

# **Zoning Board of Adjustment Town of Sandwich**

To the Applicant:

Welcome to the Zoning Board of Adjustment (ZBA).

The Sandwich ZBA is made up of five (5) voting members and several alternate members who have been chosen by the Select Board of the Town. All members are residents of Sandwich. Each member has taken an oath and expressed their intent to serve impartially, to take the time to familiarize themselves with each case, as well as to show a willingness to understand the process and governing statute(s).

The ZBA is a quasi-judicial board which hears appeals from any order, requirement, decision, or determination made by an administrative official of the Town. The ZBA also administers special provisions in the ordinance dealing with variances and special exceptions.

The ZBA can grant variances, where justified, but it cannot amend zoning ordinances and does not enforce the ordinances. All meetings, discussions among members, and deliberative activities are open to the public and publicized as required under NH law.

Please review this packet carefully. Providing the ZBA with complete and essential information will ensure that your appeal will receive a full and thorough review and fair decision.

Mary C. Cove, Chair  
Chris Grant, Vice Chair  
James Bullitt  
James Gaisser  
Katherine Thorndike  
Jon L. Greenawalt, alternate  
Tim Miner, alternate  
Kurt Olafsen, alternate  
Geoff Tyson, alternate

Susan MacLeod, Secretary

**Town of Sandwich**  
**INSTRUCTIONS FOR APPLICANTS APPEALING TO**  
**THE BOARD OF ADJUSTMENT**

Please familiarize yourself with the ZBA Rules of Procedure as summarized here. A full copy of the rules is available on the Town website. It is the applicant's responsibility to show the Board that the specific request for relief meets the standards outlined in the Town Zoning Ordinance, applicable NH RSAs, and current NH law. The following types of appeals may be made to the Board of Adjustment:

**I. VARIANCE - See Sandwich Zoning Ordinance Article XV, Section 150-104.**

A variance may be granted for relief from the strict terms of the zoning ordinance to use property or place structures in a manner that would otherwise violate the ordinance. For a variance to be granted, you must show that your request meets ALL FIVE of the criteria specified in the application for a variance.

You may have received a determination from the Compliance Officer that your request is not permitted without a variance; a copy of that determination should be attached to your application.

**II. SPECIAL EXCEPTION - See Sandwich Zoning Ordinance Article XV Sec 150-105.**

A special exception is an allowed use that must meet specified criteria. You must have some form of determination that your proposed use is not permitted without a Special Exception. A copy of the determination by the Compliance Officer must be attached to your Application.

If, by granting a special exception as defined in paragraph 150-105 A, a violation of the Zoning Ordinance is created, an application for a variance from the appropriate section of the ordinance must be filed concurrently with the application for the special exception. The Land Use Secretary will assist you in anticipating this, if necessary.

**III. APPEAL FROM AN ADMINISTRATIVE DECISION (NH RSA 676:5)**

An Appeal from an Administrative Decision is a claim that an administrative officer has incorrectly interpreted the terms of the zoning ordinance. An administrative officer is any official or board who has responsibility for issuing permits or certificates under the ordinance or for enforcing the ordinance, and may include, but is not limited to, the Board of Selectmen and the Compliance Officer.

Appeals from Administrative Decisions must be filed with the Board within thirty (30) calendar days of the decision made by the administrative officer. A copy of the decision being appealed and all related documents must be attached.

#### **IV. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS**

When a lot or other division of land, or structure on the property, is discovered to be in violation of a physical layout of dimensional requirement imposed by a zoning ordinance, RSA 674:33-a provides two alternatives to grant an equitable waiver from the zoning requirement.

Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions.

#### **V. MOTION FOR REHEARING**

If your appeal is denied by the Zoning Board you may appeal for a rehearing on the Board's decision. No form is supplied for an appeal for a rehearing. The Selectmen, or any *aggrieved* party affected, have similar rights to appeal the Board's decision. To appeal the decision, you must first ask the Zoning Board for a rehearing. The Motion for Rehearing may be in the form of a letter to the Board attached to the application. This motion must be made within 30 calendar days from the day of the Board's decision, and must set forth fully and in detail all the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing only if, in its opinion, good reason is stated and substantiated in the motion. "Good Reason" might be a claim by the petitioner that a technical error has been made or that new evidence can be produced which was not available at the time of the first hearing. The Board will not re-open a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so. When a rehearing is held, the same procedure as in the first hearing will be followed, including public notice and notice to abutters.

