

**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@hopkinton-nh.gov

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 Department. 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 after 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 caused 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 Appeal 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 Board of Adjustment schedules a hearing date, sends notice of the 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 the same in various public places. For each hearing the Board of Adjustment 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 members of the Board then deliberate the matter, asking questions if further information is needed, after which the Board comes to a decision (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 thirty (30) days in which to file a Motion for Rehearing, after which the Board of Adjustment has a thirty (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: _____

Zoning of property in question (circle one): R-1 R-2 R-3 R-4 B-1 M-1 VR-1 VB-1 VM-1

Section of Hopkinton Zoning Ordinance under which your application was denied or you believe your proposal relates to: Section: _____ Paragraph/Table: _____

A copy of your denied Building/Use Application or administrative decision must be attached.

This application is for: Variance Special Exception Equitable Waiver Administrative Appeal

The undersigned hereby requests a Variance, Special Exception, Equitable Waiver, and Administrative Appeal 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, Notification Fees:

- Variance – \$100.00
- Special Exception – \$100.00
- Equitable Waiver – \$100.00
- Administrative Appeal – \$100.00
- Rehearing – \$100.00
- Notification of each Owner, Applicant, Agent, Abutter – \$5.00
- Published Notice – \$75.00

2. List of names and mailing addresses of all abutters to the property as defined by NH RSA 672:3. Supply information on separate sheet. Abutter is any person whose property adjoins or is directly across the street or stream from the land under consideration.

3. Attach location map showing exact location of property in relation to at least one prominent landmark (road junction, business, town building, etc.). Include north arrow and label road names. Indicate with an **X** the location of the property in question.

4. **Attach site plan of property showing:** Boundaries and area of parcel; north point, scale and legend; location, size and type of all existing and proposed buildings, uses, parking, signs, roadways, screening, etc.
5. **List provisions to be made for septic disposal, fire protection, water supply, parking, noise, smoke, surface drainage, etc.** Supply information on separate sheet.
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 to assist in their decision making process.**

You must appear at the public hearing or be presented 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 Department.

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 encourages all applicants to consider consulting an attorney regarding their application.

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

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 statements herein contained and attached, and information or attached exhibits thoroughly to the best of my/our ability represent the arguments on behalf of the application herewith submitted and that the statements and attached exhibits 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: _____

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:

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

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

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

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.

(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.

SPECIAL EXCEPTION
(Section XV)

In order to secure a variance, the Zoning Board of Adjustment must determine by law that your Special Exception 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 Special Exception to be granted. 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.**

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

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.**

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

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

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

7. **An appropriate location for the proposed use.**

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.

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

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

(Section XV)
(NH 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 an Equitable Waiver to be granted. Should the space provided be inadequate, please attach additional pages to this application.

1. **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. and innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value):**

2. **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:**

3. **That no public or private nuisance may be created by the violation:**

4. **That there will be no diminution in the value of other property in the area:**

5. **That the violation will not interfere with or adversely impact any present or permissible future uses of any such property; and**

6. **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.**

In lieu of the findings required by the Board under subparagraphs (1) and (2) 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 directed 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 nonconforming 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.

**TOWN OF HOPKINTON, NH
ZONING BOARD OF ADJUSTMENT
RULES OF PROCEDURE**

AUTHORITY

These rules of procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, 1983, Chapter 676:1, and the Zoning Ordinance and map of the Town of Hopkinton.

OFFICER

1. A **chairman** shall be elected annually by a majority vote of the Board following the Annual Town Meeting. The chairman shall preside over all meetings and hearings, appoint such committees as directed by the Board and shall affix his/her signature in the name of the board.

TERMS, MEMBERS AND ALTERNATES

1. **Terms of Members and Alternate Members** shall take the oath of office for a term of three years. Appointments made to fill vacancies on the Board shall be for the remainder of the terms in accordance with RSA 673:12.
2. **Members** are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the Chairman or Planning/Zoning Coordinator as soon as possible. Members, including the Chairman and all officers, shall participate in the decision making process.
3. **Alternate members** shall be appointed, as provided for by the local legislative body, and will attend all meetings to familiarize themselves with the workings of the board to stand ready to serve whenever a regular member of the board is unable to fulfill his/her responsibilities.

