

**APPLICATION TO THE ZONING BOARD OF ADJUSTMENT
FOR VARIANCE, SPECIAL EXCEPTION, APPEAL OF ADMINISTRATIVE
DECISION OR EQUITABLE WAIVER**

Application Revised 10/9/2023

IT IS IMPORTANT THAT YOU READ EACH INSTRUCTION CAREFULLY

The application cannot be accepted if incomplete

1. A copy of the Notice of Violation or a letter from the denying body stating the reasons for the violation must accompany this application.
2. Supply a plot map of the property in question, as close to scale as possible, showing boundaries, streets, existing and/or proposed buildings, access roads, and abutters. Unless otherwise specified, a detailed hand drawing is acceptable. If submitting large plans (24"x36") please include an 11"x17" copy.
3. Supply the correct names and mailing addresses of all abutters. An abutter is any property owner whose property adjoins yours or is directly across a street or stream. If more than one person owns the property, you must include every owner. Owner and mailing address information is available at the Town Hall. Be sure to check the information at the Town Hall, as your neighbor may not receive mail at the street address for the property or the person you always thought owned the property may not be the owner after all. (see abutter-listing page for further information)

List the name and address of anyone who will represent you at the hearing and submit a letter indicating they have permission to represent you.

List any surveyor, engineer, architect, or soil scientist whose stamp and signature appear in the application materials or on plans.

The determination of abutters is the responsibility of the applicant. This list will not be reviewed for compliance with statutory requirements. Please use abutter information available at Town Hall.

You and all other interested parties will be notified by certified mail of the time, date, and place of the hearing per NH RSA. Notice of the hearing will be posted in the Town Hall and Town website, and a newspaper of general circulation in the area.

You will be allowed, at the public hearing, to state your reasons for requesting the hearing and those opposed or in favor will have equal opportunity to speak.

4. All necessary fees must accompany the application. If fees are not paid at the time the application is submitted, the application will not be accepted per State RSA.

5. When the application is determined to be complete, the secretary will contact the Chairman of the Zoning Board and the Chairman will set the date for the hearing. The hearing will be held within forty five days of the receipt of the completed application. The hearing will usually be held on a Monday, at 7:00 p.m.
6. Board members may contact you in order to visit the site prior to the meeting. **Be advised that you cannot discuss the case or ask any questions of them relating to the case outside of the posted public meeting.** If you have any questions about your case, contact the Zoning Office at the Town Hall.
7. The Board of Adjustment will render its decision within thirty days of the hearing date. You will be sent a Notice of Decision.
8. If your request is granted, anyone affected has the right to appeal this decision within thirty days.
9. If you believe the Board's decision is incorrect, you have the right to appeal. To appeal, you must first ask the Board for a rehearing. The Motion for Rehearing is not done on this application. It should 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 all of the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a hearing 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. No formal public notice is done for this meeting, beyond posting an agenda, as there is no public hearing. The facts should be stated fully within the Motion for Rehearing that you filed.

If the Board decides to grant a rehearing, the same procedure is followed at that time as for the first hearing, including public notice and notice to abutters.

See NH RSA Chapter 677 for more details on rehearing and appeals procedures.

FEE SCHEDULE

1. Application fee - \$60 per application.
2. Abutters - \$7.00 per abutter, **including yourself**, agents representing you (see instruction page for full details). This is to cover certified mailing fees. Notices must be sent by certified mail per State Law.
3. Newspaper Notice - \$150.00. Notice of the hearing must be published in a newspaper of general circulation per State Law.

Note: Newspaper Notice Fee increased from \$75 to \$150 by resolution of the Newmarket Zoning Board of Adjustment on October 9, 2023.

