

**INSTRUCTIONS TO APPLICANTS  
APPEALING TO  
THE TOWN OF MADISON ZONING BOARD OF ADJUSTMENT**

**IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION**

**CERTIFIED PLOT PLAN:**

**A Certified Plot Plan is required with your application – any application that does not include a certified plot plan may be considered incomplete. In certain circumstances, a waiver for a certified plot plan of the entire property may be granted (fill out waiver form as needed). This requirement is waived for Appeals From Administrative Decisions unless an Appeal involves a dimensional requirement. The definition of a Certified Plot Plan is as follows: “A certified plot plan shall meet the minimum applicable specifications for a *Standard Rural Property Survey* as defined at NH Code of Administrative Rules Part Lan 503 Technical Standards. A two foot contour interval is required.”**

**IF CERTIFIED PLOT PLAN IS PRODUCED ON MEDIA LARGER THAN 11”x 17”,  
PLEASE ALSO SUBMIT TEN REDUCED SCALE COPIES AT 11” x 17”.**

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.

Four types of appeals can be made to the Zoning Board of Adjustment:

**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 meets all five of the conditions for a Variance (see Application).

**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 Madison 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 Zoning Board of Adjustment. The appeal will be granted if you can show that the decision was indeed made in error.

**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 condition 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.

**EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** When a lot or structure is discovered to be in violation of a physical or dimensional requirement, a waiver may be granted only if each of the four findings as outlined in the Statute and listed in the Application is made. Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions. Once a waiver is granted, the property does not exempt future

use, construction, reconstruction, or additions on the property from full compliance with the Ordinance.

If you are applying for a **Variance**, you must first have some form of determination that your proposed use or dimensional layout 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.

If you are appealing an **Administrative Decision**, a copy of the decision appealed from must be attached to your Application.

If you are applying for a **Special Exception**, you will probably 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 Zoning Ordinance. This should be done before you apply for a Special Exception.

If you are applying for an **Equitable Waiver of Dimensional Requirements**, you must submit a detailed plan showing the violation of the physical layout or dimensional requirement in relation to the property boundary lines.

For any Appeal, the application form must be properly and completely filled out. The application form is intended to be self-explanatory. (Also see "**Application Checklist Report**", which **must also be submitted with the Application**). Applicant is responsible to provide:

**WHO** owns the property? If the Applicant is not the owner, this must be explained.

**WHERE** is the property located?

**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 proposed appeal. Pictures of the property and the neighborhood are particularly useful. Include copies of any prior applications concerning the property.

**WHY** does your property use require an Appeal to the Zoning Board of Adjustment?

**WHY** should the Appeal be granted?

Prepare a list of all abutting property owners, have it verified at the Town Hall, and attach it to your application. If you have any difficulty, consult the Selectmen's Office, but the accuracy of the list is your responsibility.

Mail or deliver the completed Application, with all attachments to the Clerk of the Zoning Board or the Office of the Selectmen. In addition to an Application Fee, and Notice of Public Hearing Fee (Conway Daily Sun), a fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. Make check payable to TOWN OF MADISON and remit with your Application.

**Completed Applications must be received by 12:00 noon on the Tuesday, 22 days before the regularly scheduled Meeting.** Please be advised that submittal of your application more than thirty days prior to the scheduled meeting will waive your rights to RSA 676:7, II, to have a hearing within thirty days of submission.

The Board meets on the third Wednesday of each month. The Board will schedule a public hearing within 30 days of receipt of your completed Application and your consideration of the meeting date is encouraged. 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 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 to give testimony regarding the Appeal.

Following the Public Hearing (also see "Meeting Procedure"), the Board will deliberate the facts of the Case and will reach a decision. You will be sent a Notice of Decision.

The Board's decision can be appealed. The Selectmen, or any other party effected, have similar rights to appeal the decision in your case. To appeal, one must first ask the Board for a rehearing. The Motion for Rehearing must be in the form of a letter to the Zoning Board of Adjustment. The Motion must be made within 30 days of the Zoning Board of Adjustment's decision, day 1 being the day **after** the Decision and must set forth the ground 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 an Appeal 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, one must have requested a rehearing before one can appeal to a higher Court. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice of abutters. (See RSA Chapter 677 for more detail on rehearing and appeal procedures.)

## **RULES OF BEHAVIOR**

1. Anyone intending to testify or speak to the Appeal before the Zoning Board of Adjustment at the public hearing will be sworn in as follows:

"Do you swear to tell the truth, the whole truth and nothing but the truth, under the penalty of perjury?"

Anyone intending to speak to the Appeal will have to respond in the affirmative.

