

**Town of Hopkinton, New Hampshire**  
**Zoning Board of Adjustment**  
330 Main Street, Hopkinton, NH 03229  
Tel: (603) 746-4487 · Fax (603) 746-2952  
e-mail: [planzone@tds.net](mailto:planzone@tds.net)

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

The Board strongly recommends that, before making any appeal, you become familiar with the Zoning Ordinance, and also with the New Hampshire Statutes Annotated Chapters 672-677, concerning planning and zoning.

Please read the application carefully and fill it out completely. If you need assistance, or have questions in regard to the application or hearing procedures, you should contact the Planning/Zoning Director. For complex appeals it may be best to seek legal assistance.

The Zoning Board of Adjustment (ZBA) is given specific powers by the New Hampshire State Law and the Hopkinton Zoning Ordinance (See Section XV of the Hopkinton Zoning Ordinance) to hear four kinds of cases:

- ❖ Requests for variances,
- ❖ Requests for special exceptions,
- ❖ Requests for equitable waivers of dimensional requirements, and
- ❖ Appeals of zoning administrative decisions made by the Town zoning officials or by the Planning Board.

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 a majority of the sitting members must find that an application meets all five special conditions. The party(ies) seeking a variance have the burden of establishing each of the requirements for the variance.

If you are applying for a variance you must first have some form of determination that your proposal 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 special exceptions, certain sections of the Zoning Ordinance provide that a particular use of property in a particular 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.

If you are applying for a special exception, you may also need site plan or subdivision approval, or both, from the Planning Board. This shall be done before you apply for a special exception.

For equitable waivers of dimensional requirements of the Zoning Ordinance. RSA 674:33-a authorizes the ZBA to grant equitable waivers to the dimensional requirements of the Zoning Ordinance where the applicant has satisfactorily proven to the Board the elements required by statute. The equitable waiver applies to existing dimensional non-conformities. The Applicant must be able to meet the required standards: The non-conformity 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; the non-conformity was not an outcome of ignorance of the law or bad faith but was instead cause by a legitimate mistake; the non-conformity does not constitute a public or private nuisance nor diminish the value

or interfere with future uses of other property in the area; and the cost of correction would far outweigh any public benefit to be gained.

For appeals of administrative decisions, if you have been denied a building permit or are affected by some other decision regarding the administration of the 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. If you are appealing an administrative decision, a copy of the decision appealed from must be attached to your application.

For any of these types of cases, the ZBA schedules a hearing date, sends notice of that date and the applicant's intentions to all abutters of the concerned property, and advertises the meeting and scheduled cases in a local newspaper, as well as posting copies of that same notice in various public places. For each hearing the ZBA first listens to a presentation by the applicant explaining why the request should be granted and then from any abutter or affected citizen who wishes to speak either in favor or in opposition to the request. If there is opposition, the first round of testimony is followed by a rebuttal round giving parties on both sides a chance to respond to statements made by the other side. The ZBA members then deliberate the matter, asking questions if further information is needed, after which the ZBA comes to a decision by voting on a motion to "vote on the application" (either to approve or to deny, with occasional instances of deferring the matter to a later date in order to obtain additional information).

Anyone who feels aggrieved by the decision will have a period of 30 days in which to file a Motion for Rehearing, after which the ZBA has a 30 day period in which to decide whether rehearing the case is warranted. In the event that a rehearing is granted, the matter is then treated as a new case.

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**HOPKINTON ZONING BOARD OF ADJUSTMENT**  
**APPLICATION FOR APPEAL**

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

Mailing Address: \_\_\_\_\_

Telephone (days): \_\_\_\_\_

Name of Property Owner: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone (days): \_\_\_\_\_

Tax Map: \_\_\_\_\_ Lot: \_\_\_\_\_ Location of Property: \_\_\_\_\_  
(street #, name)

Zoning of property in question (see zoning map in current Ordinance):

Circle one: R-1 R-2 R-3 R-4 B-1 M-1 VR-1 VB-1 VM-1

Section of the Hopkinton Zoning Ordinance under which your application was denied or you believe your proposal relates to:

Page: \_\_\_\_\_, Section: \_\_\_\_\_, Paragraph: \_\_\_\_\_

*A copy of your denied Building/Use Application from the Board of Selectmen must be attached.*

This application is for: \_\_\_\_\_ Area Variance \_\_\_\_\_ Use Variance  
\_\_\_\_\_ Administrative Appeal \_\_\_\_\_ Equitable Waiver  
\_\_\_\_\_ Special Exception

The undersigned hereby requests an Area Variance, Use Variance, Administrative Appeal, Equitable Waiver and/or Special Exception in order to permit the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTE: This application is not acceptable unless all required statements have been completed.** Additional information may be supplied on a separate sheet if the space provided is inadequate.

