



TOWN OF WARNER

P.O. Box 59
Warner, New Hampshire 03278-0059
Land Use Office: (603)456-2298 ex. 7
Fax: (603) 456-2297

Zoning Board of Adjustment

General Instructions for an Appeal to the Zoning Board of Adjustment

Getting Started

Before filling out the application, be certain you know which application you should file. If the application is incomplete, it will be returned. This will cause a delay in the processing of the application and hearing before the Zoning Board of Adjustment (ZBA).

When you're ready to get started, make sure you read everything here, follow all the steps listed and work closely with the Land Use office to make sure everything is complete before you submit your application. **The burden of preparing and submitting a complete ZBA application is with the applicant.**

Types of Appeals

1. Variance

- a. A variance is an authorization, which may be granted under a special circumstance, to allow your property to not meet requirements specified in the Zoning Ordinance. For a variance to be legally granted, you must show that your proposed use meets all of the conditions listed in the Ordinance.
- b. If you are applying for a variance, you must first have some form of determination that you are not permitted to proceed without a variance. Most often this determination is a denial of a building permit, but could be a referral from the Planning Board. A copy of the determination must be attached to your application.

2. Special Exception

- a. Certain sections of the Zoning Ordinance provide that uses, buildings or activities 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.
- b. If you are applying for a Special Exception, you may also need Site Plan Review or subdivision approval, or both, from the Planning Board. Even in those cases where no Planning Board approval is needed, presenting a Site Plan to the Planning Board will assist in relating the proposal to the overall zoning. This should be done before you apply for a Special Exception.

3. Appeal of Administrative Decision

- a. If you have been denied a building permit or are affected by some other decision regarding the administration of the Town of Warner Zoning Ordinance, you may appeal the decision to the Zoning Board of Adjustment. The appeal must be made normally within 30 days of the decision, pursuant to RSA 677. The appeal will be granted if you can show that the decision was indeed made in error.
- b. If you are appealing an administrative decision, a copy of the decision appealed for must be attached to the application.

Types of Appeals (continued)

4. **Equitable Waiver of Dimensional Requirements**

- a. If you have found that your structure does not conform to the dimensional requirements for the zoning district in which it is located as a result of an error by your builder, yourself or a public official, you may be eligible for an Equitable Waiver of Dimensional Requirements. This does not mean that your structure is then a legal non-conforming use but rather recognizes the error and prevents any enforcement action against that error in the future. All subsequent construction at the site must then comply with all dimensional requirements.

Application Instructions

1. Read, complete and sign the proper application for the type of appeal. If the application is incomplete, it will be returned. This will cause delay in the processing of the application and hearing before the Zoning Board of Adjustment (ZBA).
2. The ZBA strongly recommends that prior to filing an appeal, the applicant become familiar with the Warner Zoning Ordinances and also with the New Hampshire Statutes Title LXIV, RSA Chapters 672 to 677 as amended, covering planning and zoning.
3. You must submit an application on forms approved by the ZBA and pay all fees before the Board will meet and make a determination.
4. **If a variance is requested, it must be based on a referral from the Board of Selectmen or the Planning Board, or a denial of a building permit.**
5. Please include the following along with your application:
 - a. A list of all abutters within 200 feet of the boundaries of the property on the supplied form. Accuracy of the list is the applicant's responsibility.
 - b. Include a copy of any order, notices of violations or other communications received from either the Board of Selectmen or the Planning Board that pertains to the property.
 - c. Plan(s) shall include:
 - 1) Clearly indicate where the site is located (locus map) and what is proposed drawn to scale.
 - 2) Show for the "lot of record" the boundary lines with footage on all sides.
 - 3) A copy of the lot's deed.
 - 4) Name of the road the lot fronts on.
 - 5) Include all existing structures on the lot, clearly indicating their dimensions, distance from other structures and distance from abutting property line, drawn to scale.
 - 6) For a proposed structure, include all of the above and a floor plan with dimensions, (length, width, and height) and yard setback lines.
 - d. At the hearing, the ZBA shall vote whether to accept the application as complete.
6. The applicant must cover the following **fees**:

| Application Fee | | Notification Fee |
|-----------------|----------|------------------------------------|
| Residential | \$50.00 | Abutter Notification ____ x \$8.00 |
| Commercial | \$100.00 | Applicant Notification *\$60.00 |

*Standard Posting: Intertown Record = \$60.00 Upon request of applicant a Special Posting in the Concord Monitor = \$300.00

- A check for the correct amount made out to the **Town of Warner** must be provided at the time of filing.
 - Fees for publication of the Legal Notice will be invoiced and must be paid prior to starting the hearing.
7. A completed application must be received at least 15 days prior to the next ZBA meeting. Public notice of the hearing will be posted and printed in a newspaper, and notice shall be given to the applicant, all abutters, and to parties the ZBA may deem to have interest, at least five days prior to 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.

