

## **RELIEF OF ADMINISTRATIVE DECISION**

### **RSA 674:33 Powers of Zoning Board of Adjustment**

I. The zoning board of adjustment shall have the power to:

(a) Hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and

(b) Authorize upon appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done.

II. In exercising its powers under paragraph I, the zoning board of adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken.

**The Board of Adjustment decides cases where a claim is made that the administrative officer has incorrectly interpreted the terms of the ordinance such as a district boundary or the exact meaning of an article or term.** Most zoning ordinances contain terms that may be confusing and are, therefore, open to interpretation. An ordinance may fail to define what is meant by such requirements as “distance from a road.” Does this mean distance from the pavement, shoulder, side ditch, or right of way? An honest difference of opinion may easily occur as to the exact meaning when applied to specific circumstances.

Decisions made by the administrative officer involving what the ordinance says and means are appealable. This includes situations such as a decision by the board of selectmen to issue (or deny) a building permit because of their belief that the proposed use is permitted (or not) in a particular zone. The same applies to decisions by the planning board or any other “administrative officer” regarding the terms of the ordinance. This does not mean, however, that decisions to enforce (or not enforce) the ordinance are also appealable to the board of adjustment. These decisions are discretionary and are not reviewable under RSA 676:5, II(b) or any other statute.