

# **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.**

#### **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 or determination by the Community Development Department.

#### **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. A list can be printed by utilizing the online tax maps.

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 Community Development Department within the Selectmen's Office. Application should include 7 plan copies to scale, 1 digital copy of the plan, 3 mailing labels of each abutter including owner, applicant, and agent, and fees.

FEES for the application are \$85 plus \$8 per notice to the owner, applicant, agent, and abutters.

### **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, 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.

## VARIANCE CRITERIA GUIDELINES

<b>Statutory Requirements (RSA 674:33, I(b))</b>  <i>APPLICANT MUST SATISFY ALL OF THE FOLLOWING</i>	<b>Explanation</b>
1. The variance is not contrary to the public interest.	<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>As it is in the public’s interest to uphold the spirit of the ordinance, these two criteria are related.</p>
2. The spirit of the ordinance is observed.	
3. Substantial justice is done.	<p>The benefit to the applicant should not be outweighed by harm to the general public.</p>
4. The values of surrounding properties are not diminished.	<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>First 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>

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## APPLICATION FOR A VARIANCE

Do not write in this space.

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

\_\_\_\_\_  
(signed - ZBA)

To: Zoning Board of Adjustment,

Town of Gilmanton

Name of Applicant \_\_\_\_\_

Address \_\_\_\_\_

Phone # \_\_\_\_\_ Email: \_\_\_\_\_

Owner \_\_\_\_\_  
(if same as applicant, write "same")

Location of Property \_\_\_\_\_  
(property address) (map & 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 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:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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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:

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- and -

- ii. The proposed use is a reasonable one because:

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- 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.

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Please provide the following information regarding the subject property:

1. Is the land, building or structure in question located on a Class V 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? \_\_\_\_\_
6. If property is vacant, please provide a description of the location, a neighboring house address, and/or the utility pole number on the subject property:  
\_\_\_\_\_  
\_\_\_\_\_

**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 give 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.

Applicant \_\_\_\_\_ Date \_\_\_\_\_  
(Signature)

Applicant \_\_\_\_\_ Date \_\_\_\_\_  
(Signature)

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