INSTRUCTIONS TO PETITIONERS SEEKING RELIEF FROM
THE ZONING BOARD OF ADJUSTMENT

Important: Read carefully before filling out attached petition!

The Board strongly recommends that, before making any petition, 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 Board is concerned with the number of petitions that have been incomplete or incorrect, thus requiring additional time and effort on the part of petitioners as well as a second appearance before the Board.

To help both the petitioner and the Board reach a proper and prompt conclusion, we are inviting petitioners to attend a meeting **PRIOR** to their scheduled appearance. This will help petitioners become familiar with the procedures and requirements of the Board, as well as provide an opportunity to seek help from the Board concerning matters of procedure or information required to support a specific petition that may appear to be somewhat unique.

Please be aware that the law specifically forbids **any** discussion of the substance of the petition itself prior to the actual hearing. What we hope to provide is the means for an applicant to be sure that all necessary information will be provided and that the Board members will be able to inspect the property, conduct the hearing and render a decision.

Questions from prospective petitioners will be entertained at the conclusion of the regular agenda but prior to the Business Meeting.

Members of the audience are reminded that only the Petitions noticed for hearing will be discussed.

The Board's usual practice is to proceed to a conclusion in the hearing of any petition that has been read by the Board or is in the process of being heard by 10 o'clock. The Board reserves the right to designate a "last petition" after 9:30 p.m. The Board's proceedings are governed by its duly adopted Rules of Procedure.

Several types of petitions may be brought before the Zoning Board of Adjustment:

A. 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 Hampton Zoning Ordinance. For a variance to be legally granted, *you, the Petitioner, must show* that your proposed use meets *all five* of the following criteria:

(1) The variance will not be contrary to the public interest;
(2) The spirit of the ordinance is observed;
(3) Substantial justice is done;
(4) The values of surrounding properties are not diminished; and

(5) Literal enforcement of the provisions of the ordinance would result in an 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.

B. SPECIAL EXCEPTION: A special exception is an authorization, which may be granted under special circumstances, for a specific use that is a permitted use under the Zoning Ordinance so long as the use complies with the following conditions as set forth in the Ordinance:

a. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.
b. That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.
c. That adequate landscaping and screening is provided as required in the zoning ordinance.
d. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.
e. That the use conforms with all applicable regulations governing the district where located.
f. That if the application is for a use in the Industrial District such exception will not:
   1. affect the quality of water supplies;
   2. constitute a health hazard to the community;
   3. permit temporary structures.
g. The applicant shall demonstrate that handling, storage and containment of any chemicals or substances defined as "hazardous" will be handled in strict accordance with the regulations and recommendations of the EPA and/or any governmental body charged with enforcing compliance with any laws or statutes regarding hazardous substances.

C. EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT: As provided for under N.H. RSA 674:33-a (and Section 1.4.2.1 of the Zoning Ordinance):

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the Board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or be an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the Board under subparagraphs I (a) and (b), the owner may demonstrate to the satisfaction of the Board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected.

D. APPEAL FROM AN ADMINISTRATIVE DECISION: Appeals to the Board of Adjustment concerning any matter within the Board's powers as set forth in RSA 674:33 and RSA 676:5 may be taken by any person aggrieved, or by any officer, department, board, or

bureau of the municipality affected, a) from a decision of an administrative official, or b) from a planning board decision or determination, in the exercise of subdivision or site plan review, which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by an administrative officer. Such appeal shall be taken within 30 days of a decision by the Administrative Officer or Planning Board as provided by the rules of the Board, by specifying the grounds thereof, on the Board's approved Petition form, and copying the official from whose decision the appeal is taken. The officer from whom the appeal is taken shall then forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the decision appealed from was taken. By law a decision of an administrative officer from which an appeal can be taken includes any decision involving construction, interpretation or application of the terms of the ordinance. It does not include a discretionary decision to commence formal or informal enforcement proceedings, but does include any construction, interpretation or application of the terms of the ordinance, which is implicated in such enforcement proceedings. An appeal from a decision of an administrative officer to the Zoning Board of Adjustment may also be taken from enforcement of the provisions of RSA 674:41 as to erection of buildings on streets, whenever such enforcement would entail practical difficulty or unnecessary hardship, and when the circumstances of the case do not require the building, structure or part thereof to be related to existing or proposed streets.