2. Anyone in attendance at a meeting called to order by the Zoning Board of Adjustment is expected to conduct themselves in a civil manner, or be called out of order.

Should the Chair determine that an individual is out of order, it will be declared as fair warning – first warning. If there has to be a second order, e.g., if an individual needs a second warning after having been given a fair warning, that individual will be asked to leave the meeting room. Should that individual refuse to leave and/or continues to be uncivil, the Officer of this Board will remove that individual. The Record will reflect those instances that are called out of order at whatever point in the meeting that they may occur.

**ZONING BOARD OF ADJUSTMENT**

**TOWN OF MADISON**

**MADISON, NEW HAMPSHIRE 03849**

**FOR OFFICE USE ONLY**

**CASE #**

**Received on:**                    /   /

**Fee:**    \$

**Plans:**

**APPLICATION FOR APPEAL**

Owner: \_\_\_\_\_

Applicant (IF OTHER THAN OWNER): AUTHORIZATION: \_\_\_\_\_

Agent: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

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Physical Address of Property (E911 address or street name): \_\_\_\_\_  
\_\_\_\_\_

Tax Map # \_\_\_\_\_ Lot # \_\_\_\_\_

Description of Property: Acreage: \_\_\_\_\_ Zoning District \_\_\_\_\_

Building/Sign distance measured from Centerline of Roadway: \_\_\_\_\_

Building/Sign distance measured from left sideline: \_\_\_\_\_

Building/Sign distance measured from right sideline: \_\_\_\_\_

Building/Sign distance measured from rear line: \_\_\_\_\_

Lot Dimension: Frontage: \_\_\_\_\_ Left Side: \_\_\_\_\_ Right Side: \_\_\_\_\_

Rear: \_\_\_\_\_ Existing Use: \_\_\_\_\_

**FILL IN SECTION 1, 2, 3, OR 4 AS APPROPRIATE.**

**THIS APPLICATION IS NOT ACCEPTABLE UNLESS ALL REQUIRED STATEMENTS  
HAVE BEEN MADE.**

**ADDITIONAL INFORMATION MAY BE SUPPLIED ON SEPARATE SHEETS IF THE  
SPACE PROVIDED IS INADEQUATE.**

**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: \_\_\_\_\_

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

Date of Decision: \_\_\_\_\_ Enforcement Officer: \_\_\_\_\_

Article: \_\_\_\_\_ Section: \_\_\_\_\_

**SECTION 2: APPLICATION FOR A SPECIAL EXCEPTION**

Description of proposed use showing justification for a special exception as specified in the zoning ordinance Article \_\_\_\_\_

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**SPECIAL EXCEPTION in rural residential zone**

1. The operation and appearance are compatible and not offensive, injurious, or a nuisance to its neighborhood and abutters and will not substantially impact the value of the abutting properties.
2. The facility will not create traffic or other safety hazard.
3. Minimum setbacks for Professional Offices and Bed and Breakfast facilities shall meet the setback requirements of 5.9A and C. Other uses shall meet the setback requirement of 5.9B and C.
4. Adequate on-site parking shall be provided to service the proposed use.

**SPECIAL EXCEPTION in the village district zone**

1. The proposed use and its operation is compatible with the surrounding neighborhood and the land and use of its abutters and will not substantially impact the value of the abutting properties.
2. The proposed use is architecturally compatible with the surrounding properties.
3. The proposed use is not offensive, injurious or a nuisance to its abutters or its neighborhood.
4. Traffic access to and from the proposed use will not create a safety hazard or alter the character of the immediate neighborhood.
5. Adequate on-site parking shall be provided to service the proposed use.
6. Minimum setbacks for the proposed uses shall be in accordance with 5.9B and C.

**SECTION 3: APPLICATION FOR A VARIANCE**

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

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Facts supporting this request:

1. The variance will not be contrary to the public interest because:

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2. The spirit of the zoning ordinance will be observed because:

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3. Granting the variance would do substantial justice because:

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

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5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as follows:

- (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 because:

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(b) The proposed use is a reasonable use because:

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If the criteria in (a) and (b) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to the following special conditions of the property that distinguish it from other properties in the area, the area cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the property:

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**4. APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS**

An Equitable Waiver of Dimension Requirements is requested from article \_\_\_\_\_  
section \_\_\_\_\_ of the zoning ordinance to permit \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Does the request involve a dimensional requirement, not a use restriction?  Yes  No

Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town:

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

**OR** provide information for the following four criteria:

Explain how the nonconformity was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after the 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:

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

Explain how 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 ordinance 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:

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

Explain how the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of the property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property:

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

Explain how 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:

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

**NOTE: A CERTIFIED PLOT PLAN** drawn to scale showing location and dimensions and pertinent setback distances of all driveways, existing and proposed structures, as well as all documents necessary to support the Appeal, **MUST accompany the Application.** (See page 1 of the instructions.) All forms must be completely filled out and signed by the Applicant.

