

Town of Alton Zoning Board of Adjustment (ZBA) Appeal Application Guide

Every appeal filed to the ZBA 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 ZBA to make a well-informed decision regarding your appeal.

FUNCTIONS OF THE ZBA:

It is strongly recommended that before making any appeal that you become familiar with the Town of Alton's Zoning Ordinance and the New Hampshire State Statutes Title LXIV, RSA Chapters 672 - 677, as amended, 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.

Five types of appeals can be made to the ZBA:

I. VARIANCE:

A **Variance** is a request to do something that is not allowed in the Zoning Ordinance. It is an exception to the rules. There are five (5) conditions that you have to meet to be granted a variance:

1. The Variance will not be contrary to the public interest. Is what you are asking for going to negatively affect the neighbors, neighborhood, or the town ("public interest"), such as putting a dumpster rental business in a Residential Zone? Something like that would **definitely** be contrary to the "public interest".
2. The spirit of the zoning ordinance is observed. The ordinance sets the guidelines for what types of activities are appropriate in different areas of the town. We have residential, commercial, rural, and lakeshore zones. Having a single-family home in a residential zone, and the dumpster business in a commercial zone, not the other way around, is the intention (spirit) of the ordinance.
3. Substantial justice is done. If you are granted the Variance, will the end result be fair to all, or are the neighbors, neighborhood, and town going to suffer while you benefit? Overall, the positive and negative effects of the decision have to equal out.
4. The values of the surrounding properties will not be diminished. Will putting the dumpster business in the residential zone cause the surrounding houses to lose value? More than likely. Would you want to live in a house next to business like that? Someone might still want to buy your house, but not for what it was worth before the business moved in.
5. Literal enforcement of the provisions of the ordinance would result in an "unnecessary hardship". Following the ordinance to the letter would be unreasonable in your particular situation. There are two parts in this section.

A. For the 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.*

The Town of Alton has one commercial zone that does not allow single-family homes. Despite that, there are a number of homes in the zone that were there when the Zoning Ordinance was adopted by the Town in 1970. These are considered “vested, non-conforming uses” (“a non-conformity”) which means that, although they do not meet the requirements of zoning as it is today, they may be continued to be used as homes until something changes. If one of these homes is torn down, the “non-conformity” ceases to exist, and the ordinance says it cannot be replaced. To justify paragraph *i*, you have to explain what is so different about your property that the rules should not apply “in this particular case”. Your home is not the only home in that zone, but one of a number of single-family homes in the zone, all of which have been there for many years. If you could only put back a commercial use, it might be considered “incompatible” with the existing homes and might have a negative effect on not only the quality of life, but property values in the neighborhood.

There are a lot of people who probably would feel that putting a home back where there was one prior in a neighborhood full of homes would be considered “reasonable”.

- 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 used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.*

Let’s say you own a very small triangular lot in a residential zone where the other lots are all square, and if you were to build a house that would meet the property line setbacks, it would have to be triangular. To refuse to let you use some of the setback area so you can build a square house in a neighborhood of square lots, *in this particular situation*, when it has no negative impact on anyone, could be an “unnecessary hardship” on you. Plus, building a residential house in a residential neighborhood is a reasonable use.

Variations shall be valid if exercised within two years from the date of final approval, or as extended by the ZBA for good cause.

II. 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 ZBA.

The ZBA 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 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 land 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:

- Accessory Dwelling Unit Standards (Section 319)
- Nonconforming Uses and Structures (Section 320)
- Height Restrictions (Section 328)
- Sexually Oriented Businesses (Section 332)
- Commercial Function Facility Review Criteria (Section 334)
- Manufactured and Pre-Site Built Housing (Manufactured Home Park) (Section 350)
- Recreational Campground or Camping Park (Section 355)
- Non-Habitable Structure as Principal Building on a Lot (Section 360)
- Solar Energy Systems (Section 363)
- Lodging House or Bed and Breakfast (Section 413)
- Contractor's Yard (Sections 444, 453, and 464)

Special Exceptions shall be valid if exercised within two (2) years from the date of final approval or as extended by the ZBA for good cause.

