

TOWN OF LISBON, NH  
ZONING BOARD OF ADJUSTMENT

Dear Town of Lisbon property owner:

Since 1972 the Town of Lisbon has had zoning. It was approved by the town's voters to carry out the town's Master Plan and has been periodically updated by town vote. The stated purpose of zoning is: "to promote the health, safety and general welfare of the inhabitants of Lisbon and to protect the value of property, to prevent overcrowding of land, to provide adequate light and air and to facilitate the adequate provision of the other public requirements." Lisbon's Zoning Regulations and Master Plan can be found on-line at the town's website. Copies are also available for purchase at the town's offices.

Zoning provides a set of rules regulating the use of land. Lisbon voters have determined that it is in the best interests of the town's people to limit the use of land in certain ways. Different sections of town have different limitation. Lisbon's Zoning Ordinances include a definition of different zoning areas and what uses are allowed in those areas by right and by special exception. There are further limitations such as building height that are town wide. There are also limitations specific to certain areas such as those subject to flooding. Additionally, the State of NH and the Federal Government set limitations on land uses.

Zoning does limit owner's use of their own lands. But it also ensures owners that the use of other properties, that can affect their property, is limited to the extent described in the Zoning Ordinances. This assurance brings value to property and comfort to landowners that they can invest with certain assurances about the use of surrounding properties. That does not mean that nothing will change with properties around them. But there is a framework that has some limitations.

Special Exceptions (SEs) and Variances can be granted by the Zoning Board of Adjustment (ZBA or "the board"). But, before granting an SE or a Variance the ZBA board must first determine that all the criteria are met.

**Special Exceptions, are a right, providing that the ZBA can find that ALL THE CRITERIA below are met: Those criteria are:**

- **The specific site is an appropriate location for the use. (8.03.01)**
- **Property values in the district will not be reduced by the use. (8.03.02)**
- **The use will not adversely affect the adjacent area and there are not reasonable objections by the owners of abutting land. (8.03.03)**
- **No nuisance or unreasonable hazard will result (8.03.04)**
- **Adequate and appropriate facilities will be provided for the proper operation and maintenance of the proposed use. (8.03.05)**

If any one of these criteria is not met – the ZBA must deny the SE. This is often hard for the board to do. They would like to help out. But, the board is simply not authorized, by the town's voters, to grant SEs without the criteria actually clearly met.

Article V of Lisbon's Zoning Ordinance specifies the uses for which an SE can be granted. Under each of the zoning district's columns - an "s" denotes a use that can be granted by SE if all criteria are met. The Zoning Ordinance includes a map and description of the districts.

Variances are more complicated. The applicant is basically asking the board to grant approval to do something which is prohibited by the zoning ordinance. Variances are intended to deal with special situations. **The specific requirements for a variance are:**

- **Granting of the variance will not be contrary to the public interest;**
- **The proposed use is not contrary to the spirit of the ordinance;**
- **Granting the variance would do substantial justice;**
- **The proposed use would not diminish surrounding property values; and**
- **Denial of the variance would result in unnecessary hardship to the owner. The terms “unnecessary hardship” are further defined to mean that “owing to special conditions of the property that distinguish it from other properties in the area:**
  - 1. 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**
  - 2. The proposed use is a reasonable one.”**

**All requirements must be met if an approval is to be given.** Please note that these requirements (established at the state level) supersede the requirements in the current (6/22/16) Lisbon Zoning Ordinance.

The ZBA also serves as the Board of Appeals if a property owner believes that an error was made by the Town’s Zoning Enforcement Officer.

The fourth responsibility of the ZBA is to rule on Equitable Waivers of Dimensional Requirements which involve existing dimensional nonconformities.

The State of NH RSAs which govern what a ZBA can and cannot do can be found online. The web address for the index for the RSAs is: [www.gencourt.state.nh.us/rsa/html/nhtoc.htm](http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm). The applicable RSAs are in Chapters 672-678 covering planning and zoning.

The State of NH’s Office of Energy and Planning has an on-line handbook entitled “The Board of Adjustment In New Hampshire, a Handbook for Local Officials”. For those seeking SEs or variances the information in this handbook can be very helpful with detailed explanations and references to individual cases. The web address for this handbook is: [www.nh.gov/oep/planning/resources/documents/zoning-board-handbook.pdf](http://www.nh.gov/oep/planning/resources/documents/zoning-board-handbook.pdf).

It will be up to you, as the applicant, to make the case that your proposal meets the criteria. Other property owners will have the right to disagree. The board will encourage everyone to **specifically** address the criteria. This is not a question of how popular a request is. It is a matter of whether the criteria for approval, are actually met.

If you submit an application that is complete, the ZBA must hold a hearing, within 30 days to consider your application. Your hearing will go through the following steps during the meeting (or meetings) to consider your application:

- You will be asked explain your request.
- Anyone who wishes to speak to support your request will be able to speak.
- Anyone opposing your request will be allowed to speak



- You and anyone favoring the request shall be allowed to speak in rebuttal
- Those in opposition shall be allowed to speak in rebuttal
- The Chair will present a summary setting forth the facts of the case and the claims made for each side.
- Opportunity shall be given for correction from the floor of the facts and claims described.
- The public hearing will be closed.

The board may limit testimony to those individuals who could be directly affected by a decision. The board may also limit the time allowed to each speaker. The board may also request that speakers refrain from repeating points that have already been raised.

