

ZBA Appeal Application Guide

Read the following information carefully in order to correctly fill out your application.

Every appeal filed to the Zoning Board of Adjustment is unique with many factors for the Board to consider. The submission of a complete application, with all necessary information and supporting documentation is critical. This allows the Board members to make a well informed decision regarding your appeal.

FUNCTIONS OF THE BOARD:

It is strongly recommended that before making any appeal you become familiar with the Zoning Ordinance and also with the New Hampshire Statutes Title LXIV, RSA Chapters 672 - 677, which address planning and zoning. **It is the applicant's responsibility** to be properly prepared and to be familiar with any and all applicable laws and regulations pertaining to the appeal.

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. For a variance to be granted, **you must show** that your proposed use meets **all** of the following conditions:

- (1) The variance **will not** be contrary to the public interest;
- (2) The spirit of the ordinance **is** observed;
- (3) Substantial justice **is** done;
- (4) The values of surrounding properties **will not** be diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an 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 definition of "unnecessary hardship" set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

SPECIAL EXCEPTION:

Certain sections of the Zoning Ordinance provide that a particular use of a 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 and are set forth below.

A Special Exception is a use that would not be appropriate generally or without restriction throughout a particular zone but which, if controlled as to the number, area, duration, location or relation to the neighborhood would promote the public health, safety, and general welfare. Such uses may be permitted in a particular zone by exception, only if a specific provision for such exception is made in this zoning ordinance and then only by permission of the Board of Adjustment.

The Board must find that all the following conditions are met in order to grant the Special Exception:

1. That a plat/plan *has* been submitted in accordance with the Alton Zoning Ordinance Section 520B and a recommendation has been made.
2. The specific site *is* an appropriate location for the use.
3. Factual evidence *is not* found that the property values in the district will be reduced due to incompatible uses.
4. There *is no* valid objection from abutters based on demonstrable fact.
5. There *is no* undue nuisance or serious hazard to pedestrian or vehicular traffic, including the location and design of access ways and off-street parking.
6. Adequate and appropriate facilities and utilities *will* be provided to insure the proper operation of the proposed use or structure.
7. There *is* adequate area for safe and sanitary sewage disposal and water supply, and
8. The proposed use or structure *is* consistent with the spirit of this ordinance and the intent of the Master Plan.

In addition to the above general criteria, the specific criteria found elsewhere in this ordinance must be met for:

- Manufactured Housing (Section 350)
- Recreation Camping Parks (Section 355)
- Height restrictions (Section 328)
- Condominium Conversion (Section 329)

APPEAL OF AN ADMINISTRATIVE DECISION:

If you have been denied a building permit or are affected by some other decision regarding the administration of the Alton 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 being appealed must be attached to your application.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:

When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any 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 I(a) and (b), 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, has been commenced against the violation during that time by the municipality or any person directly affected.

APPLICATION SUBMISSION:

THE APPLICATION SUBMISSION DEADLINE FOR NEW APPLICATIONS IS 12:30 PM OF THE 21ST DAY PRIOR TO THE MEETING DATE.

Timely submission of materials is imperative.

An original and seven (7) copies of the application, and accompanying documentation, must be submitted. **Ensure the application is signed by ALL owners!** Also, four (4) large (minimum of 22"x 34") plan copies and seven (7) reduced (11"x17") plan copies are required for each plan sheet submitted.

Information not presented by the application deadline could result in the Board members having insufficient review opportunity, and may result in rejection of the application as incomplete, denial of the request, or could delay the Board's decision unnecessarily.

Supporting documentation submitted with your application should include, but is not limited to:

- Scaled drawing of the property showing the location and size of all

structures, boundary lines, applicable setbacks such as boundary line/Right of Way setbacks, wetland setbacks, and NHDES Comprehensive Shoreland Protection Act setbacks. (In the case of a variance request for setback relief, or Equitable Waiver of Dimensions, a stamped survey by a NH Licensed Land Surveyor is required.)

- A project narrative. This is a thorough explanation of your project.
- Photos of the property, surrounding area, abutting parcels and roads. The more detailed the pictures, the better the Board members can visualize your project.
- Detailed sketches, engineered plot plans. These should show the existing conditions at the time of the application, and the proposed conditions. This includes elevation drawings and plans of any structures being modified.
- Copies of all relevant deeds and easements.
- If you are the agent for a property owner, a letter signed by the owner designating you as their agent is **required**.
- If you are requesting waivers from any of the application requirements, written justification for each waiver requested is mandatory. Waiver requests must be filed as part of the application.

Questions to answer in the application:

WHO owns the property? If the applicant is not the owner, (e.g., agent, trustee, etc.) this must be explained and authorized.

WHAT do you propose to do? Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Information such as distances to abutters, sight distances, etc is very important.

