

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. All members have 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 that involves zoning. 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
Tim Miner
Jon L. Greenawalt, alternate
Kurt Olafsen, alternate
Chase Rozelle, 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. For hardship criterion: *“Unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area, 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. Be advised, your financial situation cannot be the sole hardship, it must be tied to the special condition of the property that creates the unnecessary hardship to use the property reasonably.*

You should have received a determination from the Compliance Officer that your request is not permitted without a variance; a copy of that determination must 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 in the zoning ordinance.

If all criteria for a Special Exception cannot be met, an application for a variance from the appropriate section of the ordinance must be filed instead.

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 of an Administrative Decision pursuant to [RSA 676:5](#) shall be filed within 30 calendar days or within 30 days of when such an administrative decision becomes known or reasonably could have been known by the petitioner as determined by the

Board based on evidence presented. A copy of the decision being appealed, and all related documents must be attached.

- * *“It should be noted that the Board of Adjustment does not have authority over decisions of the Board of Selectmen or enforcement official on whether or not to enforce the ordinance. The Board does have the authority to hear administrative appeals if it is alleged that there was an error in any order, requirement, decision, or determination made by the official.”*

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 apply for a rehearing of the Board’s decision. The Selectmen, or any *aggrieved* party affected, may also request a rehearing of the Board’s decision. To appeal the decision, you must first ask the Zoning Board for a rehearing by completing the Motion for Rehearing form and attaching a letter to the Board stating the reason(s) supporting your motion for a rehearing. 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.

HEARING PROCEDURES

You and/or your agent are expected to appear in person to state reasons why the relief you are requesting 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 discussions in the public hearing.

At the hearing, the Chair of the Zoning Board will announce who will be 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 applicant opts to postpone due to less than a full Board present, the board shall announce the time, date, and location of the continued hearing. If the board cannot determine the time, date, and location of the continued hearing, the Board shall provide new notice to all parties pursuant to [RSA 676:7](#).

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. 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 Chapters 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.

CHECKLIST FOR ZBA APPLICANTS

Applications to the ZBA must be received 24 days prior to a ZBA meeting, the second Thursday of each month. Check for your deadline with Town Hall, 603-284-7701 or www.sandwichnh.org

Complete the following pages for your application (use this Checklist):

- Application Pages.
- Signature page.
- 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, your agent if you have one, and any licensed professional whose stamp is on the plan. Include the holders of any conservation easements on the property.
- Fee Schedule. Check that you included yourself and your agent!
- Disclaimer to sign.

Submit Relevant Additional Pages

- 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.
- 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.
- 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 verified mail, to you and to all Abutters, and if any, Agents, Licensed Professionals whose stamp is on the submitted plan, and easement holders.

Notice of the meeting will be posted at the Town Hall and two Post Offices and on the Town website www.sandwichnh.org at least 10 days prior to the Hearing.