

## **ZONING BOARD OF ADJUSTMENT [ZBA]**

The Rye Zoning Board of Adjustment is part of the Planning and Zoning Department. It is a quasi-judicial board. It reviews the Zoning Ordinance and case law to evaluate whether an applicant merits a particular waiver, exception or variance from the Zoning Ordinance or Building Code.

The powers of the ZBA are set forth in RSA 647:33 and include the powers to hear administrative appeals, to grant variances and special exceptions, and to grant equitable waivers of dimensional requirement. In exercising such powers, the ZBA may reverse or affirm, wholly or in part or may modify the decision appealed from and may make such decision as ought to be made. Moreover, in making any decision, the Rye Zoning Ordinance and Rye Zoning map provide the legal basis for the Board of Adjustment's work.

The ZBA provides necessary flexibility to ensure that the Rye Zoning Ordinance is applied equitably to all property. In addition to statutory law, there is also case law which is the interpretation courts have given to various statutes and ordinances when applied to specific cases. Caselaw further clarifies the provisions contained in both state and local regulations.

RSA 674:16 specifies that the "zoning ordinance shall be designed to regulate and restrict:

- (a) The height, number of stories and size of buildings and other structures;
- (b) Lot sizes, the percentage of a lot that may be occupied, and the size of yards, courts and other open spaces;
- (c) The density of population in the municipality; and
- (d) The location and use of buildings, structures and land used for business, industrial, residential, or other purposes."

Every zoning ordinance adopted in New Hampshire must include the establishment of a ZBA. RSA 673:1 The members can either be elected or appointed. RSA 673:3 After the March 2012 Rye Election, the ZBA members of Rye must be elected. The ZBA consists of five members each to serve three year terms. The terms are staggered. The current Rye Zoning Board consists of five members and up to five alternates appointed by the Select Board to staggered 3-year terms.

The Zoning Board meets at 7:00PM on the 1st Wednesday of each month in the Court Room of Town Hall. There are different types of Applications that can be submitted to the Zoning Board (Special Exception, Variance, Administrative Appeal, Waiver of Building Code and Equitable Waiver). An applicant seeking a Variance must first obtain a building permit denial from the Building Inspector. For more specifics on these Applications and their requirements, go to the Zoning Board page on the Rye website (<http://www.town.rye.nh.us/zoning/>) and download Instructions to Applicants from the Forms pull-down menu. The deadline for submittal of applications to be discussed by the Board is the second Friday of each month. Specific deadlines are posted on the website.

• **VARIANCE:** A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the Rye Zoning Ordinance. A denial for a Building Permit is first required before an applicant can apply for a variance before the ZBA. For a variance to be legally granted, you, the Petitioner, must show that your proposed use meets all five of the following criteria:

1. Granting the variance would not be contrary to the public interest.
2. Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship,
3. The variance would be consistent with the spirit of the ordinance.

4. Granting the variance would do substantial justice.
5. No diminution in the value of surrounding properties would be suffered.

• **SPECIAL EXCEPTION:** A special exception is an authorization, which may be granted under special circumstances, for a specific use that is a permitted use under the Zoning Ordinance so long as the use complies with specific conditions as set forth in the Ordinance.

• **EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT:** As provided for under N.H. RSA 674:33-a (and Section 1.4.2.1 of the Zoning Ordinance):

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, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the Board makes specific findings.

• **APPEAL FROM AN ADMINISTRATIVE DECISION:** Appeals to the Board of Adjustment concerning any matter within the Board's powers as set forth in RSA 674:33 and RSA 676:5 may be taken by any person aggrieved, or by any officer, department, board, or bureau of the municipality affected, a) from a

decision of an administrative official, or b) from a Planning Board decision or determination, in the exercise of subdivision or site plan review, which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the Board of Adjustment if it had been made by an administrative officer.

• **APPEAL OF BUILDING CODE DECISION:** In Rye, the Zoning Board of Adjustment acts as the Building Code Board of Appeals. The Board has the power, upon an appeal filed with it by any person aggrieved by a decision of the building inspector dealing with the building code, to vary the application of any provision of the building code to any particular case when, in its opinion, the enforcement of the building code would do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

To contact the Rye Zoning Board: Kimberly Reed, Planning and Zoning Administrator at (603) 379-8081 or [kreed@town.rye.nh.us](mailto:kreed@town.rye.nh.us) Monday-Friday 8:00 AM. - 3:00 PM.