E. APPEAL OF BUILDING CODE DECISION: In Hampton, the Zoning Board of Adjustment acts as the Building Code Board of Appeals. The Board has the power, upon an appeal filed with it by any person aggrieved by a decision of the building inspector dealing with the building code, to vary the application of any provision of the building code to any particular case when, in its opinion, the enforcement of the building code would do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest.

COMPLIANCE WITH THE FOLLOWING IS ABSOLUTELY ESSENTIAL FOR YOUR CASE TO BE HEARD AND ACTED UPON BY THE BOARD.

1. Each petition to the Board shall be made on the form provided by the Board to the Building Inspector, who acts as the Board's agent. All petitions, once completed, must then be submitted to the Building Inspector. Zoning Board meetings are held on the third Thursday of every month. Submittal deadlines for completed applications to be heard at any given scheduled monthly meeting appear on a list adopted by the Board and posted at the office of the Building Department. A large number of petitions may require some petitions to be heard on the fourth Thursday of the month. In extraordinary circumstances an applicant may request a specially scheduled hearing and such hearing may be granted at the discretion and convenience of a majority of the Board members.

2. In order to be a proper petitioner on a petition, you must be:
   a. The title holder of record to the property in question; or
   b. The holder of a valid purchase and sale agreement for the purchase of the subject property; or

c. The holder of a valid option for the purchase of the subject property.

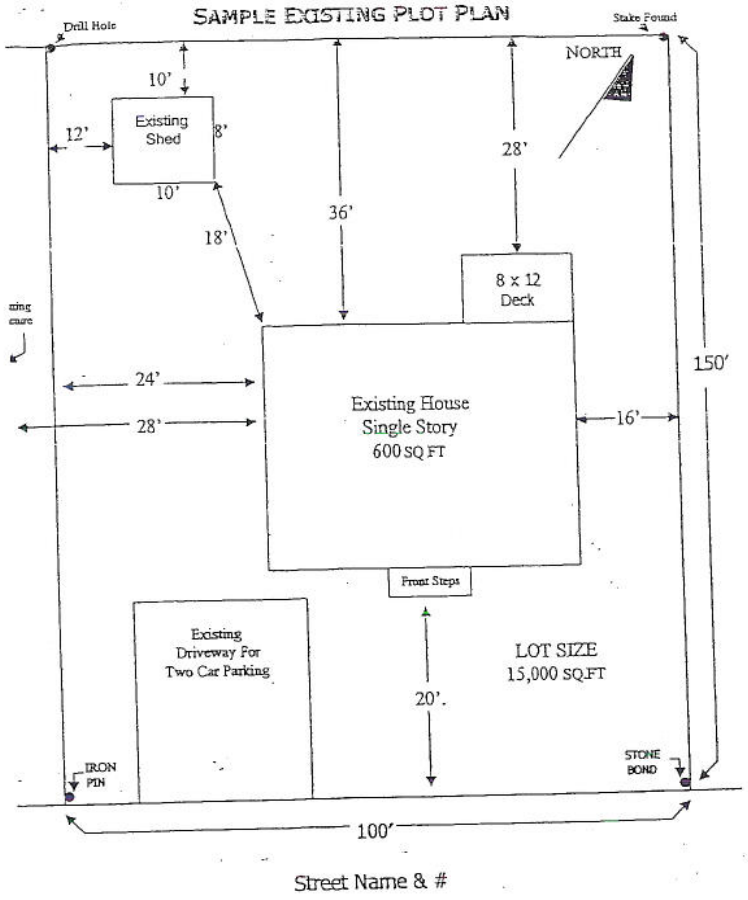
In the case of (b) or (c) above, the current title holder of the property or his designated (in writing) representative must be present at the hearing and the decision of the Board regarding the question of hardship will be based, as provided by law, on hardship to the current owner and not the holder of a purchase and sale agreement or an option to buy. The Board may require production of documentary evidence of any title, agreement, or option.

