



# Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

Zoning Board of Adjustment

## ZONING BOARD OF ADJUSTMENT Meeting and Hearing (continued)

September 17, 2024, 6:30 p.m.

Middleton Old Town Hall  
200 Kings Highway  
Middleton, NH 03887

These minutes serve as the legal record of the meeting and are in the form of an overview of the Zoning Board of Adjustment meeting. It is neither intended nor is it represented that this is a full transcription. A recording of the meeting is available online at <https://www.youtube.com/@townofmiddleton9741/streams> for a limited time for reference purposes.

**Meeting Called to Order** by Chair Therriault at 6:37 p.m.

### Roll Call

Members Present: Charles Therriault (Chair)  
Linda Adamo  
Lorri Gunnison  
Tim Cremmen (BOS Liaison)

Members Absent: Jim Keegan (Vice Chair)  
Dan Saliga  
Joe Varga (Alternate)

Public Present: None

### Pledge of Allegiance

### Attachments

Sign in sheet  
Proposed updated Application

**L Gunnison made a motion** to continue the public hearing for Duguay and Gagnon

**L. Adamo seconded the motion**

### Motion carried

**C. Therriault** said he delivered gravel to a home next door to the Gagnon's before he knew they were building a garage.

**C. Therriault** suggested the Board come up with some specific zoning guidelines for the non-conforming lots in the Sunrise Lake Village District. He said he would like to get

input from the Highway Department, Fire Chief and Code Enforcement Officer and then propose new setbacks to the Planning Board.

**L. Adamo** said she thinks it could be accomplished by establishing where the center of the road is and finding out from the Highway and Fire Departments how much space they need from the center of the road for a good setback considering plowing and fire safety. They could still encourage people who have larger lots to have larger setbacks.

**C. Therriault** suggested they invite the Highway Department, Fire Chief and CEO to a future meeting to get their opinions on this and see if they have any other suggestions.

**L. Adamo** read a portion of the setback ordinance for accessory structures that is specific to the village.

**T. Cremmen** said he would invite the Highway Department, Fire Chief and CEO to the next meeting.

**C. Therriault** said he doesn't want a variance for the Gagnon's garage to set a precedent for the rest of the town.

**L. Gunnison** said the law is clear it would not set a precedent; every situation is different.

**C. Therriault** said you're supposed to ask for an inspection.

**L. Gunnison** disagreed and said it's the Code Enforcement Officer's responsibility.

**T. Cremmen** said since the Code Enforcement Officer is being invited to the next meeting, they can discuss this with him then.

### **Proposed Updated ZBA Appeal Instructions and Applications**

**R. Willis** (Administrative Clerk) presented an updated version of the proposed revised ZBA Applications and Instructions and asked the board to approve them.

**C. Therriault** said he wants to get members J. Keegan and D. Saliga's input before they vote on it.

It was decided that **T. Cremmen** would take the proposed application and instructions to the BOS for them to review.

### ***Review of Minutes***

**L. Adamo made a motion** to approve the minutes of July 16, 2024.

**L. Gunnison seconded the motion**

**Motion carried**

**L. Adamo made a motion** to approve the minutes of August 20, 2024.

**L. Gunnison seconded the motion**

**Motion carried**

***Adjournment***

**C. Therriault made a motion** to adjourn at 6:56 p.m.

**L. Adamo seconded the motion**

**Motion carried**

Respectfully submitted,

Robin Willis  
Administrative Clerk

Approved at 2024-10-15 ZBA Meeting



# MEETING SIGN-IN

# Old Town Hall

**Please Print Legibly**

**Phone/E-mail** (optional)

Phone: 603-473-5208    [zba@middletonnh.gov](mailto:zba@middletonnh.gov)



OLD

## INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

The Board strongly recommends, before making any appeal, you become familiar with the Middleton Zoning Ordinance (<http://nhplanning.com/Middleton/regulatory.htm>), with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672- 677 covering planning and zoning, with RSA 483-B, the comprehensive Shoreland Protection Act available for review at the Municipal Building or on the Web at <http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm>, and with the maps of the pertinent overlay district, available for review at the Municipal Building.