III. APPEAL OF AN ADMINISTRATIVE DECISION:

If you have been denied a building permit or are affected by some other decision regarding an interpretation of a Zoning Ordinance made by the Code Official or Board of the Town of

Alton and you believe that **the decision was made in error**, you may appeal an Administrative Decision, provided the application for appeal is submitted within thirty (30) days of the date of the written decision. **A copy of the written decision must be submitted along with the application.** When such an application is submitted, the Official or Board shall furnish a copy of the entire file concerning the matter to the ZBA for inclusion in the ZBA records no later than fourteen (14) days prior to the scheduled hearing.

IV. 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, as amended, the ZBA 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 ZBA 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 representative, 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.
- e) In lieu of the findings required by the ZBA under subparagraphs a) and b), the owner may demonstrate to the satisfaction of the ZBA 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.

V. EXTENSION OF A DECISION:

An applicant may apply for an Extension of Decision for a Variance or Special Exception granted in accordance with RSA 674:33, paragraph I and IV, as amended.

APPLICATION SUBMISSION:

THE APPLICATION SUBMISSION DEADLINE FOR NEW APPLICATIONS IS 5:00 PM OF THE 28th 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, one (1) large (minimum of 22" x 34") plan set and eight (8) reduced (11" x 17") plan copies are required to be submitted.

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

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

- A project narrative. This is a thorough explanation of your project.
- 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, parking areas, driveways, septic, well, and other pertinent features of the property. (In instances where the accuracy of the setbacks from the property boundaries for a proposed Special Exception application is critical to the evaluation of the application, the ZBA can require the applicant to provide a boundary survey done by a NH registered Licensed Land Surveyor.)
- Photos of the property, surrounding area, abutting parcels, and roads. The more detailed the pictures, the better the ZBA members can visualize your project.
- Detailed sketches, building plans, or 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, an authorization letter signed by the applicant/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, natural and cultural features (such as cemeteries, rock walls, and water courses), and any other details that will help the ZBA 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 ZBA?

WHY should the appeal be granted?

PUBLIC NOTICE:

Your application must include an **abutter list** -- a listing showing the names, mailing addresses, and map 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. 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, 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 addresses, 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. In addition, your abutter list must also include the applicant/owner, and agent addresses, as well as every engineer, architect, land surveyor or soil scientist whose professional seal appears on plans submitted to the ZBA. This information may be obtained and verified at the Alton Assessing Department.

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

In addition to the abutter list, #10 size business envelopes with Certified Mail Receipts (PS Form 3800) attached for each abutter and other individuals indicated above, with addresses printed or typed on both the envelopes and receipts 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.

It is strongly recommended that you contact your abutters personally whenever possible prior to the notices being mailed out. This enables you to answer their questions in advance, and potentially avoid any delays in the application process.

FEES:

A completed *Fee Schedule* and fees (cash or *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, Planning Department, by the previously mentioned deadline.

IT IS STRONGLY RECOMMENDED THAT YOU REVIEW THE APPLICATION WITH THE PLANNING STAFF OR CODE OFFICIAL SEVERAL DAYS PRIOR TO THE APPLICATION SUBMISSION 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 Department will be scheduled at the next public hearing (within 30 days of the receipt of your application). Unless otherwise noticed, ZBA hearings are scheduled on the first Thursday of each month at 6:00 p.m. 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 individuals whom the ZBA may deem to have an interest, at least nine (9) days before the date of the hearing. The applicant and all other individuals will be invited to appear in person, or by agent, 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 ZBA will determine if the application can be accepted as complete and is ready for formal consideration.

If an application is deemed to be incomplete for acceptance by the ZBA, 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 ZBA. The ZBA may direct questions to the applicant and request additional information. After the application has been presented, the ZBA Chairman will open the discussion to the public and invite anyone present who may have input to speak in support of or in 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 ZBA believes it has sufficient information to make a decision, then deliberations will begin and the ZBA will either grant or deny the appeal. The applicant will be informed of the decision verbally at the hearing and then a written *Notice of Decision* sent by mail shall be made available 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 ZBA.