Following the Board's final decision after a Rehearing or if the Motion for Rehearing is denied, you have thirty (30) days in which to appeal to the Superior Court. However, no such Appeal may be taken unless you have first applied for a Rehearing to the Zoning Board. The only grounds for appeal the Court will hear are those set forth in your Motion for Rehearing.

## SUBMISSION TIPS

Applications to the ZBA must be received 17 days prior to a ZBA meeting, the second Thursday of each month. Check for your deadline with Town Hall, 284-7701. Or call the Land Use Secretary at 284-6800.

Complete the following pages for your application:

- Page 1: Application Page
- Page 2: Checklist and signature page.
- Page 3: Agent page. If you are not the owner of the property, the owner must sign this to authorize you to serve as his or her agent. If your attorney or surveyor will speak for you or assist you at the hearing, you must authorize him or her.
- Page 4: Abutters' List. The names and addresses should be those of the current owners as published in the Town of Sandwich tax records. Find these on the Town website in the Avitar records. Make sure you give the mailing address, not the physical address of the abutter. Include all properties that abut your property. The accuracy of the list is your responsibility. Under the Law all abutters must be notified of the hearing on your Appeal. Failure to include any abutter might invalidate the proceedings. Your list of abutters should include yourself and your agent (lawyer or surveyor), if you have an agent. Include the owners of any conservation easements.
- Page 5: Waivers. Your surveyor will help you decide if you need any Town rule or ordinance waived. Perhaps your particular case does not require that the plat show steep slopes or wetlands, for example.
- Page 6: Fee Schedule. Check that you included yourself and your agent!
- Relevant Case Page:
  - Page 7-8: Application for Variance
  - Page 9: Application for Special Exception
  - Page 10: Application for Appeal of Administration Decision
  - Page 11-12: Application for Equitable Waiver
  - Letter requesting Motion for Rehearing (no application page for this)

Submit Relevant Additional Pages

- Denial of Building Permit by Town Compliance Officer
- Denial or inspection reports by any other Town or State agency
- Applicant's summary of request. Use formal letter format, addressed to Zoning Board of Adjustment
- Property tax card from property file
- Pertinent past decisions by Town boards
- Letters of support from abutters, if any
- Surveyed Plat by licensed surveyor showing all relevant details as prescribed in the Sandwich Site Plan Review Regulations.

Mail or deliver **Eleven (11)** sets of completed Application forms and all attachments with the appropriate Fee to:

**Town of Sandwich  
Zoning Board of Adjustment  
PO Box 194  
Center Sandwich, NH 03227-0194**

The Town office is open Monday-Thursday, 7:30 a.m. to 5:30 p.m.

Make checks payable to the Town of Sandwich.

When your application is received, the Land Use Secretary will schedule a public hearing. Public Notice will be mailed, via certified mail, to you and to all Abutters. Notice of the meeting will be posted at the Town Hall and Post Office and in a local newspaper at least 5 days prior to the Hearing.

## **Hearing Procedures**

You and/or your agent are expected to appear in person to state reasons why the Appeal should or should not be granted. If you do not appear, the case may be continued. Abutters or other interested parties may also participate in deliberations.

At the hearing, the Chair of the Zoning Board will ask members if they believe the case is complete and ready for consideration. The Chair will announce who will be a voting members on the case. If there are not five members present to vote, the Chair will ask you whether you wish to proceed with only three or four members or if you would prefer to continue the case to another month.

If the case is accepted, the Chair will open the public hearing and invite you to present your case. Please summarize your case and then carefully address the specific questions posed by your particular type of application. Those questions are clearly set out in your application. The Chair will ask other members of the public to speak.

The Chair will close the public hearing. Members will deliberate. A decision will be made. You may be present during this part of the meeting although you may not speak (except if invited to speak by the Chair). When a decision is made, you will be notified in writing of a Notice of Decision, a document that will be entered into your property file.

For more detailed requirements of the Law, see New Hampshire Revised Statutes Annotated Chapter's 672 to 677, the Zoning Ordinance of the Town of Sandwich, and the policies and procedures of Zoning Board of Adjustment. This instruction sheet summarizes some of the required procedures, but does not in any way replace any provisions of Law, Town Ordinance, or procedure requirements.