The four types of appeals that can be made to the board of adjustment are:

Variance	permission to use a specific piece of property in a more flexible manner than normally permitted by Ordinance
Appeal from an Administrative Decision	appealing an order, requirement or decision made in the enforcement of the Zoning Ordinance, that you feel was made in error
Special Exception	exceptions to the terms of the Ordinance made in accord with the general purpose, intent and rules contained in the Ordinance
Equitable Waiver of Dimensional Requirements	waivers only from existing physical layout and mathematical or dimensional requirements contained in the Ordinance, but not from use restrictions

The applicant must decide **which appeal** applies to his/her situation. The following information addresses these appeals in detail and states what you, the applicant, need to do to bring your appeal before the Board of Adjustment.

**VARIANCE:** A **variance**, which may be granted under certain circumstances, is an authorization to use your property in a way that is not permitted under the strict terms of the Zoning Ordinance. If you are 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 determination is a denial of a building permit. A copy of the determination must be attached to the application.

For a variance to be granted, **you must show** that your proposed use meets **all five** of the following conditions:

1. The proposed use would not diminish surrounding property values.
2. Granting the variance must not 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, results in an arbitrary or confiscatory limitation, or is 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.

The NH Supreme Court has established the following test for unnecessary hardship for a **Use Variance** consisting of three elements:

- a. that the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment;
- b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and
- c. that the variance would not injure the public or private rights of others.

For an **Area Variance**, an applicant can demonstrate unnecessary hardship by establishing that:

- a. special conditions of the property make an area variance necessary in order to allow the applicant to construct the development as designed; and
  - b. the applicant cannot achieve the same benefit by some other reasonably feasible method that would not impose an undue financial burden.
4. Granting the variance would do substantial justice.
  5. The proposed use is not contrary to the spirit of the ordinance.

**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 Town of Middleton 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 Zoning 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. 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 overall Zoning Ordinance. This should be done **before** you apply for a Special Exception.

**EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS:** The Board may grant an equitable waiver only for existing dimensional nonconformities provided the applicant can meet the following 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; and
- b) The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake.
- c) If the violation has existed for 10 years or more with no enforcement action commenced by the town, including written notice, then the applicant has met the criteria for an Equitable Waiver of Dimensional Requirement.

If the above conditions (a) and b) or c)) are satisfied, the applicant must then demonstrate to the Board:

- a) 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
- b) The cost of correction would far outweigh any public benefit to be gained.

**Forms:**

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 include:

- **Who** owns the property? If the applicant is not the owner, this must be explained. A letter of authority must be provided by the owner stating that the applicant is acting in behalf of the Owner.
- **Where** is the property located?
- **Description** of the property including 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 use. Include copies of any prior applications concerning the property.

- **Why** does your proposal require an appeal from the Board of Adjustment?
- **Why** your appeal should be granted?
- **A list** of all abutting property owners attached to your application. This information can be obtained from the map files at the Municipal Building. If you have any difficulty preparing the abutters' list, you may consult the tax assessor's office, but the accuracy of the list is **your** responsibility.

#### **Certified Plot Plan:**

A Certified Plot Plan is recommended as part of the Board of Adjustment application. Since a similar plan is usually necessary for a building permit application, the plan can serve both purposes. Lack of a plot plan could result in a delay or misunderstanding. If the Board decides a Certified Plot Plan is required, the following additional information must be shown on that plan at the discretion of the Board:

- distance between septic system and wetlands
- wetlands must be delineated with soil types identified
- distance between proposed septic system and wetlands on abutting properties
- distance between proposed septic system and well(s) on abutting properties
- topography contours to indicate the direction of water runoff from the proposed septic
- topography contours between any wells within 75 feet and/or any wetlands within 100 feet of a proposed septic system
- maximum height of water table between proposed septic system and wetlands
- seals of all persons providing information shown on the plan must appear on plan
- other information as required by the Board

**Note that a Certified Plot Plan must accompany any application for an area variance involving a septic design.**

**Board members of the Middleton Zoning Board of Adjustment and/or their representatives may request access to the subject property (site visit) for the purpose of obtaining information on areas directly related to the appeal, as well as those areas which could be indirectly affected by an approval.**

#### **Costs:**

Mail or deliver the completed application, with all attachments to the Selectmen's Secretary.

