

- (h) The gross square foot floor area of the building housing the existing nonconforming use will not be expanded as a result of the replacement.
 - (i) The replacement will be equally or more compatible with the neighborhood, will contribute to neighborhood socioeconomic needs or will otherwise be in the public interest.
- (3) The applicant surrenders all rights in the previously existing nonconforming use.

§ 235-68. Abandonment; termination due to abandonment.

The term "abandonment," as used herein, shall mean the voluntary discontinuance of a nonconforming use or the occupancy of a nonconforming structure. Normal, seasonal cessation of a use or a temporary discontinuance for purposes of maintenance, rebuilding after damage or destruction or maintenance or improvements permitted under this article shall not be included in calculating the period of discontinuance. Any one of the following shall constitute evidence of abandonment of a nonconforming use:

- A. Failure to make a good faith effort to take the necessary steps to resume the nonconforming use or occupancy with reasonable dispatch in the circumstances, such as advertising of the property for sale or for lease.
- B. Discontinuance of the occupancy or nonconforming use for 12 consecutive months.

ARTICLE XI
Zoning Board of Adjustment

§ 235-69. Zoning Board of Adjustment established; composition; officers; application procedure.

- A. Appointment and terms. Pursuant to RSA 673, Establishment of Boards, a Zoning Board of Adjustment shall be established, consisting of five members and up to five alternate members, all appointed by the City Council for three-year terms. Alternate members may fulfill the duties and responsibilities of a regular member when a regular member is disqualified from consideration of a particular application.
- B. Organization and rules of procedure. On an annual basis, the Board shall elect a Chairman and other officers from among its membership. The Board shall adopt, and from time to time amend, rules of procedure for the conduct of its business. The rules of procedure shall establish a regular meeting schedule so as to allow for the expeditious consideration of appeals.
- C. Application procedure. Application procedures are as indicated in this section and by RSA 676:5-7, Zoning Board of Adjustment. Where there is a conflict the more stringent provisions shall apply.
 - (1) Application fees. A nonrefundable fee shall be submitted together with an application to cover the costs of the advertising, notification and processing of the

application as well as any special investigative studies deemed necessary by the Zoning Board of Adjustment.

- (2) Submission materials. An application to the Zoning Board of Adjustment shall include a completed application form, and plans and supplemental information as may be required for the specific type of appeal. The application shall be filed at least 14 days before a regularly scheduled meeting of the Zoning Board of Adjustment and one copy shall be forwarded to the Planning Board.
- (3) Notification. A notice of a public hearing on an application shall be given to the applicant and to all abutters by certified mail not less than five days before the date of the hearing. Notice shall also be provided to each member of the Zoning Board of Adjustment and a notice shall be sent to the Planning Board. A public notice of the hearing shall be placed in a newspaper of general circulation in Laconia, not less than five days before the date of the hearing.
- (4) Public hearing. At the public hearing, the Zoning Board of Adjustment shall hear or receive oral or written testimony from the applicant and all abutters, and any nonabutters who can demonstrate that they are directly affected by the application upon which the hearing is being held.
- (5) Action on the application. The Zoning Board of Adjustment shall approve, deny or approve with conditions each application upon which a hearing has been held. Action on the application may be tabled by the Zoning Board of Adjustment from the date of the hearing to another meeting of the Board. A concurring vote of three members of the Zoning Board of Adjustment shall be necessary for a decision on an application. Only members who were present at the hearing may vote on the application.
- (6) Issuance of a decision. Within 72 hours after a vote on an application, a written record of the decision shall be available for public inspection at the office of the Zoning Board of Adjustment. The record of decision shall state whether the application was approved or denied, include any conditions if approved, and state the reasons for the decision. A copy of the record of decision shall be sent to the applicant by first-class mail, and copies shall be made available to the Director of Planning and Community Development or his or her designee, the Director of Public Works, the City Assessor and the Director of Planning.³⁷
- (7) As provided for by RSA 677:2, any party to the action or any person directly affected thereby may move for a rehearing in respect to any matter determined in the decision and must specify such grounds in the motion for rehearing. The Zoning Board of Adjustment may grant a rehearing if, in the opinion of the Board, there is sufficient reason presented in the applicant's motion for rehearing.
[Amended 9-10-2001 by Ord. No. 06.2001.06]

37. Editor's Note: The term "Director of Code Enforcement" was changed to "Director of Planning and Community Development or his or her designee" in this subsection pursuant to the provisions of Ord. No. 07.2000.07, adopted 8-14-2000.

- (8) Appeal to Superior Court. No appeal from any decision of the Zoning Board of Adjustment may be taken to the Superior Court unless the appellant has first made application for a rehearing as provided above.

§ 235-70. Powers and duties of Zoning Board of Adjustment.

A. Interpretation of this chapter.

- (1) The Zoning Board of Adjustment shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination by the Director of Planning and Community Development or his or her designee in the administration and enforcement of this chapter. The Board may affirm or reverse such order, requirement, decision or determination, in whole or in part, or may modify the same. **[Amended 8-14-2000 by Ord. No. 07.2000.07]**
- (2) The Board shall hear and render determination on any questions relative to the meaning and intent of any provision of the text of this chapter.
- (3) The Board shall hear and render determination on any question relative to the exact location of any district boundary shown on the Zoning Map.

