

APPLICATION FOR APPEAL

To:
Zoning Board of Adjustment
Town of Greenville
Greenville, NH 03048

Do not write in this space.
Case No _____
Date filed 11/10/2004
(signed - ZBA)

Name of applicant Adam Ames
Address 370 Boston Post Road, Sudbury, MA 01776
Owner Adam Ames
(if same as applicant, write "same")

Location of property 27 Columbian Avenue
(number, street)
Tax Map 2 Parcel 35, Zoned Residential (R)
(map number & lot number, zoning district)

NOTE: Fill in Section 1, 2, 3, or 4 as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. Sign application at end.

Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of zoning ordinance.

Decision of the enforcement officer to be reviewed _____

_____ Number _____ Date _____

article _____ section _____ of the zoning ordinance in question: _____

Section 2. APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance article _____ section _____

Section 3. APPLICATION FOR VARIANCE

A variance is requested from ~~article~~ Appendix B6.2 ~~section~~ _____ of the zoning ordinance to permit the construction of a seven (7) unit open space residential development on a lot with a multi-family dwelling, 7.379 acres, and 234.06' of frontage.

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because:

See attached narrative

2. Granting the variance would not be contrary to public interest because:

See attached narrative

3. Denial of the variance would result in "unnecessary hardship" to the owner. The applicant must either meet the criteria of I or II below.

I. Unnecessary hardship means owing to the special conditions of the property that distinguish it from other properties in the area:

a. No fair and substantial relationship exists between the general public purposes of the zoning ordinance provision and the specific application of that provision to the property; and

See attached narrative

b. The proposed use is a reasonable one.

See attached narrative

II. If the criteria for unnecessary hardship above are not met an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions on the property that distinguish it from other properties in the area, the property cannot be used in strict conformance with the ordinance, and a variance is therefore necessary to enable reasonable use of it.

See attached narrative

I. Granting the variance would do substantial justice because:

See attached narrative

II. The use is not contrary to the spirit of the ordinance because:

See attached narrative

Section 4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from article _____
Section _____ of the zoning ordinance to permit _____

1. Does the request involve a dimensional requirement, not a use restriction?
() yes () no
2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town _____

- or -

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bonafide purchaser _____

And how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake _____

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area _____
4. Explain how the cost of correction far outweighs any public benefit to be gained _____

SIGNATURE

Applicant Charlie Ritchie Date 11/10/2021
Agent: _____ (Signature)

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION

The board strongly recommends that before making any appeal, you become familiar with the zoning ordinance and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 678, covering planning and zoning.

Four types of appeals can be made to the board of adjustment:

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 zoning ordinance. For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. Denial of the variance would result in **unnecessary hardship** to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(b)(5) provides the criteria for establishing 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.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted without a variance. Most often this determination is a denial of a building permit. A copy of the determination must be attached to your application.

Appeal from an Administrative Decision: If you have been denied a building permit or are affected by some other decision regarding the administration of the Greenville zoning ordinance, and you believe that the decision was made in error under the provisions of the ordinance, you may appeal the decision to the board of adjustment. The appeal will be granted if you can show that the decision was indeed made in error.

If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

Special Exception: Certain sections of the zoning ordinance provide that a particular use of property in a particular zone will be permitted by special exception if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception will be granted if you can show that the conditions stated in the ordinance are met.

If you are applying for a special exception, you may also need site plan or subdivision approval, or both, from the planning board. Even in those cases where no planning board approval is needed, presenting a site plan to the planning board will assist in relating the proposal to the overall zoning. This should be done before you apply for a special exception.

Equitable Waiver of Dimensional Requirements: The board may grant an equitable waiver only for existing dimensional nonconformities, provided the applicant can meet the required standards.

1. The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.
2. The nonconformity was not an outcome of ignorance of the law or bad faith, but was instead caused by a good faith error in measurement or calculation.

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

3. The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; and
4. The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (1) and (2), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property. If the applicant is not the owner, this must be explained.

WHERE the property is located.

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc.

WHAT do you propose to do? Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property.

WHY does your proposed use require an appeal to the board of adjustment?

WHY should the appeal be granted?

Prepare a list of all abutting property owners, have it verified at the city/town office, and attach it to your application. If you have any difficulty, consult the assessor's office, but the accuracy of the list is your responsibility. Mail or deliver the completed application, with all attachments, to the clerk of the board or to the office of the board of selectmen. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to city/town of Greenville and remit with your application.

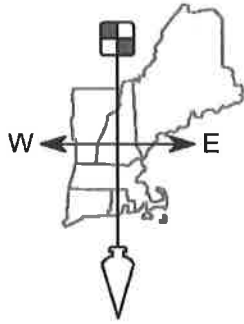
The board will promptly schedule a public hearing upon receipt of your properly completed application. Public notice of the hearing will be posted and printed in a newspaper and notice will be mailed to you and to all abutters, and to other parties whom the board may deem to have an interest, at least 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 reasons why the appeal should or should not be granted.

After the public hearing, the board will reach a decision. You will be sent a notice of decision.

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 the decision in your case. To appeal, you must first ask the board for a rehearing. The Motion for Rehearing may be in the form of a letter to the board. The motion must be made within 30 days of the decision and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

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 procedure is followed as for the first hearing, including public notice and notice to abutters.

See RSA Chapter 677 for more detail on rehearing and appeal procedures.