**Zoning Board of Adjustment**  
**P.O. Box 194**  
**Center Sandwich, NH 03227**

**Application for: (Circle)**

**Appeal of an Administrative Decision/Variance/Special  
Exception/Equitable Waiver/Motion for Rehearing**

Applicant:  
Mailing Address:

Owner:  
Mailing Address:

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

<b>Administrative use only:</b>
<b>CASE #</b>
<u>Date Filed</u> _____
<u>Amt. Rec.</u> _____
<u>Rec. by</u> _____
<u>Hearing Date</u> _____
<u>Decision</u> _____
<u>Decision Date</u> _____

*If Applicant is the same as Owner write SAME, above. If not, you must complete an Agent Form, and include a statement of your vested interest.*

Physical Address of Property:

\_\_\_\_\_  
Zoning District \_\_\_\_\_ Tax Map \_\_\_\_\_ Lot # \_\_\_\_\_ Lot Size \_\_\_\_\_  
Shore Frontage \_\_\_\_\_ Road Frontage \_\_\_\_\_

The property is used for year-round residential use \_\_\_\_\_, seasonal residential use \_\_\_\_\_, other (please specify) \_\_\_\_\_.

Have any previous appeals/decisions or permits (State and or Town) been made in regard to this property \_\_\_\_\_? (If yes, attach copies)

Provide a brief description of the application. This short statement will be used in public notices of your case.

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

**Page 2**

This application, by \_\_\_\_\_, is ...

**Type of Request:**

- Appeal of Administrative Decision,
- Application for Special Exception
- Application for Variance
- Application for Equitable Waiver of Dimensional Requirements
- Application for Rehearing of ZBA Decision (no form, written motion required)

The undersigned applicant hereby applies for the granting of said Variance, Special Exception, Relief From Administrative Decision, Request For Rehearing, or Equitable waiver of Dimensional requirements under penalties of perjury; I/we represent that to the best of my/our knowledge, the data and information submitted as part of this Application is true and correct.

The undersigned applicant hereby authorizes the Zoning Board of Adjustment Members and/or Town Staff to inspect the subject property for the purpose of evaluating this Application.

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

Signature of Owner(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature of Owner(s) \_\_\_\_\_ Date \_\_\_\_\_

**AGENT FORM**

AGENT FORM: Complete this form if Applicant is other than the Owner of the property

Agent's Name \_\_\_\_\_ Phone \_\_\_\_\_

Mailing Address \_\_\_\_\_

Give a statement of your vested interest: (You may supply this statement on a separate sheet if additional space is necessary.)

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

Signature of Agent \_\_\_\_\_ Date \_\_\_\_\_

The undersigned Owner hereby authorizes the above named agent to present this Appeal and furnish all required information and for Sandwich Zoning Board of Adjustment members and/or town staff to inspect the subject property for the purpose of evaluating this Appeal.

Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_



**ABUTTERS LIST**

Name of Applicant: \_\_\_\_\_

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

(Location of property)

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

Zoning District \_\_\_\_\_

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

(Mailing)

ABUTTER means any person whose property adjoins or is directly across the street or stream from the land under consideration by the Zoning Board of Adjustment. For noticing purposes, it also includes the owner, applicant, and any professional who may represent the applicant, including surveyors or other specialists.(RSA 672:3)

1. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

2. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

3. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

4. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

5. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

6. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

7. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

8. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

9. Name: \_\_\_\_\_ Tax Map No. \_\_\_\_\_ Lot No. \_\_\_\_\_

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

This Board is not responsible for the information supplied above. The most current property information is available at the County Registry's office. Use a separate page as necessary to list all abutters.

**WAIVERS:**

I (we) am (are) requesting a waiver\* of the following:

- Section \_\_\_\_\_ of the Sandwich Zoning Ordinance'
- Section \_\_\_\_\_ of the Zoning Board of Adjustment Rules of Procedure;
- The requirement \_\_\_\_\_ of the Zoning Board of Adjustment Application

For the following reasons: (please use a separate page as appropriate)

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

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Applicant(s) or Agent

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

This application does not require any waivers.

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*Signature*

**FEE SCHEDULE**

<u>Appeal</u>	<u>Fee</u>	<u>Amount Submitted</u>
Variance	\$50	\$ _____
Special Exception	\$50	\$ _____
Appeal of an Administrative Decision	\$50	\$ _____
Equitable Waiver	\$50	\$ _____
Motion for Rehearing	\$50	\$ _____

Associated Fees

Letters to Abutters via Certified Mail	# of letters _____ x \$10.00	\$ _____
Public Hearing Newspaper Notice	\$80.00	\$ _____

Total Due \$ \_\_\_\_\_

Please note: Fees are set by the Board of Selectmen and may not be waived by the Zoning Board of Adjustment. Fees were last amended, 7/11/16; 9/24/22

