



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824
PHONE: 603/868-8064
www.ci.durham.nh.us

ZONING BOARD OF ADJUSTMENT REQUEST PROCEDURE

MEETINGS: The Zoning Board of Adjustment (ZBA) will meet on the second Tuesday of each month in the Council Meeting Room at the Town Hall.

FILING OF APPLICATION: Applications for ZBA are available at the Town Office. The application must be filed at the Town Office at least 15 days prior to a meeting, along with an application fee. A notice of the meeting will be published in the Foster's Daily Democrat and a similar notice will be sent, by certified mail, to abutters and nearby property owners. The filing fee will be used to meet these expenses. If the expenses exceed the filing fee, the applicant will be billed for the difference.

LIST OF ABUTTERS: You must prepare a list of all abutting property owners, have it verified at the Town 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**. An "abutter" means any person whose property adjoins or is directly across the street or stream from the land under consideration. The list of abutters must also include any holders of conservation, preservation, or agricultural preservation restrictions in accordance with RSA 676:4 (I) (a) of the New Hampshire Planning and Land Use Regulations.

PLOT PLAN: Applications must be accompanied by plot plans in order to be considered by the ZBA. Plans should show the location and shape of the subject structure in relation to lot lines and required setbacks, in addition to location and identification of abutters. Neither the review of any applications or plans by officials of the Town of Durham, nor any subsequent inspection of the premises, should be relied upon as an assurance of conformity to legal requirements. The applicant shall remain fully responsible for complying with all applicable United States, New Hampshire or Durham laws, ordinances, regulations or conditions.

PRESENTATION AT MEETING: The Petitioner should bring all documentation, which will assist the Board in understanding the proposal. Do not assume that anything submitted to a different Town Board will find its way to the ZBA file.

NOTE: Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. An appeal of Administrative Decision must be filed with the Board no later than 30 days from the date of the original decision as per the Zoning Board Rules of Procedure Section D(1)(b).

It is necessary that the applicant or his legal representative attend the meeting held for the review and consideration of this petition.

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

Appeal for Applicant

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: _Joseph Caldarola, Mamager, Perley Lane, LLC

Address: PO Box 370, Portsmouth, NH 03802 Phone # 603-674-5204

Email: joe@smithfieldconstruction.com

Owner of Property Concerned: Perley Lane Condominium

Address: Same

Location of Property: Perley Lane

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) Map 1, Lot 16-22 and 16-23

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

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

Decision of the enforcement officer to be reviewed: _____
_____ Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

**Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of

adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.**

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

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

Grass to the side of Unit 6 and to the side and rear of Units 1 and 2

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

1. No decrease in value of surrounding properties would be suffered because:

See the following excerpt from the Conservation Commissions letter to the Planning Board:

“There were two lots where grass has been planted in the Shoreland Protection zone, Lot 1 and Lot 6. The revised plan returns most of the Shoreland in Lot 6 to woods, with a path added from the front of the house to the back yard (a conditional use per 175.72), and adds small landscaped gardens on the house side of the path.

The plan for Lot 1 returns the area in the Shoreland Protection Zone that slopes down to the brook to woods, but leaves a large portion of the front lawn that is in the Shoreland Protection Zone as grass. The Conservation Commission asked that the plan extend the non-grassed area down to the southeast corner of the property, which will involve taking in a garden that currently exists. We are willing to agree that the rest of the lawn at Lot 1, given that it is mostly flat, and drains to a rain garden, may remain. Also, factored into our decision was the addition of more rain gardens to the original plan, and the collection of all rainwater on site. Our one major concern with the remaining grassed area is that it should not be fertilized, which is a prohibited use in the Shoreland Protection Zone (175.73). According to the owners, this lawn is currently being fertilized by a lawn care service. We ask that the Planning Board include a prohibition on fertilizer use on the lawn at unit 1 as one of the conditions of approval. “

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

See above excerpt from the Conservation Commission’s letter to the Planning Board

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(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:

- a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

See above excerpt from the Conservation Commission’s letter to the Planning Board

And

- b. the proposed use is a reasonable one because:

See above excerpt from the Conservation Commission’s letter to the Planning Board

Or

3(B). Owing to special conditions of the property that distinguishes 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.

4. By granting the variance substantial justice would be done because:

See above excerpt from the Conservation Commission's letter to the Planning Board

5. The use will not be contrary to the spirit and intent of the ordinance because:

See above excerpt from the Conservation Commission's letter to the Planning Board