

APPLICATION FOR AREA VARIANCE
BOARD OF ADJUSTMENT
PO Box 268, Jackson, N.H. 03846

Revised 01/08

An Area Variance (also called a dimensional variance) is one which involves physical aspects of a property such as building height or size, setback, frontage or lot size. If you have questions about an area variance or this application, additional information can be found in the application instructions or by contacting the Chairman, Jackson Board of Adjustment.

Do not write in space below:

Case No. _____ Date Filed _____

ZBA Signature _____ Public Hearing _____
Decision _____

Applicant Signature  Date 3/28/14

TAX LOT NUMBER: R-13, Lot 19

Name of applicant: Arthur R. Couture

Address: 155 Sweden Street
Berlin, NH 03570
arcouture@ne.rr.com

Owner: Same

Location of property: Greenhill Road

Acres: 60

A variance is requested from NH RSA §674:41 to permit:

The construction of a residence, attached garage and barn on the property. Initially Arthur R. Couture's (hereinafter "*Applicant*") construction plan involved building a barn. Thereafter he intends to build a house with an attached garage.

In order for a variance to be granted all of the following conditions must apply:

1. The value of surrounding property will not be diminished because:
The access road and applicant's property have existed for a very long time. The building of a residence with attached garage and barn will not diminish the value of the surrounding property. To the contrary, these improvements will add value to the abutting land as well as the Applicant's land. On April 30, 2013, the Town of Jackson, NH (hereinafter "*Town*") issued a Driveway/Underground Cable Permit for Applicant to build a driveway from Greenhill Road up to where the prospective barn and house would be built, so long as the driveway construction met a 15% grade and complied with all other Town requirements. Your Applicant engaged a professional engineer to design the driveway to these specifications. Because the location of the driveway is in an area that does not impact other existing homes or developed property there can be no loss of, or diminished value to, the surrounding property.

Construction of this permitted driveway was substantially completed around the end of November, 2013.

The residence, attached garage, and barn will not diminish the value of surrounding property because they are to be constructed at the end of the permitted 6000' long driveway. The location where the driveway was

constructed is predominantly or entirely secluded from neighbors due to its distance from Greenhill Road and the obstruction of its view by trees and landscaping on the property.

2. The variance will not be contrary to the public interest because:

The construction of a residence with attached garage and barn on the property will not interfere with any public interest or affect the overall well-being of other Jackson, NH residents, businesses, or nearby properties. Appropriate and quality development that does not adversely impact other residents or the Town but adds value to the tax base is consistent with, and in furtherance of, the public interest. The laws at issue with respect to this variance exist to prevent hardship to a town or its residents where the town could acquire future responsibility for a means of access. Here, a driveway is being constructed consistent with the Town's standards based on professional engineering drawings. The drawings and driveway have been reviewed by the Fire Chief, who has no objection so long as it is constructed according to Town standards. Accordingly, appropriate access for emergency and law enforcement vehicles will exist. Maintenance of the driveway will be the sole responsibility of the Applicant and all future owners.

3. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship. To establish unnecessary hardship for an area variance, you must prove that:

a. An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property because:

The special condition of Applicant's property is a 6000' long driveway that he is constructing, which leads to an area on his property where he has proposed to build a barn and thereafter a residence with an attached garage. The Town of Jackson, NH granted your Applicant a Driveway/Underground Cable Permit ("Driveway Permit") on April 30, 2013. In a subsequent phone call, your Applicant was told by the Town's Building Inspector the state statute which is the basis of the current denial of Applicant's building permit did not apply. He indicated to your Applicant because access had existed for a long period of time and a Driveway Permit had been issued, the parcel at issue was not landlocked so that RSA 674:4 was not applicable. Accordingly, a building permit could be granted when he applied for construction of his residence, attached garage and barn. Your Applicant's intention when purchasing this property and applying for a Driveway Permit has always been to build a home with an attached garage and storage barn on the property. Your Applicant began constructing the R-13, Lot 19 driveway on June 28, 2013 and it was substantially completed at the end of November, 2013. See Start of Construction Notification, dated June 19, 2013.

