



CITY OF MANCHESTER

PLANNING AND COMMUNITY DEVELOPMENT

Planning & Land Use Management
Building Regulations
Community Improvement Program
Zoning Board of Adjustment

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GENERAL INFORMATION TO APPLICANTS ON THE MANCHESTER ZONING BOARD OF ADJUSTMENT

Everyone has the right to appeal land use decisions through the Zoning Board of Adjustment. If you are considering such an appeal, you should be aware of the functions of the ZBA and the main issues that the ZBA is required by law to consider in reaching their decision. The Manchester Zoning Board of Adjustment is authorized by State Statute and established by Ordinance. The ZBA has the authority to act in separate and distinct categories, which are an **Administrative Appeal**, a **Special Exception**, a **Variance**, an **Equitable Waiver of Dimensional Requirements**, an **Appeal of the Planning Board's Decision** as it relates to the Zoning Ordinance, an Appeal of the **Heritage Commission's Decision** and other appeals as set forth in the Zoning Ordinance of the City of Manchester, NH.

When a development proposal does not meet the terms of the Zoning Ordinance and the applicant considers an appeal to the ZBA, he/she must obtain the necessary paperwork listed in the following pages. The completed paperwork, along with supporting documents, is to be returned to that department. The department would then review the plan whereupon the violations would be cited and a denial letter typed. Any deviation in the appeal application, plot plan or public testimony than what is presented to the Board could be a basis for denial.

There are several types of cases on which the ZBA is empowered to rule.

A **Variance** is a waiver of a Zoning Ordinance requirement that a property owner either cannot or does not want to meet. Five criteria must be satisfied in order to justify the granting of a variance. (See attached Variance Criteria and Guidelines.)

(As a result of this change in State Statute, there is no longer the distinction between a "use" variance and an "area" variance).

A **Special Exception** is a use of the land or building that is permitted, subject to specific conditions that must be met. (See attached Special Exception form.)

An **Administrative Appeal** is an appeal from the written administrative decision involving interpretation or application of the Zoning Ordinance.

An **Equitable Waiver of Dimensional Requirements** shall be granted only from the physical layout, mathematical or dimensional requirements and not from use restrictions. The burden of proof is on the property owner to show that a violation was discovered after the structure was substantially completed, an error was made in calculations, to correct it would outweigh any public benefit, it would not cause a public or private nuisance nor would it diminish surrounding property values. The owner may separately demonstrate that the violation existed for 10 years or more with no enforcement action taken.

The ZBA normally, with few exceptions, holds their public hearings and business meetings on the second Thursday of each month in the Aldermanic Chambers in City Hall beginning at 6:00 PM. These hearings are public, with all testimony and discussion recorded. Prior public notification to the applicant and the abutters is sent stating the place, date and time of the hearing. The cases are heard in the order that they are received in the department with a few exceptions made by the Chairman. The Board usually renders a decision upon sufficient testimony by all parties concerned.

Cases before the ZBA may be tabled for additional information or for review and recommendation from other departments before a decision is rendered. The ZBA has the right to attach stipulations or conditions that must be adhered to; otherwise the Variance for Special Exception may be revoked. Notice of the Board's decisions will be made available within 5 business days of the date of the hearing. When the Board grants the petitioner's request, the building permit must be obtained within two years from the date of approval *or* within 6 months after the resolution of a planning application filed in reliance upon the variance or special exception (whichever is longer). If the building permit is not obtained, the variance will expire.

Whether granted or denied, the petitioner, an abutter or any person aggrieved by the decision of the Board has 30 days to request a rehearing. The first day starts with the day after the hearing. To be considered for a rehearing, the appeal must introduce new evidence that is to be considered or a change in circumstances that considerably alters the case. If the request for a rehearing is denied, the applicant may appeal the Board's decision to Superior Court within 30 days.

When a property has had a denial by the Zoning Board of Adjustment, any new appeal must be reviewed by the Board under their **Subsequent Application** policy. The Board will make the determination whether to hear the case based on its proposed use, circumstances or newly provided evidence.

The Zoning Board of Adjustment's Agendas and Decisions can be found on the City's Website at www.ManchesterNH.gov/PCD.

APPEALS TO THE ZONING BOARD OF ADJUSTMENT

The following items must be included in all packets provided for Appeals to the Zoning Board of Adjustment.

(Incomplete packets may delay the case.)

