

TOWN OF NEW BOSTON

INSTRUCTIONS FOR APPLICATION FOR APPEAL

**Instruction to applicants appealing to the
Zoning Board of Adjustment**

AMENDED

May 16, 2023

The Board strongly recommends that, before making any appeal, you become familiar with the TOWN OF NEW BOSTON ZONING ORDINANCE, and also with the New Hampshire Revised Statutes Annotated (RSA) TITLE LXIV, Chapters 672 through 677.

The New Boston Zoning Board of Adjustment meets the third Tuesday of each month as needed. Applications must be submitted to the Community Development Department, Sonya Fournier-Mitchell, per the SUBMITTAL SCHEDULE (available at the Town Hall and on the Town's website www.newbostonnh.gov) or call the Community Development Department at 603-487-2500, Sonya Fournier-Mitchell (ext 142). Please also see the Zoning Board of Adjustment's Rules of Procedure, available at the Town Hall and on the Town's website www.newbostonnh.gov.

Four types of appeals can be made to the Board of Adjustment: ***Appeal from an Administrative Decision; Special Exception; Variance; and, Equitable Waiver of Dimensional Requirements.***

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

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 concerning the property.

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

FOR ALL APPLICATIONS YOU MUST:

Prepare a list of parties to be notified of the public hearing. This list shall include the owner and applicant (if different than the owner, all abutting property owners, all holders of conservation, preservation or agricultural easements, and any professionals whose seal appears on any plan submitted to the Board. Attach this list to your application. If you have difficulty, consult the Community Development Department in the Town Hall during normal business hours. Please note: the accuracy of this list is your responsibility.

Mail or deliver the completed application, with all attachments to the Clerk of the Board of Adjustment or to the Community Development Department. A fee is charged sufficient to cover the cost of preparing and mailing legally required notices.

THE APPLICATION FEE IS \$150.00, plus public notice hearing fee, plus abutter notifications fee, INCLUDING THE APPLICANT AND OWNER, ALL HOLDERS OF CONSERVATION, PRESERVATION OR AGRICULTURAL EASEMENTS AND ANY PROFESSIONAL WHOSE SEAL APPEARS ON ANY PLAN SUBMITTED TO THE BOARD. MAKE YOUR CHECK PAYABLE TO THE TOWN OF NEW BOSTON AND REMIT WITH YOUR APPLICATION.

Provide a plan showing the location of the property in question, as required by the Rules of Procedure. This may be a copy of the tax map with property highlighted. Legal abutters' names should appear on abutting properties, roads should be shown, and the building location shown if applicable.

If submitting for a variance a plot plan prepared by a N.H. Licensed Land Surveyor shall be submitted along with the completed application and abutters list.

The Board will schedule a **public hearing within 30 days of submission 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 at least five (5) 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 has been closed, the Board will deliberate the merits of the application. A determination on the

application may be reached, or the hearing may be continued to a future meeting. If the Board reaches a decision, you will receive a Notice Of Decision in the mail.

If you believe the Board's 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 30 days after the decision of the Board, beginning with the date following the date upon which the Board voted to approve or disapprove the application**, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. Pursuant to RSA 677.

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 determined in the hearing, 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 details on rehearing and appeal procedures.

Section 1, 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 Boston 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.

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

Section 2, 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 specific conditions are met.

The necessary conditions for each special exception are given in the Ordinance. Your appeal for a special exception may be granted if you can show that the conditions stated in the Ordinance are met.

If you are applying for a Special Exception, A Site Plan Approval from the Planning Board may also be required. It is suggested that applicants consult with the Planning Board prior to submitting their application to the New Boston Zoning Board of Adjustment.

Section 3, **VARIANCE**

A variance is an authorization, which may be granted under special circumstances, to use your property in a way that is not permitted by the Zoning Ordinance.

If the application is for a dimensional **VARIANCE**, you will be required to submit plans, prepared by a N.H. Licensed Land Surveyor, showing property lines and setbacks to property lines, and wetlands, if applicable, along with such other information that the applicant deems necessary to the Board. The Board may request additional plot plans, surveys, or the delineation of wetlands by a N.H. Certified Wetland Scientist.

Copies of the drawings at 8.5" x 11" or 11" x 17" shall be provided, one for each Board member and alternate and one for the Clerk. If a full size plan (22 inches by 34 inches) is required, three (3) full size copies shall be submitted with the application.

Applications for a use **VARIANCE**, shall submit a copy of the tax map or other scale drawing along with such other information that they deem necessary to present the application to the Board. The Board reserves the right to require additional plans, including plans prepared by a N.H. Licensed Land Surveyor, N.H. Professional Engineer, or a N.H. Certified Wetland Scientist.

Section 4, **HARDSHIP DEFINITION**

For a Variance to be granted, the applicant must show that the proposed use meets all five of the following criteria:

1. The variance will not be contrary to the public interest;
2. The spirit of the ordinance is observed;

3. Substantial justice is done;
4. The values of surrounding properties are not diminished;
and
5. Literal enforcement of the provisions of the ordinance
would result in an unnecessary hardship.

(A.) Denial of the variance would result in unnecessary
hardship to the owner.

For purposes of Criteria 5, "unnecessary hardship" means that,
owing to special conditions of the property that distinguish it
from other properties in the area:

- (i) No fair and substantial relationship exists between
the general public purposes of the ordinance provision
and the specific application of that provision to the
property; and
- (ii) The proposed use is a reasonable one.

(B.) If the criteria in subparagraph (i) are not estab-
lished, an unnecessary hardship will be deemed to exist if, and
only if, owing to special conditions of the property that dis-
tinguish it from other properties in the area, the property can-
not be reasonably used in strict conformance with the ordinance,
and a variance is therefore necessary to enable a reasonable use
of it.

Section 5, **APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL
REQUIREMENTS**

The Board may grant an Equitable Waiver of Dimensional
Requirements: only for existing dimensional nonconformities
provided the applicant can meet the required standards.

- a. the nonconformity was not discovered until after the struc-
ture was substantially completed or after a vacant lot in
violation had been transferred to a bona fide purchaser;
- b. the nonconformity was not an outcome of ignorance of the
law or bad faith but instead caused by a legitimate
mistake;

- c. the nonconformity does not constitute a public or private nuisance and does not diminish the value or interfere with future uses of other property in the area; and
- d. the cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (a) and (b), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the Town.

Instructions revised 04/01/10, 07/19/16, 02/23/18
01/21/2020 (ZBA approved increased fees), 08/02/2021,
05/16/2023.