

## **INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT**

### **IMPORTANT: READ CAREFULLY BEFORE FILLING OUT THE APPEAL 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 672-677, covering planning and zoning.

**Five types of appeal** can be made to the Zoning Board of Adjustment:

**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 New Hampton 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.

**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 as well as listed on the application. Your appeal for a special exception will be granted if you can show that the conditions stated in the ordinance are met.

**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 the five conditions listed on the application.

**CHANGE IN A NON-CONFORMING USE BY SPECIAL EXCEPTION:** An existing non-conforming use may be changed to another **non-conforming use by special exception**, subject to specific criteria listed on the application and any conditions that may be attached to the special exception by the Zoning Board of Adjustment.

**EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT:** The Zoning Board of Adjustment may grant an **Equitable Waiver of Dimensional Requirement** 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. The waiver shall be granted if the board can make all of the findings listed on the application.

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

If you are applying for a **special exception**, you will probably 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. If a building permit is denied and a copy of that determination must be attached to your application.

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.

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

- **WHO** owns the property? If the applicant is not the owner, this must be explained.
- **WHERE** is the property 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 and state and/or local permits 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 on the sheet provided in the application. If you have difficulty, consult the Selectmen'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 the **TOWN OF NEW HAMPTON** and remit with your application.

The board will schedule a **public hearing within 30 days of 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 and all other parties to the case will be sent a notice of decision.

If you believe the boards' 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 20 days of the board's 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.

**FOR OFFICE USE ONLY**

Case # \_\_\_\_\_

Date Filed \_\_\_\_\_

**APPLICATION FOR APPEAL**

Name of Applicant(s): \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

E-Mail : \_\_\_\_\_

Owner of Property : \_\_\_\_\_  
(if same as applicant, write "same")

Location of Property: \_\_\_\_\_  
(Street, Tax Map & Lot number)

NOTE: Fill in Section 1, 2, 3, 4 and/or 5, as appropriate. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheet if the space provided is inadequate.

**Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION**

Relating to the interpretation and enforcement of the provisions of the zoning ordinance. (*Attach copies of correspondence, decisions, etc.*)

Decision of the enforcement officer to be reviewed \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Number \_\_\_\_\_ Date \_\_\_\_\_ Article \_\_\_\_\_ Section \_\_\_\_\_ of the  
zoning ordinance in question: \_\_\_\_\_

\_\_\_\_\_

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**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 \_\_\_\_\_.

Conditions: (attach pages if necessary)

(1) The specific site is an appropriate location for such use.

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(2) There is adequate area for safe and sanitary sewage disposal.

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(3) The use will not adversely affect the adjacent area.

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(4) There will be no nuisance or hazard created.

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- (5) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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- (6) The use will not impair the aesthetic values exhibited by the surrounding neighborhood.

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- (7) The building, parking and/or driveway area shall not exceed 50% of the lot.

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**Section 3. APPLICATION FOR VARIANCE**

A variance is requested from Article \_\_\_\_\_ Section \_\_\_\_\_ of the zoning ordinance.

Request is to permit:

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Facts supporting this request:

1. The variance will not be contrary to the public interest because:

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2. The spirit of the ordinance is observed because:

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3. Substantial justice is done because:

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4. The values of surrounding properties are not diminished because:

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5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because Special Conditions of the property distinguish it from other properties in the area :

(A) i. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific application of that provision to the property because:

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ii. The proposed use is a reasonable one because:

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(B) If the paragraphs in 5(A) are not established what are the special conditions **of the property that distinguishes 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.

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*The definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.*

**Section 4. APPLICATION FOR A CHANGE IN A NON-CONFORMING USE BY SPECIAL EXCEPTION (Article VI Section A(1))**

An existing non-conforming use may be changed to another non-conforming use by special exception, subject to the following criteria and any conditions that may be attached to the special exception by the Zoning Board of Adjustment.

To grant a special exception, the Zoning Board of Adjustment must find that the applicant satisfies each of the following criteria: *(Please make statements regarding each of the following conditions.)*

Description of Proposed Use and Present Non-Conforming Use:

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3. The new non-conforming use will be equally or more conforming with the purposes of the ordinance and the intent of the use restrictions applicable in the particular zoning district;

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4. The applicant must surrender all rights to continue the previously existing non-conforming use;

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5. There will not be an adverse impact on the surrounding neighborhood;

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6. The proposed replacement would not result in an increase in noise, vibration, dust, odor, fumes, glare and smoke detectable at the property line;

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7. The numbers and kinds of vehicular trips to the site will be comparable to, or lower than, those associated with the existing use;

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8. The replacement will not place increased demand on the amount and nature of outside storage or loading requirements, and there will be no net loss in the number of existing off-street parking spaces servicing the existing use(s);

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9. The visual appearance of the site and structure will either remain unchanged or will be improved;

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10. The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood;

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11. Non-conforming characteristics including, but not limited to, signs, off-street loading and parking, lighting, landscaping, of the previously existing use shall be brought into conformance with the ordinance to the extent feasible;

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12. The non-conforming use area of the lot will not be increased;

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13. The gross square foot floor area of the building housing the existing non-conforming use will not be expanded as a result of the replacement;

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14. The replacement will be equally or more compatible with the neighborhood, will contribute to neighborhood socioeconomic needs, or will otherwise be in the public interest.

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**Section 5. EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT (RSA 674:33-a)**

*Note: An equitable waiver granted under these circumstances 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.*

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 the Zoning Board of Adjustment shall grant an equitable waiver from the requirement, if the board makes all of the following findings: *(Please make statements regarding each of the following findings.)*

1. The violation was not noticed or discovered by any owner, owner’s agent, or municipal officials until after a structure in violation had been substantially completed:

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2. The violation was not an outcome of ignorance of law or ordinance, failure to inquire, misrepresentation or bad faith on the part of the owner or owner’s agent:

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3. The physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property the area, not interfere with or adversely affect any present or permissible future uses of any such property:

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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:

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Notification of abutters and engineers/surveyor is required by law, please list name(s), address(es), tax map & lot numbers (if applicable) below:

Tax Map & Lot

Abutter's Name & Address

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A filing fee of \$125.00 plus the cost of certified/registered mail for each notice to abutters, applicants, property owners and engineers/surveyors, payable to the Town of New Hampton, must be paid before this application for appeal may be processed.

I understand that the filing fee covers only those minimal expenses necessary to bring my appeal before public hearing of the New Hampton Zoning Board of Adjustment.

I also understand and agree that I am liable and responsible for any additional expenses legally incurred by the New Hampton Zoning Board of Adjustment in the disposition of my appeal.

Signature(s): \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

**AUTHORIZATION TO INSPECT**

I/We hereby give permission to any member or designee of the New Hampton Zoning Board of Adjustment to enter onto my/our property located on \_\_\_\_\_ Tax Map # \_\_\_\_\_ Lot # \_\_\_\_\_, for the purpose of inspecting said property with reference to the changes, alterations, or improvements set forth in my/our Zoning Board of Adjustment application and until such time my application is finalized.

Date: \_\_\_\_\_

Owner(s)      Signatures: \_\_\_\_\_

\_\_\_\_\_

NOTE: If the applicant is not the owner(s) of record then a notarized letter to authorize the applicant to present the proposal to the Zoning Board of Adjustment will be required.