



Town of Troy

16 Central Square - PO Box 249 - Troy, New Hampshire 03465

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS CAREFULLY BEFORE FILLING OUT 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 TITLE LXIV, RSA Chapters 672- 678, covering planning and zoning.

Four types of appeals can be made to the board of adjustment:

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

<p>Statutory Requirements (RSA 674:33, I(b)) <i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i></p>	<p>Explanation</p>
<p>1. The variance is not contrary to the public interest.</p>	<p>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.”</p>
<p>2. The spirit of the ordinance is observed.</p>	<p>As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.</p>
<p>3. Substantial justice is done.</p>	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
<p>4. The values of surrounding properties are not diminished.</p>	<p>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.</p>
<p>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 distinguishes 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.</p>	<p>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.</p>

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 Troy 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.

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 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. Even in those cases where no planning board approval is needed, depending on the particular facts of your case, presenting a site plan to the planning board may assist in relating the proposal to the overall zoning.

Equitable Waiver of Dimensional Requirements: The board may grant an equitable waiver only for existing dimensional nonconformities, provided the applicant can meet the required standards.

1. 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.
2. The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a good faith error in measurement or calculation.

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

3. 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
4. The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (1) and (2), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.

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?

Prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the assessor's office, but the accuracy of the list is your responsibility. Mail or deliver the completed application, with all attachments, to the clerk of the board or to the office of the board of selectmen. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. Make check payable to city/town of Troy and remit with your application.

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 a newspaper and notice will be mailed to you and to 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 may be in the form of a letter to the board. 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.



Town of Troy

16 Central Square - PO Box 249 - Troy, New Hampshire 03465

Application for a Variance

To: Zoning Board of Adjustment, Town of Troy

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)

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

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:

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

3. Granting the variance would do substantial **justice** because:

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

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:

- and -

ii. The proposed use is a reasonable one because:

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.

Applicant _____ Date _____
(Signature)



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Appeal from an Administrative Decision

Do not write in this space.
Case No. _____
Date Filed _____
_____ (Signed - ZBA)

To: Zoning Board of Adjustment, Town of Troy

Name of Applicant _____

Address _____

Owner _____

(If same as applicant, write "same")

Location of Property _____

(Street, number, sub-division, and lot number)

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

Relating to the interpretation and enforcement of the provisions of the zoning ordinance.

Decision of the enforcement officer to be reviewed _____

_____ number: _____ date: _____

article _____ section _____ of the zoning ordinance in question: _____

Applicant _____ Date _____

(Signature)



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16 Central Square - PO Box 249 - Troy, New Hampshire 03465

Application for an Equitable Waiver of Dimensional Requirements

Do not write in this space.
Case No. _____
Date Filed _____
_____ (Signed - ZBA)

To: Zoning Board of Adjustment, Town of Troy

Name of Applicant _____

Address _____

Owner _____

(If same as applicant, write "same")

Location of Property _____

(Street, number, sub-division, and lot number)

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

An Equitable Waiver of Dimensional Requirements is requested from article _____
section _____ of the zoning ordinance to permit _____

1. Does the request involve a dimensional requirement, not a use restriction?

yes no

3. Explain how the violation has existed for 10 years or more with no enforcement action,
including written notice, being commenced by the town. _____

- or -

Explain how the nonconformity was discovered after the structure was substantially completed
or after a vacant lot in violation had been transferred to a bona fide purchaser.

- and -

How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation. _____

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area. _____

4. Explain how the cost of correction far outweighs any public benefit to be gained.

Applicant _____ Date _____
(Signature)



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Application for a Special Exception

Do not write in this space.
Case No. _____
Date Filed _____
_____ (Signed - ZBA)

To: Zoning Board of Adjustment, Town of Troy

Name of Applicant _____

Address _____

Owner _____

(If same as applicant, write "same")

Location of Property _____

(Street, number, sub-division, and lot number)

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

Description of proposed use showing justification for a special exception as specified in the zoning ordinance, article _____ section _____

Explain how the proposal meets the special exception criteria as specified in article _____, section _____ of the zoning ordinance (list all criteria from ordinance).

Criterion 1 - _____

Criterion 2 - _____

Criterion 3 - _____

Criterion 4 - _____

Applicant _____ Date _____

(Signature)

List of Abutters

Applicant: _____ Map # _____ Lot # _____

Address: _____ City/State/Zip _____

Preparer of Plan: _____

Address: _____ City/State/Zip _____

Are there easements or Agricultural Restrictions on Deeds of the property or Conservation Easements held by the Town? Yes _____ No _____

Abutters:

Name: _____ Map _____ Lot _____

Address: _____

Name: _____ Map _____ Lot _____

Address: _____

Name: _____ Map _____ Lot _____

Address: _____

Name: _____ Map _____ Lot _____

Address: _____

Name: _____ Map _____ Lot _____

Address: _____

Name: _____ Map _____ Lot _____

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Name: _____ Map _____ Lot _____

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Address: _____