WHEN is the proposed activity supposed to take place, is it a seasonal activity or year round?

WHERE is the property located? Detailed information on the abutting parcels and surrounding area is more helpful than simply supplying an address. (for example-abutting septic areas, structures and other features). Describe the property and surrounding area. Provide the lot area, road and/or water frontage, side and rear property lines, slopes and natural and cultural features (such as cemeteries, rock walls, water courses), and any other details that will help the Board to understand the unique characteristics of the subject parcel. ***Pictures are a big help here.***

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

PUBLIC NOTICE:

Your application must include an **abutter list** -- a listing showing the names, mailing addresses, map numbers and lot numbers of every abutter.

"Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use

board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII as amended.

For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II as amended, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

The abutter list must include names, mailing address and map and lot numbers of all abutters as defined above, also for every holder of conservation, preservation, or agricultural preservation restrictions concerned (when applicable), the owner(s) of the property and any person(s) acting as agent on behalf of the applicant/owner.

Information may be obtained and verified at the Alton Land Use and Property Records Department.

THE ACCURACY OF THE ABUTTER LIST IS THE RESPONSIBILITY OF THE APPLICANT!!!

In addition to the abutter list, **#10 small legal size envelopes** with each of the listed addresses printed or typed on them (**NO** return address or certified) must be supplied to the Planning Department with your application. The Planning Department will place the return address on the envelopes and certified delivery postage.

FEES:

A completed **Fee Schedule** and **check** made payable to the Town of Alton must be included with your application at the time of submission.

You may mail or deliver the completed application, with all attachments and fees, to the Alton Town Hall, Land Use and Property Records Department by the previously mentioned deadline.

IT IS STRONGLY RECOMMENDED THAT YOU REVIEW THE APPLICATION WITH THE PLANNING STAFF SEVERAL DAYS PRIOR TO THE DEADLINE TO PREVENT UNNECESSARY DELAYS OR REJECTION OF THE APPLICATION!

Once your completed application has been submitted:

A properly completed application, submitted by the deadline to the Planning Office, will be scheduled at the next public hearing (within 30 days of the receipt of your application). Unless otherwise noticed, Zoning Board of Adjustment hearings are scheduled on the first Thursday of each month at 7:00 pm. Public notice of the hearing will be posted and printed in the newspaper, and notice will be mailed to you and to all abutters and other parties whom the Board may deem

to have an interest, at least five days before the date of the hearing. The applicant 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.

At the hearing:

Applications scheduled for that evening will be read into the record and then the Board will determine if the application can be accepted as complete and is ready for formal Board consideration.

If an application is deemed to be incomplete for acceptance by the Board, the applicant will be required to start the application process over, and will be responsible for all fees pertaining to the new application.

Once the application is accepted for consideration, the applicant or their agent will be asked to present it to the Board. The Board may direct questions to the applicant and request additional information. After the application has been presented, the Chair of the Board will open the discussion to the public, and invite anyone present who may have input, to speak in support of or opposition to the appeal. Any written testimony submitted from interested persons will be read into the record at this time. Once all public testimony has been presented, the public input portion of the hearing will be closed. If the Board believes it has sufficient information to make a decision, then deliberations will begin and the Board will either grant or deny the appeal. The applicant will be informed of the decision verbally at the hearing and then in a written *Notice of Decision* sent by mail within five (5) business days following such decision.

If the hearing is continued:

Should the hearing be continued so that more information can be provided, the deadline for submission of that information shall be two (2) weeks prior to the continued hearing date or as specified by the Board.

After the hearing:

If you disagree with the Board's decision, you have the right to appeal in accordance with RSA 677:2 as amended. Also the Board of 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 filed within 30 days after the decision is made**, and must set forth the grounds on which it claims 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.

Do Not Write in this Space.

Date Filed: _____

Case No.: _____

**APPLICATION FOR APPEAL
ZONING BOARD OF ADJUSTMENT
TOWN OF ALTON**

Name(s) of Applicant/Agent: _____

Address: _____

Telephone Number: (_____) _____ Email: _____

Owner(s) of Property concerned: _____

(If same as above, write same)

Address: _____

(If same as above, write same)

Telephone Number: (_____) _____ Email: _____

Street Location of Property:

Tax Map # _____ Lot # _____ Zone: _____

Description of Property _____

(Give length of frontage, side and rear property lines)

Size of Property _____

Proposed use, or existing use affected _____

Note: Fill in Section 1, 2, 3 or 4 as appropriate. 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.

