



CITIZEN GUIDE TO THE ZBA PROCESS & APPLICATION FOR APPEAL

This guide has been published to provide citizens with the necessary information, to appeal any zoning decision you feel may have been improperly made. Zoning codes and regulations can be very intimidating and sometimes confusing. We hope the following information will be helpful in assisting you through the appeal process by providing you information about your rights and responsibilities when you have been denied.

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The ZBA Handbook
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**Updated for Northwood Zoning Board by Land Use Specialist Linda Smith
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**IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE
FILLING OUT APPLICATION**

INSTRUCTIONS TO APPLICANTS

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:

VARIANCE

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 must not be contrary to **the public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would **not diminish surrounding property values**.
5. Literal enforcement of the ordinance would result in **unnecessary hardship**.

Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes 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.

Because of special conditions of the property that distinguish it from other properties in the area:

- (a) there is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; **and**
- (b) the proposed use is a reasonable use

OR

Alternatively, unnecessary hardship means that, 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.

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.

APPEAL FROM AN ADMINISTRATIVE DECISION

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 Northwood Development 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.

SPECIAL EXCEPTION

SPECIAL EXCEPTION: Certain sections of the zoning ordinance provide that a particular use of property in a particular overlay district or zone, will be permitted **by special exception** if specified conditions are met. The necessary conditions for each special exception are given in the ordinance. Your appeal for a special exception will be granted if you can show that the conditions stated in the ordinance are met.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

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 was instead caused by a legitimate mistake;

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

- c) The nonconformity does not constitute a public or private nuisance nor 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.

APPEAL FROM RSA 674:41 II

Whenever the enforcement of the provisions of this section would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets, the applicant for such permit may appeal from the decision of the administrative officer having charge of the issuance of permits to the zoning board of adjustment in any municipality which has adopted zoning regulations in accordance with RSA 674

GENERAL INSTRUCTIONS

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, and you will need to provide a notarized letter from the property owner giving you permission to represent them before the board.

WHERE is the property located? You will need to provide the property map and lot number as well.

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?

Prepare a list of all abutting property owners, have it verified at the town office, and attach it to your application. If you have any difficulty, consult the assessor'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 checks payable to: Town of Northwood 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 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 is filed** and first becomes available for public inspection in the board's office, 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.

REQUIRED FEES

The Town of Northwood has provided a fee schedule, which provides for a reasonable application fee, required notice to all abutting property holders and for the cost of any required posting and advertising in a local newspaper.

Application Fee	\$ 150.00
Recording Fee	\$ 25.00
Abutter Notification Fee	\$ 15.00 per Abutter
Each Additional request-same application	\$50.00
Recording fee-Notice of Decision	\$ 25.00

When determining who is an abutter to your property, the following guidelines must be used.

1. You the applicant or applicants and owners of the land affected.
2. Holders of conservation, preservation, or agricultural preservation restrictions.
3. Every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plat submitted to the board.
4. Any person or other owner of property that is located in New Hampshire and adjoins or is directly across the street or any other way or stream from your property. For condominiums or other collective form of ownership, the officers of the association shall be the abutters.

For abutting land owners, the names and addresses must be generated from town records not more than 5 days prior to filing your appeal. Compliance with notification procedures is solely your responsibility and not that of the Zoning Board or board staff.

Deadline for submission of a complete application is the first of the month. Depending on the application and the type of information required for an application to be deemed complete for processing, the amount of time sufficient to compile all necessary documents and meet with the building department may vary and may take from one week to several months (or more). It is the responsibility of the applicant to provide all necessary information with the application. No applications will be processed that do not contain all required information and/or are not received by the deadline date for the month they will be processed.

Monthly meetings are held the fourth Monday of the month when necessary. Board of Adjustment Office Hours: Mondays 9 a.m. – 2 p.m. or by appointment. Telephone: 942-5586, Ext. 2005. The applicant and abutters will be notified of the meeting date and time.