

Little Boar's Head District of North Hampton, NH

ZONING BOARD OF ADJUSTMENT

APPLICANT'S PACKAGE

The Little Boar's Head (LBH) Zoning Board of Adjustment (ZBA) strongly recommends that before making any appeal to the ZBA, you become familiar with the LBH Zoning Ordinance 2016 [update to refer to 2018 if approved] and also with the New Hampshire Statutes Title LXIV, RSA Chapters 672-678, covering planning and zoning. Additional resources are the Little Boar's Head ZBA Rules of Procedure and the publication of the NH Office of Strategic Initiatives "The Board of Adjustment in New Hampshire: A Handbook for Local Officials."

Four types of appeals can be made to the ZBA.

- Variance
- Special Exception
- Appeal from an Administrative Decision
- Equitable Waiver of Dimensional Requirements

These types of appeal are defined further below. Each has specific application requirements and criteria for ZBA decisions.

Instructions for making an Application of Appeal:

Work with the LBH Zoning Compliance Officer to understand why your original plan was denied. Obtain and understand the Letter of Denial. **Identity the specific relief that is required** in the LBH Zoning Ordinance (e.g., Variance vs. Special Exception) and the section and article of the LBH ordinance to which the appeal applies. The description of appeals included below provides some further guidance.

Complete the appropriate LBH ZBA application form for your appeal from those included in this package. Each type of appeal has a different application form. The application forms are intended to be self-explanatory, but be sure that you show:

WHO owns the property. If the applicant is not the owner, then written, notarized authorization from the property owner is required.

WHERE the property is located. Address and tax map and lot number are required.

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 proposal. Include copies of any prior applications concerning the property.

WHY does your proposal require an appeal to the ZBA? Please indicate which zoning ordinance(s) you are seeking an appeal from.

WHY should the appeal be granted?

Prepare a list of all abutting property owners, verify it at the North Hampton town offices, and attach it to your application. If you have any difficulty, consult the assessor's office, but the accuracy of the list is your responsibility. An abutter is any person whose property adjoins or is directly across the street or stream from the land under consideration by the LBH ZBA.

Develop a set of required attachments for your application as indicated in the Application Form and in the Application Checklist below. This must include detailed dimensional drawings of the lot plan, the floor plan and the building elevations, including before and after drawings when an existing structure is involved.

Determine the application fee. For all forms of appeal, a fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. The fee formula is \$150 plus \$7 per Abutter on the abutter list. Make your application fee check payable to Little Boar's Head District and remit with your application.

Mail or deliver the entire application package including a check for the application fee to the Little Boar's Head Zoning Board of Adjustment, Town of Hampton Town Offices, 2nd Floor, 233 Atlantic Avenue, North Hampton, NH 03862.

Subsequent to your application:

The Board will promptly schedule a public hearing upon receipt of your properly completed application. Public notice of the hearing will be posted and printed in a newspaper and notice will be mailed to you and to all abutters, and to other parties whom the Board may deem to have an interest, at least five days before the date of the hearing. You 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. Refer to the LBH ZBA Rules of Procedure and meeting calendar that are available at the Little Boar's section of the Town of North Hampton web page for further guidance on the conduct of the meeting and subsequent activities. <https://www.northhampton-nh.gov/village-district-little-boars-head>

After the public hearing, the Board will reach a decision. You will be sent a Notice of Decision.

If you believe Board has erred in its decision, you have the right to appeal. Any party affected have similar rights to appeal the decision of your case. To appeal, you must first ask the Board for a rehearing. The Motion for Rehearing may be in the form of a letter to the Board. The motion must be made within 30 days of the decision and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board may grant such a rehearing if, in its opinion, good reason is stated in the motion. The Board 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. See RSA Chapter 677 for more detail on rehearing and appeal procedure.

The four types of appeal to the ZBA:

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:

Note that all five of these criteria must be met. If the ZBA concludes that any one or more of the criteria is not met, they must deny the application.

VARIANCE CRITERIA GUIDELINES

<p>Statutory Requirements (RSA 674:33, I(b)) MUST SATISFY <u>ALL</u> OF THE FOLLOWING</p>	<p align="center">Explanation</p>
<p>1. The variance is not contrary to the public interest.</p>	<p>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.”</p>
<p>2. The spirit of the ordinance is observed.</p>	<p>As it is in the public’s interest to uphold the spirit of the ordinance, this is related to (1) public interest.</p>
<p>3. Substantial justice is done.</p>	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
<p>4. The values of surrounding properties are not diminished.</p>	<p>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>
<p>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p><i>First</i> 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>

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. This should be done before you apply for a Special Exception.

