

**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, pg 13). 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 A 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).

If you are applying for a **Variance**, you must first have some form of determination that the proposed use or dimensional layout is not permitted without a Variance. Most often, this determination is the denial of a building permit. A copy of the determination must be attached to your 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. This category of appeal also includes any issue involving the existence or extent of any nonconforming use, lot or structure, pursuant to Section 1.3 of the Zoning Ordinance.

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

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 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. **(The “Application Checklist Report” at the end of the Application (pg 14) must also be filled out and submitted with the Application).**

Applicant is responsible to provide:

WHO owns the property? If the Applicant is not the owner, this must be explained, and the owner’s written consent to the application will usually be required.

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 (contiguous and across the street) and attach it to your application. The accuracy of the list is your responsibility and the information can be obtained at Town Hall.

Mail or deliver the completed Application, with all attachments to the Administrative Assistant of the Zoning Board. 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. The Board may impose reasonable fees upon an applicant for the expense of consultant services or investigative studies, review of documents, and other such matters that may be required by a particular application (RSA 676:4,I (g)).

Make check payable to TOWN OF MADISON and remit with your Application.

Completed Applications must be received by 12:00 noon on the Tuesday, twenty-two (22) days before the regularly scheduled Meeting, in order to be placed on the Agenda for that regularly scheduled meeting. Anyone submitting a completed application after that deadline shall be asked to sign and date a Waiver to the requirement to hold a public hearing within thirty days of receipt of an application and hold the application until the next regularly scheduled meeting or be notified as such, via email from the Administrative Assistant.

PUBLIC NOTICE: The Board meets, as needed, 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.

The Administrative Assistant will:

A. Provide the Public Notice of the Hearings of each Application to the Conway Daily Sun and shall be posted at Madison Town Hall, upper and lower levels, the Madison Post Office, and the Silver Lake Post Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the Applicant, description of property to include tax map identification, action desired by the Applicant, provisions of the Zoning Ordinance concerned, the type of Appeal being made and the date, time and place of the Hearing.

B. Give Notice by certified mail to the Applicant, agent, if applicable and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to Board of Selectmen, Code Enforcement Officer, Planning Board, Town Clerk, and any other parties deemed by the board to have special interest. Notice for all cases within the Village District of Eidelweiss shall be given to the Office of the Board of Commissioners of the Village District of Eidelweiss. Said notice shall contain the same information as the public notice and shall be made on forms provided for this purpose. You and all other parties are invited to appear in person or by agent to give testimony regarding the Appeal.

DECISION:

Following the Public Hearing (also see “Rules of Procedure”), the Board will deliberate the facts of the Case and will reach a decision. The Administrative Assistant will mail a Notice of Decision to the Applicant and/or agent. The Board’s decision can be appealed. The Selectmen, any party to the proceeding, or any other person directly affected, have similar rights to appeal the decision in your case. To appeal, one must first ask the Board for a rehearing.

MOTION FOR REHEARING:

The Motion for Rehearing must be in the form of a letter to the Zoning Board of Adjustment. A Motion for Rehearing shall be filed within thirty (30) days of a decision by the Zoning Board. This thirty day period shall be counted in calendar days beginning with the date following the day upon which the board voted to grant or deny the application, (RSA 677-2) 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, a member 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: _____

Agent/ Authorization: _____

Applicant/Agent Address: _____

Telephone: _____ Email: _____

Physical Address of Property (E911 address/ street name): _____

Tax Map # _____ Lot # _____ Sub 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: _____

1. **FILL IN SECTION 1, 2, 3, OR 4 AS APPROPRIATE.**
2. **THIS APPLICATION IS NOT ACCEPTABLE UNLESS ALL REQUIRED STATEMENTS HAVE BEEN MADE.**
3. **ADDITIONAL INFORMATION MAY BE SUPPLIED ON SEPARATE SHEETS IF THE SPACE PROVIDED IS INADEQUATE.**

