

**INSTRUCTIONS TO APPLICANTS APPEALING TO THE
WINDHAM BOARD OF ADJUSTMENT
IMPORTANT: READ CAREFULLY BEFORE FILLING OUT
ATTACHED APPLICATION**

The Board strongly recommends that you become familiar with the Windham Zoning Ordinance, and also with the New Hampshire Statutes **TITLE LXIV, RSA CHAPTERS 672-677**, covering planning and zoning (before making any appeal). The applicable ordinances and statutes are available at the Office of Planning and Development.

There are four types of appeal that can be made to the Board of Adjustment. Namely Variance, Special Exception, Equitable Waiver and Appeal of Administrative Decision.

1. **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. For a variance to be legally granted you must show that your proposed use will meet **all five** of the following conditions.

1. The proposed use would not diminish surrounding property values.
2. Granting of the variance would be of benefit to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner.

Unnecessary hardship can now be established by demonstrating the following three conditions:

- The zoning restriction as applied to the applicant's property interferes with the applicant's reasonable use of the property, considering the unique setting of the property in its environment.
 - No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property.
 - The variance would not injure the public or private rights of others.
4. Granting this variance would do substantial justice.
 5. The proposed use is not contrary to the spirit of the ordinance

Only the Board of Adjustment shall impose these conditions and no other consideration shall govern its deliberations on variance. **The burden of proving that these conditions have been or will be met shall be upon the applicant.** The Board may attach reasonable conditions to the granting of any variance.
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BOARD OF ADJUSTMENT

4 North Lowell Road
Windham, NH 03087
Telephone (603) 432-3806

BOARD OF ADJUSTMENT CHECK LIST FOR VARIANCE, SPECIAL EXCEPTION, AND EQUITABLE WAIVER

For an application to be considered complete and placed on an agenda, the applicant must submit the following:

1. Complete application form.
2. Complete Abutters list and **two mailing labels for each Abutter, Owner and person representing the Applicant if any.**
3. If the Applicant is someone other than the Owner, the Owner must provide a letter authorizing the Applicant to represent the Owner at the meeting.
4. Filing Fees - **\$75.00 for an Area Variance, \$200.00 for a Use Variance, all other applications are \$60.00. In addition to the application fee there is a \$6.00 fee for each abutter, the applicant and anyone else that you may want to be notified.**
5. Copy of Plot Plan (see sample) (3)
6. Dimensional Plans: (1) (3)
 - Existing Structure, Floor Plan, Elevations (2)
 - Proposed Structure (if any additions or changes are proposed), Floor Plan, Elevations (2)

FOOT NOTES

- (1) Including accessory structures (decks, porches, sheds, etc.)
- (2) Not required for Special Exception
- (3) Two (2) copies are to be submitted

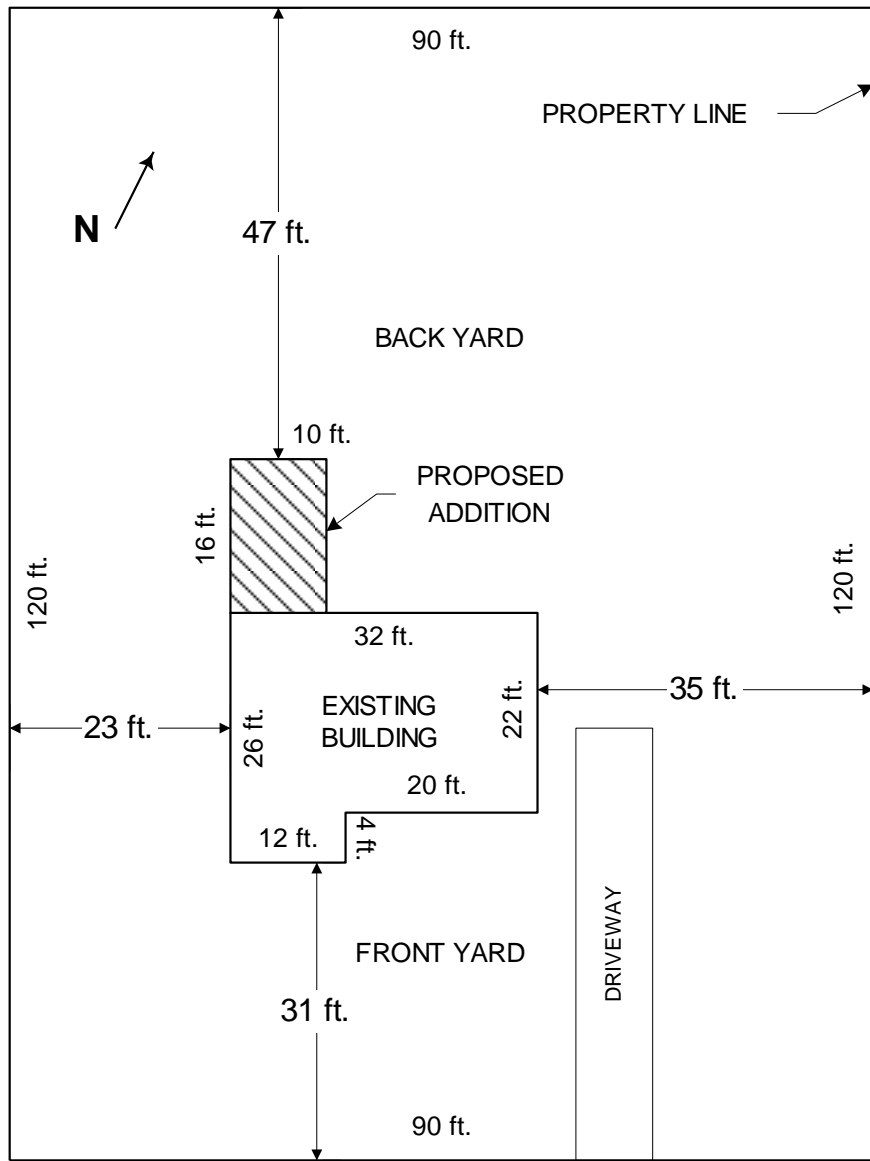
Any questions call the Department of Planning & Development at 432-3806.