**DISCLAIMER**

Name of Applicant/Agent: \_\_\_\_\_ Tax Map # \_\_\_\_\_

Physical Address \_\_\_\_\_ Lot # \_\_\_\_\_

Mailing Address: \_\_\_\_\_ Zoning District \_\_\_\_\_

The Town of Sandwich, its employees, the Planning Board and the Zoning Board of Adjustment are here to help an applicant through the process of applying for either a Site Plan Review, Boundary Line Adjustment, Subdivision of Property, Excavation Permit, Preliminary Consultation, Design Review, Scenic Road Tree Cut, Variance, Special Exception, or Appeal of an Administrative Decision, Equitable Waiver or Motion for Rehearing.

Town employees are not trained or licensed to give legal advice or to provide answers to any substantive questions (those requiring interpretation of the Town's Zoning Ordinance and/or Regulations).

There is no promise or guarantee for the outcome of an application, case or review. Land Use boards, the Planning Board and Zoning Board of Adjustment, meet in public and only make decisions at those public meetings.

The Town staff and the land use secretary will gladly help with questions within these constraints. If you find that you need additional help to successfully complete the application process, please seek advice from a lawyer or surveyor.

Thank you for your understanding. We look forward to working with you.

**APPLICATION FOR VARIANCE**

**(RSA 674: 33; Sandwich Zoning Ordinance, Article XV Section 150-104)**

A variance is requested from Article \_\_\_\_\_ Section \_\_\_\_\_ of the Town of Sandwich Zoning Ordinance, to permit:

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*The Zoning Board of Adjustment shall have the power to authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance, using the criteria listed below (RSA 674:33):*

FACTS SUPPORTING THIS REQUEST in accordance with RSA 674:33 I(b)

(1) The variance will not be contrary to the public interest;

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(2) The spirit of the ordinance is observed;

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(3) Substantial justice is done;

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(4) The values of surrounding properties are not diminished; and

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

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(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 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 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.

## **APPLICATION FOR A SPECIAL EXCEPTION**

### **APPLICATION:**

Describe the proposed use showing justification for a Special Exception as specified in the Sandwich Zoning Ordinance Articles and all other condition enumerated in the Ordinance:

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

1. The specific site is an appropriate location for the use or structure because:
  
  
  
  
  
  
  
  
  
2. The use will be compatible with neighboring land uses because:
  
  
  
  
  
  
  
  
  
3. Show that the property values in the District will not be reduced by your use:
  
  
  
  
  
  
  
  
  
4. There will not be any nuisance or serious hazard to vehicles or pedestrians because:
  
  
  
  
  
  
  
  
  
6. The proposed use complies with the minimum land space requirements set forth in the General and Special provisions of the Ordinance because:

NOTE: You must provide a detailed description of just what you proposed to do; you may attach additional information, dimensional sketches or pictures, construction plans, plot plans, and additional pages of explanation which might be helpful in describing the proposed use.

**APPLICATION FOR APPEAL FROM ADMINISTRATIVE DECISION**

Relating to the interpretation and enforcement of the provisions of the town's Zoning Ordinance the "administrative officer" means any Official or Board who, has responsibility for issuing Permits or Certificates under the Ordinance, or for Enforcing the Ordinance, and may include a Building Inspector, Board of Selectmen, or other Official or Board with such responsibility. (NH RSA 676:5)

Relating to the interpretation and enforcement of the provisions of the Zoning ordinance.

Administrative Officer making the Decision \_\_\_\_\_

Decision to be reviewed:

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Article: \_\_\_\_\_ Section: \_\_\_\_\_ of the Sandwich Zoning Ordinance in Question. List and describe fully all the reasons the Board should grant this Appeal:

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Date the Administrative Officer made the Decision appealed from:

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ATTACH: A copy of all papers, documents, and plans presented to the Administrative Officer relating to this Appeal.



**APPLICATION FOR EQUITABLE WAIVER  
OF DIMENSIONAL REQUIREMENTS  
(NH RSA 674:33-a)**

An Equitable Waiver of Dimensional Requirements is requested from:

**Section** \_\_\_\_\_ **Article** \_\_\_\_\_ of the town of Sandwich zoning ordinance to permit:

Does the request involve a dimensional requirement, not a use restriction?

**Yes** \_\_\_ **No** \_\_\_

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

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**OR**

1. Explain how the non-conformity 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:

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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 an municipal official in the process of issuing a permit over which that official had authority:

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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.

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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:

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