

Does This Appeal To You?

By Brian Longstaff, Zoning Administrator



Nearly every day, we are approached by someone wanting to do something with their property, but we find that the current zoning ordinance (or land use regulations) does not allow the project because it does not conform with some provision in the ordinance. If there is no way to redesign the project so that it meets the rules, the only alternative is for the person to file an **appeal** for relief from the particular rule or regulation that is prohibiting the activity.

Scarborough offers several different types of appeals to deal with a variety of non-conformance issues. These appeals are heard by the Scarborough Zoning Board of Appeals, which is a 7-member board made up of 5 voting members and 2 alternates, who are appointed by the Town Council. The Board is made up of lay people with different backgrounds and experience, who selflessly volunteer their time to review and decide if the submitted appeals meet the standards outlined in the ordinance, and by Ordinance, the Board is only authorized to hear the following appeals.

The Administrative Appeal is to hear and decide if the building inspector or zoning administrator has made an error in any order, decision, or ruling in the enforcement of the Ordinance.

The Special Exception is more of an application than an appeal, and the Board hears and decides if the application meets the standards for Special Exception uses as provided for in Section IV.I.

The Variance Appeal is to hear and decide if a request for relief from any provision of the Ordinance that would otherwise result in "undue hardship", so we referred to it as a "Hardship Variance", and it is the most difficult type of variance to obtain.

The Miscellaneous Appeal deals with a variety of land use activities including the enlargement, extension, expansion, resumption, or conversion of non-conforming uses of land or structures, as well as non-conforming signage, off-street parking, etc.

The Limited Reduction of Yard Size Variance is for the expansion of a non-conforming residential building or structure; the construction of a new building or structure that is accessory to an existing building; or the construction of a new building on a non-conforming lot of record. This variance only allows for up to 10 feet of relief on the required front yard setback, and 5 feet of relief on the side and rear yard setbacks, for lots in residential use where a dwelling existed on or before July 3, 1991.

The Practical Difficulty Variance is to grant relief from a dimensional standard such as lot area, lot coverage, frontage, or setback, when there is no feasible alternative.

In each type of appeal, the Board must decide if the applicant has met the specific standards for that appeal. The Board must have a legal basis for the decision it makes, and in many cases, that decision may seem harsh and uncaring because no matter how much sense the appeal makes, or how much

empathy the Board may have for the applicant's situation, if the standards have not been met, the appeal cannot be granted.

As the Zoning Administrator, I meet with most applicants before they ever submit an appeal, which gives me the opportunity to discuss the application and appeal process with them. Appeal applications are not easy for most folks to understand, and even harder for them to complete. In most cases, it will require a boundary survey of the property to accurately show the non-conforming issues. It may also require clear and accurate drawings or designs for the project, along with technical calculations, and other information. Although it is not required, an applicant may retain an engineer, architect, builder, land surveyor, or attorney to assist in presenting the application to the Board rather than do it alone. Depending on the complexity of the issue and the applicant's abilities to explain their project, it may improve the chances of getting an approval.

There are some important steps that I give to every applicant, whether they represent themselves or hire a professional:

- Read and understand the application thoroughly, including the general instructions and checklists. Don't be afraid to ask questions! I can explain it to you, but I can't understand it for you.
- Put yourself in the Board member's shoes...make sure everything you provide in your application explains something or helps demonstrate that you've met a particular standard! (Don't just throw paper at them if it doesn't help your application!) Imagine you are seeing this for the first time...would you understand it and would you see how it meets the standards?
- Provide a cover letter or summary page if the application form does not give you an adequate opportunity to explain your project fully, but get to the point...Board members do not have a lot of time to read through pages of narrative.
- Leave emotion out of it. The Board can't approve something just because it was your childhood home, or because you've been coming to this cottage for 40 years. It's not that they don't care...its that it does not address any standard required for the Board to get to an approval, so it is totally irrelevant.
- Don't be lazy! It will usually take several days and possibly weeks to generate a "complete" application that addresses all of the criteria. It requires effort and thought, and it may require expert testimony such as a structural engineer's analysis, contractor's estimate, real estate appraisal, or legal opinion depending on what the issue is. Remember – appeals are the exception, not the rule. The odds are against you so if you don't work hard for it, it won't be approved.

Maybe the most important thing is to check with the planning department early in the process of planning your project. Do not wait until your builder is ready to get started before asking if there are any problems that you should be aware of. The Board of Appeals meets only once each month and applications need to be received about 3 weeks prior to the next meeting.

A thorough and well thought out appeal application will not guarantee an approval, but a poor application will almost always guarantee a denial.

###