- A \$100.00 fee will be charged to cover the cost of the application process and legally required newspaper notices.
- In addition, a certified mailing fee will be required for notification of each abutting property owner. The fee is presently \$6.11 per notification (\$0.46 Base Rate + \$2.90 Certified Mail + \$2.75 Return Receipt).
- It is the responsibility of the applicant to obtain and fill out the Certified Mail Receipt (PS Form 3800) and the Domestic Return Receipt (PS Form 3811) for each abutter; No. 10 envelopes must also be made out for each abutter, indicating the Municipal Offices as the

return address. Certified Mail and Return Receipt forms are available at any Post Office. (Example: the total check amount for a variance application on a property with six (6) abutters will be  $\$100.00 + 6 \times 6.11 = 136.66$ ).

- Make the check payable to The Town of Middleton and remit with your application.

### **Your Appearance Before The Board:**

Applicants are encouraged to informally present their application to the Board for initial review. This initial review will not result in a decision but will give the Board the opportunity to advise the applicant if their application is complete. There is no charge for this review and no penalty if the application is incomplete. Once an application is deemed complete, it will be scheduled for hearing.

The Board meets at 6:30 PM on the second Tuesday of each month unless otherwise noted. Public notice of the hearing will be posted and printed in a newspaper, and notice will be mailed to the applicant, all abutters and to other parties whom the Board may deem to have an interest, at least five days before the date of the hearing. The applicant and all other parties should appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

After the public hearing is complete, the Board will reach a decision. The applicant and all other parties to the case will be sent a **notice of decision**.

### **Appealing The Board of Adjustment Decision:**

If the applicant believes the Board's decision is wrong, he/she has the right to appeal. The Selectmen, or any party affected, have similar rights to appeal the decision in a case. To appeal, the applicant must first ask the Board for a rehearing. The **motion for rehearing** may be in the form of a letter to the Board. The motion **must be made within 30 days after the decision is filed and first becomes available for public inspection in 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 error 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, except public notice and notice to abutters will be at the Town's expense. See RSA Chapter 677 for more detail on rehearing and appeal procedures.

CLD

## APPLICATION FOR APPEAL

To: Board of Adjustment,

Town of Middleton

Name of applicant

\_\_\_\_\_

\_\_\_\_\_

Address

\_\_\_\_\_

Owner

\_\_\_\_\_

(if same as applicant, write "same")

Location of property

\_\_\_\_\_

(street, number, map & lot number)

NOTE: 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 a separate sheet 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

\_\_\_\_\_

\_\_\_\_\_ Number \_\_\_\_\_ Date \_\_\_\_\_

article \_\_\_\_\_ section \_\_\_\_\_ of the zoning ordinance in question:

\_\_\_\_\_

\_\_\_\_\_

### Section 2. APPLICATION FOR A SPECIAL EXCEPTION

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Section 3. APPLICATION FOR USE OR AREA VARIANCE

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

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Facts supporting this request:

1. The proposed use would not diminish surrounding property values because:

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

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3.1 **Use Variance** only: Denial of the variance would result in unnecessary hardship to the owner because:

a. the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that:

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b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

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c. the variance would not injure the public or private rights of others since:

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3.2 **Area Variance** only: Denial of the variance would result in unnecessary hardship to the owner because:

a. the following special conditions of the property make an area variance necessary in order to allow the development as designed:

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b. the same benefit cannot be achieved by some other reasonably feasible method that would not impose an undue financial burden because

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4. Granting the variance would do substantial justice because:

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5. The use is not contrary to the spirit of the ordinance because:

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

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

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1. Does the request involve a dimensional requirement, not a use restriction? ( ) yes ( ) no

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

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• or -

Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser

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and how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake

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3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area

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4. Explain how the cost of correction far outweighs any public benefit to be gained

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Applicant \_\_\_\_\_ Date \_\_\_\_\_

(Signature)

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# Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

September 18, 2024

To the Selectboard, Town of Middleton -

The Town of Middleton ZBA has requested you review and approve the attached new and updated forms as soon as possible. They consist of 1) Application Instructions for Applicants, 2) Application Forms for each type of appeal 3) Abutters List and 4) Worksheet for the clerk to track the process and costs.

The new application instructions and forms are based on recommended examples from the "Handbook for Zoning Boards" updated in 2023 by the Bureau of Economic Affairs. I have made revisions to those based on Middleton's procedures, suggestions from counsel and input from ZBA member Linda Adamo. The revisions are necessary and desirable because:

- The new application and instructions are separated to allow the applicant to read all instructions, determine what type of the four appeals they are requesting and fill out the appropriate application. The current form combines all types together and has proven to be confusing for residents.
- There are no longer two types of variances – use and area. The current application includes these; the new application combines them as the law requires.
- The new instructions are clear in describing the different types of appeals and gives examples as well as what the applicant needs to provide and prove.
- The new instructions give more guidance to the applicant, including the page "What Happens Next?"
- The new forms do a better job leading the applicant through questions to help prove their case.
- There is currently no form for applicants to use to list abutters.
- There is currently no worksheet or internal form to track the appeal process and fees.

These new forms do a better job of leading the applicant through the process. They make it more clear and complete. I believe they will make the process easier and more efficient for both the applicant and the ZBA.

Sincerely,

**Robin Willis**

Robin Willis  
Administrative Clerk  
Town of Middleton  
182 Kings Highway  
Middleton, NH 03887  
603-473-5208

*My normal office hours are Tuesday, Wednesday and Thursday 9:00 to 5:00*

# ***INSTRUCTIONS***



# Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

## APPLICATION FORMS & INSTRUCTIONS FOR APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

*Important: Read all instructions carefully before filling out the attached application.*

The Board strongly recommends that before making any appeal, you become familiar with the Town of Middleton Zoning Ordinance and with the New Hampshire statutes Title LXIV, RSA Chapters 672 – 678, covering planning and zoning.

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### TYPES OF APPEALS

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

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. Examples are building a garage that does not meet the setback requirements, putting up a fence where fences are customarily not permitted, and building a structure that is larger in square footage or higher than permitted.
2. **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 Town of Middleton 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 ("ZBA").
3. **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.
4. **Equitable Waiver of Dimensional Requirements** - the Board may grant an equitable waiver only for existing dimensional nonconformities, provided the applicant can meet the required standards. For example, this would apply to a structure already in place that does not meet the current setbacks.

## CONDITIONS

*For an appeal to be legally granted, the following conditions apply to each type of appeal.*

**Variance** - for a variance to be legally granted you must first have some form of determination that your proposed use 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.

For a variance to be legally granted, you must show that your proposed use meets **all five** of the following conditions:

1. Granting the variance must not be contrary to the **public interest**.
2. The proposed use is not contrary to the **spirit of the ordinance**.
3. Granting the variance would do **substantial justice**.
4. The proposed use would not diminish surrounding **property values**.
5. 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. RSA 67:33, I(b)(5) provides the criteria for establishing unnecessary hardship:
  - (A) For purposes of the 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 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.

The chart below may be helpful in completing a variance application.

### **VARIANCE CRITERIA GUIDELINES**

The applicant must satisfy all of the requirements listed below.