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VARIANCE CRITERIA

(VARIANCE FROM APPENDIX B)

Tax Map Parcel 2-35

27 Columbian Avenue - Greenville, NH

November 10, 2021

Prepared For:

Adam Ames

The proposed open space residential development will be constructed on parcel 2-35. Parcel 2-35 is 7.379 acres with 234.06' of frontage on Columbian Avenue. The site lies on the Residential side of the Downtown/Residential zoning district line. It is currently a residential use lot with a multi-family dwelling located at the very north of the lot. The site is almost entirely wooded and has a large area of delineated wetlands in the center of the lot. Our client is proposing to construct an open space residential development on the parcel.

Appendix B6.2 of the Zoning Regulations and Ordinance, Tract Size and Density Requirements, requires that the parent tract of land have at least 20 acres and 250 feet of frontage on a class V road or better. Multifamily homes are also not permitted in open space residential developments. Since the subject parcel has an existing duplex that is proposed to remain and only contains 7.379 acres with 234.06 feet of frontage, we are requesting zoning relief in the form a variance to allow an open space residential development on the site.

The numbered items below correlate to the questions asked in the Town Application for a Variance.

1. Granting the variance must not be contrary to the public interest because:

Granting this variance would allow for the productive use of the property and provide connected open space to the public. The proposed open space will connect with the open space on lot 2-23 and also provide additional open space adjacent to the recreational areas to the west. The residential use is consistent with the abutting properties and meets the Town of Greenville's density requirements. Granting this variance would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.

2. The proposed use is not contrary to the spirit of the ordinance because:

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The intent of the Open Space Residential Development ordinance is “to provide a policy for quality open space development which will protect the rural character, health, safety, and welfare of the Town of Greenville through preservation of open space to serve recreational, scenic, conservation, and other related purposes, and reduce the impact of development on the environment.” The proposal for this site meets all the intents of the ordinance, simply at a smaller scale. The site will provide a minimum of 50% of the subject parcel as open space. The layout of the site also allows for the wooded hill at the south of the lot, one of the more visible and flat areas on the site, to remain undeveloped and protected in the open space. Requiring a conventional subdivision due to the size of the lot would require more disturbance to the lot and a longer road, both of which go against the intent of the ordinance. For these reasons we believe that granting the variance would observe the spirit of the ordinance.

3. Granting the variance would do substantial justice because:

Granting this variance would allow the land owner to utilize lot 2-35 to its potential while providing the public and Town of Greenville with additional open space. Granting this variance would do substantial justice by utilizing the land with minimal disturbance to wetlands and wooded areas. The parcel is located near the center of town where it is beneficial to construct buildings closer together and provide open space. A conventional subdivision would require a longer road which is more costly to build as well as maintain. An open space residential development will not negatively impact the public or abutting properties and is in line with the spirit and intent of the ordinance. In other words, a denial of this variance request would be an injustice to our client as there would be no apparent gain to the general public by denying this application.

4. The proposed use would not diminish surrounding property values because:

The proposed residential development is consistent with the abutting properties. As a residential use there will be minimal noise or light pollution created from the site. Additionally, open space enhances property values for abutting properties as homebuyers prefer lots close to or facing open space areas. For all of these reasons we do not believe that the proposed residential development would have any negative impacts on the value of surrounding properties.

5. Denial of the variance would result in unnecessary hardship to the owner.

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:

1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

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The general purpose of the ordinance is to provide as much open space to be protected as possible for conservation, passive recreation, and aesthetic purposes. Requiring the parent lot for an open space residential development to have a minimum of 20 acres limits potential lots that could provide additional open space. The subject lot is unique as it lies at the end of Columbian Avenue, a dead-end road, with 234.06' feet of frontage on it and 7.379 acres of land, which does not meet the requirement for an OSRD. This goes against the general public purpose of encouraging open space and alternate site design. The location of the site on the dead end of Columbian Avenue prevents the site from meeting the tract size requirements for an OSRD. For these reasons we do not believe that a fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property.

2. The proposed use is a reasonable one because:

We believe that the proposed use is a reasonable one for all of the reasons previously stated. The following is an outline of why we believe the proposed use is reasonable:

- Granting this variance would allow for the productive use of the existing property.
- Open space would be provided and connect the adjacent open space on lot 2-23 and the recreational area to the west.
- The wetlands and wooded hillside will be protected in open space areas.
- The road length will be minimized, reducing construction and maintenance costs.
- The proposed use as a residential property would be in harmony with the neighborhood and surrounding areas.
- The residential use would not be contrary to the public interest as this project will not alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public.
- This proposal would in our opinion observe the spirit and intent of the ordinance.
- This project would have no measurable negative impacts on the surroundings or their property values.

For all of the reasons we believe that the proposed use is reasonable.

- B. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the special conditions of the property that distinguish it from other properties in the area, the property cannot reasonably be used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

Lot 2-35 is 7.379 acres and has 234.06' of frontage on Columbian Ave. In order to make reasonable use of the property our client is proposing to use the parcel as an open space

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residential development. If a variance is not granted, a conventional subdivision would be required. In order to construct the length of road required for a conventional subdivision, our client would face a financial hardship. A standard subdivision would require a longer road to provide frontage to the lots as well as more utilities and disturbance. This provides additional construction costs as well as more maintenance cost to the town. This hardship is due to the location of the lot on Columbian Avenue and the size of the lot. These are all special conditions of the property that distinguish it from other properties in the area. Due to these conditions we believe this property is reasonably suited for the proposed use. We are thereby requesting a variance from Appendix B6.2 to allow an open space residential development on the subject property.

This information was prepared by:
Fieldstone Land Consultants, PLLC



Chuck L. Ritchie, E.I.T.
Project Engineer