**Non-refundable Application Fees must accompany the application, payable to the Town of Madison**

Administration & Public Hearing Notice: \$200 \_\_\_\_\_

Abutter Notice: \$10.00 per abutter or other party notified # \_\_\_\_\_ x \$10.00 \_\_\_\_\_  
(minimum of \$50.00)

Total Due: \_\_\_\_\_

Multiple properties owned by the same abutter (must be exactly the same owners listed) require only one abutter fee. **Please provide three sets of labels (1" x 2.63") with abutter mailing addresses with the application.**

The Applicant or a representative is required to attend the public hearing on the Appeal. Although subject to change, meetings are held on the third Wednesday of each month.

The application will be considered under the cited section(s), together with any other section(s) the Board determines may be applicable.

I (we) assume full responsibility for the accuracy of all plans and supporting information submitted with this application. I understand that I (we) may be required to move/remove any improvement if an exact determination of any aspects of this application are found to be false or inaccurate.

I (we) am (are) aware that other town and state permits may be required prior to any appeal activity authorized by the Zoning Board of Adjustment, including but not limited to, driveway, well, septic, and state Shoreland.

\_\_\_\_\_  
Owner/Applicant's Signature

\_\_\_\_\_  
Date

I (we) grant Zoning Board of Adjustment Members reasonable access to my (our) property during reasonable daylight hours to view the specific characteristics of my (our) Appeal.

**(Please use the surveyor flagging provided with the application and describe a landmark that can be used to locate your property).**

\_\_\_\_\_  
Owner/Applicant's Signature

\_\_\_\_\_  
Date

I (we) grant Zoning Board of Adjustment Members permission to take photographs of my (our) property which will become part of the official public record of the Appeal.

\_\_\_\_\_  
Owner/Applicant's Signature

\_\_\_\_\_  
Date



**APPLICATION FOR WAIVER**

Date: \_\_\_\_\_

I (we) am (are) requesting a waiver\* of a Certified Plot Plan for the **entire** lot for the following reasons:

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I (we) understand that a denial of the waiver request may result in the appeal being continued until all required documents are provided.

\_\_\_\_\_  
*Applicant(s)*

\* A waiver may be granted if the Board finds, by majority vote, that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the Board's Rules or that specific circumstances relative to the appeal indicate that the waiver will properly carry out the spirit and intent of the Board's Rules. The basis for any waive granted by the Board shall be recorded in the minute of the Board.

## Application History of Changes

**2010:** provided a waiver provision for a full survey plan; clarified that fees are non-refundable; required a minimum fee of \$25 for abutters; added language for owner accountability; added a waiver form

**2011-Nov:** provided separate signature lines for permission for Board members to enter the property and to take photographs; encouraged the applicant to provide photographs of the property and the neighborhood with the appeal form

**2012-June:** added the application will be considered under the cited section(s), together with any other section(s) the Board determines may be applicable.

<b>APPLICANT(S) NAME:</b>					
<b>CASE NUMBER</b> (To be completed by Recording Secretary)					
<b>DATE OF HEARING</b> (To be completed by Recording Secretary)					
		<b>RESPONSIBILITY</b>			
<b>MADISON ZBA Check List</b>		Applicant	CEO	Administrative	Board
<b>To be Included with Application</b>					
Has the proper application been filed?					
Documentation of denial of permit/administrative decision					
Property Location					
Description/directions for inspection (landmark)					
Record of previous ZBA decisions					
Abutters List					
Mailing labels - see instructions					
Which Zoning Ordinance is being appealed					
Number of Appeals per Application					
Certified Plot Plan of property - all pertinent dimensions shown					
Tax Map copy highlighting Application lot & abutters					
Date(s) of construction of existing building(s)					
Written and Verbal Argument for Appeal					
Fees					
Tax Card copy					
<b>ZBA Action</b>					
Statutory Public Notice					
Statutory Mail Notice					
Other regulations requiring consideration					
Shoreland Protection Area Applicability					
Wetlands Protection Applicability					
Date Application Received					
Parties in Standing					
Grandfathered Status					
If a Variance Request: Use or Area?					
Decision					

Zoning Board of Adjustment - Town of Madison  
 Amended 21 February, 2006  
 Adopted 18 April, 2006