1. **Ten completed copies** of the applicable zoning criteria (ie. Variance, Special Exception, Equitable Waiver).
2. **Ten copies** of a plot plan or site plan drawn to a standard scale (1 full size, 9 reduced to 11"x17" or less), showing lot, principal structure(s), parking spaces (8.5' x 18.5'), setbacks, driveways, streets and accessory structures (including signage).
3. **One copy** of the Deed with description of lot. (Deed prior to 1965 if a new building or a subdivision.)
4. **Ten copies** of the **GIS map** showing surrounding neighborhood with street names and addresses and **10 copies** of the **current property card** (double-sided with picture), both of which can be obtained from the **Assessor's Office** located at One City Hall Plaza-West Wing, Manchester, NH 03101.
5. **Ten copies** of the floor plans (if applicable) drawn to a standard scale. Elevations (including signage) are required for any new construction (including additions). Construction details are not necessary.
6. **Ten copies** of any supporting documentation.
7. **One list** of abutting property owners' names and addresses. Abutting properties may be identified using the GIS maps (see #4 above).

***NOTE:**

1. *Be aware that data on the GIS website or in the Assessor's records may not reflect the current owner of a property. Please contact the Registry of Deeds listed below for the most up to date information.*

Hillsborough County Registry of Deeds

19 Temple Street, Nashua, NH

Tel: (603) 882-6933

Website: www.nhdeeds.com

2. *Where an abutting property is under a condominium or other collective form of ownership, please provide only the names and addresses of the officers of the condominium association or the collective.*

8. **One** signed affidavit from the owner of the subject property if the applicant is not the owner.
9. The following fees shall apply to ZBA applications:

- | | |
|---|----------|
| • Application Fee (non-refundable) | \$ 25.00 |
| • Legal Notice (per abutter) | \$ 10.00 |
| • Dimensional and Use Variances, Special Exceptions, Administrative Appeals and Equitable Waivers | \$350.00 |
| • Re-Hearing | \$ 85.00 |

PLEASE NOTE: In the event that the Board of Adjustment grants your appeal, you must then make application for a building permit through the Planning & Community Development Department in order to complete the process. This permit must be obtained **within TWO YEARS from the date that the appeal is granted or the approval will EXPIRE.**

VARIANCE CRITERIA GUIDELINES

In order for a variance to be granted, an applicant must successfully demonstrate that it would meet all of the following criteria:

1. It must not be contrary to the public interest.

For a variance to be contrary to the public interest, the proposal has to conflict with the ordinance so much that it violates the ordinance's basic zoning objectives (see Zoning Ordinance Section 1.02 Purpose). A couple of tests for this are:

- Will the proposal alter the essential character of the neighborhood?
- Will it threaten the public's health, safety or welfare?

2. It must be consistent with the spirit of the ordinance.

Because it is in the public's interest to uphold the spirit of the ordinance, previous court opinions have held that these two criteria are related to each other. The same arguments can be made for both, therefore if you meet one test you almost automatically meet the other.

3. It must result in substantial justice being done.

Again, the courts have ruled that for a variance to be granted under this test, you must show that any loss suffered by the general public would be so minimal that it is outweighed by the gain to the applicant. Conversely, a denial must result in a gain to the general public that outweighs any loss to the applicant. Otherwise it would be an injustice to deny. A test for this would be to demonstrate that the proposal is consistent with current uses in the area.

4. It must not diminish the value of surrounding properties.

Meeting this condition seems fairly obvious, but there are many factors that can influence property values (see again Zoning Ordinance Section 1.02 Purpose). It must be demonstrated that the proposal will have no negative impact on the marketability, and therefore the value, of neighboring properties. Many applicants submit the opinion of a real estate professional for this.

5. It must be shown that denial would result in unnecessary hardship.

Unnecessary hardship can be shown in either of two ways. Both of them depend on the existence of special conditions or circumstances that distinguish the subject property from others in the area.

The first way is to show that because of those special conditions or circumstances, (1) there is no substantial relationship between the general purposes of the ordinance (see Section 1.02) and the specific violation being applied to the property and (2) the proposed use is a reasonable one.

The second way is to show that, again, because of those special conditions or circumstances, the property cannot be used in strict conformance with the ordinance and a variance is needed to enable a reasonable use of it.



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 One City Hall Plaza-West Wing
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VARIANCE CRITERIA

Complete this form and attach 10 copies along with any supplemental material that would support your appeal.

Deadline for Next Hearing: _____

Property Location: _____

Owner: _____

Address: _____ **Phone #:** _____

_____ **Email:** _____

Applicant: _____

Address: _____ **Phone #:** _____

_____ **Email:** _____

Relief Sought From Section(s): _____

1. The variance would not be contrary to the public interest because: _____

2. The spirit of the ordinance is observed because: _____

3. Substantial justice would be done because: _____

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

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship if:

(A) Owing to the following special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general purposes of the ordinance provisions and the specific application of that provision to the property; **and**

ii. The proposed use is a reasonable one.

Or (B) Owing to the following 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.

Applicant Signature

Print Name

Date



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AFFIDAVIT FORM

I, the undersigned, owner of the property at _____
hereby verify that I have authorized _____ to apply to
the Planning & Community Development Department of the City of Manchester, New Hampshire, for the
following:

Owner's Signature

Printed Name

Address of Owner

Date