

INSTRUCTIONS TO APPLICANTS APPEALING TO THE HANCOCK BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT THE ATTACHED APPLICATION

The Zoning Board strongly recommends that, before making any appeal, you become familiar with the zoning ordinance and with the particular article that you are applying under.

Four types of appeals can be made to the ZBA:

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. Denial of the variance would result in unnecessary hardship to the owner. 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 the conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33 (b)(5) provides the criteria for establishing unnecessary hardship:

(A) For purposes of this subparagraph, “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 (A) are not established, an unnecessary hardship will be deemed to exist it, 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.

If you are applying for a variance, you must first have some form of determination that your proposed use is not permitted with a variance. Most often this determination is a denial of a building permit. A copy of the determination must be attached to you application.

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 Hancock 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.

An “**area**” variance (also called a “dimensional variance”), on the other hand, is one which involves physical aspects of the developments such as building height, setback or size; the number of parking spaces required; frontage or lot size etc. Examples of area variances filed have been:

Article 5.6 Section 5.6.3.2 Dimensional Requirements – request in the Residential District to add two feet in width to an existing porch which would place the building closer than the required 20 foot side setback from the property line.

Article 7.6 Section 7.6.3.2 – Dimensional Requirements - request in the Rural District to locate an addition to an existing garage closer than the 30 foot setback requirement from the property line.

Article 10.4 Septic Setback – request to construct a septic system closer than the 125 foot setback requirement from wetlands or poorly drained soil.

Use variances that have been applied for:

Article 13 – Non-Conforming Lots, Structures and Uses, Sections 13.3.1.1 and 13.3.1.2 – request to construct a new substation that would replace a smaller, old, existing system.

Article 15.2 – Variances – request to manufacture and sell handmade hatboxes on site of former industrial site.

For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions. The board must review each variance criterion and grant the variance, **only** if they are all met. The board does not have the discretion to grant the variance because they like the applicant or believe the project to be a good idea.

1. The proposed use would not diminish surrounding **property values**.
2. Granting the variance must not be contrary to the **public interest**.
3. Denial of the variance would result in **unnecessary hardship** to the owner. By its basic purpose, a zoning ordinance imposes some hardship on all property by setting lot size dimensions and allowable uses. When the hardship so imposed is shared equally by all property owners, no grounds for a variance exist. Only when some characteristic of the particular land in question makes it different from others can unnecessary hardship be claimed. The NH Supreme Court has established a new test for unnecessary hardship for a use variance consisting of three elements:
 - a) That the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;
 - b) That no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and
 - c) That the variance would not injure the public or private rights of others.

For an area variance, an applicant can demonstrate unnecessary hardship by establishing that:

- a. special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed; and
 - b. the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.
4. Granting the variance would do **substantial justice**.

5. The proposed use is not contrary to the **spirit of the ordinance**.

If you are applying for a variance, you must 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:

If you have been denied a building permit or are affected by some other decision regarding the administration of the Hancock Zoning Ordinance, and you believe that the decision was made in error under the provision 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 in error. If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

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 all of the specific conditions are met. If the conditions for a special exception are not met, the board cannot allow it; if the conditions are met, the board must grant the special exception. 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 and if you also meet the criteria under Article 15.5 Special Exceptions – General Conditions. Refer to the zoning ordinance for the articles included under Special Exceptions.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:

The board may grant an equitable waiver only for existing dimensional nonconformities provided that 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.

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.

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 zoning board?

WHY should the appeal be granted?

Prepare a list of all the abutting property owners, have it verified at the town office, and attach it to your application. If you have any difficulty, please call the Town Office for assistance. Mail or deliver the completed application with all attachments to the Secretary of the Zoning Board at the Town Office. A fee will be charged that will be sufficient to cover the cost of preparing and mailing the certified notices to abutters. There is also an application fee and an advertising fee for the notice to be published in the local paper. The payment is to be made at the time the application is filed.

An appointment will be scheduled upon receipt of your properly completed application. The zoning board meets the 2nd and 4th Wednesday of the month. Public notice of the hearing will be posted and printed in the newspaper, and notices will be mailed to you and to all abutters by certified mail at least 5 days before the date of the hearing.

After the public hearing, the board will reach a decision. The board may decide to continue the hearing to their next meeting date if they need additional information or more time to reach a decision. You will be sent a notice of their decision.

If you believe the board's decision is wrong, you have the right to appeal. 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 at the Town Office. The motion 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.