

December 6, 2011

STAFF REPORT

Community Development Department

RE: Administrative Zoning Changes – Round 2 – March 2012 Warrant

Public Worksessions: December 6
Public Hearings: December 20
Board Action: TBD

The ZBA submitted a list of potential suggestions for updates to the Zoning Ordinance in late November. Staff has reviewed the suggestions internally and with Town Counsel. The following is the list of recommended changes initiated by the ZBA, and supported by Staff and Town Counsel.

PROPOSED REVISIONS:

1. Update Section 8.01.0 Enforcement (Administration) and Section 7.06.d.f.2 (Sign Ordinance)

- **Modify Section 8.01.0 Enforcement** as follows:

This Ordinance shall be enforced by the Board of Selectmen, and the Board of Selectmen is hereby given power and authority to enforce the provisions of this Ordinance. The Board of Selectmen is further empowered to confer upon an administrative official appointed by the Board of Selectmen the duty of administering the provisions of this Ordinance *in accordance with RSA 676:17(as amended) or as otherwise authorized by RSA. A copy of RSA 676:17 is included in appendix.*

- **Remove 7.06.5.F.2 General Administration, Sign Ordinance** as follows:

~~2. By virtue of the authority contained in NH RSA 676:17, the Code Administrator is hereby authorized to issue warnings or citations for violations of this Article, at a fee of two hundred seventy five dollars (\$275) for each day the violation continues, including the day the citation is issued and the day the violation is abated for first violations and five hundred fifty dollars (\$550) for each day of any subsequent violation.~~

~~i. The Code Administrator shall issue a verbal warning to the property owner and/or lessee upon the Code Administrator's discovery of a violation of the terms of this Article.~~

~~ii. If the violation is not remedied within seven (7) days, the Code Administrator shall issue a second warning, in writing, to the property owner and any applicable lessee.~~

~~iii. If the violation is not remedied within fourteen (14) days of the Code Administrator's discovery of said violation, the Code Administrator shall issue a citation in the amounts set out above.~~

7.06.5.F.1 directs the reader to Article VIII as listed above and will have the reference to the RSA and the appendix.

2. Move Equitable Waiver from Article II, Section 2.06 to Article X, Section 10.07.0 and modify

- **Remove** Section 2.06, Equitable Wavier and **Add** Section 10.07.0 as follows:

All equitable waivers of dimensional requirements shall be governed by RSA 674:33-a (as amended), *a copy of which is included in appendix.*

~~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 NH 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 all of the following findings:~~

~~1. That the violation was not noticed or discovered by any 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;~~

~~2. 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 made by a municipal official in the process of issuing a permit over which that official had authority;~~

~~3. 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~~

~~4. 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.~~

~~B. In lieu of the findings required by the Board under subparagraphs 2.06.0:A.1 and 2.06.0:A.2, the owner may demonstrate to the satisfaction of the Board that the violation has 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.~~

~~C. Application and hearing procedures for equitable waivers under this section shall be governed by NH RSA 676:5 through 7. Rehearings and appeals shall be governed by NH RSA 677:2 through 14.~~

~~D. 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 on 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.~~

3. Update Section 10.02.3.C Home Occupation

- **Add C.** Prior to commencement of operation of a Home Occupation, the homeowner shall make application for a permit to the Community Development Office, submit to a Code Compliance Inspection specific to the location or area of the Home Occupation and shall obtain a Certificate of Compliance specific to the location or area of the Home Occupation.

4. Modify Section 10.01.0 Variances

- **Modify 10.01.0 VARIANCES** as follows:

Any request for a permit of any nature required under this Ordinance which will require a variance from the prescribed stands of this Ordinance shall be made only by the owner of the property in question or ~~his~~ *the owner's(s')* duly appointed agent and shall be transmitted to the Board of Adjustment or ~~their~~ *its* duly appointed official to the Board. ***All variance requests made to the Zoning Board of Adjustment shall be made in accordance with RSA 676:5 (as amended), a copy of which is included in the Appendix.*** Upon receipt of the request, the Board shall establish a date for a public hearing in the following manner:

- A.—~~The Board of Adjustment shall, within thirty (30) days of receipt of the application, establish a hearing date.~~
- B.—~~The applicant and abutters must be notified of the public hearing by certified mail, return receipt requested, mailed at least ten (10) days prior to the public hearing. Said notice shall include the date and time of the hearing as well as a general description of the proposal.~~
- C.—~~Notice to the general public shall also be given at the same time by posting said notice in the Office of the Board of Selectmen, the Town Clerk Office, and the Planning and Zoning Office.~~
- D.—~~Notice shall be placed in a newspaper circulated in the Town of Milford at least one (1) week prior to the hearing date.~~
- E.—

- **Modify 10.01.2** as follows:

Every variance granted by the Zoning Board of Adjustment shall be ***in accordance with the powers of the Board as stated in RSA 674:33 (as amended), a copy of which is included in the Appendix.*** ~~based upon and accompanied by a specific finding or findings that:~~

- A.—~~There are special circumstances or conditions applying to the land or structure for which the variance is sought (such as, but not limited to, the exceptional narrowness, shallowness, or shape of the property in question, or exceptional topographical conditions), which are peculiar to such land or structure, and the application of the requirements of this Ordinance will deprive an owner of such property a reasonable use of it, and will impose upon such owner a hardship not shared by the owners of other property in the same district.~~
- B.—~~The specific variance as granted is the minimum variance that will grant reasonable relief to the owner and is necessary for a reasonable use of the land or structure.~~
- C.—~~The granting of the variance will be in harmony with the general purposes and intent of this Ordinance, and with the convenience, welfare and character of the district within which it is proposed, and will not be injurious or otherwise detrimental to the public welfare.~~