

TOWN OF NEW BOSTON
INSTRUCTIONS FOR APPLICATION FOR APPEAL

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

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.

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 intended to be self-explanatory, but be sure that 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 concerning the property.

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

WHY should the appeal be granted? How would you benefit?

The New Boston Zoning Board of Adjustment meets the third Tuesday of each month as needed. Applications must be submitted to the Zoning Board Clerk (Nadine Scholes, Planning Department) per the SUBMITTAL SCHEDULE (available at the Town Hall and on the Town's website www.newbostonnh.gov) or call the Planning Department at 603-487-2500, Shannon Silver (ext 141) or Nadine Scholes (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.

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FOR ALL APPLICATIONS YOU MUST:

Prepare a list of parties to be notified of the public hearing. This list shall include the applicant and owner, if different from the applicant, all abutting property owners, all holders of conservation, preservation or agricultural preservation restrictions, and any professionals whose professional seal appears on any plan submitted to the Board. Attach this list to your application. If you have difficulty, consult the Planning 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 Planning Department. A fee is charged sufficient to cover the cost of preparing and mailing legally required notices.

THE APPLICATION FEE IS \$200.00* (*fee includes \$75.00 for the Public Hearing Notice in Local Newspaper), PLUS \$10.00 FOR EACH ABUTTER, INCLUDING THE APPLICANT AND OWNER, ALL HOLDERS OF CONSERVATION, PRESERVATION OR AGRICULTURAL PRESERVATION RESTRICTIONS AND ANY PROFESSIONALS WHO HAVE SUBMITTED STAMPED PLANS. 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 the application is for a **SPECIAL EXCEPTION**, you may need a site plan for PLANNING BOARD APPROVAL. Please refer to the instruction for applying for a "**SPECIAL EXCEPTION**".

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 and to parties who 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.

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After the public hearing, the Board will reach a decision. You will be sent a **NOTICE OF DECISION**.

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.

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 will be

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granted if you can show that the conditions stated in the Ordinance are met.

If you are applying for a **special exception**, you may also need a site plan for planning approval, and/or approval 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 the special exception.

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 under the strict terms of the Zoning Ordinance. For a variance to be legally granted, **you must show** that your proposed use meets **all five** of the following conditions:

1. Granting the variance would not be contrary to the public interest.
2. If the variance were granted, the spirit of the ordinance would be observed.
3. Granting the variance would be substantial justice.
4. If the variance were granted, the values of surrounding properties would not be diminished.
5. Unnecessary Hardship
 - (A.) Denial of the variance would result in unnecessary hardship to the owner. **Hardship**, as the terms applies to zoning, results if a restriction, when applied to a particular property, become arbitrary, confiscatory, or unduly oppressive **because of conditions of the property that distinguish it from other properties** under similar zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner.
 - 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 (A.) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish 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.

Section 4, **APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS** :

The Board may grant an equitable waiver only for existing dimensional nonconformities provided the applicant can meet the required standards.

- a. the nonconformity was not discovered until after the structure 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)