3. To be placed on the agenda, each petition must show the following or the petition will be rejected.
   a. A completely filled in Petition For Relief.
   b. A clear, complete and accurate plot plan showing existing structures. Complete dimensions of the structure(s) footprint(s) as well as distances to property lines, as measured from the drip edge must be shown. If there are two or more structures, the distances between the structures must be shown, again as measured from the drip edge. Show NORTH with an arrow in the upper right corner.
   c. A clear, complete and accurate plot plan showing proposed structures. All dimensions as listed above for existing structure must be shown. In addition, if structures on abutting properties are within **15** feet of the property line, indicate that distance also. Show NORTH with an arrow in the upper right. NOTE: It may be possible to show both existing and proposed structures on one plan, especially if there is a simple addition or a second building. If the plan appears cluttered or is confusing, use a separate sheet for the proposed structure(s).
   d. North, South, East and West elevations of existing and proposed structures.
   e. Floor plans of proposed structure or addition having room designations shown.
   f. Abutting streets labeled.
   g. Off-street parking. Legal parking spaces are 9'x18'.
   h. On both existing and proposed plot plans, the square footage of the land and square footage of the buildings.
   i. Assessor's Tax Map of property and adjacent area. NOTE: Tax maps are for Board reference only and may not be relied upon to establish property lines, building locations, etc.
   j. Names and legal mailing addresses of immediate abutters with street location.
   k. Valid boundary markers. In the event that such markers are missing or unable to be found, it will be necessary to have the lot surveyed and the markers (or "pins") set. A New Hampshire licensed surveyor at the Petitioner's expense must do this.

Except as noted in paragraph 3(k) above, the required plot plan does not have to be drawn by a professional, but it must be clear and accurate. Graph paper may prove helpful – please use a ruler for straight lines. As a suggestion, look at the completed plan and answer the following question: "If I were not familiar with the property, would I be able to understand the proposal?" All materials larger than 8.5 x 11 must be submitted with eleven (11) additional copies at the time of submission of the petition.

