



TOWN OF WEARE
PLANNING BOARD
ZONING BOARD OF ADJUSTMENT
15 Flanders Memorial Road
Weare, NH 03281
Phone: (603) 529-2250
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ZONING BOARD
Jack Dearborn, Chair
Mike Myer, Vice Chair

PLANNING BOARD
Craig Francisco, Chair
Bruce Fillmore, Vice Chair

Attention Zoning Board Applicants:

The Zoning Board of Adjustment sits as a quasi-judicial board (just like going to court). As an applicant it is up to **YOU** to produce any and all evidence necessary to support your case. The success of your case depends upon the information that **YOU** submit with your application. To assist you in the collection of required documentation you have been provided with a “Required Documentation Checklist”. Each line of this checklist must be completed. If a particular item does not apply to your appeal enter “N/A” in the space provided. The attached instructions should be read carefully. Those instructions spell out exactly what information you are **REQUIRED** to submit with your application for appeal. Incomplete applications shall NOT be collected and shall NOT be reviewed by the board. It is not up to the board to guide the applicant in the completion of the appeal applications or to continue a hearing because information was missing. Think about it, a judge wouldn’t tell you what other supporting information you should bring in and have you come back in another month for another try. We don’t want to sound difficult, but properly filled out paperwork the first time makes the process go a lot smoother for everyone. If you have any questions, **please call (603) 529-2250**. Thank you.

Sincerely,
Zoning Board of Adjustment

INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

IMPORTANT: READ ALL INSTRUCTIONS 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 New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering planning and zoning.

Four (4) types of appeals can be made to the zoning board of adjustment.

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 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 board of adjustment. The appeal will be granted if you can show that the decision was indeed made in error. 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 may also need site plan or subdivision approval, or both, from the planning board. Presenting a site plan to the planning board will assist in relating the proposal to the overall zoning. Again, this should be done **before** you apply for a special exception.

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 (5)** of the following conditions:

1. The proposed use would not diminish surrounding property values.
2. Granting the variance must be contrary to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner. **Hardship**, as the term applies to zoning, results if a restriction, when applied to a particular property becomes arbitrary, confiscatory, or unduly oppressive **because of conditions of the property that distinguish it from other properties** under similar zoning restrictions. Hardship, under zoning law, has nothing to do with the physical or economic condition of the owner.
4. Granting the variance would do substantial justice.
5. The proposed use is not contrary to the spirit of the ordinance.

If you are applying for a **variance**, you must first demonstrate a 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 a copy or reference to the zoning ordinance. A copy of the determination must be attached to your application.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS: The board may grant an equitable waiver only for existing dimensional nonconformity's provided the applicant can meet the required standards.

- a.) The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser;
- b.) The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake;

If these conditions are satisfied, the board can move on to the additional findings to grant the waiver:

- c.) The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; and
- d.) The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs (a) and (b), the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the Town.

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property (a copy of deed to be attached)? If the applicant is not the owner, a written authorization 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 plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of your applications concerning the property.

WHY does your proposed use require and 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.

Mail or deliver the completed application with all attachments (along with seven copies of all documentation) to the Land Use Department. A fee of \$50.00 for the hearing plus and additional \$10.00 per abutter is charged to cover the cost of preparing and mailing the legally-required notice, and two sets of pre-printed mailing labels. Make checks payable to "Town of Weare" and remit with your application.

The board will schedule a **public hearing within 30 days of receipt of your properly-completed application**. 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 whom the board may deem to have an interest, at least five (5) days before the date of the hearing. You and all other parties are invited to appear in person or by agent of counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the board will reach a decision. You will be sent a **notice of decision** within 72 hours of the decision. Minutes from the meeting are available within 144 hours (6 days) after the meeting.

If you believe the board's decision is wrong, you have the right to appeal. The selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the board for a rehearing within thirty (30) days. The **motion for rehearing** may be in the form of a letter to the board. The motion **must be made within 20 days after the decision is filed and first becomes available for public inspection to the board's office**, and must set forth the grounds 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 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 rehearing is held, **you must have requested one before you can appeal to the courts**. When a rehearing 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 rehearing and appeal procedures.

Weare Zoning Board of Adjustment Required Documentation Checklist

Case #: _____

Applicant Name: _____

Date Application Filed: _____

Important Notice to Applicants: *The Required Documentation Checklist is a tool to assist you and us by optimizing operational review of your application by the Land Use Coordinator prior to your appeal to the Zoning Board of Adjustment. Improperly completed applications shall be rejected upon initial review by the Land Use Coordinator and appeal to the Zoning Board of Adjustment denied. All forms must be completed in ink.*

1. _____ All original application forms must be complete, clear and easily readable; typewritten is preferred. (If using a word process make sure you attach the typed information to the original application document) All forms must answer and/or demonstrate:
 - [a] Who owns the property (copy of deed to be attached)?
 - [b] Where is the property located?
 - [c] What do you propose to do?
 - [d] Why does your proposed use require an appeal to the ZBA?
 - [e] Why should your appeal be granted?

