

**Re: Variance from Zoning Ordinance / Appeal of 674:41 denial**

From [frank\\_benesh@roadrunner.com](mailto:frank_benesh@roadrunner.com)

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Date: **April 04, 2013 3:12:48 PM**

[ZBA 2010 VARIANCE APP.doc \(60.9 KB\)](#), [ZBAappchecklist.doc \(49.26 KB\)](#),  
[ZBAappinstructions.doc \(65 KB\)](#), [ZBAadminappealapp.doc \(60.21 KB\)](#)

Attached are forms for a variance and an appeal of an administrative decision. You will need to file both. Please do let me know with questions.

Additional instructions:

- please provide abutter's address list on labels (3 copies of each abutter) on Avery label form 5160/8160 or equivalent. (1" x 2 5/8").
- please provide entire package in electronic form in addition to hard copy per instructions.

On Apr 3, 2013, at 12:29 PM, [frank\\_benesh@roadrunner.com](mailto:frank_benesh@roadrunner.com) wrote:

I do not have a copy of the letter of denial of a Building Permit, but from our discussion I believe you have two issues, (a) Section 4.3.1.2 of the Town of Jackson Zoning Ordinance which requires a 200 ft of Frontage on a public or Private Road right of way and (b) the state law RSA 674:41 which (in part) requires access to street before the grant of a building permit and specifically excludes access to a lot via a private easement or right-of-way.

RSA 674:41 is available at <http://gencourt.state.nh.us/rsa/html/LXIV/674/674-41.htm> and the Jackson Zoning Ordinance is available at [http://www.jacksonvillage.net/public\\_documents/index](http://www.jacksonvillage.net/public_documents/index).

The Board of Adjustment is able to grant variances from the Zoning Ordinance and also has the ability to hear an appeal of the denial of a building permit due to RSA 674:41. So I believe you are going to be (1) requesting a variance from Section 4.3.1.2 of the Zoning Ordinance and (2) appealing an administrative decision relative to the denial of a permit to build due to the lack of access to a street required by 674:41.

To grant a variance, we must find that an applicant has meet 5 specific criteria (which are to be addressed in the application).

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed;
- (3) Substantial justice is done;

- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

(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 public purposes of the ordinance provision and the specific application of that provision to the property; and (ii) The proposed use is a reasonable one.

(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 is therefore necessary to enable a reasonable use of it.

More information on precisely what each of these tests mean can be found beginning on page II-9 at

[http://www.jacksonvillage.net/Public\\_Documents/JacksonNH\\_BComm/zbahandbook.pdf](http://www.jacksonvillage.net/Public_Documents/JacksonNH_BComm/zbahandbook.pdf)

To grant an appeal of the decision relative to permits to build without access to a street (RSA 674:41), the ZBA has the authority to grant the permit subject to any reasonable conditions. The statute lists standards that must be met before the permit may be granted. To allow the building, the board must find all of the following:

- (1) That the enforcement of RSA 674:41’s minimum frontage requirements would “entail practical difficulty or unnecessary hardship;” and
- (2) That the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets; and
- (3) That the erection of the building will not tend to distort the official map or increase the difficulty of carrying out the master plan; and
- (4) That erection of the building will not cause hardship to future purchasers or undue financial impact on the municipality.

The ZBA is a quasi-judicial body that must act on specific applications. Once we receive a complete application, we must provide public notice (including certified letters to abutters), hold a public hearing to hear testimony from the applicant and abutters, consider the request for a variance or appeal, deliberate, and then deny or grant the variance and/or appeal. Including the time an applicant will spend preparing a variance application, the

time necessary to prepare and provide public notice, the specified notice periods, holding the public hearing and make a decision, one should expect at least a month. There is a statutory requirement to have a hearing within 30 days of receipt of a completed application. Our ZBA meetings are generally on the third Wednesday of the month, but we sometimes can reschedule if there is only one issue on the agenda.

As a guide, prior applications for variances can be found at [http://www.jacksonvillage.net/public\\_documents/JacksonNH\\_ZBAMinutes/Applications/](http://www.jacksonvillage.net/public_documents/JacksonNH_ZBAMinutes/Applications/) and our decision can be found at [http://www.jacksonvillage.net/public\\_documents/JacksonNH\\_ZBAMinutes/Decisions/](http://www.jacksonvillage.net/public_documents/JacksonNH_ZBAMinutes/Decisions/)

I will try to get copies of the necessary forms to you in a email later today or Thursday at the latest, but this should give you a good overview.