Statutory requirement (RSA 674:33, I(b))	Explanation
1. The variance is not contrary to the public interest.	The proposed use must not conflict with the explicit or implicit 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."
2. The spirit of the ordinance is observed.	As it is in the public's interest to uphold the spirit of the ordinance, these two criteria are related.
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished.	Expert testimony on this question is not conclusive but cannot be ignored. The Board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
<p>5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways:</p> <p>First is to show that because of special conditions of the property that distinguish it from other properties in the area:</p> <ul style="list-style-type: none"> <li>(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; and</li> <li>(b) The proposed use is a reasonable one.</li> </ul> <p><i>Alternatively</i>, unnecessary hardship exists 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.</p>	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area.</p> <ul style="list-style-type: none"> <li>(a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a "fair and substantial" way.</li> <li>(b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.</li> <li>(c) <i>Alternatively</i>, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.</li> </ul>

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**Special Exception** - an 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. Even in those cases where no Planning Board approval is needed, depending on the particular facts of your case, presenting a site plan to the Planning Board may assist in relating the proposal to the overall zoning.

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**Equitable Waiver of Dimensional Requirements** – a waiver may be granted for an *existing* nonconformity provided the applicant can meet the four requirements listed below.

1. 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.
2. The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a good faith error in measurement or calculation.

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

3. 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
4. The cost of correction would far outweigh any public benefit to be gained.

Note: Conditions 1 and 2 above may be satisfied if the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the town.

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## WHAT TO INCLUDE WITH YOUR APPLICATION

Determine what type of appeal you are requesting and fill out the appropriate application. Applications must be complete and are not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. The application form is intended to be self-explanatory, but be sure that you show:

**Who** owns the property. If the applicant is not the owner, this must be explained.

**Where** the property is located.

**Describe** the property. Give the 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 use. Include copies of any prior applications concerning the property.

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

**Why** should the appeal be granted?

**Prepare a list** of all abutting property owners on the Abutters Form (available from the Administrative Clerk) 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.

### **Certified Plot Plan**

A Certified Plot Plan is recommended as part of the Board of Adjustment application. Since a similar plan is usually necessary for a building permit application, the plan can serve both purposes. Lack of a plot plan could result in a delay or misunderstanding. If the Board decides a Certified Plot Plan is required, the following additional information must be shown on that plan at the discretion of the Board.

distance between septic system and wetlands  
wetlands must be delineated with soil types identified  
distance between proposed septic system and wetlands on abutting properties  
distance between proposed septic system and well(s) on abutting properties  
topography contours to indicate the direction of water runoff from the proposed septic  
topography contours between any wells within 7 feet and/or any wetlands within 100 feet of a  
proposed septic system  
maximum height of the water table between proposed septic system and wetlands  
seals of all persons providing information shown on the plan must appear on the plan  
other information as required by the Board

**Note that a Certified Plot Plan must accompany any application for an area variance involving a septic design.**

**Site Visit**

Board members of the Middleton Zoning Board of Adjustment and/or their representatives may request access to the subject property (site visit) for the purpose of obtaining information on areas directly related to the appeal, as well as those areas which could be indirectly affected by an approval.

Draft 4



## WHAT HAPPENS NEXT?

Mail or deliver the completed application, with all attachments, and the \$100 application fee to the Administrative Clerk at the Town of Middleton, 182 Kings Highway, Middleton, NH 03887.

The Board will promptly schedule a hearing upon receipt of your properly completed application. Public notice of the hearing will be posted and printed in a newspaper and a 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 days before the date of the hearing. You are responsible for paying the cost of mailing the legally required notices and the newspaper ad. The Administrative Clerk will determine that amount. Make the check payable to the Town of Middleton and remit it before your hearing.

You and all other parties will be invited to appear in person or by agent or 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.

**If you believe the Board's decision is wrong, you have the right to appeal.** The Selectboard, or any party affected, has similar rights to appeal the decision in your case. To appeal, you must first ask the Board for a rehearing. The Motion of Rehearing may be in the form of a letter to the Board. The motion must be made within 30 days of the decision 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 request one before you can appeal to the courts. When a rehearing is held, the same procedure is followed for the first hearing, including public notice and notice to abutters.

# ***APPLICATIONS***

## APPLICATION FOR A VARIANCE

*To: Zoning Board of Adjustment  
Town of Middleton, NH*

Do not write in this space.

