

# INSTRUCTIONS TO APPLICANTS APPEALING TO THE NEW IPSWICH ZONING BOARD OF ADJUSTMENT FOR A VARIANCE

**IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION**

**The Zoning Board of Adjustment 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 - 678, covering planning and zoning.**

**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.

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 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 conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(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 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.

The following chart may be helpful in completing a variance application:

## **VARIANCE CRITERIA GUIDELINES**

<b>Statutory Requirements</b> (RSA 674:33, I(b)) APPLICANT MUST SATISFY <b><u>ALL</u></b> OF THE FOLLOWING	<b>EXPLANATION</b>
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights.”
2. The spirit of the ordinance is observed.	As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition 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 one.  <i>Alternatively</i> , unnecessary hardship exists 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.	The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.  (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way.  (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.  <i>Alternatively</i> , the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.

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** the property is 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?

Once the application has been completed, the applicant should submit an application with the Zoning Board of Adjustments' Clerk at the Town Offices. Prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the clerk of the board, but the accuracy of the list is your responsibility. Mail or deliver the completed application, with all attachments, to the clerk. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to Town of New Ipswich and remit with your application. Failure to pay the required fee will result in denial of your application.

#### **Fee Determination – As of August 2023**

Board of Adjustment Fee \$75.00

Newspaper Advertisement 75.00

Certified Mailings at \$ (\$ x # of abutters) **TBD**

Decision letters (\$ x # of abutters) **TBD**

Additional expenses **TBD**

Total payable to Town of New Ipswich **TBD**

The Board will promptly schedule a public hearing upon receipt of your properly completed application. Public notice of the hearing will be posted and printed in the Monadnock Ledger and shall be posted at the New Ipswich Post Office and Town Office no less than five days before the date fixed for the hearing. Notice will be mailed to you and 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 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 form can be found on the Town's website. The motion must be made within 30 days of the 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.

## APPLICATION FOR A VARIANCE

To: Zoning Board of Adjustment,  
Town of New Ipswich

**Do not write in this space.**

Case No. \_\_\_\_\_

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

\_\_\_\_\_  
(signed - ZBA)

Name of Applicant \_\_\_\_\_

Address \_\_\_\_\_

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

\_\_\_\_\_  
(street, number, sub-division and lot number)

Do you own the property? Yes \_\_\_\_ No \_\_\_\_ If you are not the owner of the property, provide duly notarized documentary evidence that you are the owner's authorized agent.

**NOTE:** Additional information may be supplied on a separate sheet if the space provided is inadequate.

The following information is required for acceptance of your application unless specifically waived by the Board:

1. Copy of tax map showing your property in relation to town/state roads and abutters.
2. List of all abutting property owners and other interested parties including addresses. The Assessors' Office will assist you with the list but the accuracy of the list is your responsibility.
3. A drawing prepared by a licensed land surveyor or registered professional engineer in the State of New Hampshire

### Receiving Deadline:

1. The closing date by which completed variance applications must be submitted to the Land Use Office is 14 calendar days prior to the meeting at which the application is to be addressed.
2. Additional information being submitted in regards to an application already accepted by the board must be received at least 7 calendar days prior to the scheduled date of meeting.

### Application for a Variance

A variance is requested from article \_\_\_\_\_ section \_\_\_\_\_ of the zoning ordinance to permit \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because:

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2. If the variance were granted, the spirit of the ordinance would be observed because:

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3. Granting the variance would do substantial justice because:

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4. If the variance were granted, the values of the surrounding properties would not be diminished because:

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5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

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 because:

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- and - ii. The proposed use is a reasonable one because:

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b. Explain how, if the criteria in subparagraph (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.

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I certify that all information provided in this application is true and correct to the best of my knowledge.

Applicant \_\_\_\_\_ Date \_\_\_\_\_