B. Authorization of variances.

- (1) Upon appeal, the Zoning Board of Adjustment may authorize a variance from the terms of this chapter for a parcel of land, an existing building or a proposed building.
- (2) The Zoning Board of Adjustment may authorize a variance from this chapter only where it confirms in writing all of the following:
 - (a) An unnecessary hardship would be imposed by a literal application and enforcement of the provisions of this chapter. The following information must be provided to support a finding of unnecessary hardship: **[Amended 9-10-2001 by Ord. No. 06.2001.06]**
 - [1] Explain how the proposed use of the property is reasonable, considering the unique setting of the property in its environment, and how the zoning restriction interferes with that reasonable use;
 - [2] Explain why applying the zoning restriction to the property will not further the general purpose of the zoning restriction; and
 - [3] Explain why granting the variance will not harm the public or private rights of others.
 - (b) Authorization of a variance will not be contrary to the public interest.³⁸

38. Editor's Note: Former Subsection B(2)(b), regarding confirmation of the uniqueness of the hardship, was deleted 10-9-2001 by Ord. No. 07.2001.07, and former Subsection B(2)(c) through (e) were relettered accordingly.

- (c) The spirit of this chapter shall be observed and substantial justice done in the authorization of a variance.
 - (d) No diminution in the value of surrounding properties would be suffered as a result of the authorization of the variance.
- (3) The applicant bears the burden of presenting evidence sufficient to allow the Zoning Board of Adjustment to reach conclusions and make findings to support the authorization of a variance.
- (4) In authorizing a variance, the Zoning Board of Adjustment may impose such conditions and stipulations as it deems necessary and proper in order to fulfill the purposes and intents of this chapter.
- C. Granting of special exceptions.
- (1) The Zoning Board of Adjustment shall hear and decide requests for special exceptions that are specifically authorized in the Table of Permitted Uses³⁹ or elsewhere in this chapter.
- (2) The Zoning Board of Adjustment shall grant a request for a special exception only where it confirms in writing each of the following findings:
- (a) The use requested is specifically authorized in this chapter.
 - (b) The requested use will not create undue traffic congestion or unduly impair pedestrian safety.
 - (c) The requested use will not overload any public water, drainage or sewer system or any other municipal system, nor will there be any significant increase in stormwater runoff onto adjacent property or streets.
 - (d) The requested use will not create excessive demand for municipal police, fire protection, schools or solid waste disposal services.
 - (e) Any special provisions for the use as set forth in this chapter are fulfilled.
 - (f) The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the use of or out of character with the adjacent neighborhood.
 - (g) The proposed location is appropriate for the requested use.
 - (h) The requested use is consistent with the spirit and intent of this chapter and the Master Plan.
- (3) The applicant bears the burden of presenting evidence sufficient to allow the Zoning Board of Adjustment to make findings required to support the granting of a special exception.

39. Editor's Note: Said table is included at the end of this chapter.

- (4) In granting a special exception, the Zoning Board of Adjustment may attach conditions as it deems necessary to assure compliance with the purposes of this chapter. Such conditions may include but are not limited to the following:
 - (a) Increasing the lot size or setback area dimensions.
 - (b) Limiting the lot coverage or building height.
 - (c) Specifying the location and limiting the number of vehicular access points to the property.
 - (d) Requiring additional on-site parking or loading spaces.
 - (e) Requiring additional landscaping and screening.
 - (f) Limiting the number of occupants of a building, and the methods and times of operation of a use.
 - (g) Restricting the number, size and illumination of signs.
 - (h) Modification of the exterior appearance of a building.
 - (i) Providing for specific locations or layout of facilities on the property.
- D. Equitable waiver of dimensional requirement. **[Added 10-14-1997 by Ord. No. 10.97.10]**
 - (1) Waivers.
 - (a) When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the Zoning Board of Adjustment shall hear and decide requests for an equitable waiver of dimensional requirement under the terms of this chapter.
 - (b) Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use and shall not exempt future use, construction, reconstruction or additions to the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.
 - (2) The Zoning Board of Adjustment shall grant an equitable waiver of dimensional requirement, upon application by and with the burden of proof upon the property owner, if and only if the following findings are made:
 - (a) The violation was not noticed or discovered by the owner, former owner, owner's agent or representative or municipal official until after a structure in

violation had been substantially completed or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner's agent or representative but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent or by an error in ordinance interpretation or applicability by a municipal official in the process of issuing a permit over which that official had authority;
 - (c) That 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; and
 - (d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected.
- (3) In lieu of the findings required by the Board under Subsection D(2)(a) and (b), the owner may demonstrate to the satisfaction of the Board that the violation existed for 10 years or more and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

ARTICLE XII

Conditional Use Permits

§ 235-71. Planning Board to administer. [Amended 10-14-1997 by Ord. No. 10.97.10]

Wherever a conditional use is authorized by this chapter, the authority to administer or grant conditional use permits shall be vested in the Planning Board and authorized pursuant to RSA 674:21, Innovative Land Use Controls.

§ 235-72. Application and review procedure.

An application for a conditional use shall be initiated by filing with the Planning Board for an application for a conditional use permit. The following procedures shall apply to the processing of such application:

- A. Where other required development approvals for a conditional use include subdivision or site plan approval by the Planning Board, the application, review procedure, and length of approval for a conditional use permit shall be made concurrently and in accordance with the procedures specified in the subdivision regulations or site plan regulations as applicable to the particular development.