MEETINGS

1. **Regular meetings** shall be held at the Hopkinton Town Hall, at 7:00 PM on the first Tuesday of each month. Other meetings may be held on call of the Chairman provided public notice and notice to each member is given not less than five (5) days prior to such meetings.
2. **Quorum.** A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.

RSA 674:33 provides that "...the concurring vote of 3 members of the board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal..." For this reason, the Board will make every effort to ensure that a full five (5) member board is present for the consideration of any appeal.

If any regular Board member is absent from any meeting or hearing, or disqualifies himself from sitting on a particular case, the Chairman shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.

3. **Disqualification.** If any member finds it necessary to disqualify himself from sitting in a particular case, as provided in RSA 673:14, he or she shall notify the chairman as soon as possible so that an alternate may be requested to sit in his or her place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-

binding. The disqualification shall be announced by either the Chairman or the member disqualifying himself before the beginning of the public hearing on the case. The disqualified member shall absent himself from the board table during the public hearing and during all deliberation on the case.

4. **Order of Business.** The order of business for regular meetings shall be as follows:
 - a. Call to order by the chairman
 - b. Roll call by the chairman
 - c. Public hearing
 - d. Minutes of previous meeting
 - e. Unfinished business
 - f. New business
 - g. Other business
 - h. Communications and miscellaneous
 - i. Adjournment

APPLICATION DECISION

1. Applications.

- (a) Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Planning/Zoning Coordinator.
- (b) Appeals from an administrative decision taken under RSA 676:5 shall be filed within forty-five (45) days of the decision.
- (c) All applications shall be filed at least fifteen (15) days before the date of the meeting. See schedule of meeting dates.
- (d) All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.

2. Public Notice.

- (a) Public notice of public hearings on each application shall be given in the Concord Monitor and shall be posted at the Town Hall and Town Clerk's Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the zoning ordinance concerned, the type of appeal being made and the date, time and place of the hearing.
- (b) Personal notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board, Town Clerk and other parties deemed by the Board to have special interest. Said notice shall contain the same information as the public.
- (c) Costs of all required notices must be paid for, in advance, by the applicant.

3. Public Hearing. The conduct of public hearings shall be governed by the following rules:

- (a) Chairman will explain the function of the Zoning Board of Adjustment, as opposed to the Zoning Board (Selectmen).
- (b) The applications are taken in the order that they were posted for the meeting; however, they can be taken out of order if the Board desires to do so for good cause.

- (c) Each application will begin with the applicant and his or her authorized representative presenting and explaining his or her application in detail.
- The Board would ask that the applicants stand, come forward and address the Board.
 - It is important that the audience hears the applicant, but it is imperative that the Board hears the applicant.
 - The applicant may use a display board for visual displays during his or her presentation.
 - The applicant should present his or her entire case, as this will be the only opportunity during the hearing that he or she will have to explain the application and convince the Board that he or she qualifies for a Variance or Special Exception, as the case may be.
- (d) At the conclusion of the applicant's case, the Board members will have an opportunity to ask any questions of the applicant that they may desire.
- (e) When the Board has concluded its questions, the Board will solicit testimony from abutters to the application. The Board will be soliciting testimony from abutters who are either in favor or in opposition to the application.
- (f) Should an abutter desire to speak in favor of or in opposition to a particular application and they are unsure whether or not they are an abutter, the Board has a list of the abutters for each application at its disposal to assist in clarifying the situation. However, generally if a property owner received a certified letter in the mail they are an abutter to at least one of the applications.
- (g) If non-abutters wish to address the Board when non-abutter testimony is called for, they will first be required to convince the Board that they are or would be "directly affected," by the proposal under consideration.
- (h) Lastly, in regards to public testimony, the Board will hear from any other Town Board, Commission and Department Head of the Town, should they wish to offer testimony.
- (i) The Board requests that the public testimony be confined to the application that the Board is considering at this particular time. The Board will solicit comments as to why the application should or should not be granted, as it relates to the Zoning Ordinance and the conditions necessary to be granted a Variance, Special Exception, Appeal from Administrative Decision, Equitable Waiver of Dimensional Requirements. Simple statements of, "I am in favor," OR "I am opposed," to the application should not be used, as the Board tends to put very little weight on "straw polls".
- (j) At the conclusion of all public testimony, the applicant will have one opportunity and one opportunity only to rebut what has been said by any members of the public who has given testimony.
- (k) At the conclusion of the applicant's rebuttal, the audience will then have an opportunity and one opportunity only to rebut anything that has been said by the applicant in his rebuttal.
- (l) All testimony from the applicant and the public having been received, the Board will discuss the application at its conclusion and vote on the application in public.
- (m) During the Board's deliberations on each application and subsequent vote in public, The Board requests that members of the public be quiet and attentive, not only for the Board's benefit, but more importantly for anyone in the audience who wishes to hear the Board's deliberation process and subsequent vote.

