

**KINGSTON ZONING BOARD OF ADJUSTMENT**  
**P.O. BOX 716, 163 MAIN STREET, KINGSTON, NH 03848**  
**PHONE: (603)642-3342 EXT. 6    EMAIL: [ZBA@KINGSTONNH.ORG](mailto:ZBA@KINGSTONNH.ORG)**

**APPLICATION INSTRUCTIONS**

(Adopted August 2020, rev. 10/19/2023)

Please read ALL of these instructions carefully. Non-compliance with the directions may result in your application being rejected for correction and delay in the scheduling of your hearing.

**NOTICE TO ALL APPLICANTS:** The Zoning Board of Adjustment may refuse to hear your application if there is not a referral or denial by the Building Inspector and/or the Kingston Planning Board or other Town board of similar authority.

**1. APPLICATION:** Complete the attached application for one of the following: Appeal of Administrative Decision, Special Exception, Variance, or Equitable Waiver. If you are applying for more than one of the above listed, an application form will be required for each request. Do not use the same application for both requests. Submitting more than one request on an application may cause postponements in the time frame your case will be heard. If needed, see Appendix B (attached) for *Instructions to Applicants Appealing to the Board of Adjustment from the New Hampshire Office of Planning and Development (NH OPD)* to assist you with completing your application.

**2. ABUTTER LABELS AND LIST:** The applicant is responsible for submitting a correct list of all abutters, with complete mailing addresses. Be sure to include the full mailing address (street number, where applicable) and zip codes of the owner of the property. Be aware that the post office returns all mail to the sender if the address is not absolutely correct. We request three sets of mailing labels with the abutters name, address and zip code, in order to expedite your application. Please do not put tax map and lot numbers on the mailing labels. You will only need to enclose one list of abutters for multiple applications for the same property submitted at the same time. [Note: there is an abutter tool on the Town website under the Assessing Page that may help with compiling abutter information (CAI AxisGIS). You should also double check the information provided to the tax maps to ensure you included all the abutters. Abutters also include the applicant; property owner; engineer/architect (if applicable) who prepared your plan(s).]

**3. APPLICATION FEES:** An application fee of \$50.00/application (for example, two variance applications require two application fees); a legal notice fee of \$150 and a certified mail fee of \$12.25 per abutter (including the applicant, property owner and applicable engineer) must be paid at the time of application submission. Payment may be made by check or cash.

**4. HEARING DATES AND APPLICATION DUE DATES:** ZBA hearings are generally held on the **second Thursday** of the month at 7:00PM at the Town Hall. Applications must be submitted with the appropriate fees paid by **noon on the third Wednesday** of the month. **NO EXCEPTIONS.**

**5. COPY OF PLANS AND MATERIAL:** Where plans are required, nine (9) copies of the plan (11"x17") must be provided when appropriate or required, must bear the seal of a professional engineer, licensed in New Hampshire as specified in the Zoning Ordinance. Plans must be submitted with the application. **AN ELECTRONIC COPY OF YOUR APPLICATION WITH MATERIALS SHOULD BE EMAILED TO [ZBA@KINGSTONNH.ORG](mailto:ZBA@KINGSTONNH.ORG).** If applicable, please submit a separate PDF file for your PLAN(s).

**6. OWNER AUTHORIZATION:** If the applicant is not the property owner, written authorization from the property owner must accompany the application. If the owner will not be in attendance at the hearing, the authorization must be notarized.

**WHAT TO EXPECT:** You will receive a certified notice in the mail, with the information regarding your hearing (and other hearings scheduled for that night).

- You or a representative of yours must be present at the hearing.
- Be prepared to make a presentation regarding your request (pictures, plans, documents... are helpful and should be marked with the property address for identification). Any evidence you present to the Board in support of your case becomes part of the record and will not be returned.
- The Board will hear your case, ask questions and hear from any interested parties who are present.
- After hearing all cases, the Board will not hear any more input from members of the public and will deliberate the cases presented.





