



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 an applicant is denied a building permit and considers an appeal to the ZBA, he/she must obtain the necessary paperwork as supplied by Building Regulations. The completed paperwork, along with supportive 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.

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.

The Board is required by law to consider the five-part criteria in the granting of a **Variance**. It is the responsibility of the petitioner to provide reasonable, factual proof so that each of the criteria is met. The first criterion is that "Granting of the variance would not be contrary to the public interest." The second criterion is "Granting the variance, the use would not be contrary to the Spirit of the Ordinance." The intent of the legislative body that originally passed the Ordinance must be considered. They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers and providing for adequate air and light. The third criterion is "Substantial Justice would be done". The fourth criterion is "There would be no diminution in value to the surrounding property values". The fifth criterion is "Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area. (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. (b) The proposed use is a reasonable one." (RSA 674:33, Rev. 1/01/10).

(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 set forth in the Ordinance. The site must be an appropriate location for the use or structure. The use will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians. Lastly, adequate and appropriate facilities are sufficient to insure proper operation of the proposed use, structure or condition.

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 on the property owner is to prove 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.

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, 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.**



City of Manchester
Planning & Community Development
 One City Hall Plaza-West Wing
 Manchester, NH 03101
 (603) 624-6475
www.manchesternh.gov

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SPECIAL EXCEPTION CRITERIA
Section 11.04 (G)

Please address the following criteria and attach any other supplemental material that would support your appeal.

Property Location: _____

Owner's Name: _____

Owner's Address: _____

Phone No. _____

Pursuant to Section 11.04 (G), Criteria for Change or Expansion of Non-Conforming Use, a change or expansion of a non-conforming use may be issued by the ZBA upon a finding that the proposed use; (1) will not have an adverse impact on the surrounding neighborhood, and (2) that the change in use is more conforming with the intent and purpose of the Ordinance. The applicant must demonstrate, in writing, the following:

1. The proposed change would not result in an increase in noise, vibration, dust, odor, fumes, glare or smoke detectable at the property line;
2. The numbers and kinds of vehicular trips to the site will be comparable to, or lower than, those associated with the existing use;
3. The use will not place increased demand on the amount and nature of outside storage or loading requirements, and there will be no net loss in the number of existing off-street parking spaces serving the existing use(s);
4. The visual appearance of the site and structure, including landscaping and screening will either remain unchanged or will be improved;
5. The proposed hours of operation for the use will result in an equal or lesser impact on the neighborhood;
6. The non-conforming characteristics of the use including residential density, signs, loading, lighting, and landscaping, will be brought into greater conformance with the requirements of the ordinance;
7. The area of the lot devoted to the non-conforming use will not be increased;
8. The change in use will be equal to or more compatible with the character of the neighborhood, will contribute to neighborhood socioeconomic needs, or will otherwise be in the public interest; and,
9. The maximum expansion of a non-conforming use over its lifetime shall not exceed twenty-five (25) percent of the area of the existing building, measured from the time the use first became non-conforming by reason of an amendment to this Ordinance.

Applicant's Signature

Date

Printed Name



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SPECIAL EXCEPTION
Section 14.02 (C)

Please address the following criteria and attach any other supplemental material that would support your appeal.

Property Location: _____

Owner's Name: _____

Owner's Address: _____

Phone No. _____

Pursuant to Section 14.02 (C) of the Zoning Ordinance, the Zoning Board of Adjustment shall grant a request for a Special Exception only when an applicant can demonstrate, in writing, the following:

1. The use requested is specifically authorized in the Ordinance;
2. The requested use will not create undue traffic congestion or unduly impair pedestrian safety;
3. The requested use will not overload the public utility systems (e.g. sewer and water);
4. The requested use will not create excessive demand for municipal police, fire protection, schools, or solid waste disposal services;
5. Any requirements and standards for the use as set forth in Article 8, Supplementary Regulations and Standards for Specific Uses, of this Ordinance are fulfilled;
6. The requested use will not create hazards to the health, safety, or general welfare of the public, nor be detrimental to the character of the adjacent neighborhood;
7. The proposed location is appropriate for the requested use; and
8. The requested use is consistent with the spirit and intent of this Ordinance and the Master Plan.

Applicant's Signature

Date

Printed Name



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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