- (n) Anyone wishing to address the Board, please state their complete name and legal address, so that it may be properly recorded in the minutes of the meeting. All meetings are tape recorded and while individual members or collectively, the Board may know an abutter or applicant who wishes to testify, the Board would still ask that those wishing to speak give their name and legal address so that it may be recorded on the tape recorder for reference in writing of the Board's minutes.
- (o) Any party to the action or proceedings, or any person directly affected thereby, may apply for a rehearing. All Motions for Rehearing shall be filed in accordance with NH RSA 21:35. Such a request must include the reason or reasons. A simple statement entitled, "Request for Rehearing," is not sufficient. Note: Motions for Rehearing will NOT be accepted by electronic filing. All rehearing requests must be acted upon within 30-days from receipt.

Anyone wanting more detailed information on rehearing requests is asked to see the Chairperson at the conclusion of the meeting. The Chairman then formally begins the Zoning Board of Adjustment hearing for...

- 4. **Decisions.** The Board shall decide all cases within 30-days of the close of the public hearing to approve, approve with conditions, or deny the appeal, unless the Board continues the application. Notice of the decision will be made available for public inspection within five (5) business days after the public meeting, as required by RSA 676:3, and will be sent to the applicant. If the appeal is denied, the notice shall include the reasons therefore. The notice shall also be given to the Planning Board, the Board of Selectmen, Town Clerk, Tax Assessor and other Town officials as determined by the Board. Notice shall be posted at the Town Clerk's Office and the Town Hall.

RECORDS

- 1. The records of the Board shall be kept by the Planning/Zoning Coordinator and made available for public inspection at the Board's office in accordance with RSA 673:17.
- 2. Final written decisions will be placed on file and available for public inspection within five (5) business days after the decision is made. RSA 676:3.
- 3. Minutes of all meetings including names of Board members, persons appearing before the Board, and a brief description of the subject matter shall be open to public inspection within five (5) business days after the public meeting. RSA 91-A:2 II.

AMENDMENTS

These Rules of Procedure may be amended by a majority vote of the members of the Board provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken. Public notice of meetings shall be posted in the Concord Monitor and at the Town Hall and Town Clerk's Office not less than five days (5) before the date fixed for the hearing.

WAIVERS

Any portion of these Rules of Procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant and waiver would not be contrary to the spirit and intent of the rules.

JOINT MEETINGS AND HEARINGS

- 1. RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other boards and that each board shall have discretion as to whether or not to hold a joint meeting.

2. Joint business meetings with any other land use board may be held at any time when called jointly by the chairmen of the two boards.
3. A public hearing on any appeal to the Board of Adjustment will be held jointly with another board only under the following conditions:
 - (a) The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - (b) If the other board is the Planning Board, RSA 676:2 requires that the Planning Board chairman shall chair the joint hearing. If the other board is not the Planning Board, then the Board of Adjustment chairman shall chair the joint hearing; and
 - (c) The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other Board, shall be followed; and
 - (d) The other board shall concur in these conditions.

Effective Date: May 4, 2004

Effective Date of Revisions: April 6, 2010

Janet Krzyzaniak
George Langwasser
Carolyn Hackwell
Charles Koontz
Toni Gray

Harold Perkins
Daniel Rinden
David Brock
Charles Koontz
Toni Gray

Board of Adjustment
Hopkinton, NH