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 the conditions of the property that distinguish it from other properties under similar zoning restrictions. 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 or a letter of denial from the Director of Planning and Land Use.

A COPY OF THE DETERMINATION MUST BE ATTACHED TO YOUR APPLICATION.

For a variance to be legally granted, you must show that your proposed use meets **all five (5)** of the following conditions:

1. Granting the variance would not be contrary to the public interest.
2. The Spirit of the Ordinance is observed.
3. Substantial Justice is done by granting the variance.
4. The values of surrounding properties will not be diminished
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because:
 - (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 purposes of the ordinance provision and the specific application of that provision to the property.
 - (ii) The proposed use is a reasonable use.
 - OR
 - (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 if therefore necessary to enable a reasonable use of it.

APPEAL FROM AN ADMINISTRATIVE DECISION:

If you are aggrieved by a decision of an administrative official (including, for example, the code enforcement officer or the planning board) regarding the administration of the Gilford 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 Zoning Board of Adjustment. The appeal must be made within thirty (30) days of the decision, as provided by the rules of the Zoning Board, and 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.**

SPECIAL EXCEPTION:

Certain sections of the Gilford Zoning Ordinance provide that a particular use of property, in a particular zone, will be permitted by special exception if the specified criteria are met. The necessary conditions for each special exception are given in the ordinance. Your application for a special exception will be granted if you can show that the all the criteria can be met.

If you are applying for a special exception you may also need site plan or subdivision approval, or both from the Gilford Planning Board. You must first obtain a *letter of denial* from the Director of Planning and Use before applying for your site plan or subdivision related special exception. If no site plan or subdivision approval is required, you must first apply for a building permit and obtain a denial. These cover most applications requiring special exceptions.

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 of dimensional requirements 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 legitimate mistake;

If conditions a & b are satisfied, the board can then consider the following findings to determine whether 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.

If the violation has existed for ten (10) years or more with no enforcement action, including written notice, commenced by the Town of Gilford, the requirements in paragraph a & b may be waived. Final determination must still consider findings be made from paragraph c & d.

ALL APPLICATIONS 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 application to the Gilford Zoning Board of Adjustment?

WHY should the request be granted?

Prepare a list of all abutting property owners (available in Gilford Assessor's 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.** You must include the owner(s) of the property and any professional agent (i.e. surveyor, engineer, etc.) as an abutter.

APPLICATION SUBMISSION REQUIREMENTS
ALL APPLICATIONS ARE DUE BY NOON ON DEADLINE DAY
NO EXEPTIONS

Correctness of information submitted is the responsibility of the applicant. Applications must be complete and legible; either typed or printed in ink. Incomplete or illegible applications will be returned and must be resubmitted.

The most current application form must be used with all attachments and must include the following- NO EXEPTIONS:

- **IF THERE ARE 10 OR MORE ABUTTERS, PLEASE SUBMIT ENVELOPES WITH MAILING LABELS AFFIXED TO ONE SET OF ENVELOPES, PLUS TWO (2) SETS OF MAILING LABELS.**
- **IF THERE ARE LESS THAN 10 ABUTTERS, PLEASE SUBMIT THREE (3) SETS OF MAILING LABELS.**
- **IF THE APPLICANT IS NOT THE OWNER OF THE PROPERTY, A LETTER OF AUTHORIZATION FROM THE PROPERTY OWNER MUST BE PROVIDED IN THE APPLICATION.**
- **EIGHT (8) SETS (7 copies and the original) OF THE COMPLETED APPLICATION INCLUDING ANY APPLICABLE DECISION OR DENIAL LETTERS.**
- **EIGHT (8) FULL SIZE PLAN SETS AND EIGHT (8) 11"X 17" PLANS (IF APPLICABLE).**
- **EIGHT (8) COPIES OF 11"X 17" TOWN TAX MAP WITH THE SUBJECT PROPERTY IDENTIFIED.**

NO EXCEPTIONS PLEASE

Mail or deliver the completed application to the Town of Gilford, Department of Planning and Land Use, 47 Cherry Valley Road, Gilford, NH 03249. A \$100.00 application fee is charged, plus \$8.00 per abutter. Please make check payable to "Town of Gilford" and remit with your 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 (5) 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. You must appear at the public hearing, or be represented by an authorized agent, in order for the Board to take action on your application.

After the public hearing, the Board will reach a decision. You will be sent a notice of decision.

If you believe the Zoning Board of Adjustment's decision is wrong, you have the right to appeal. The Gilford Board of 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 Application for Request for Rehearing must be completed. This application must be made within thirty (30) days after the decision is rendered and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Zoning Board of Adjustment may grant such a rehearing if, in its opinion, good reason is stated in the application. **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 or it is convinced that it has made a legal error.** Whether or not a rehearing is held, you must have requested one before you can appeal to the

courts. If 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.