



**TOWN OF DURHAM**  
8 NEWMARKET RD  
DURHAM, NH 03824  
PHONE: 603/868-8064  
[www.ci.durham.nh.us](http://www.ci.durham.nh.us)

RECEIVED  
Town of Durham  
OCT 24 2018  
Planning, Assessing  
and Zoning

## **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, 8 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: ARNE LLC c/o Ray Donahue, Member

Address: 37 Leonard Avenue, Hookset, NH 03106 Phone # 603-264-1034

Email: arne.llc@yahoo.com

Owner of Property Concerned: Same as Applicant  
(If same as above, write "Same")

Address: Same as Applicant  
(If same as above, write "Same")

Location of Property: Tax Map 17, Lot 13-2 - 221 Packers Falls Road  
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) Tax Map 17, Lot 13-2; See Site Plan and Narrative filed herewith which are incorporated by reference.

**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 \_\_\_\_\_

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**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: \_\_\_\_\_

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**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 XII.1 Section 175-54 of the Zoning Ordinance to permit the subject property to have a lot area of 35,579 sq/ft where 150,000 sq/ft minimum is required in the Rural Zoning District after proposed lot line adjustment with abutting property 13-1.

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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:  
**\_\_\_\_\_ Please see Site Plan, Adjustment Plan ,and Narrative filed herewith which are incorporated by reference for responses to Criteria 1 -5.** \_\_\_\_\_

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

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:

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and

b. the proposed use is a reasonable one because:

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**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.

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

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

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**TOWN OF DURHAM  
NARRATIVE IN SUPPORT OF  
VARIANCE REQUEST**

Arne LLC (Owner/Applicant)  
Ray Donahue, Member  
221 Packers Falls Road  
Durham, NH 03824  
Tax Map 17, Lot 13-2

**INTRODUCTION**

ARNE LLC is the applicant and owner of property located at 221 Packers Falls Road, shown on Tax Map 17 as Lot 13-2 (the “Property”). The Property is located in the Rural - Residential Zoning District (the “R Zoning District”). In addition, the Property is located within the Wetlands Conservation Overlay District (the “WCOD District”).

The Durham Zoning Board of Adjustment (the “Board”) granted a Special Exception to the Applicant at its October 2018 public meeting to allow a single-family residence to be constructed on the Property within the WCOD District. Concurrent with this variance request, the Applicant is seeking further relief by way of Special Exception in order to construct the required septic system within the front yard setback to service the residence.

The Property is unique. The origins of the original lot, which was later increased in size via a boundary line adjustment, goes back to a deed recorded in 1910.<sup>1</sup> The Property is a “vacant” lot that does not contain any structures outside of a shed. The Property does not comply with the minimum lot area requirement set forth in the Durham Zoning Ordinance (the “Ordinance”) for the R Zoning District. It contains just over 1/3<sup>rd</sup> (55,444 sf.) of the total lot area required in the R Zoning District (150,000 sf.) and is oddly shaped as shown on the attached Site Plan (“Site Plan”).

In addition to the Property being unique by way of its history, it is also uniquely burdened by the fact that the house located on the abutting property to the north (Lot 13-1) is partially constructed over the shared boundary line with the subject Property.

The Applicant desires to submit with the Planning Board a lot line adjustment plan to effectuate the more orderly development of the subject Property and Lot 13-1, as well as to eliminate the encroachment of the 13-1 house onto the Property. In order to do so, the Applicant requires variance relief because the lot line adjustment will cause the Property to reduce in lot area,

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<sup>1</sup> The Property is described as two distinct parcels of land in the current and past deeds to the Property – “Tract I” and “Tract III”. However, the Town has reached the conclusion that “Tract III” as described in the current deed to the Property was never created as a separate lot. Rather, it represents a land area that was appended to (merged with) Tract I per a boundary line adjustment approval granted by the Durham Planning Board in 1984 and subsequent deed conveyance. The plan depicting the land area referred to as “Tract III” in the chain of title to the Property was recorded in the Strafford County Registry of Deeds as Plan 0025-0019 (entitled “Subdivision of the Property of Albert Laroche Wiswall Road, Durham, N.H.”). As demonstrated on Durham Tax Map 17, the Town considers Tract I and III to be one parcel of land (Tax Map 17, Lot 13-2; 221 Packers Falls Road). The first recorded deed describing the parcel referred to as “Tract I” was executed in 1910 and recorded at Book 359, Page 197 in the SCRD.

thus creating a greater nonconformity with the Ordinance. Please see the attached Plat Showing Lot Line Adjustment (“Adjustment Plan”).

### **VARIANCE RELIEF**

The Applicant seeks the following variance from Article XII.1, Section 175-54 (Table of Dimensions), as summarized below:

- 1) Lot Size – 35,579 sq/ft +/- where 150,000 sq/ft is the minimum required.

### **VARIANCE CRITERIA**

**A. *The public interest and spirit of the ordinance will be observed by granting the variance relief.***

The proposed reduction in lot area will not threaten public health, safety and welfare, will not create any traffic burden to the neighborhood and will have no negative impact on municipal services. The Board has already granted relief for a single-family residence to be constructed on the Property evidencing, in effect, that the further development of the Property is in the public interest and spirit of the ordinance. The grant of this variance relief would not have any additional effect on public health, safety, welfare, and would not create any further traffic burden to the neighborhood, nor create a negative impact to municipal services.

