

ZONING BOARD OF ADJUSTMENT
APPLICATION 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.

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> <p>(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</p> <p>(b) The proposed use is a reasonable one.</p> <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> <p>(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.</p> <p>(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.</p> <p>(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.</p>

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.

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.

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 and a letter of authority or power of attorney must be provided by the owner stating that the applicant is acting on behalf of the owner.*

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.

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.



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

ZONING BOARD OF ADJUSTMENT APPEAL FOR OFFICE USE

NAME OF APPLICANT _____ CASE # _____

CALCULATION OF FEES

Application fee - \$100 (copy & give to tax collector) \$ _____

Abutter's Notices - \$2.00 each plus cost of postage (currently \$9.64) \$ _____

Newspaper notice (cost – currently approximately \$85 to \$165) \$ _____

Total due when hearing is scheduled \$ _____

POTENTIAL REGIONAL IMPACT (Circle) Yes No

DATES

Application received _____

Abutter's list received _____

Public hearing scheduled _____

Abutter's notices sent _____

News ad ordered _____

Public hearing posted _____

Public hearings and other meetings _____

Notice of Decision _____

FOLLOW UP NOTES _____

ZONING BOARD OF ADJUSTMENT
APPLICATION FORMS



Town of Middleton

182 Kings Highway, Middleton, New Hampshire 03887

Website: Middletonnh.gov
603-473-2261

Zoning Board of Adjustment
zba@middletonnh.gov

Abutters List

Applicant information:

Printed Name _____ Contact Phone _____

Addresses: Mailing _____ Email _____

Owner/Agent Information

Map	Lot	Name	Address

Abutter(s) Information

Map	Lot	Name	Mailing Address

(Attach additional sheet if needed)

I certify that to the best of my knowledge the above is an accurate and complete abutters list.

Applicant signature

Date

672:3 Abutter. -- "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356-B:3, XXIII. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of an abutting property being under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, the term "abutter" includes the manufactured housing park owner and the tenants who own manufactured housing which adjoins or is directly across the street or stream from the land under consideration by the local land use board.

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)

If the applicant is not the owner, this must be explained and a letter of authority or power of attorney must be provided by the owner stating that the applicant is acting on behalf of the owner.

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.

A variance is requested from article _____section_____of the Zoning Ordinance to permit:

Facts in support of granting the variance

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

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

3. Granting the variance would do substantial justice because:

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

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:

AND

ii. The proposed use is a reasonable one because:

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.

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)

If the applicant is not the owner, this must be explained and a letter of authority or power of attorney must be provided by the owner stating that the applicant is acting on behalf of the owner.

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.

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)

If the applicant is not the owner, this must be explained and a letter of authority or power of attorney must be provided by the owner stating that the applicant is acting on behalf of the owner.

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.

Applicant Signature _____ Date _____

Applicant Signature _____ Date _____

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)

If the applicant is not the owner, this must be explained and a letter of authority or power of attorney must be provided by the owner stating that the applicant is acting on behalf of the owner.

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.

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.

Applicant Signature _____ Date _____

Applicant Signature _____ Date _____