After the hearing:

If you disagree with the ZBA's decision, you have the right to appeal in accordance with RSA 677:2, as amended. In addition to the ZBA having the right to reconsider their own decision, 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 ZBA for a rehearing. The *Motion for Rehearing* may be in the form of a letter to the ZBA. **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 ZBA may grant such a rehearing if, in its opinion, good reason is stated in the motion.

The ZBA 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.

| |
|--|
| <p>Do Not Write in this Space.</p> <p>Date Filed: _____</p> <p>Case No.: _____</p> |
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**TOWN OF ALTON
ZONING BOARD OF ADJUSTMENT (ZBA)
APPLICATION FOR APPEAL**

Name(s) of Applicant: _____

Address: _____

Telephone Number: (_____) _____ Email: _____

Name(s) of Agent: _____

Address: _____

Telephone Number: (_____) _____ Email: _____

Owner(s) of Property concerned: _____

(If same as Applicant above, write same)

Address: _____

(If same as Applicant 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.

I. 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 **will** 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**:

II. APPLICATION FOR A SPECIAL EXCEPTION

A Special Exception is requested from **Article** _____ **Section** _____ of the Zoning Ordinance 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**:

4) There **is no** valid objection from abutters based on demonstrable fact **because**:

5) 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**:

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

7) There **is** adequate area for safe and sanitary sewage disposal and water supply **because**:

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

III. APPLICATION FOR AN APPEAL OF AN ADMINISTRATIVE DECISION

Decision to be reviewed: _____

Date of Decision: _____

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

Reason for appeal: _____

IV. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

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

1. 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.

2. Explain how the nonconformity does not constitute a nuisance, nor diminish the value or interfere with future uses of other property in the **area:**

3. Explain how the cost of correction far outweighs any public benefit to be **gained:**

The applicant hereby certifies to the ZBA 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 that all information provided to the ZBA 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 ZBA 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
ZONING BOARD OF ADJUSTMENT (ZBA)
APPLICATION CHECKLIST**

| <u>Item</u> | <u>Submitted</u> | <u>Received</u> |
|---|------------------|-----------------|
| 1. A project narrative describing the particulars of the application and the use(s) involved. | | |
| 2. Existing Conditions - 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, parking areas, driveways, septic, well, and other pertinent features of the property. | | |
| 3. Proposed Conditions - Scaled drawing of the property with dimensions and all pertinent information (similar to Existing Conditions). In instances where the accuracy of the setbacks from the property boundaries for a proposed Special Exception application is critical to the evaluation of the application, the ZBA can require the applicant to provide a boundary survey done by a NH registered Licensed Land Surveyor. | | |
| 4. Photos of the property, surrounding area, abutting parcels and roads add to the completeness of the application. | | |
| 5. Copies of relevant deeds and easements. | | |
| 6. If an agent is presenting the case for the applicant, an authorization letter from the owner/applicant designating the agent. | | |
| 7. An abutter list (double-spaced) showing names, mailing addresses, and map and lot numbers of all abutters as defined in the Appeal Application Guide. | | |
| 8. List of names, mailing addresses, and map and lot numbers for the owner and/or applicant, holders of conservation, preservation, or agricultural preservation restrictions; and, the person or company who has provided certified information, any person(s) acting as agent on behalf of the applicant, and every engineer, architect, land surveyor or soil scientist whose professional seal appears on plans submitted to the ZBA. | | |
| 9. #10 size business envelopes with Certified Mail Receipts (PS Form 3800) attached for each abutter and other individuals indicated in #7 and #8 above, with addresses printed or typed on both the envelopes and receipts. (DO NOT PUT RETURN ADDRESS OR POSTAGE) (2 envelopes for each owner/applicant and agent) | | |
| 10. If appealing an administrative decision, a copy of the decision. | | |
| 11. An original and seven (7) copies of the completed application and accompanying materials. (Application must be signed by ALL owners.) | | |
| 12. one (1) large (minimum of 22" x 34") plan set. | | |
| 13. eight (8) reduced (11" x 17") plan sets. | | |
| 14. Fee schedule and fees. (Cash or check made payable to the Town of Alton) | | |

NOTE: The ZBA 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.