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

This relates 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 VARIANCE

A Variance is requested from Article _____ Section _____ of the Zoning Ordinance to permit:

Facts supporting this request:

1. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship as follows:

a) The special conditions of the property that distinguish it from other properties in the area are:

b) Owing to those special conditions, 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:

c) The proposed use is a reasonable one, owing to those identified special conditions, because:

2. The Variance will not be contrary to the public interest because:

3. The spirit of the Zoning Ordinance will be observed because:

4. Granting the Variance would do substantial justice because:

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

SECTION 3: APPLICATION FOR A SPECIAL EXCEPTION

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

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 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 _____

Has the violation existed for 10 years or more with no enforcement action, including written notice, being commenced by the town?

Yes ____ If 'yes', answer questions # 3 & 4 only. No ____ If 'no', answer questions # 1- 4.

1. Explain how the violation 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:

2. 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:

3. 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:

4. 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.

APPLICATION FEES

Non-refundable Application Fees must accompany the Application.

Checks made payable to the Town of Madison.

Administration & Public Hearing Notice: \$200 _____
Abutter Notice: \$10.00 per abutter, (include owner, applicant &/or agent) _____
_____ 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 four (4) sets of labels (1” x 2.63”) with abutter mailing addresses with the application.**

The Applicant, Agent 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.

Owner/Applicant/Agent Signature Date

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/Agent Signature Date

I (we) grant Zoning Board of Adjustment Members reasonable access to my (our) property during reasonable daylight hours to view the specific lot characteristics and to take photographs of my (our) property which will become part of the official public record of the Appeal.
(Please provide a landmark at the street or flagging to mark the location your proposed building so that ZBA members can find the property.)

Owner/Applicant/Agent Signature Date

ABUTTER NOTIFICATION FORM

Instructions:

- 1. THE DETERMINATION OF ABUTTERS IS THE RESPONSIBILITY OF THE APPLICANT; THIS LIST WILL NOT BE REVIEWED FOR COMPLIANCE WITH STATUTORY REQUIREMENTS. AN ERROR IN LISTING ALL ABUTTERS WILL RESULT IN A POSTPONEMENT OF HEARING.**
2. List the map, parcel, name and mailing address of the property owner and all abutters as shown in Town records per RSA 676:4,I(b). This may be typed on a separate sheet. If using another sheet or multiple sheets, please indicate the date of preparation and sign your name on each sheet.
3. As applicable, include the name, mailing address, daytime phone number and fax number of: the Applicant's Authorized Agent; and any surveyor, engineer, architect or soil scientist whose stamp and signature appear in the application materials. Other required abutters are detailed in RSA 676:4(I)(b).
- 4. Please attach four (4) completed adhesive mailing labels for each entry on the list. Label size must not exceed 1" tall by 2.63" long.**

Map	Lot/sub-lot	Owner Name	Mailing Address
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I hereby certify that all information presented on this form is, to the best of my knowledge, correct.

Signature of preparer: _____ Date of preparation: _____

HEARING DATE WAIVER

I hereby waive the right to have my application heard within 30 days of submission, with the understanding that it will be heard by the Zoning Board of Adjustment on _____(date).

(Name) (Date)

APPLICATION FOR CERTIFIED PLOT PLAN WAIVER

Date: _____

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

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 a practical difficulty – insofar as the need for and usefulness of the information contained in such a plot plan is outweighed by the cost of such a plan, in light of the issues raised by the specific circumstances of the case 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 Waiver granted by the Board shall be recorded in the minutes of the Board.

APPLICATION CHECKLIST REPORT

APPLICANT/AGENT(S) NAME:				
CASE NUMBER (To be completed by Administrative Assistant)				
DATE OF HEARING (To be completed by Administrative Assistant)				
	RESPONSIBILITY			
MADISON ZBA Check List	Applicant	CEO	Administrative	Board
To be Included with Application				
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 Article/Section of the 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				
ZBA Action				
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				
Decision				