**KINGSTON ZONING BOARD OF ADJUSTMENT**  
**APPLICATION FOR APPEAL**

163 Main Street  
P.O. Box 716  
Kingston, NH 03848

Note: all matters that come before the ZBA are referred to as "appeals." This form is required to be filled out for all applications including: **Appeal of Administrative Decision, Special Exception, Variance, Equitable Waiver and Re-hearing.**

|  |   |
|--|---|
| <b>Name of Applicant:</b>                |   |
| <b>Address:</b>                          |   |
| <b>Phone:</b>                            |   |
| <b>Email:</b>                            |   |
| <b>Owner of Property:</b>                | OR ____ Same as Applicant   |
|  | <small>Authorization letter/form required if property owner is not attending the public hearing.</small>                      |
| <b>Tax Map and Lot:</b>                  | MAP                      LOT  |
| <b>Zone: (select applicable)</b>         | __SFR __RR __HDI __HD II __C-1 __C-11 __C-111 __IND.  |
| <b>Overlay zone:<br/>(if applicable)</b> | __Aquifer Protection (AQ)                      __Shoreland Protection (SP)<br>__Wetlands Conservation Dist. (WC)      __Other |

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

- **The Article and Section Numbers must be completed. If you are unsure of these numbers, please seek the guidance of the Building Inspectors or Planning Board Office.**

**APPEAL FROM AN ADMINISTRATIVE DECISION:** *relating to the interpretation and enforcement of the provisions of the zoning ordinance.*

**Article:** \_\_\_\_\_ **Section:** \_\_\_\_\_

Decision of the enforcement officer/board to be reviewed: \_\_\_\_\_

\_\_\_\_\_

Reason(s) that you believe decision was in error: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**APPLICATION FOR VARIANCE:**

Tax Map and Lot Number: \_\_\_\_\_ Street Address: \_\_\_\_\_

• **Article:** \_\_\_\_\_ **Section:** \_\_\_\_\_

A variance of the Zoning Ordinance to permit: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Facts supporting this request (all must be completed):

1. The proposed variance will not be Contrary to the Public Interest because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. There is substantial justice in granting the variance because: (NOTE: Any loss to the individual that is not outweighed by a gain to the general public is an injustice): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The values of the surrounding properties would not be diminished because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**5. Literal enforcement of the provisions of the ordinance would result in an Unnecessary Hardship because:**

a. 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 (because:)

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- 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.

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Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FEEL FREE TO USE ADDITIONAL PAPER AS NEEDED TO PROVIDE COMPLETE ANSWERS, OR TO SUBMIT THE APPLICATION WITH A SEPARATE DOCUMENT CONTAINING ALL OF THE REQUIRED INFORMATION.**



**REQUEST FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:**

Tax Map and Lot Number: \_\_\_\_\_ Street Address: \_\_\_\_\_

• Article: \_\_\_\_\_ Section: \_\_\_\_\_

An Equitable Waiver of Dimensional Requirements is requested from the above Zoning Ordinance to Permit:

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

2. Has the violation existed for 10 years or more with no enforcement action, including written notice, being commenced by the town. Yes or No (circle one)

- If "Yes", date in year in which the violation began: \_\_\_\_\_.

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- If "No", was the violation discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser?

Explain 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.

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

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Applicant signature: \_\_\_\_\_ Date: \_\_\_\_\_



**ABUTTER'S LIST\***

**Three sets of mailing labels are required with all applications.**

(1" X 2.63" - Avery 8160 or 5160 or equivalent)

**PLEASE REFER TO THE DEFINITION OF ABUTTER BELOW.**

BE CERTAIN TO INCLUDE THE APPLICANT IN YOUR MAILING LABELS. If the applicant is not the property owner, the property owner must also be listed as an abutter. (Do not note map and lot numbers on labels.)

APPLICANT'S NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

Tax Map Number of property: \_\_\_\_\_

Please type or print legibly the complete names and mailing addresses of all abutters, with full name, mailing address (including street number where applicable), and zip code. Incomplete addresses may cause your application to be rejected for correction and possibly delay your hearing. When calculating your abutter notification costs please be certain to include the applicant; engineer and/or architect who prepared your plan(s) (if applicable). Multiple applications, submitted for the SAME property at the SAME time will only be charged for one set of abutter notifications.

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You may use a separate sheet to provide your abutter list. Include additional paperwork as needed to provide a complete list of abutters.

