

What to do when the abutter's notice arrives .

One day your mailbox contains a notice of “certified letter” from the planning or zoning board of adjustment (ZBA) in your town. What to do next?

First, don't panic. Collect the letter and find out what is proposed, by whom and when the hearing will be held.

Next, unless you already know what your abutter plans to do, go to the Town Office and ask to see the application. You may ask for copies of any documents in the file (although most towns make a modest charge for copies).

Find out what rules apply. If you don't have a copy of the Town zoning ordinance, or subdivision and site plan regulations, you can review them at the Town office. Copies should be available for purchase. Many towns put their ordinances and regulations on their web site. That may be the easiest and cheapest way to find out what the rules are.

If the notice is from the planning board, it will be an application for *subdivision* or *site plan review* (if the use is commercial or multi-family).

If the notice is from the zoning board of adjustment (ZBA), the application will usually be for

- a. a *variance* from the terms of the zoning ordinance (a use not allowed normally by the ordinance) or
- b. a *special exception* (a use permitted by the ordinance only if certain conditions are found to be met by the Board).

If you do not object to the proposal, you may attend the hearing and voice your support or address a letter to the board letting them know your view.

If you are uncertain, or if you are opposed to the project, by all means attend the hearing. But do more homework ahead of time.

Submit your comments in writing. While it is important to express your concerns verbally at the hearing, it is crucial that you submit a detailed summary of your concerns in writing. Cite specific facts and ways in which the proposal does not conform to the requirements. No minutes are perfect, and you want the record to reflect exactly what you intend to convey.

Consider consulting legal counsel. If you and other neighbors are strongly opposed, this is the time to consult legal counsel. Creation of a record at the hearing stage is crucial to success in defeating or significantly altering a proposed development.

Ask these questions of the application:

BEFORE THE ZONING BOARD OF ADJUSTMENT

For a variance: Recent decisions of the New Hampshire Supreme Court have significantly elaborated the standards required for grant of variance. In order to grant a variance, the Zoning Board of Adjustment MUST find that the application merits a response favoring the application to EACH of the following questions.

1. Will granting of the variance cause diminution of surrounding property values?
2. Will granting the variance be adverse to the public interest?
3. Will granting the variance do substantial justice?
4. Will granting the variance be contrary to the spirit of the zoning ordinance?
5. Will denial of the variance result in unnecessary hardship to the owner seeking it? The concept of “Hardship” has been elaborated by the Court as follows.
 - A. Does the zoning restriction as applied to the applicant’s property interfere with his reasonable use of the property, considering the unique setting of the property in its environment?
 - B. Is there a fair and substantial relationship between the general purposes of the zoning ordinance and the specific restriction on the property?
 - C. Will the variance injure the public or private rights of others?

For a special exception:

What provision of the ordinance allows the use as a special exception? (This information should be provided in the application and in the notice to abutters.)

Does the application meet the specific and general requirements for special exception as set forth in the zoning ordinance?

If not, how does it fail?

BEFORE THE PLANNING BOARD

For a subdivision:

Does the application conform to the requirements of the zone in which the property is located?

Does the application meet the requirements of the subdivision regulations?

If the answer to either question is negative or uncertain, specifically what questions arise?

For site plan review:

Is the proposed use permitted in the zone?

If the use requires a special exception, has the applicant appeared before the zoning board of adjustment (ZBA) and obtained a permit? (In this case you will have received a notice of hearing from the ZBA and had opportunity to examine the proposal and voice your response.)

Does the site plan conform to the regulations? Does the site plan conform to the character of the neighborhood?