

GILMANTON ZONING BOARD of ADJUSTMENT

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT.

IMPORTANT: READ 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 672-677, covering Planning and Zoning. The office staff is available to help you.

THREE TYPES OF APPLICATION CAN BE MADE TO THE ZBA:

APPEAL FROM ADMINISTRATIVE DECISION:

If you have been denied a building permit or are affected by some other decision regarding the administration of the Gilmanton 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. **A copy of the decision appealed must be attached to this application.**

RSA 674:41 II states that a Board of Adjustment may hear an appeal from a decision to deny a permit to erect a building on a class VI road or other highway not legally accepted or approved.

VARIANCE:

A variance is an authorization, which may be granted under specific circumstances, to use your property in a way that is not permitted under the strict terms of the Zoning Ordinance. For a variance to be legally granted, you must show why your proposed use meets all five of the following conditions:

1. Granting the variance will not be contrary to the public interest.
2. Granting the variance will observe the spirit of the ordinance.
3. Granting the Variance will do substantial justice.
4. The values of surrounding properties will not be diminished.
5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

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 your determination must be attached to that 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 a Special Exception are listed in Article 9-B of the Gilmanton Zoning 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, 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.

FOR EVERY APPLICATION, the 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 and written authorization from the owner must be attached.

WHERE is the property located? Please provide specific directions as to how to get there as all properties may be visited by the ZBA and Conservation Commission. Please mark your property with a stake and cloth or surveyor tape at the top so we can identify your property easily.

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc. Are there any streams, wetlands or flowing water?

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. If your application is for a new home, addition or other structure, please put stakes with cloth or tape at each corner of the proposed structure.

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

PREPARE A LIST of all abutting property owners, have it verified at the Town office, 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.

ABUTTER: (RSA 672:3) "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

MAIL or DELIVER the completed application, with all attachments to the Clerk of the Board or to the Office of the Board of Selectmen. A fee is charged sufficient to cover the cost of preparing and mailing the legally-required notices. Make check payable to Town of Gilmanton and remit with your application. Incomplete applications will be returned.

UPON RECEIPT OF YOUR PROPERLY COMPLETED APPLICATION

- The Board will schedule a public hearing.
- 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 10 days before the date of the hearing.
- You and all other parties are invited to appear in person or by agent or counsel to state reasons why the application should or should not be granted.
- After the public hearing, the Board will reach a decision.
- You will be sent a notice of decision.

YOU HAVE THE RIGHT TO APPEAL If you believe the Board's decision is wrong. The Selectmen, or any party affected, have similar rights to appeal the decision in your case.

- To appeal, you must ask the Board for a re-hearing, in the form of a letter to the Board.
- The letter must be made within 30 days of the Board's decision, and must set forth the grounds on which it is claimed the decision is **unlawful or unreasonable**.

The Board may grant such a re-hearing if, in its opinion, good reason is stated in the letter.

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 re-hearing is held, you must have requested one before you can appeal to the courts.

When a re-hearing 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 re-hearing and appeal procedures.

ZONING BOARD of ADJUSTMENT APPLICATION

Mail BOARD OF ADJUSTMENT
To: TOWN OF GILMANTON
PO BOX 550
GILMANTON, NH 03237

Do not write in this space.

Case # _____
Date Filed _____
Amount Paid _____
Map/Lot _____

Check One: _____ APPLICATION FOR APPEAL FROM ADMINISTRATIVE DECISION
_____ APPLICATION FOR A VARIANCE
_____ APPLICATION FOR A SPECIAL EXCEPTION

This application must be completed accurately and in its entirety in order for it to be processed. **PLEASE PRINT**

NAME OF APPLICANT: _____ PHONE # _____

APPLICANT MAILING ADDRESS: (# & street) _____
(town & zip) _____

OWNERS of property concerned: _____
(If same as above, write same)

OWNERS' MAILING ADDRESS: _____

PROPERTY ADDRESS and/or LOCATION of property: Include directions to assist Board members in locating your property. Vacant property **MUST** be identified with stakes and ribbon at the site.

HAS A PREVIOUS ZBA APPLICATION/APPEAL been made with respect to this property? _____ If yes, list date(s), type of request(s), and decision(s):

NOTE:

1. A site plan drawn to scale, must be submitted with this application giving the length of frontage, dimensions of the lot, dimensions and location of all buildings (existing and proposed), rights of way, any wetlands and streams, and setback distances to all boundaries. Failure to provide this information may delay your hearing or the Board's decision on your hearing, together with a check for \$60.00 with the addition of \$6.00 per abutter listed. **The application fee is non-refundable and payable to the Town of Gilmanton.**
2. Legal names and mailing addresses of owners of properties abutting this property, as listed in the Town's assessing records, must be supplied with this application.

Map/
Lot

Abutting Property Owner

Mailing Address

FILL OUT SECTION 1, 2 or 3 AS APPLICABLE.
 PLEASE ADD ADDITIONAL PAGES AS REQUIRED.

SECTION 1.

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

The undersigned alleges that an error has been made in the decision, determination, or requirement, by (title)

_____, on (date) _____ to (person requesting permit) _____

_____ in relation to Article _____,

Section _____, of the Gilmanon Zoning Ordinance and hereby

appeals said decision for the following reasons: (use additional paper if necessary) _____

SECTION 2

APPLICATION FOR VARIANCE

As provided in Article IX, Section C of the Gilmanton Zoning Ordinance, a variance is requested from Article ___ Section/Table ___ of the Zoning Ordinance to permit:

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

2. Describe how the spirit of the Ordinance would be observed by the granting of this variance:

3. Describe how substantial justice would be done by granting of this variance:

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

5. 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* as:

a. 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:

b. AND the proposed use is a reasonable one because:

* The definition of "unnecessary hardship" as set forth in #5 above shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance. [See RSA 674:33,I(b)]

As Amended 01/01/2010

SECTION 3

APPLICATION FOR A SPECIAL EXCEPTION

The undersigned hereby requests a Special Exception from Article 4-Table 1, as provided in Article IX, Section B, of the Zoning Ordinance:

Proposed Use: _____

The applicant alleges that the following circumstances exist which legally justifies the Special Exception:

1. The site is an appropriate location for such a use because:

2. The use as developed will not adversely affect the neighborhood because:

3. The following adequate & appropriate facilities will be provided for the proper operation of the proposed use:

SECTION 4

**IF YOU HAVE APPLIED FOR A VARIANCE OR SPECIAL EXCEPTION
THE FOLLOWING QUESTIONS NEED BE ANSWERED.**

- 1. Is the land, building or structure in question located on a class five road? _____
- 2. What is the frontage of the lot? _____
- 3. What is the height of the structure? _____
- 4. Does the proposed construction involve the addition of any bedrooms to an existing home? _____
- 5. Is a septic system design approval from the NH Department of Environmental Services necessary for the proposed construction? If so, what is the State approval number?

As Amended 07/21/05

If the previous questions are not answered completely, the applicant may be notified that this appeal could be rejected for lack of information

I understand that I must appear in person or be represented by my agent at the public hearing. The agent who represents me at this hearing must be familiar with the case and I agree to be bound by his or her testimony.

By signing this application, you as owner or applicant representing the owner, hereby gives permission for any member of the Zoning Board of Adjustment or Conservation Commission, to enter onto the property in order to make a decision based on attributes of the property.

Date: _____ Signed _____
(Applicant)

If your variance or special exception is granted, the building permit will be issued no sooner than 30 days following the decision in order for the appeal process to expire.