

Town of Dunbarton, New Hampshire
Zoning Board of Adjustment
1011 School Street, Dunbarton, N.H. 03046
Phone: (603) 774-3541 Ext. 106
Email: building@dunbartonnh.org

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 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 Dunbarton Zoning Ordinance (See Article 15 of the Dunbarton 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's Administrative Officer 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 of the ZBA 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.

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 all 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.

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 all the elements required by statute have been met.

In lieu of the findings required under subparagraphs (a) and (b) outlined in NH RSA 674:33a, the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, had been commenced against the violation during that time by the municipality or any person directly affected.

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 **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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DUNBARTON ZONING BOARD OF ADJUSTMENT
APPLICATION FOR HEARING

Name of Applicant:_____

Mailing Address:_____

Telephone (days):_____

Name of Property Owner:_____

Mailing Address:_____

Telephone (days):_____

Tax Map:_____ Block _____ Lot_____

Location of Property:_____

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

Circle one: LDR MDR VD MFD

Section of the Dunbarton 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 must be attached****

This application is for: _____ Variance _____ Appeal of Administrative Decision
_____ Equitable Waiver _____ Special Exception
_____ Rehearing (if granted)

The undersigned hereby requests a 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:**
 - Application fee – \$50.00
 - Variance – \$100.00
 - Special Exception – \$250.00
 - Equitable Waiver of Dimensional Requirements – \$75.00
 - Appeal of Administrative Decision – \$50.00
 - Notification of Owner, Applicant, Agent, and all Abutters – \$6.00 each (in all cases)
 - Published Notice – **the actual cost of the notice will be invoiced, and must be paid prior to the meeting**
 - Rehearing/Additional Hearings – \$150.00
- 2. A complete list of the names and mailing addresses of all abutters to this property and two (2) sets of mailing labels (include labels for Applicant), 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. Certified Plot Plan of property showing: (10 copies required with application)**
 - 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. (**see full definition of Certified Plot Plan in Zoning Ordinance for full requirements).
- 4. What provisions may need to be made for septic disposal, fire protection, water supply, parking, noise, smoke, surface drainage, etc.**
- 5. Letter of Authorization to allow an Agent or Attorney to represent Applicant (if applicable).**
- 6. Copy of property deed of the subject property.**
- 7. 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 and be prepared to present your case 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 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 Dunbarton 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 master plan. The Town of Dunbarton strongly recommends that all applicants consider consulting an attorney regarding their application.

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/our 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 Dunbarton 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 Dunbarton 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 Dunbarton 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

(Article15)

For a variance to be granted, the Zoning Board of Adjustment must determine by law that your variance request satisfies all five variance criteria below.

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. 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 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.

The definition of "unnecessary hardship" set forth in paragraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, dimensional or other limitations on a permitted use, or any other requirement of the Ordinance.