Application Instructions (continued)

8. All property owners must sign the application.
9. **Authorization from Owner(s)** must be signed to designate someone to speak on behalf of the property owner(s).
10. **Abutter(s) List instructions:**
 - a. Please list the name and addresses of all owners of the property that abut the subject property, defined as follows:
 - 1) Any person whose property is located in New Hampshire and;
 - i. adjoins or is directly across a street or stream from or
 - ii. has a boundary which is within 200 feet of any boundary of the land under consideration by the ZBA, or,
 - iii. has frontage on a pond on which the land under consideration by the ZBA also has frontage.
 - iv. In 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. (also see RSA 672:3).
 - b. In addition to abutters, please include the names and addresses of the applicant, owner(s) of the subject property and as applicable, the owner’s agent engineer, land surveyor, architect, soil scientist, wetland scientist, and holders of conservation, preservation, or agricultural preservation restrictions.
 - c. If the property abuts a street, the Board of Selectmen shall receive a notice as an abutter. If the property abuts a State Highway, the State Department of Transportation as well as the Board of Selectmen shall be noticed as abutters. If a referral was received from the Planning Board, they shall be noticed as an abutter.
 - d. **The abutters list must be obtained from the Town of Warner’s Assessors records within five (5) days of submission of this application.**
11. The applicant shall appear at the hearing. If an attorney represents the applicant and the attorney desires to present a written brief in the case, the brief may be delivered with the application.
12. After the public hearing, the ZBA will reach a decision. The decision could be postponed to a date specified however, to allow for the availability of additional information or to consult with Town Counsel. After the ZBA reaches a decision, a formal Notice of Decision will be mailed to the applicant and property owner(s), and a copy will be placed in the ZBA files.
13. The applicant, Selectmen, or any party aggrieved by the decisions of the ZBA’s decision has a right to appeal within 30 days. **A motion for rehearing shall be in the form of a letter to the ZBA.** The Board will not reopen a case based on the same set of facts unless it is convinced that injustice would be created by not doing so. In the event that a rehearing is granted, the same procedures will be followed as for the first hearing, including public notice to abutters. See RSA Chapter 677 for more details on rehearing and appeal procedures.

Applicant's Checklist

| Have you included | | Item | Land Use Office finds | |
|-------------------|----|---|-----------------------|----|
| Yes | No | | Yes | No |
| | | Complete and sign, the proper application for the type of appeal (request). | | |
| | | If a variance is requested, it must be based on a referral from the Board of Selectmen or the Planning Board and included with the application. | | |
| | | A list of all abutters within 200 feet of the boundaries of the property on the supplied form. Accuracy is the applicant's responsibility. The abutters list must be obtained from the Town of Warner's Assessor's records. | | |
| | | An attached copy of any order, notice of violations or other communications received from either the Board of Selectmen or the Planning Board that pertains to the property. (If applicable) | | |
| | | Plans shall include: | | |
| | | <ul style="list-style-type: none"> Clearly indicate where the site is located (locus map) and what is proposed drawn to scale. | | |
| | | <ul style="list-style-type: none"> Show for the "lot of record" the boundary lines with footage on all sides. | | |
| | | <ul style="list-style-type: none"> A copy of the lot's deed (to verify Owner). | | |
| | | <ul style="list-style-type: none"> Name of the road the lot fronts on. | | |
| | | <ul style="list-style-type: none"> Include all existing structures on the lot, clearly indicating their dimensions, distance from other structures and distance from abutting property line, drawn to scale. | | |
| | | <ul style="list-style-type: none"> For a proposed structure, include all of the above a floor plan with dimensions, (length, width, and height). | | |
| | | The applicant has paid fees (see application for specific fees). Check made out to the Town of Warner . | | |
| | | Application must be received 15 days prior to the next ZBA meeting. | | |
| | | All property owners must sign the application. | | |
| | | Authorization from Owner must be signed to designate someone to speak on behalf of the property owner(s). (If applicable) | | |



TOWN OF WARNER

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Zoning Board of Adjustment

APPLICATION FOR VARIANCE

This application is subject to NH RSA 91-A which affords the public access to government records and meetings.

| Application Fee | | Notification Fee | |
|-----------------|----------|-----------------------------|---------|
| Residential | \$50.00 | Abutter Notification ____ x | \$8.00 |
| Commercial | \$100.00 | Applicant Notification | \$60.00 |

* Fees for publication of the Legal Notice will be invoiced and must be paid prior to starting the hearing ** Please use attached form to list all abutters within 200 feet of the boundaries of the property.