1. **Hearing, Abutter, and Notification Fees:**
  - Variance--\$100.00
  - Special Exception--\$70.00
  - Equitable Waiver--\$70.00
  - Administrative Appeal—No Fee
  - Owner, Applicant, Abutter Notification—\$5.00 (in all cases)
2. **A complete list of the names and mailing addresses of all abutters to this property, as defined by RSA 672:3.** Abutter is any person whose property adjoins or is directly across the street or stream from the land under consideration.
3. **Sketch map (11" x 17" maximum size) showing the exact road location of property in relation to at least one prominent landmark (road junction, business, town building, etc.).** Put a north arrow on your sketch map and label road names, etc. Indicate with an **X** the location of the property in question.
4. **Site plan of property showing:**
  - a. Boundaries and area of entire parcel
  - b. North point
  - c. Scale and legend
  - d. Location, size and type of all existing and proposed buildings, parking areas, signs, roadways, screening, etc.
5. **What provisions may need to be made for septic disposal, fire protection, water supply, parking, noise, smoke, surface drainage, etc.**
6. **Letter of Authorization to allow an Agent or Attorney to represent Applicant (if applicable).**
7. **Copy of property deed of the subject property.**
8. **Any other pertinent information that you feel the Board may need in order to make an intelligent and fair decision for all.**

You must appear at the public hearing or be represented by an authorized agent or attorney for the Board to take action on your application. The application will be terminated or tabled for failure to appear at a scheduled public hearing, without first providing written notification to the Planning/Zoning Director.

You are fully responsible for researching and knowing any and all laws, which may be applicable and affect the outcome of the Board's decision on your application request. The Town of Hopkinton assumes no responsibility or liability relating to your failure to research and know all applicable laws including, but not limited to, state, federal and local laws, codes, land development regulations and comprehensive plan. The Town of Hopkinton strongly recommends that all applicants consider consulting an attorney regarding their application.

You are encouraged to review the attached Quasi-Judicial Rules of Procedures used by the Board of Adjustment at the public hearing.

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I/We being duly sworn, depose and say that I am/We are the owner(s)/lessee(s) of land included in the application and that the foregoing statement herein contained and attached, and information or attached exhibits thoroughly to the best of my/our ability present the arguments on behalf of the application herewith submitted and that the statements and

attached exhibits above referred to are in all respect true and correct to the best of my/or knowledge and belief.

In addition, I/We understand this application must be filed with all pertinent information as it pertains to the requirements of the Town of Hopkinton Zoning Ordinance and all other information requested or required by the Zoning Board of Adjustment in order to be considered complete. I/We understand that this application will not be filed until all required information has been received, and do further understand that the Town of Hopkinton reserves the right to postpone this request until such time as the requirements are met.

Furthermore, I/We understand that I/We, our representative as stated on the application, should appear at the public hearing. If photographs, documents, maps or other materials are provided to the Board as evidence at the public hearing, said evidence will become property of the Town of Hopkinton and will remain on file for future reference.

Also, I/We recognize and understand that the public hearing before the Board of Adjustment regarding land development is considered quasi-judicial in nature. *State and local law strictly prohibits applicants and/or interested parties from participating in ex-parte communications with Board members in person, by phone, e-mail, or in writing before the application is discussed at a public hearing.*

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant's Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

Owner's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Owner's Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

**SPECIAL EXCEPTION**  
(Section XV)

In order to secure a special exception, the Zoning Board of Adjustment must determine that your requests is in harmony with the general purpose and intent of this Ordinance and meets the following criteria. **Please provide a written response along with any other supporting documentation for each of the following criteria.** Should the space provided be inadequate, please attach additional pages to this application.

- 1) Standards provided by this Ordinance for the particular use permitted by special exception.