In some cases there may be a number of meetings required before a hearing is closed, particularly where abutters are offering testimony in addition to the applicants. Meetings will normally be limited to 1 ½ hours (2 hours if more than one case is being heard).

In complex or contested applications, the board may need additional time to seek expert opinion.

Until the board has gathered all pertinent information, that it considers necessary, to make a decision, you will be asked whether you agree to a “continuance” if the board feels that is required. Please understand that without further time for fact finding, the board must deny the application, since they cannot ascertain that the criteria are met. Should the board deny an application, the applicant cannot return with the same or similar applications for four years. So, we must ask your patience.

The board may choose to make the decision at the same meeting, in which a case is heard. More likely, the board will hold a subsequent meeting within 30 days to approve, approve with conditions or deny your appeal. You and other members of the public will be welcome to attend that meeting but you may not be allowed to participate.

The board may also ask you to pay the cost of hiring an expert, if that is deemed necessary, to ascertain whether the criteria /requirements are met.

If your use could impact landowners in a neighboring town, the board will be required to provide notice to that town and take testimony from that town before closing the hearing. The board may also need to ask the opinion of the Lisbon Planning Board or Conservation Commission or other town officers / committees.

Your approval or denial will be in writing. If you believe the board’s decision is wrong, you have the right to appeal. The selectmen, or any party affected, have similar rights to appeal in your case. To appeal you must first ask the board for a rehearing. The Motion for Rehearing must be in the form of a letter to the board. The motion must be made within 30 days of the decision and must put forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The board will hold a public meeting to consider a request for a rehearing. Testimony is not generally accepted at that meeting. Your reasons for asking for a re-hearing should be very clearly set out in the Motion for Rehearing. The decision will be based on those arguments.

The board may grant such 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 rehearing is held, you must have requested one before you can appeal to the courts. When a rehearing is held, the same procedures are followed as for the first hearing, including public notice and notice to abutters.

Lisbon seeks to have 5 members at all time on the ZBA and additional alternates. However, this may not always be the case as members are volunteers and there are times when the board may not be staffed by the full compliment of 5 members. As a matter of State of NH law, the affirmative vote of 3 members is necessary to approve an application. If the ZBA has less than 5 members to hear your case, you will be asked whether you want to accept a smaller board and proceed. If there are only 3 members available, you will have to convince all off them that your application meets the criteria outlined above. With 4 members you will have to convince 3 of them. If you do not wish to proceed, you may request a continuation of the Public Hearing to another date when there may be five board members present, though the town cannot guarantee a full board at that meeting either. You may also withdraw an application at any time before it is voted upon.

The work of the ZBA is difficult. Members are public spirited volunteers doing their best to make sometimes difficult distinctions regarding whether an application meets the criteria. ZBA members must keep an open mind. They must not follow a personal agenda. They must gather the information to determine that criteria have been met or they must deny the application.

For more detailed information, please refer to:

- The Lisbon Zoning Ordinance, available online at the town's website or for purchase from the town.
- The Lisbon ZBA procedures, available online at the town's website or for purchase from the town.
- Chapters 672 to 678 of the NH RSAs, available on line at the address provided above.
- The Board of Adjustment in New Hampshire Handbook, available online at the address provided above.
- The Lisbon Master Plan, available on line at the town's website.

Applications for Special Exceptions and Variances are available from the town's offices. If you are appealing to the ZBA because you were denied a building permit or are affected by some other decision regarding the administration of the Town's Zoning Ordinance, you must provide a copy of the denial or written advice of non-compliance.

The ZBA urges you to provide as comprehensive a set of information as possible pertaining to the criteria that the ZBA must consider. You will likely need to attach relevant additional documentation such as plot plans. Those should generally be prepared by a surveyor or other licensed third party with expertise in preparing site plans. You should feel free to include additional pages in your application as attachments. For instance, you may insert the words – see attachment A,B,C etc. on the application if there is not enough room on the form to include all the points you wish to raise. Simply stating that you meet a criteria is not enough. The ZBA needs to understand how and why you meet that criteria. The town staff are available to help you in understanding the process and preparing your application.

You must provide a copy of any prior application for the same or similar requests. Note that if you are turned down by the ZBA you must wait 4 years to reapply for the same or a similar approval.



You must provide a list of all abutting property owners and have it verified by the town and attach it to your application. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices and publishing notice in the local paper. The notice shall be published in a newspaper of general circulation. All fees must be paid before your application will be considered complete.

Public notice of the hearing will be posted and printed in the 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 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 the reasons why the appeal should or should not be granted.

We hope that you don't find this daunting. We hope to make it as easy as possible. But we are a quasi-judicial board with decision making authority limited by Lisbon's Zoning Ordinance and State Law. We will listen respectfully to your proposal. We will listen respectfully to any opposition. We will rely both on the testimony and our own knowledge.

Board members may not discuss the merits of your proposal with you or with your opposition except at a noticed public meeting. We will not discuss the merits of your proposal, amongst ourselves, except at a noticed public meeting.

ZBA members will need to visit your site. Without public notice, no more than 2 members, will visit at a time. By making an application, you are agreeing to ZBA members entering your property to better understand your request and how the proposed usage might impact other properties. If you have preferences regarding the visit – please let us know.

Sincerely,

Your Lisbon ZBA

Dated:

*July 14, 2016*