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Received By: \_\_\_\_\_

Name of Applicant(s)

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Address

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Owner(s)

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(if same as applicant, write "same")

Location of Property

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(street address, map and lot)

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

A variance is requested from article \_\_\_\_\_ section \_\_\_\_\_ of the Zoning Ordinance to permit:

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***Facts in support of granting the variance***

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

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2. If the variance were granted, the spirit of the ordinance would be observed because:

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3. Granting the variance would do substantial justice because:

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4. If the variance were granted, the values of the surrounding properties would not be diminished because:

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5. Unnecessary Hardship

a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship 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:

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**AND**

ii. The proposed use is a reasonable one because:

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b. Explain how, 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.

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Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

## APPLICATION FOR AN APPEAL FROM AN ADMINISTRATIVE DECISION

*To: Zoning Board of Adjustment  
Town of Middleton, NH*

Do not write in this space.

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Received By: \_\_\_\_\_

Name of Applicant(s)

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Address

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Owner(s)

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(if same as applicant, write "same")

Location of Property

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(street address, map and lot)

NOTE: This application is not acceptable unless all required statements have been made.  
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Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance, the undersigned alleges that an error has been made in the decision, determination, or requirement of:

\_\_\_\_\_ on \_\_\_\_\_  
(name of enforcement officer) (date)

to \_\_\_\_\_  
(decision)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Number \_\_\_\_\_ Date \_\_\_\_\_

in relation to Article \_\_\_\_\_ Section \_\_\_\_\_ of the \_\_\_\_\_  
(ordinance)

and hereby appeals said decision because \_\_\_\_\_  
(insert argument here)

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

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

## APPLICATION FOR A SPECIAL EXCEPTION

To: Zoning Board of Adjustment  
Town of Middleton, NH

Do not write in this space.

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Received By: \_\_\_\_\_

Name of Applicant(s)

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

Address

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

Owner(s)

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

(if same as applicant, write "same")

Location of Property

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

(street address, map and lot)

NOTE: This application is not acceptable unless all required statements have been made.  
Additional information may be supplied on a separate sheet if the space provided is inadequate.



Description of proposed use showing justification for a special exception as specified in the

\_\_\_\_\_ ordinance, article \_\_\_\_\_ section \_\_\_\_\_

*Explain how the proposal meets the special exception criteria as specified in Article 32 of the Zoning Ordinance.*

**Criterion 1:** The proposed use(s) shall be only those allowed in this Ordinance by Special Exception.

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

**Criterion 2:** The proposed use(s) is/are consistent with the adopted Master Plan.

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

**Criterion 3:** The specific site is an appropriate location and is of adequate size for the use.

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

**Criterion 4:** The use, as developed, will not adversely affect the character of the area in which the proposed use will be located.

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

**Criterion 5:** There will be no nuisance or serious hazard to vehicles or pedestrians.

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

**Criterion 6:** The use will not place excessive or undue burden on Town services.

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

**Criterion 7:** There would be no significant effect resulting from such use upon the public health, safety, and general welfare of the neighborhood in which the use would be located.

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Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Draft

## APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

*To: Zoning Board of Adjustment  
Town of Middleton, NH*

Do not write in this space.

Case No. \_\_\_\_\_

Date Filed \_\_\_\_\_

Received By: \_\_\_\_\_

Name of Applicant(s)

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Address

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Owner(s)

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(if same as applicant, write "same")

Location of Property

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(street address, map and lot)

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

An Equitable Waiver of Dimensional Requirements is requested from Article \_\_\_\_\_, Section \_\_\_\_\_  
\_\_\_\_\_ of the zoning ordinance to permit \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. Does the request involve a dimensional requirement, not a use restriction?    ( ) yes            ( ) no

2a. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town.

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

- or -

2b. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser.

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

**and** how the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation.

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

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area.

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

4. Explain how the cost of correction far outweighs any public benefit to be gained.

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Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_