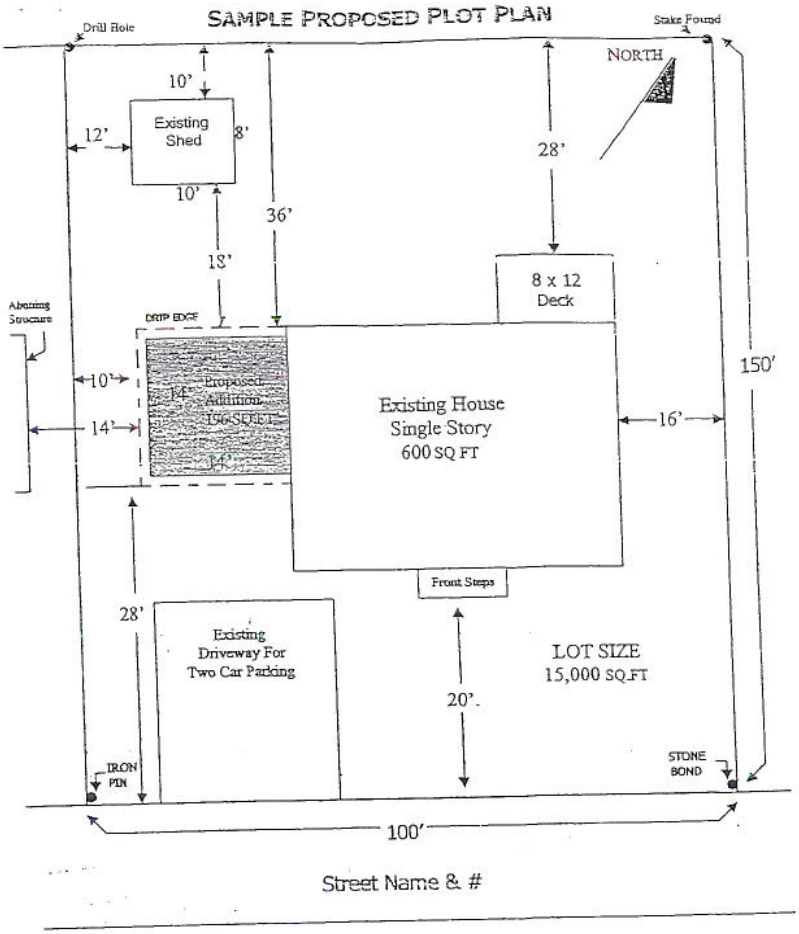
SAMPLE DRAWINGS FOLLOW

SAMPLE EXISTING PLOT PLAN



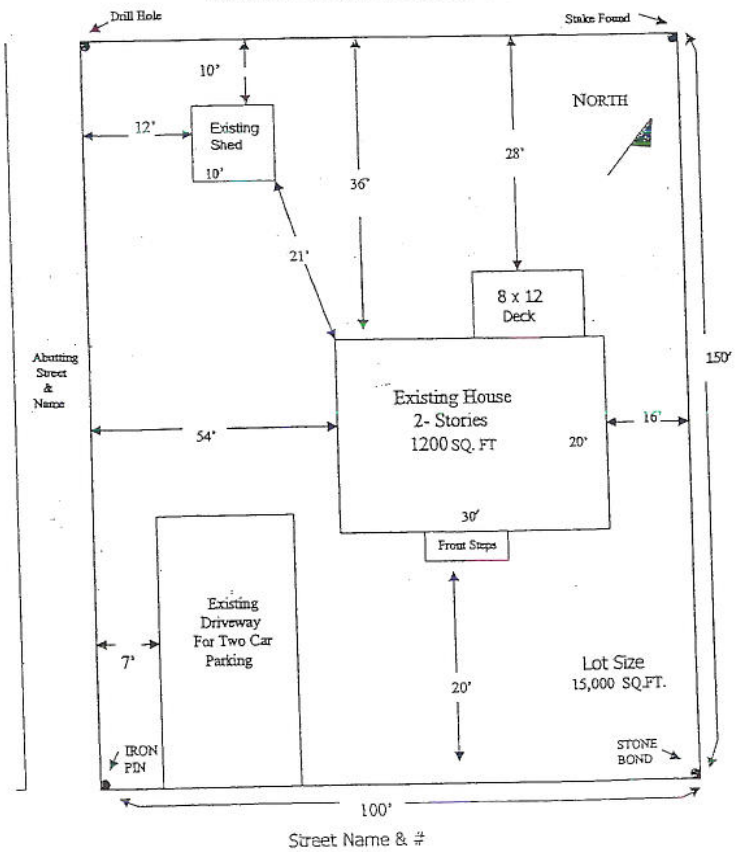
Street Name & #

SAMPLE PROPOSED PLOT PLAN



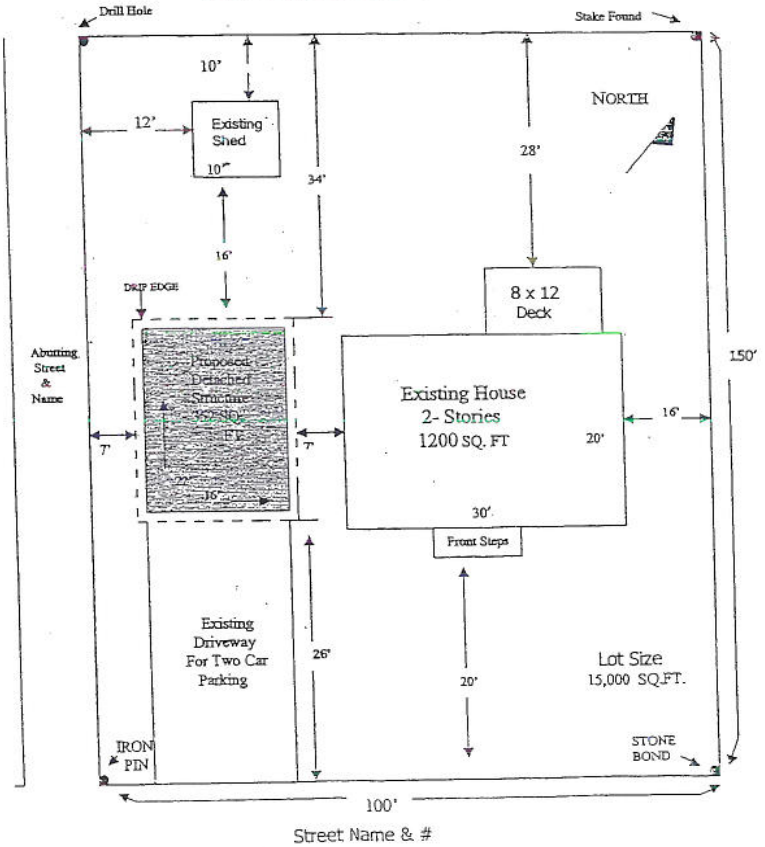
Street Name & #

SAMPLE EXISTING PLOT PLAN



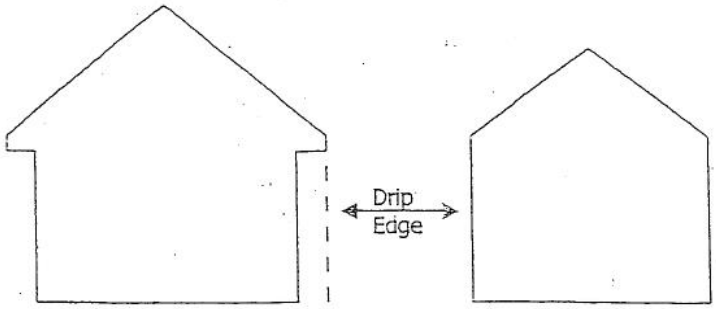
Street Name & #

SAMPLE PROPOSED PLOT PLAN

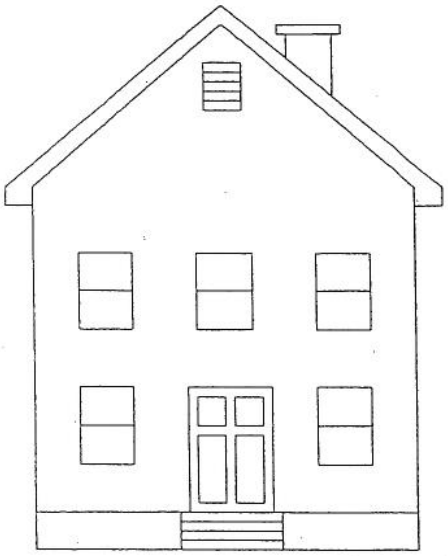


Street Name & #

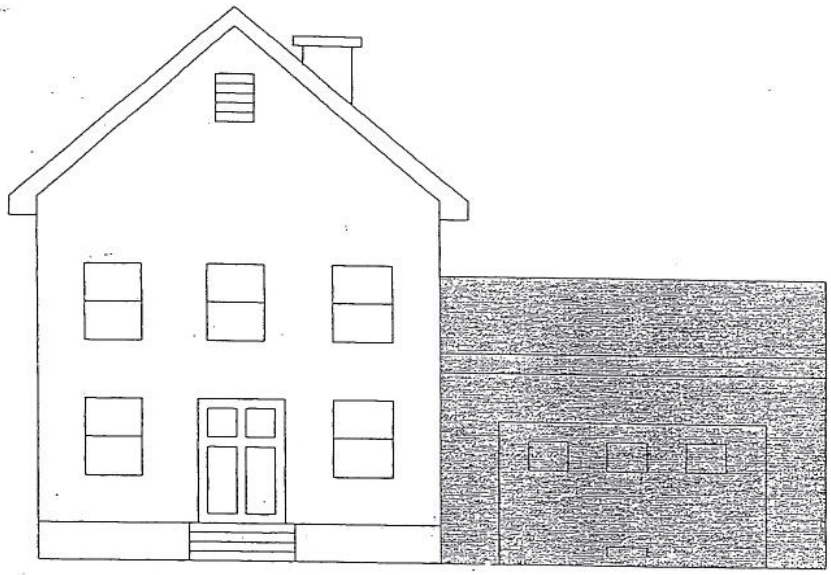
Drip Edge Illustration



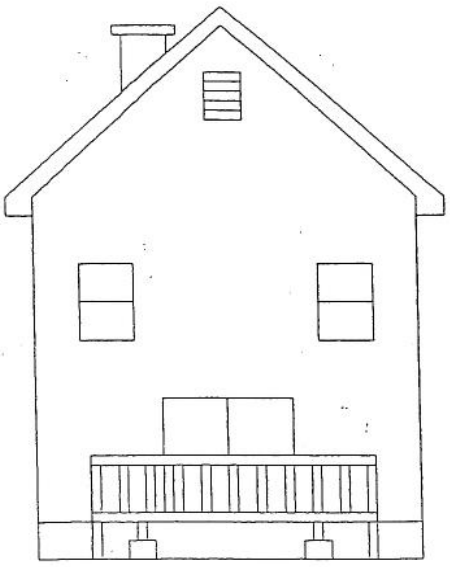
SAMPLE
Existing North Elevation



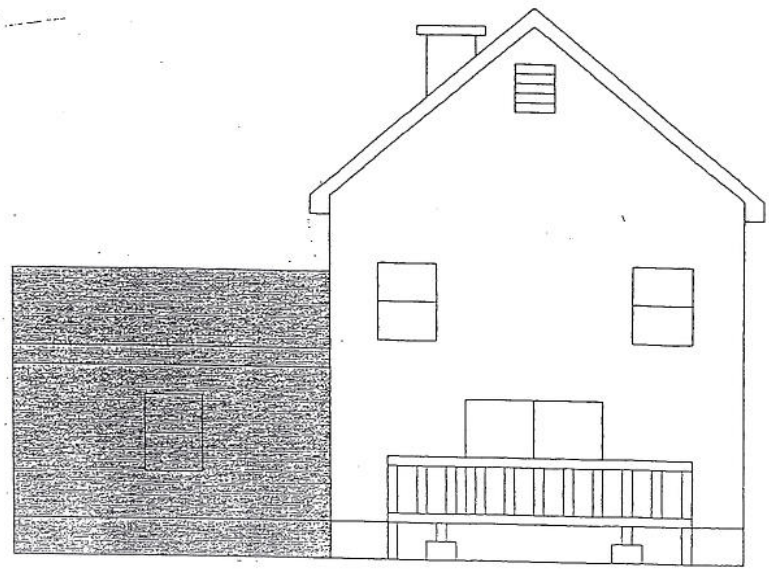
SAMPLE
Proposed North Elevation



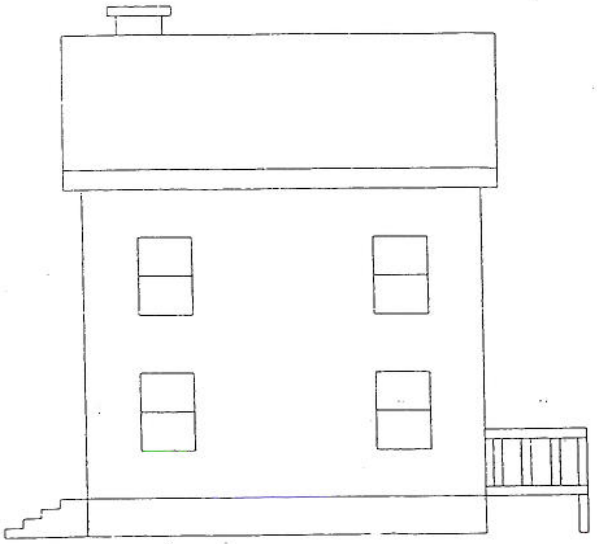
SAMPLE
Existing south Elevation



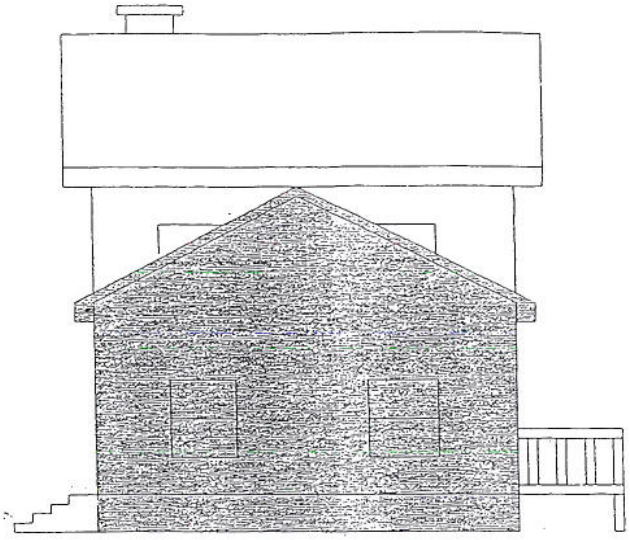
SAMPLE
Proposed South Elevation



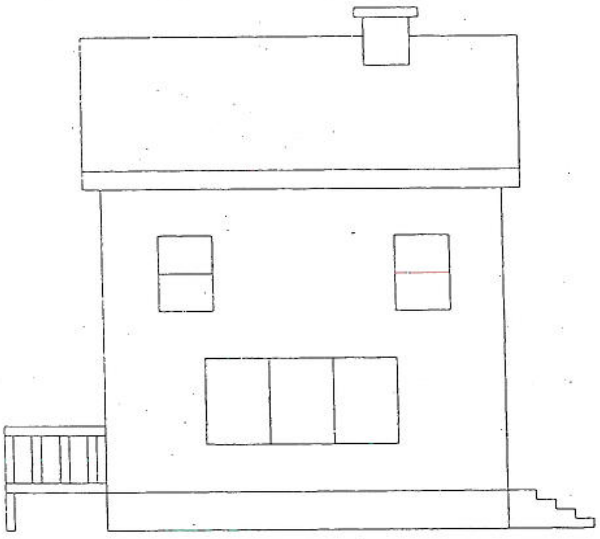
SAMPLE
Existing East Elevation



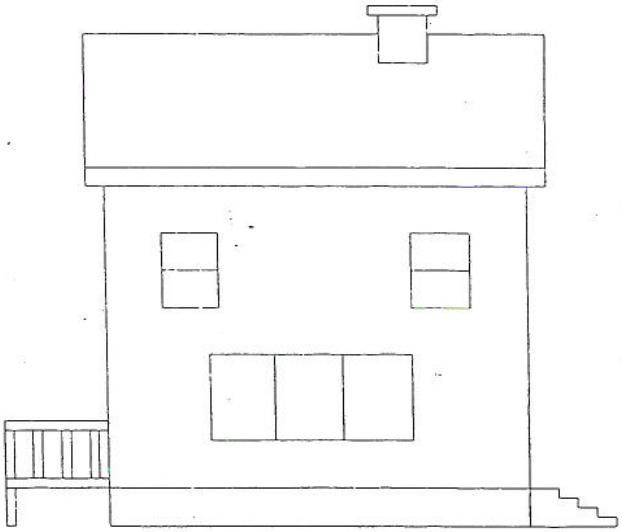
SAMPLE
Proposed East Elevation



SAMPLE
Proposed West Elevation



SAMPLE
Existing West Elevation



ADDITIONAL INFORMATION AND REMINDERS

