

Guidelines for Applicants

Zoning Board of Adjustment

Newbury, New Hampshire

Purpose: The purpose of the Zoning Board of Adjustment is to hear appeals regarding our zoning regulations from any order, requirement, decision or determination made by an administrative official and to administer special provisions in the Zoning Ordinance dealing with special exceptions and variances.

Who may apply: **Anyone who has been denied a building permit or disagrees with a decision made by the Board of Selectmen or other administrative official.** Only the owner of record has legal standing to apply, but the owner may appoint an agent to prepare and present his/her case. The agent must submit a letter of appointment from the owner with the other materials in the application

How to Choose the Type of Appeal:

1. **Special Exception** - For certain uses as defined in Articles [4.3](#), [5.4](#), [6.5](#), [8.5](#), [11.3](#), or any alteration / construction on your property covered by zoning regulation that specifically require a special exception, you must apply for a special exception.
2. **Variance** - If you want to do something which is prohibited by the regulations and you think that there are **special circumstances of the property that distinguish it from other properties similarly zoned, you may apply for a variance.**
3. **Administrative Appeal** - If the Board of Selectmen or other administrative official has made a decision related to zoning with which you disagree, you may file an appeal from the administrative decision.
4. **Equitable Waiver** - When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by the zoning ordinance, you may apply for an Equitable Waiver.

How to apply: Obtain a current copy of the Zoning Regulations and an application form specific to the type of appeal chosen. The Zoning Ordinance and application forms are available at the Town Office or online at www.newburynh.org . Fill out and submit the complete application to the Land Use Board Coordinator with the following materials:

1. Application form (**Nine (9) copies**)
2. A check for \$100.00 plus prepayment of \$4.42 (notice fee) for each name on abutter list (See form) payable to Town of Newbury.
3. **One (1)** list of abutters as shown on the current town tax map and every holder of conservation, preservation, or agricultural preservation restrictions on the subject property. **The list of abutters includes the property owner, agent, and any person**

defined in Article 2.0 of the Zoning Ordinance.

4. A map to the property that includes written directions from Newbury Town Hall. **(Nine (9) copies)**
5. A map of the property showing buildings, water wells, septic systems, and setbacks from all boundaries. Submit **one full size copy and nine (9) 11" x 17" copies** for member preparation.
6. Photos or other materials which will help the Board understand the issues underlying the appeal. Not required, but helpful. **(Nine (9) copies)**
7. A written statement detailing how the applicant will meet the requirements of paragraphs 16.6 or 16.7 (for 16.7 see paragraph 4 below) **(Nine (9) copies)**
8. Erosion control plans, both temporary and permanent, for construction or earth disturbance in the Shoreland Overlay district. **Not required, but encouraged. (Nine (9) copies)**
9. If you will be appointing an agent to represent you, include a signed letter of appointment. The letter of appointment should include the name of the agent, the name of the property owner and the signature of the property owner.

How to prepare:

1. Familiarize yourself with the latest edition of the Newbury Zoning Ordinance. The Zoning Ordinance is available online at www.newburynh.org or may be purchased from the Town Office. If you have received a denied building permit, the Code Enforcement Officer will site the articles from the Zoning Ordinance and reason for denial on the permit. Read **Article XVI** and the paragraphs relevant to your appeal. Skim through Article II for any definitions that may be helpful. If you have trouble understanding the ordinance, seek help from the Land Use Board Coordinator at (603) 763-4940.
2. Try to provide as much educational material as possible to help the board understand your situation. The board is often interested in septic system location and age, and in water flows across the property, as well as environmental protection issues. Photos can be a help.
3.
 - A. Special Exception - If you are applying for a special exception, you must cite a paragraph that has the phrase "special exception" in it.
 - B. Shoreland Overlay District - Applications for alteration and reconstruction in Shoreland Overlay District should cite the appropriate paragraph in Article VII as well as **paragraph 15.1**. Do not cite any paragraph in Article XVI.
 - C. Site Plan Review - If you are required to apply for Site Plan Review, provide a copy of your site plan materials with your special exception application. Prepare an argument for your case showing how you meet the specific conditions imposed by the section that allows the special exception. Also prepare an argument showing how you meet the general conditions in the appropriate subparagraphs of paragraph 16.6.
 - D. Variance - If you are applying for a variance, paragraph 16.7, you must cite a

paragraph which prohibits you from doing what you want to do, and explain what it is you want to do. Prepare an argument for your case by completing the following sentences (follow-on sentences may be added):

1. (16.7.1)Granting the variance will not be contrary to the public interest because -
2. (16.7.2)Denial of the variance will result in unnecessary hardship to the owner as proven by the following arguments:

Use Variance

- a. (16.7.2.1.1)Taking into account the unique setting of this property in its environment, the application of the cited paragraph of the zoning ordinance to this property will interfere with the owner's reasonable use of the property because -
- b. (16.7.2.1.2)There is no fair and substantial relationship between the general purposes of the zoning ordinance and the restriction placed on this property because -
- c. (16.7.2.1.3)Granting a variance in this case will not injure the public or private rights of others because -

Area Variance

- a. (16.7.2.2.1.)An area variance is needed to enable the owner's proposed use of the property given the following special conditions of the property-
 - b. (16.7.2.2.2.)The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the owner to pursue because -
3. (16.7.3)The use will not be contrary to the spirit of this Ordinance because -
 4. (16.7.4)By granting the permit substantial justice would be done because -
 5. (16.7.5)The proposed use will not diminish surrounding property values because-

Item 2 is the most difficult hurdle in this process because of the narrow definition of "unnecessary hardship" in New Hampshire law. See Appendix A for a complete discussion.

Assistance:

If you have any questions, need additional information, or would like assistance with the application process, please contact the Land Use Board Coordinator at (603) 763-4940.

What to expect:

A hearing will be scheduled within 30 days upon acceptance of your complete application package. You and your abutters will be notified by certified mail of the place, date, and time of your hearing. Before the hearing, members of the zoning board may come to your property to view the existing conditions of the property. It is assumed that they have your permission to walk on your property for this purpose unless the board is otherwise notified. At the hearing, the meeting procedure will be explained to you. The Zoning Board will then hear your presentation and ask questions. Then the public will be asked for their input. The hearing portion will then close and the Board will deliberate. Finally, a vote on your case will be taken and a decision made. In addition, a

formal written Notice of Decision will be mailed to you. You have 30 days from the date of the decision to appeal.

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