**APPLICATION – ZONING BOARD OF ADJUSTMENT
TOWN OF NEWMARKET, NH**

Applicant: _____

Mailing Address: _____

Email Address: _____

Property owner: _____

Mailing Address: _____

Home Phone: _____ Cell Phone: _____

Email address: _____

Location of property: _____ Map ____ Lot ____ Zone ____

Description of property: _____

Proposed use or existing use affected: _____

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**The following pages contain forms for Appeal from Administrative Decision, Special Exception, Variance, & Equitable Waiver. Please fill out appropriate request sheet. All applications will need completed abutters list.**

|                               |
|-------------------------------|
| Do not write in<br>this space |
| Date filed<br>_____           |
| Initials _____                |

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SECTION 1 APPEAL FROM ADMINISTRATIVE DECISION

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

Decision of the Building Official to be reviewed:

Section _____ of the Newmarket Zoning Ordinance in question: _____

SECTION 3 VARIANCE

A variance is requested from Section _____ of the Newmarket Zoning Ordinance to permit _____

See attached pages for variance criteria

VARIANCE CRITERIA

The local ordinance cannot limit or increase the powers of the Board to grant variances under this authority, but this power must be exercised within bounds. In several decisions from 1952 to the present, the Supreme Court has declared that each of the following criteria must be found in order for a variance to be legally granted:

CRITERION 1. Granting the Variance would not be contrary to the public interest.

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

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

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

CRITERION 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:

1. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

AND

2. 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 reasonable use of it.

SECTION 4 APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-a of the NH Revised Statutes Annotated.

1. Does the request involve a dimensional requirement, not a use restriction
() yes () no

2. Explain how the violation has existed for ten 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 legitimate mistake _____

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.

Please sign below for all applications:

Applicant _____
Signature

Applicant _____
Please Print

Owner _____
Signature

Owner _____
Please Print

Date _____

ABUTTERS LIST

1. List the tax map, lot number, name(s) and mailing address of the **property owner(s), applicant (if different from property owners) and all abutters and any others requiring notification**, as shown in Town records, not more than five days prior to submittal per RSA 676:4,I(b). This may be done on a separate sheet. Please indicate the date of preparation and sign your name on each sheet.
2. As applicable, list the name, mailing address, daytime phone number, and email address of the Applicant's Authorized Representative and any surveyor, engineer, architect or soil scientist whose stamp and signature appear in the application materials. Use a separate piece of paper if needed.
3. **Fill out two adhesive mailing labels for EVERY entry on the list. Labels must not exceed 1" tall by 2.75" long in order to fit on the certified mail tags.**
4. **The determination of abutters is the responsibility of the applicant.** This list will not be reviewed for compliance with statutory requirements. Use abutters information available at Town Hall Assessing Office. Do not use information from any other source to determine abutters (online, website, memory, etc.)

Map	Lot	Owner	Mailing Address
_____	_____	<u>PROPERTY OWNER-MUST BE INCLUDED PER STATE LAW</u>	
_____	_____	<u>APPLICANT, IF DIFFERENT FROM PROPERTY OWNER</u>	
_____	_____	<u>AUTHORIZED AGENT, IF APPLICABLE-PER STATE LAW</u>	

All abutters (use separate sheet, if necessary):

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Date of preparation: _____

I hereby certify that all information presented on this form is, to the best of my knowledge, correct. _____

Signature of preparer

CHECKLIST

Go over the list and make sure that you have included everything on it **BEFORE** submitting your application.

1. Letter of Violation/Denial - From the Administrative Officer. _____

2. Plot map – As close to scale as possible showing
 - a. boundaries _____
 - b. setbacks _____
 - c. streets _____
 - d. existing or proposed structures _____
 - e. access roads _____
 - f. abutters _____

3. List of abutters – Every owner of every property, the owner of the property involved in the request, the applicant if different from the property owner, any authorized agent representing the owner or applicant at the meeting, with correct mailing addresses (see instruction sheet for full details). _____

4. **Two adhesive mailing labels per everyone on the list, not to exceed 1” tall by 2.75” long.**

5. Section number of the ordinance involved. _____

6. Fees. _____

7. Letter of permission from property owner(s) if someone is representing them at the meeting. _____