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- 2) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

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- 3) No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

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- 4) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

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- 5) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

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- 6) No significant increase of storm water runoff onto adjacent property or streets.

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7) An appropriate location for the proposed use.

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8) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

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9) In the public interest and in the spirit of the ordinance.

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Note: Special exception approvals may be subject to appropriate conditions including the following:

- 1) Front, side, or rear yards in excess of the minimum requirements of this Ordinance.
- 2) Screening of the premises from the street or adjacent property by walls, fences, or other devices.
- 3) Modification of the exterior features or buildings or other structures.
- 4) Reasonable limitations on the number of occupants and methods and times of operation.
- 5) Grading of the premises for proper drainage.
- 6) Regulation of design of access drives, sidewalks, and other traffic features.
- 7) Regulation of the number, size, and lighting of signs more stringent than the requirements of this Ordinance.

**VARIANCE**  
(Section XV)

In order to secure a variance, the Zoning Board of Adjustment must determine by law that your variance request satisfies the following criteria of the Zoning Ordinance. **Please provide a written response along with any other supporting documentation for each of the following criteria.** Please note that all criteria must be satisfied and supported by the Zoning Board of Adjustment in order for a variance to be granted. Should the space provided be inadequate, please attach additional pages to this application.

1. The proposed use would not diminish surrounding property values because:

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

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3. By granting the variance substantial justice would be done because:

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4. The spirit and intent of the Ordinance will not be broken by granting the variance because:

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5. Literal enforcement of the ordinance results in 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.

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(ii) The proposed use is a reasonable one.

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(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.

**EQUITABLE WAIVERS OF DIMENSIONAL REQUIREMENTS**

(Section XV)  
(RSA 674:33-a)

The Board shall hear and decide requests for equitable waivers when a lot or structure thereupon, is discovered to be in violation of dimensional requirements imposed by the Zoning Ordinance. **Please provide a written response along with any other supporting documentation for each of the following criteria.** Please note that all criteria must be satisfied and supported by the Zoning Board of Adjustment in order for a variance to be granted. Should the space provided be inadequate, please attach additional pages to this application.

- (a) That the violation was unknown to the owner, owner’s predecessors, owner’s agent or representative, or municipal official, until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been conveyed to a bona fide purchaser for value (i.e. an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value);

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- (b) That the violation was caused by a good faith error in measurement or calculation by an owner or agent or an error in interpretation of the Ordinance or its applicability by a municipal official in the process of issuing a permit, while that official was acting within the scope of his/her authority;

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- (c) That no public or private nuisance may be created by the violation;

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- (d) That there will be no diminution in the value of other property in the area;

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- (e) That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and

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(f) That due to the degree of past construction or investment, the cost to correct the violation so far outweighs the public benefit to be gained that it would be inequitable to require the violation to be corrected.

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In lieu of the findings required by the Board under subparagraphs (a) and (b) above, the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more and no enforcement action, including written notice of violation, has been initiated regarding the violation by the Town or anyone directly affected by the violation.

**Waivers shall be granted under this section only from physical layout, mathematical, or dimensional requirements (e.g. setbacks, frontage or area), and not from use restrictions.** An equitable waiver granted under this section shall not be construed as a non-conforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

## **APPEAL FROM AN ADMINISTRATIVE DECISION**

(Section XV)

If you have been denied a building permit or are affected by some other decision regarding the administration of the Hopkinton 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.

When an appeal is made to the Board of Adjustment under this provision, the Board must apply the strict letter of the law in exactly the same way that a building inspector must. It cannot alter the Ordinance and map or waive any restrictions under the guise of interpreting the law. The petitioner may ask for a variance after the Board of Adjustment has defined the law, but this must be done by filing an application for variance and considered by the Board based on the standards required for a variance.

Please note that the Board of Adjustment cannot hear appeals from decisions made by the Planning Board concerning plats, subdivisions, and site plans. RSA 677:15 directs that appeals from Planning Board decisions are taken to Superior Court. However, if a Planning Board has declined to accept an application based on its determination that the proposal does not meet the requirements of the Zoning Ordinance, an appeal may be taken to the Zoning Board of Adjustment. The appeal would be from the administrative decision not to accept the application. The Board of Adjustment would then be asked to interpret the intent of the Zoning Ordinance, which is a legitimate function of the Board.

**A copy of the decision appealed from must be attached to your application.**