1. APPLICATION FOR A SPECIAL EXCEPTION

A Special Exception is requested to Article _____ Section _____
to permit:

Facts to support this request:

(1) That a plat _____ /plan *has* been submitted in accordance with the Alton Zoning Ordinance Section 520B and a recommendation has been made. _____

(2) The specific site *is* an appropriate location for the use **because:**

(3) Factual evidence *is not* found that the property values in the district will be reduced due to incompatible uses **because;**

(3) There *is no* valid objection from abutters based on demonstrable fact **because;**

(4) There *is no* undue nuisance or serious hazard to pedestrians, or vehicular traffic, including the location and design of access ways and off-street parking **because;**

(5) Adequate and appropriate facilities and utilities *will* be provided to insure the proper operation of the proposed use or structure **because;**

(6) There *is* adequate area for safe and sanitary sewage disposal and water supply **because;**

(7) The proposed use or structure *is* consistent with the spirit of this ordinance and the intent of the Master Plan **because;**

2. APPLICATION FOR A VARIANCE

A variance is requested from **Article** _____ **Section** _____ of the Zoning Ordinance to **permit;**

Facts to support this request:

(1) The variance *will not* be contrary to the public interest **because;**

(2) The request *is* in harmony with the spirit of the Zoning Ordinance, the intent of the Master Plan and with the convenience, health, safety and character of the district within which it is proposed **because;**

(3) By granting the Variance, substantial justice *will be* done **because;**

(4) The request *will not* diminish the value of surrounding properties **because;**

(5) Literal enforcement of the provisions of the ordinance would result in an 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 **because:**

3. APPEAL OF AN ADMINISTRATIVE DECISION

Decision to be reviewed: _____

Date of Decision: _____

Article: _____ Section: _____ of the Alton Zoning Ordinance in question.

Reason for appeal: _____

4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from Article _____
Section _____ of the Zoning Ordinance to **permit;**

2. Provide an answer for *either "a." or "b."* of the following:

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

b. 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**:

The Applicant hereby certifies to the Zoning Board of Adjustment that they have investigated the condition of the property that is the subject of this application, and the property outlines and dimensions and their location relative to all existing structures are true and accurate.

The Applicant also certifies to the Board that all information provided to it in this application is true and accurate. The Applicant recognizes that they will bear the burden of any inaccuracies in the information provided.

Any decision of the Board will be based on the information that is provided by the Applicant.

Signature of Applicant/Agent

Date

Signature of Applicant/Agent

Date

Signature of Property Owner

Date

Signature of Property Owner

Date

Town of Alton ZBA Application Checklist

<u>Item</u>	<u>Required</u>	<u>Received</u>
1. A project narrative describing the particulars of the application and the use(s) involved.	X	
2. Existing Conditions plan/sketch with dimensions showing setbacks, buildings, parking areas, driveways, accessory buildings, septic, well, and other pertinent features of the property. Photos of the property, surrounding area, abutting parcels and roads add to the completeness of the application.	X	
3. Proposed Conditions plan/sketch with dimensions and all pertinent information. (similar to Existing Conditions plan/sketch) In the case of a variance request for setback relief, or Equitable Waiver of Dimensions, a stamped survey by a NH Licensed Land Surveyor is required.	X	
4. Copies of relevant deeds and easements.	X	
5. If an agent is presenting the case for the applicant, a letter from the owner/applicant designating the agent.	X	
6. An abutter list (double spaced) showing names, mailing addresses, and map and lot numbers of all abutters as defined in the Application Guidelines.	X	
7. List of names, mailing address and map and lot numbers for holders of conservation, preservation or agricultural preservation restrictions, the person or company who has provided certified information, or any person(s) acting as agent on behalf of the applicant.	X	
8. #10 small legal size envelopes for abutter notices with addresses printed or typed on them. (DO NOT PUT RETURN ADDRESS) (2 envelopes for each applicant/agent)	X	
9. If appealing an administrative decision, a copy of the decision.	X	
10. An original and 7 copies of the completed application and accompanying materials. (Application must be signed by ALL owners.)	X	
11. 4 large (minimum of 22"x 34") plan sets.	X	
12. 7 reduced (11"x 17") plan sets.	X	
13. Fee schedule and check. (Made payable to the Town of Alton)	X	

NOTE: The Zoning Board reserves the right to require more detailed information if it feels it is necessary to making a well informed decision. This could result in a continuance of the appeal hearing and a delay of the decision.

Alton Zoning Board of Adjustment Application Fee Schedule

Received From: _____ Date: _____

Case #: _____ Tax Map/Lot #: _____

Application Fees for Zoning Board of Adjustment

Appeal of an Administrative Decision: \$125 \$ _____

Special Exception: \$125 \$ _____

Variance: \$125 \$ _____

Equitable Waiver of Dimensional Requirements: \$125 \$ _____

Abutter Fee: \$6 per abutter x total # of abutter notices _____
(Includes owner/applicant/agent) \$ _____

Notice of Decision \$1 per mail out \$ _____

Newspaper Notice: \$75 \$ _____

Total \$