The filing fee is $125.00 plus $8.00 for each abutter and petitioner and is due when filing the petition. The Board sets specific costs. Be especially careful in compiling the abutter list for the petition form. If an abutter is missed, the Board may not legally hear the petition. Accuracy of naming abutters is wholly the responsibility of the Petitioner.

The Board of Adjustment is a quasi-judicial body. As such, we require the same standards as a court in terms of the information provided us upon which we make our decision. As previously noted, tax maps may not be used for establishing any of the lines and dimensions required on the plot plan. The Board will hear and act upon your petition within 30 days of the deadline for filing. Written confirmation of the decision will be mailed to the petitioner.

The Petitioner or his duly authorized (in writing) agent must present the petition to the Board. If you fail to appear for your scheduled hearing, the Board will consider the petition administratively withdrawn and all fees are forfeited. If a subsequent hearing is requested, the petition filing fee and abutter notification fees must be paid again. The Board understands that extenuating circumstances may require a request that your hearing be postponed. At the sole discretion of the Board, abutter re-notification and requisite fees may be waived.

If the subject property is held in the condominium form of ownership, the Board must have written confirmation from the condominium association governing board that they have no objection to the proposed project.

When in doubt about any aspect of your application, please call the office of the Building Inspector for guidance.

Finally, please read carefully and completely the information concerning the type of petition you are presenting – that is, variance, special exception, appeal from an administrative decision, etc. The Board will question you concerning how your proposed project and your property meet the specified criteria. Be prepared.

As a matter of policy, the Board encourages all applicants to fully inform their neighbors and solicit their opinions concerning the proposed project. Bear in mind, however, that while the Board is interested in the reaction of your abutters, our decision is based upon the ordinance, and the criteria set forth by state law, not upon opinions of abutters.

A favorable decision is not an authorization to proceed with your project. YOU MUST THEN OBTAIN A BUILDING PERMIT and, where applicable, Planning Board Approval.

PETITION#_____

TOWN OF HAMPTON
ZONING BOARD OF ADJUSTMENT

PETITION FOR RELIEF

Owner_____

Mailing Address _____
Phone Number _____

Petitioner's Name (If different from owner) _____

Option Holder_____

Property Address_____ Map _____ Lot_____ Zone _____

Please check one or more of the following:

Description of Property (check one or more of the following):
__ Vacant Lot __ Single dwelling unit __ Duplex (two dwelling units in one or more buildings)
__ Multi-family (three or more dwelling units in one or more buildings) __ Commercial

Specify lot size (in feet): Frontage _____ Left Side _____ Right Side _____ Rear _____

Leased Land: Is this property now or was this property ever leased land? ___ Yes ___No
If yes, attach a copy of the original Deed from the Town and schedule an appointment with the Building Inspector.