Your Applicant has thus far expended approximately \$250,000.00 to construct the approved driveway in reliance on the Driveway Permit he was issued and the representations a building permit could be issued. His understanding was based on communications with Town officials including the Building Inspector that a building permit could be approved by the Town. As previously stated, your Applicant was assured by the then Building Inspector following issuance of the Driveway Permit and before driveway construction started that the legal reason now given for denying a building permit was not a basis upon which a permit could be denied. To deny an area variance now, after your Applicant's substantial financial and personal investment in constructing the driveway in reliance on his Driveway Permit and assurances he could receive a building permit, would result in an unnecessary hardship. It would also be unfair, unreasonable and unjust.

b. The benefits sought cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance because:

The only way your Applicant can construct the proposed residence on his property is by the granting of this area variance from the Zoning Board of Adjustment. Initially, the Building Inspector advised your Applicant

that the related state statute did not apply. Applicant's lot was an existing lot that had an existing access road, therefore it was not landlocked and the ordinance and statute did not apply. In reliance on this representation and determination your Applicant reasonably understood the Town could issue him a building permit. The Board of Selectmen's minutes from their February 6th, 2014 meeting indicate the current Building Inspector had reached the same conclusion even though the former Inspector had changed his position and the Selectmen agreed a permit for your Applicant should be signed. (*See Board of Selectmen Minutes – 02/06/2014*). It was in reliance on this opinion your Applicant constructed a driveway at substantial expense with the full knowledge of the Town. Your Applicant has no other means by which to utilize his property except by use of the existing driveway permit and the granting of this variance.

According to RSA §674:4, II *“the board of adjustment [upon an appeal or application for variance to the zoning board of adjustment]... may make any reasonable exception and shall have the power to authorize or issue a permit, subject to such conditions as it may impose, if the issuance of the permit or erection of the building would not tend to distort the official map or increase the difficulty of carrying out the master plan upon which it is based, and if erection of the building or issuance of the permit will not cause hardship to future purchasers or undue financial impact on the municipality.”* See NH RSA §674:41, II. This is the only method reasonably feasible for Applicant to pursue, and as such he has filed this application for an area variance.

Because the driveway is being constructed consistent with all town standards and requirements and according to professional engineering drawings your Applicant has met all the conditions that were imposed. The granting of a variance will not distort the official map of the Town; nor will it increase the difficulty in carrying out the master plan. Issuance of a permit will not cause future purchasers or the Town undue financial hardship or impact because of the standards to which the driveway has been constructed. The Fire Chief has indicated so long as the driveway is constructed according to these standards and requirements he saw no issue with Town emergency or law enforcement vehicles accessing the property. The Town is not being asked to assume any responsibility for the maintenance of the driveway.

4. Substantial justice is done because:

Substantial justice will be accomplished by granting an area variance for Applicant's construction of the proposed residence in light of the considerable expense already spent building a driveway based on professional engineering drawings that were reviewed and approved by the Town. Your Applicant has ensured that all Town standards and regulations have been followed in doing so. Your Applicant was informed that his building permit could be approved and he relied on those determinations and the Driveway Permit he was issued. Should your Applicant not be granted an area variance as to his building permit application, he would have relied on Town officials' representations to his detriment and the detriment of the community. Not only will the Applicant lose the approximately \$250,000, time and energy expended on constructing the approved driveway, but he will not be able to utilize his property for his residence and its value as a whole will substantially decrease.

5. The variance is consistent with the spirit of the statute because:

The intent of the ordinance and the related state statute is to limit those instances where a town may ultimately through no fault of its own, become responsible for access roads to houses that do not have frontage on existing town roads. In this instance, Applicant is building a driveway consistent with all applicant Town standards and regulations based on professional engineering drawings. These drawings have been reviewed by the Town and found satisfactory. The Fire Chief has reviewed the drawings and visited the site and expressed no concerns or reservations as to access over the driveway by the Fire Department. The Town will have no responsibility for the maintenance of Applicant's driveway that leads to his planned

residence, attached garage and storage barn. Accordingly, the spirit and intent of the statute are not disturbed by the granting of this variance.

The following additional information must be completed regarding the property in question:

Is any Use or Structure currently Non-Conforming? YES ___ NO X

If yes, explain in detail:

Does the property in question including all existing or proposed building, signs, driveways, and septic systems meet Jackson Zoning Ordinance requirements and applicable state regulations? YES X NO ___

If no, explain in detail:

ADDITIONAL INFORMATION: Summarize below any information from preliminary discussions with any state agency personnel in regard to the case. In addition, attach copies of any correspondence from state agencies, or Jackson officials and boards pertaining to the property.

See attached email communications and Jackson Board of Selectmen Meeting Minutes.

Attach all pertinent document and correspondence.

NOTE: This application is not acceptable unless all required statements have been made.


Use additional attachments or separate sheet to provide answers to questions not already covered if the space provided is inadequate.

IMPORTANT NOTICE: Board of Adjustment By-Laws state that information from the applicant and/or his representatives must be provided to the Board no less than 7 calendar days prior to the date of the public hearing.

ARTHUR COUTURE
155 SWEDEN ST.
BERLIN, NH 03570-3063

123
52-60/112
182

3/28/14
Date

Pay to the Order of Town of Jackson \$ 75.00
Seventy Five & 00/100 Dollars  Security Features Details on Back.



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For Area Variance  MP

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