The Property is currently vacant and surrounded by single-family residences to the north and east, a large wooded area to the south, and a farm to the west. Seeing that the Board already granted relief to construct a single-family residence on the Property, it is reasonable to submit that there are no privacy, landscaping, light, air or space concerns with respect to the reduction in lot area. Accordingly, the variance relief proposed will not alter the essential characteristics of the neighborhood or impact the public or abutters in any negative way. In fact, it will help abutting properties and resolve current issues.

**B. *Substantial Justice will be done by granting the variance relief.***

There is no public benefit served by denying the variance relief sought. However, if the variance relief were to be denied, there would be a detriment to the Applicant and nearby abutting properties, as there would be a continued encroachment of the house located on Lot 13-1 over the shared boundary line. Although this encumbrance could be somewhat remedied by the grant of certain property interests and rights (i.e an easement) it would still create a situation, in perpetuity, where the owners and future owners of the Property and Lot 13-1 would have to deal with the encroachment and it would increase the possibility for future dispute. Granting this variance and allowing the Applicant to proceed to the Planning Board with a lot line adjustment would permanently resolve this current issue and would prevent future issues and disputes from occurring relative to encroachments.

**C. *There will be no diminution in surrounding property values as a result of granting the variance relief.***

Surrounding property values will not be diminished by the grant of relief requested allowing the proposed lot line adjustment to move forward. To the contrary, it is highly likely that surrounding property values (specifically Lot 13-1) will increase due to the fact that this relief will allow the Applicant to eliminate the current encroachment and encumbrance. Furthermore, the Applicant has already obtained the required relief to construct a single-family residence on the Property, so the reduction in lot area would not affect any abutting properties in any tangible way, thus not diminishing surrounding property values

**D. *Literal Enforcement of the Zoning Ordinance provisions would result in an unnecessary hardship.***

**1. *There are special conditions that distinguish the Property from surrounding properties.***

The Property is part of an “ancient” lot of record with it first appearing in the Registry as far back as 1910. *See* Page 1 and footnote 1. Furthermore, as has also been referenced above, the Property and Lot 13-1 underwent a lot line adjustment in 1984 with additional land being appended to the Property (this was the result of confusion between the Applicant and Town regarding how many tracts of land existed due to a poorly designed plan from 1984). The Property, and surrounding lots, generally pre-date the adoption of the Ordinance and have, generally, been further defined and developed over the years by the then current owners’ use of the lots (i.e. farms, wooded tracts, and residences). The Property is unique when you consider that it has remained in an undeveloped state since its creation, and the lot line adjustment in 1984. Furthermore, the Property is particularly unique in that upon information and reasonable belief it is the only parcel in the surrounding area that is being encumbered by an abutting lot’s house encroaching on it.

**2. *There is no fair & substantial relationship between the general purposes of the ordinance provisions and their specific application to Property.***

The Ordinance provisions applicable to the R Zoning District are intended to create standards for lot size, depth, setbacks and density to further the historically rural areas that are low density, are not served or intended to be served by municipal services, and to further preserve the natural and scenic environment of the rural area.

Strictly applying current zoning standards to the Property that pre-date the adoption of current zoning is impractical and is the reason that the court, and subsequently the legislature, has provided an outlet for zoning relief. The Property in its current state is already nonconforming to the Ordinance by being roughly 1/3 the required minimum lot size, so even in its current state strict application of the Ordinance to the Property is impossible. Moreover, the Board has already granted relief that allows for the development of a single-family residence on the Property, so the further reduction in lot size, and consequential increase in lot nonconformity, would similarly have



no fair and substantial relationship to the general purpose of the R Zoning District and its related dimensional requirements.

**3. *The Proposed Use is Reasonable***

The proposed use of the property as a single-family home is, even with the requested reduction in lot area, reasonable in light of the spirit and intent of R Zoning District where single-family residences are permitted by right. Additionally, what is proposed is similar to the character of surrounding properties and homes.


**CONCLUSION**

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variance relief requested. Accordingly, the Applicant respectfully requests that the Board approve the variance relief requested.

Respectfully Submitted,

ARNE LLC

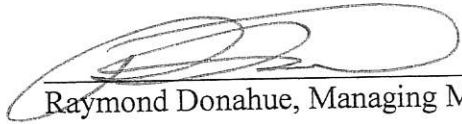
Dated: October 24, 2018

By:   
Colby T. Gamester, Esq. *of counsel*  
DURBIN LAW OFFICES PLLC  
144 Washington Street  
Portsmouth, NH 03801  
Direct Line (603)-427-0000  
colby@gamesterlaw.com

LETTER OF AUTHORIZATION

ARNE LLC, by and through its Managing Member, Raymond Donahue, of 37 Leonard Avenue, Hookset, New Hampshire 03106, hereby grants its authorization and permission to DURBIN LAW OFFICES PLLC to represent it on all permit applications before the Town of Durham, including the Zoning Board of Adjustment, and to file all related municipal applications necessary to seek approval of a single-family residential structure on the property identified on Tax Map 17, as Lot 13-2.

ARNE LLC

  
Raymond Donahue, Managing Member