Wetlands: Does the proposed project fall within the Town's 50-foot wetland buffer or the100-foot State wetland buffer? __Yes __No
If yes, and relief is sought only to Section 2.3 of the Zoning Ordinance, "Wetlands Conservation District" schedule an appointment with the Building Inspector.

Flood Zone: Is this property within a flood zone? __Yes __No If yes, indicate what zone _____

Please check the appropriate box(es) to indicate the type of relief you are seeking from the Board:

Petition for:	A. Variance ☐	*Appeal of:*	D. Administrative Decision ☐
	B. Special Exception ☐		E. Building Code Decision ☐
	C. Equitable Waiver of Dimensional Requirement ☐		

Description of Proposed Project:

_____

_____

_____

Please fill in the section(s) that follow which correspond to the type of Petition or Appeal you have indicated above.

A. If a Petition for a Variance:

Relief from Zoning Ordinance Article(s) # _____

Facts that support each requested variance: (If additional space is required, use separate sheet of paper)

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

_____

_____

_____

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

_____

_____

_____

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

_____

_____

_____

4. Granting the variance, would not diminish the value of surrounding properties because:

_____

_____

_____

5. Literal enforcement of the provisions of the ordinance would result in an "unnecessary hardship" meaning that, owing to special conditions of the property that distinguish it from other properties in the area, 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:

_____

_____

_____

If criteria i and ii 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 reasonably be used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. If applicable, please set forth all facts as to why the qualification is met:

_____

_____

_____

B. If a Petition for a Special Exception:

Zoning Ordinance Article under which Special Exception is sought:

_____

Please explain in the space below why and how the proposed use would comply with the following:

1. That the use is so designed, located and proposed to be operated that the public health, safety, welfare and convenience will be protected.

_____
_____
_____

2. That the use will be compatible with adjoining development and the proposed character of the zone district where it is to be located.

_____
_____
_____

3. That adequate landscaping and screening is provided as required in the Zoning Ordinance.

_____
_____
_____

4. That adequate off-street parking and loading is provided and ingress and egress is so designed as to cause minimum interference with traffic on abutting streets.

_____
_____
_____

5. That the use conforms to all applicable regulations governing the district where located.

_____
_____
_____

6. That if the application is for a use in the Industrial District such exception will not:
   1) affect the quality of water supplies;
   2) constitute a health hazard to the community;
   3) permit temporary structures.

_____
_____
_____

7. That handling, storage and containment of any chemicals or substances defined as "hazardous" will be in strict accordance with the regulations and recommendations of the EPA and/or any governmental body charged with enforcing compliance with any laws or statutes regarding hazardous substances.

_____
_____
_____

C. <u>If a Petition for an Equitable Waiver of a Dimensional Requirement:</u>
Please list here each dimensional requirement from which a waiver is sought

_____

and set forth below with respect to each such requested waiver the facts that Petitioner says would enable the Board to make each of the following findings: (If additional space is required, use a separate sheet of paper).

1. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

_____

_____

_____

2. That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

_____

_____

_____

3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;

_____

_____

_____

4. That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

_____

_____

_____

D. <u>If an Appeal from an Administrative Decision:</u>
Please set forth the following:

1. The date of the decision: _____
2. The person/entity making the decision was: _____
3. What Zoning Ordinance Sections were involved: _____
4. What the decision was: _____

_____

5. Why you say that the decision was incorrect: _____

_____

_____

E. If an Appeal from a Decision of the Building Inspector dealing with the Building Code:

Please set forth the following:

1. The date of the decision _____
2. The person/entity making the decision was: _____
3. What Building Code Sections were involved: _____
4. What the decision was: _____

   _____
5. Why you say that enforcement of the building code in your case
   a. Would do manifest injustice _____

      _____

      _____

   b. Would be contrary to the spirit and purpose of the building code and the public interest

      _____

      _____

ABUTTERS

Name *Mailing Address*

_____

_____

_____

List additional abutters on a separate sheet of paper.

Date: _____ Signed _____

(Signatures of all applicants should appear here)

DO NOT FILL IN BELOW THIS LINE

Petition Granted: _____ Vote: _____ Petition Not Granted: _____ Vote: _____

Conditions, if any, upon which petition is granted:

_____

_____

_____

If applicable, reasons for not granting petition:

_____

_____

_____

_____

Date _____ Chairman _____

Clerk _____