BE PREPARED TO MAKE A PRESENTATION THE NIGHT OF THE MEETING.

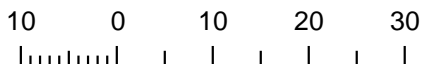
Sample Plot Plan

In order to verify the proposed appeal, a plot plan is required. The plan must show building setbacks, property lines, and distances of all existing and proposed buildings from the property lines. An existing plot plan may be available at the Building Department. The plan must be drawn to a scale of **not less than** 1" = 20', such as 1"=10' (the scale used should be indicated on the plan).

Failure to supply sample plot plan shall result in a denial without prejudice or a continuance.



ANY STREET



INFORMATION SHEET

WHEN 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 is **denial of a building permit**.

Forms are to be filled out by the owner or an authorized agent.

This office must notify abutters by certified mail.

1. **Abutters** are all property owners adjacent to, adjoining, or directly across the street or stream from the property in question.
2. You must print the names and addresses of the abutting owners. Names and addresses are your responsibility – they are on file in Assessor's office. **YOU MUST USE THE LEGAL MAILING ADDRESS.**

FOR THE NIGHT OF THE MEETING

You should be prepared to make your presentation before the members of the Board of Adjustment providing them with the information relative to your request based on the five criteria used by the Board in granting variances.

PICTURES, SKETCHES, OR DIAGRAMS ARE HELPFUL IN YOUR PRESENTATION, AND ARE A NECESSARY PART OF YOUR PRESENTATION BEFORE THE BOARD AND WILL BECOME A PART OF THE OFFICIAL RECORD.

REQUEST FOR RE-HEARING

You may appeal a denial by the Board of Adjustment within 30 days of the date of the hearing. It is necessary to fill out forms. **NEW EVIDENCE OR PROOF OF A TECHNICAL ERROR MUST BE PROVIDED WITH THE REQUEST FOR RE-HEARING.** Also an abutter or an aggrieved party may appeal a variance granted by the Board of Adjustment within 30 days after the variance has been granted. Therefore, no building permit will be issued until after the 30-day period of time. (RSA 677:2).

Within 30 days after a decision of such re-hearing the applicant may appeal by petition to the Superior Court (RSA 677:4). **Whether or not a re-hearing is held you must have requested one before you can appeal to the Court.**

WHEN APPLYING FOR AN APPEAL OF AN ADMINISTRATIVE DECISION

If you have been denied a building permit or are **affected** by some other decisions regarding the administration of the Windham Zoning Ordinance and you believe 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 in error. If you are appealing an Administrative Decision a copy of the decision appealed from must be attached to your application.

WHEN APPLYING FOR A SPECIAL EXCEPTION

Certain sections of the zoning ordinance provide that a particular use of a property in a particular zone will be permitted by special exception if the 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 have been met.

SCHEDULE OF PUBLIC HEARINGS

The Board will schedule a public hearing within 30 days of the receipt of your properly completed application. Public notice of the hearing will be posted in the Town Hall and the Department of Planning & Development and printed in the Windham Independent or a newspaper of general circulation. Notices will be mailed to you and all abutters at least seven days before the date of the hearing.

After the public hearing the Board will reach a decision. You will be sent a notice of decision