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 LBH 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 ZBA. 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.

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.

Applicant's Package: List of Forms

Application for Variance

Application for Special Exception

Application for Appeal of Administrative Decision

Application for Equitable Relief of Dimensional Requirements

List of Abutters

Checklist for Application to ZBA

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE**

APPLICATION FOR A VARIANCE

To: Zoning Board of Adjustment, Little Boar's Head District

Name of Applicant _____

Address _____

Owner _____

(if same as applicant, write "same")

Location of Property _____

(street, number, sub-division and lot number)

NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on separate pages if the space provided is inadequate.

APPLICATION FOR A VARIANCE

A variance is requested from article _____ section _____ of the zoning ordinance to permit

Facts in support of granting the variance:

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

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

Do not write in this space.
Case No. _____
Date Filed _____
_____ (signed - ZBA)

3. Granting the variance would do substantial **justice** because:

4. If the variance were granted, the **values** of the surrounding properties would not be diminished because:

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary **hardship** because:

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:

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.

Applicant _____ Date _____

(signature)

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE
APPLICATION FOR A SPECIAL EXCEPTION**

To: Zoning Board of Adjustment, Little Boar's Head District

Name of Applicant _____

Address _____

Owner _____

(if same as applicant, write "same")

Location of Property _____

(street, number, sub-division and lot number)

NOTE: 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.

APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a special exception as specified in the zoning ordinance, article _____ section _____: _____

Explain how the proposal meets the special exception criteria as specified in article _____, section _____ of the zoning ordinance (list all criteria from ordinance).

Criteria 1 - _____

Criteria 2 - _____

Criteria 3 - _____

Criteria 4 - _____

Applicant _____ Date _____

(signature)

Do not write in this space.
Case No. _____
Date Filed _____
_____ (signed - ZBA)

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE
APPEAL FROM AN ADMINISTRATIVE DECISION**

To: Zoning Board of Adjustment, Little Boar's Head District

Do not write in this space.
Case No. _____
Date Filed _____
_____ (signed - ZBA)

Name of Applicant _____

Address _____

Owner _____

(if same as applicant, write "same")

Location of Property _____

(street, number, sub-division & lot number)

NOTE: 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.

APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the zoning ordinance.

Decision of the enforcement officer to be reviewed _____

_____ Number _____ Date _____

article _____ section _____ of the zoning ordinance in question: _____

Applicant _____ Date _____

(signature)

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE
APPLICATION FOR AN EQUITABLE WAIVER
OF DIMENSIONAL REQUIREMENTS**

To: Zoning Board of Adjustment, Little Boar's Head District

Name of Applicant _____

Address _____

Owner _____

(if same as applicant, write "same")

Location of Property _____

(street, number, sub-division and lot number)

NOTE: 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.

Do not write in this space.
Case No. _____
Date Filed _____
_____ (signed - ZBA)

APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from article _____ section _____ of the zoning ordinance to permit _____

1. Does the request involve a dimensional requirement, not a use restriction?

() yes () no

2. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town/district. _____

- or -

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 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. _____

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

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE**

APPLICATION TO ZONING BOARD OF ADJUSTMENT

List of Abutters

Name of Applicant _____

Location of Property _____
(street, number, sub-division and lot number)

Map	Lot #	Owner Name of Record	Mailing Address (Street, #, City/Town, State, Zip)

**LITTLE BOAR'S HEAD DISTRICT
NORTH HAMPTON, NEW HAMPSHIRE**

CHECKLIST FOR APPLICATION TO ZONING BOARD OF ADJUSTMENT

- Completed Application Form
- Fees: **\$150.00 for variance application plus \$7.00 for each abutter notice (including property owner). Check Payable to: Little Boar's Head District**
- Copy of denial of Zoning Compliance Certificate from the LBH Zoning Officer
- Copy of Section(s) of Zoning Ordinance from which variance(s) is/are sought
- Set of labels, (4 sets of labels) for the list of Abutters, Owner, Applicant, Attorney, Engineer, and any others to receive notice
- Copy of tax map showing lot and other lots surrounding
- Survey plan stamped by the New Hampshire LLS or PE (if applicable)
- Copy of, or evidence of application for, septic system plan and NHDES Construction/Operational Approval (if applicable)
- Copies of, or evidence of application for, other State approvals such as Wetlands Board where applicable (if applicable)
- Building floor plan and elevation drawings drawn to scale with detailed dimensions. (if applicable)
- Six (6) consecutive sets of submittal beginning with application form including all plans and other requested information.