| Applicant/Contact Person Information | | | |
|---|----------|------------------|-------------|
| Name of Applicant: | | | Date: |
| Applicant Mailing Address: | | | |
| | Town: | State: | Zip: |
| Telephone | Primary: | Alternate: | |
| Owner of Property Information | | | |
| Name of Owner: | | | Date: |
| Owner Mailing Address: | | | |
| | Town: | State: | Zip: |
| Telephone | Primary: | Alternate: | |
| Location and Description of Property | | | |
| Map #: | Lot #: | Zoning District: | |
| Address: | | | |
| Will a Site Plan Review approval be required by the Planning Board? | | | Yes No |
| Proposed Use: | | | |
| | | | |
| Details of Request: <i>Please feel free to include additional information on separate attached pages. Be sure to put the name of applicant and date on each sheet. (indicate number of sheets attached _____)</i> | | | |
| | | | |

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

The undersigned hereby requests a VARIANCE to the terms of:

Article: _____, Section: _____ of the Warner Zoning Ordinance

For a Variance to be granted, the following five conditions must be met:

(For more information reference the Warner Zoning Ordinance Article XVII and RSA 674:33.)

Please explain in writing how your project meets each of the five (5) conditions, in the space provided on the following pages. If you do not use the space provided refer to attached pages.

The applicant seeking a variance must be prepared to prove these conditions at the Public Hearing. In order for the public hearing to proceed there needs to be responses to all five conditions.

The five conditions are:

1. Granting the variance will not be contrary to the public interest because:
2. By granting the variance, the spirit of the ordinance is observed because:
3. By granting the variance substantial justice is done because:
4. Granting the variance will not diminish the values of surrounding properties because:
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:
 - A.** Meaning 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 on the property; **and**
 - ii. The proposed use is a reasonable one.
[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]
 - B.** Or, if the criteria in 'A' are not established, then 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 the property.

[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

1. Granting the variance will not be contrary to the public interest because:

2. By granting the variance, the spirit of the ordinance is observed because:

3. By granting the variance substantial justice is done because:

4. Granting the variance will not diminish the values of surrounding properties because:

Answer - 5.A.i. and 5.A.ii. - or 5.B.

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

- A. Meaning 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 on the property;

and

- ii. The proposed use is a reasonable one.

[Explain what is unique about the property that makes the specific zoning restriction unfair and unrelated to the purpose of the provision, and that it is a reasonable use]

Or, if the criteria in 'A' are not established

- B. 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 the property.

[Explain what is unique about the property that makes the specific zoning restriction unreasonable]

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Authorization from Owner(s):

1. I (We) hereby designate _____ to serve as my (our) agent and to appear and present said application before the Warner Zoning Board of Adjustment [Zoning Board].
2. By submitting this application I (We) hereby authorize and understand that agents of the Town may visit the site without further notice. I (We) further understand the Zoning Board may at some point during the review process schedule a Site Visit, which will be duly posted.
3. I (We) understand that the Zoning Board will review the application/plan and/or may send the application/plan out for review. The applicant shall pay for such a review.
4. To the best of my (our) knowledge, the information provided herein is accurate and is in accordance with the Town of Warner Zoning Ordinance and other land use regulations of the Town and other applicable state and federal regulations which may apply.

Signature of Owner(s): _____

Date: _____

Date: _____

Signature of Applicant(s), if different from Owner: _____

Date: _____

Date: _____

Printed name of person(s) who signed above:

For Zoning Board of Adjustment Use Only

| | | |
|-----------------------------------|------------------|-----------------|
| Assigned Case #: | | |
| Date Received at Land Use Office: | | |
| Received by: | | |
| Fees Submitted: | | |
| Amount: | Cash: | Check #: Other: |
| Abutters' List Received: | | |
| | Yes | No |
| Date of Review: | Date of Hearing: | Date Approved: |

ALL APPLICABLE PAGES MUST BE COMPLETED TO BE ACCEPTED

ALL COSTS OF MAILING BY CERTIFIED MAIL, FEES, AND LEGAL ADVERTISEMENT IN A NEWSPAPER MUST BE PAID BY APPLICANT BEFORE THE HEARING MAY BEGIN.

Town of Warner Zoning Board of Adjustment Abutter(s) List

Please list all abutters **within 200 feet** of the boundaries of the property.
Applicant must reference and follow stipulations in the Abutter(s) List Instructions on page 3, item numbers 10.a. through 10.d. of the Application Instructions.

| | |
|-----|----------|
| Map | Name: |
| Lot | Address: |
| Map | Name: |
| Lot | Address: |
| Map | Name: |
| Lot | Address: |
| Map | Name: |
| Lot | Address: |
| Map | Name: |
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| Lot | Address: |
| Map | Name: |
| Lot | Address: |

Town of Warner Zoning Board of Adjustment Abutter(s) List

(Continued)

| | |
|-----|----------|
| Map | Name: |
| Lot | Address: |
| Map | Name: |
| Lot | Address: |
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