2. _____ Written authorization is required from the owner or legal representative if applicant is not the owner of record of the affected property.

3. _____ Location Map identifying area street names, north orientation arrow and abutting properties
(note: a location map is not the same as the site map or plan)

4. _____ Site plan of property at issue identifying current structures, location[s] of proposed structures, location of well and septic systems, defined setbacks, wetlands, slope characteristics, etc. Survey plans are always preferred, however, well drawn, IN SCALE, non-professional drawings may be acceptable. **[A] IF YOU ARE SEEKING RELAXATIONS FROM SETBACKS, LOTLINES OR WETLANDS A PROFESSIONAL STAMPED PLAN SHALL BE MANDATORY. [B] EACH COMPONENT IDENTIFIED ABOVE MUST BE IDENTIFIED ON THE SITE PLAN.**
(note: a site plan or map is not the same as a copy of the tax map)

5. _____ Abutters list identifying all property owners names and addresses that abut the subject property on all sides of the property, as well as across any road, street, or stream. If you have difficulty, ask, but the accuracy of this list is the sole responsibility of YOU.

6. _____ For a **variance** application, you must demonstrate some form of determination that the proposed use is not permitted without a variance. Applications must identify the type of variance being applied for (Use or Area). Applications that do not contain this determination SHALL NOT be collected and SHALL NOT be reviewed by the Board.

7. _____ For an **appeal from an administrative decision** application, a copy of the decision you are appealing must accompany your application. If the decision copy is not attached your application SHALL NOT be collected and SHALL NOT be heard by the Board.

8. _____ Any other additional information, pictures, construction plans, etc that will assist you in your presentation should accompany your application.



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APPLICATION FOR ZONING HEARING

Case # _____

Applicant: _____ Telephone: _____
Address: _____

Owner: _____
Address: _____

Property Address or Location: _____
Tax Map & Lot #: _____ Zone: _____

Property Description (length of frontage, side and rear lines, etc.):

Proposed use or existing use affected:

Why does your proposed use require an appeal to the Zoning Board of Adjustment?

APPEAL FROM AN ADMINISTRATIVE DECISION

The undersigned alleges that an error has been made in the decision, determination, or requirement by the Code Enforcement Officer on (date) _____ to (name) _____ in relation to Article _____ Section _____ of the Zoning Ordinance or in relation to RSA _____ and hereby appeals said decision.

Explanation:

Signed: _____

Date: ___/___/___

APPLICATION FOR SPECIAL EXCEPTION

The undersigned hereby request a special exception as provided in Article _____ Section _____ of the Zoning Ordinance. The following seven (7) conditions per Article 6, Section 6.1.4 of the Zoning Ordinance must be met in the positive to warrant the granting of a special exception:

1. The specific site is an appropriate location for such a use or uses in terms of overall community development:

2. The proposed use will not adversely affect the neighborhood and shall produce no significant reduction of real estate values in the neighboring area:

3. The proposed use will not be a nuisance or serious hazard to vehicular traffic or pedestrians:

4. The proposed use will not cause an undue burden on the Town through the provision of basic Town services:

5. Adequate off-street parking be provided if determined necessary by the Zoning Board of Adjustment:

6. A buffer may be required to screen neighboring uses from the proposed use. Buffers may be fence screens, dense planting of suitable trees and shrubbery, or naturally occurring shrubs and trees:

7. The Zoning Board of Adjustment, in granting any special exception, may include such restrictions or conditions to insure compliance with this section:

Signed: _____ Date: _____

APPLICATION FOR A VARIANCE

The undersigned hereby requests a variance to the terms of Article _____ Section _____ of the Zoning Ordinance of the Town of Weare and asks that said terms be waived to permit:

To qualify for a variance from the terms of the zoning ordinance, you must demonstrate that

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 specific 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.

With the foregoing standards in mind, please provide the following facts relative to your application:

1. **The Variance will not be contrary to the public interest:** because: (the proposed use must not conflict with the purpose of the ordinance and that it must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure “public rights”)

2. **Please describe how the spirit of the ordinance is observed:** because: (the proposed use must not conflict with the general 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”.

3. **Please describe how substantial justice is done;** because: the benefits to the applicant must not be outweighed by harm to the general public)

4. **Please describe how the values of surrounding properties are not diminished:**

5. **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship;**

A. Please describe the special conditions of the property that distinguish it from other properties in the area (explain any details of the property/structure that are different than the surrounding properties such as slopes, wetlands, size, etc.)

- i. Owing to the special conditions identified above, please indicate how no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to the property;

- ii. Owing to the special conditions identified above, please indicate how the proposed use is a reasonable one; (explain how the special conditions of the property and the zoning restriction interferes with the reasonable use of the property)

OR (this is to be filled out if you cannot meet 5Ai and 5Aii)

(If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to specific 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.)

The definition of “unnecessary hardship” set forth in subparagraph (5) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

B. Please describe the special conditions of the property that distinguish it from other properties in the area:

Owing to the special conditions identified above, please indicate how 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;

Description of proposed use:

Signature: _____

Date: ____/____/____