**\*The "Abutters List" includes not only the names and addresses of all abutters to the property as indicated in Town records but "Required Notification" (aka "Abutters" for the purpose of creating the mailing list) includes the names and address of the following: Applicant/Owner, holders of conservation, preservation or agricultural preservation restrictions (as defined in RSA 477:45), upstream dam owners and the NHDES Dam Bureau; any engineer, architect, land surveyor or soil scientist whose professional seal appears on any plat submitted to the Board. (RSA 676:4)**

## HOW TO COMPILE AN ABUTTERS LIST

*An abutting property is defined as any property that touches your property line, including across the street, pond or stream. The abutter is that property's owner. (Please refer to additional "required notification" on page 7 of this application when creating the abutters list.)*

**There is an abutter tool on the Town website under the Assessing Page that may help with compiling abutter information (CAI AxisGIS). You should also double check the information provided to the tax maps to ensure you included all the abutters. Abutters also include the applicant; property owner; engineer/architect/surveyor/soil scientist (if applicable) who helped prepare your plan(s).]**

*To verify and compare the report that is produced from the CAI AxisGIS program.*

1. Find your property on the Kingston Tax Maps. These can be found on the Town website under Departments/Assessing.
2. Look at that map to see which properties fit the above description of an abutter.
3. Using the Map-Lot of each of those properties, and the computer available for the public; look up the property owner and address for each abutter. This information can be found on the Town website under Departments/Assessing.
4. ALL LOT DESIGNATIONS MUST BE THREE (3) DIGIT PLACES and contain the letter designation. [For example: 163 Main Street would be Tax Map U10 Lot 39 and designated U10-039. In the case of hyphenated lots (as is frequent in the case of condominiums) the example is: Tax Map R3-3-01-10 would be R3-03-01-010.]
5. Fill in this information in the blocks on the abutters list form on pg. 7 of this application provided in your application kit, one abutter per block. Or provide a separate typed report list.

***IF YOU DO NOT HAVE THE MOST CURRENT APPLICATION DEADLINE/MEETING SCHEDULE PLEASE ASK AND WE'LL BE HAPPY TO PROVIDE IT TO YOU.***

**Zoning Board of Adjustment  
(ZBA)**

**PROPERTY OWNER'S ACKNOWLEDGEMENT**

*This document must be notarized if the Property Owner is unable to attend the Public  
Hearing for the review of the proposal.*

Please accept this as formal authorization to allow \_\_\_\_\_  
(and their agents, if applicable) to represent me on all ZBA matters pertaining to the referenced ZBA  
application below.

\_\_\_\_\_  
*Property Tax Map and Lot Number*

\_\_\_\_\_  
*Property Address*

\_\_\_\_\_  
*Property Owner(s) Name*

\_\_\_\_\_  
*Property Co-Owner's Name (if applicable)*

\_\_\_\_\_  
*Property Address (if different than above)*

\_\_\_\_\_  
*Mailing Address (if different than above)*

\_\_\_\_\_  
*Contact Number (Phone, Cell, etc.)*

\_\_\_\_\_  
*Email address*

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\_\_\_\_\_  
*Contact Number (Phone, Cell, etc.)*  
\_\_\_\_\_  
*Applicant's Name (If different than property owner)*  
\_\_\_\_\_  
*Email:*

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**I am aware of the proposal being submitted for review by the Zoning Board of Adjustment.**

\_\_\_\_\_  
*(Property Owner's Signature)*

\_\_\_\_\_  
*(Date)*

\_\_\_\_\_  
*(Property Co-Owner's Signature, if applicable)*

\_\_\_\_\_  
*(Date)*

**Notary:**

STATE OF \_\_\_\_\_ County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public, personally appeared  
\_\_\_\_\_, who proved to me through satisfactory identification, which was a Driver  
License or \_\_\_\_\_ to be the person whose name is signed on this document.

\_\_\_\_\_  
Notary Public:

My Commission Expires: \_\_\_\_\_

## APPENDIX B:

### 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:



**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 \_\_\_\_\_ 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?

## VARIANCE CRITERIA GUIDELINES

| Statutory Requirements (RSA 674:33, I(b))  | Explanation   |
|--|---|
| <i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i>   |   |
| 1. The variance is not contrary to the public interest.  | 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."   |
| 2. The spirit of the ordinance is observed.  | As it is in the public's interest to uphold the spirit of the ordinance, these two criteria are related.  |
| 3. Substantial justice is done.  | The benefit to the applicant should not be outweighed by harm to the general public.  |
| 4. The values of surrounding properties are not diminished.  | 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>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p>First is to show that because of special condition of the property that distinguish it from other properties in the area:</p> <p>(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</p> <p>(b) The proposed use is a reasonable one.</p> <p><i>Alternatively</i>, unnecessary hardship exists 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.</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.</p> <p>(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.</p> <p>(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.</p> <p><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> |