



**TOWN OF WELLS ZONING BOARD  
VARIATIONS IN NONCONFORMANCE PETITION**

**\*\*ALL ITEMS ON THIS APPLICATION MUST BE COMPLETED\*\***

NAME OF APPELLANT: \_\_\_\_\_ PHONE: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY/TOWN STATE ZIP CODE

LOCATION OF PROPERTY: \_\_\_\_\_

TAX MAP # \_\_\_\_\_ LOT# \_\_\_\_\_ ZONE \_\_\_\_\_ YEAR PURCHASED \_\_\_\_\_

NAME OF OWNER \_\_\_\_\_ PHONE: \_\_\_\_\_

(IF DIFFERENT THEN APPELLANT)

EMAIL ADDRESS: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY/TOWN STATE ZIP CODE

To permit variations in nonconformance as prescribed in Article III.

**§ 145-12. Nonconforming uses**

- A.  A nonconforming use may continue to exist although the use does not conform to the requirements of this chapter. The normal upkeep and maintenance, repairs, renovations or modernizations which do not expand the nonconforming use shall be permitted.
- B.  If a nonconforming use is replaced by a permitted use, the nonconforming use may be resumed within two years of its discontinuance, except in the Residential A, Residential B, Residential D and Resource Protection Districts, where a nonconforming use may not be resumed once it has been replaced by a permitted use.
- C.  An existing nonconforming use may be changed to another nonconforming use if the Zoning Board of Appeals determines that the impact of the proposed use on adjacent lots is equal to or less adverse than that of the existing use. This determination shall require written findings on the probable changes in traffic (volume and type), parking, noise, potential for litter, wastes or by-products, fumes, odors or other impacts likely to result from such change of use. The standards in Article VI (Town-Wide Regulations) and Article VII (Performance Standards) shall apply to the change of one nonconforming use to another nonconforming use.
- D.  A nonconforming use which is discontinued for more than two years shall not be resumed, except that a residential use in the Resource Protection or Shoreland Overlay District may be resumed if it has not been discontinued for more than five years.
- E.  A nonconforming use shall not be extended or expanded in land or floor area, except that a nonconforming use may be extended into any existing part of a building or structure for which site plan approval had been granted prior to the use becoming nonconforming.
- F.  Mobile home parks outside Mobile Home Park Overlay District. [Added 11-5-2002]

Notwithstanding § 145-12E, the Planning Board, acting under Chapter 260 (Subdivision of Land), may permit the expansion of a legally nonconforming existing mobile home park which is located outside the Mobile Home Park Overlay District, subject to the following conditions:

- (a) The mobile home park was in existence on October 27, 2000.

- (b) The expansion is limited to the parcel on which the existing mobile home park was located on October 27, 2000, plus any parcels abutting that parcel which are under the same ownership or control as the existing mobile home park.
- (c) All new mobile home sites developed pursuant to this § 145-12F must comply with the requirements of § 145-34 (Mobile Home Park Overlay District), except that the maximum density shall be as follows:

On the parcel on which the existing mobile home park was located on October 27, 2000, the maximum density shall not exceed:

- (a) The density allowed when the existing mobile home park was approved; or
- (b) The maximum density allowed currently in the zoning district in which the land is located, if the existing mobile home park was approved at a time when the ordinances of the Town of Wells did not impose a density limit or was developed before any Town approvals were required.
- (c) On parcels abutting the existing mobile home park which can be developed pursuant to Subsection F(1)(b) above, the density shall not exceed the maximum density allowed currently in the zoning district in which the land is located.
- (d) If an expansion includes land which was not in the same ownership or control as the existing mobile home park on October 27, 2000, the following additional limitations shall apply:

The total number of mobile home sites developed pursuant to this § 145-12F, including any sites added within the parcel on which the existing mobile home park was located on October 27, 2000, plus any sites added on abutting parcels as allowed by Subsection F(1)(b) above, shall never exceed:

- [a] Forty percent of the number of mobile home sites which were lawfully located in the existing mobile home park on October 27, 2000, provided that the existing mobile home park is served by public water and public sewer.
- [b] Twenty percent of the number of mobile home sites which were lawfully located in the existing mobile home park on October 27, 2000, if the existing mobile home park is not served by public water and public sewer.

Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this § 145-12F applies to any application under this Chapter or under Chapter 260, whether or not such application has become a pending proceeding as defined in 1 M.R.S.A. § 302.

### **§ 145-13. Nonconforming structures.**

- A.  A nonconforming structure may be repaired, maintained or enlarged in conformity with the requirements of this chapter.
- B.  Discontinuance of the use of a nonconforming structure shall not constitute abandonment of the structure. The use of such a structure may be reactivated provided the use is permitted within the district in which the structure is located.
- C.  The following modifications to those portions of nonconforming structures located within the required setbacks shall be permitted:
- (1) The placement of a foundation beneath a nonconforming structure which does not increase the habitable space within any required setback and which does not increase the height of the structure above the height limit of the district.
  - (2) Upward expansion of a nonconforming structure over the existing footprint and under the height limit shall be permitted within the required setbacks from streets, water bodies, tributary streams or wetlands. If any portion of such a nonconforming structure is less than the required setback from a water body, tributary stream or wetland, that portion of the structure may be expanded in floor area or volume by no more than 30% of that which existed on January 1, 1989. [Amended 4-18-1998]
- D.  A nonconforming structure may be replaced, provided that:
- (1) If it was destroyed by fire, flood or other casualty, the reconstruction or replacement work is initiated within 24 months of the original destruction;
  - (2) If the structure is to be removed and replaced, a building permit is obtained prior to the removal of the nonconforming structure; and
  - (3) The new structure is constructed so that the previously existing nonconformities are not increased, except that a nonconforming structure which was less than the required setback from a water body, tributary stream or wetland and which is removed, damaged or destroyed by more than 75% of its market value may be reconstructed or replaced provided the reconstruction or replacement is in compliance with the required setback from a water body, tributary stream or wetland to the greatest practical extent as determined by the Zoning Board of Appeals. In determining whether the building construction or replacement meets the required setback from a water body, tributary stream or wetland to the greatest practical extent the Board shall consider the criteria in Subsection E and the physical condition and type of foundation present, if any.

E.  A nonconforming structure may be relocated upon the lot on which the structure is now located if the relocated structure conforms to all setback requirements to the greatest practical extent as determined by the Zoning Board of Appeals. In no case shall the encroachments into the required setbacks be increased in area or in distance. In determining whether the building relocation meets the setbacks to the greatest practical extent, the Zoning Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the lot and on adjacent lots, the location of the septic system and other on-site soils suitable for septic systems and the type and amount of vegetation to be removed.

F.  A nonconforming structure which does not comply with the required setback from the edge of any street right-of-way may expand horizontally within that required setback, provided that:

- (1) The proposed expansion is no closer to the edge of any street right-of-way than the nonconforming structure;
- (2) The proposed expansion is at least 10 feet from the edge of any street right-of-way;
- (3) If the proposed expansion is within 20 feet of the edge of any street right-of-way, it may not exceed the height of the part of the nonconforming structure located within the required setback from the street right-of-way;
- (4) The proposed expansion does not encroach into any other required setback;
- (5) Within the required setback from a street right-of-way, the total of the setbacks from both lot lines which intersect the street right-of-way shall be equal to at least three times the required setback from one lot line;
- (6) The proposed expansion does not impair the vision along the street or from any roads entering the street. A proposed expansion shall not reduce the minimum sight distance below a distance of 10 feet for every mile per hour of posted speed limit on the street. Sight distances shall be measured from the driver's seat of a vehicle that is 10 feet behind the curb or edge of shoulder line with the height of the eye 3.5 feet above the pavement to an object having a height of object 4.25 feet located within any travel lane in the street; and
- (7) The proposed expansion does not increase the ground area within the setback covered by the part of the structure existing on January 1, 1994, by more than 200%.

G.  Egress. [Added 4-18-1998]

- (1) The following types of means of egress shall be exempt from the dimensional requirements of this chapter if all of the conditions of Subsection G(2), (3) and (4) are met:
  - (a) The construction of a means of egress on a structure that is required by the Building Code of the Town of WellsEN or that is required to make a structure or use accessible to a physically disabled person; or
  - (b) The expansion of a stairway which is legally nonconforming with regard to space and bulk requirements solely to conform to the Building Code as adopted by the Town of Wells.
- (2) The use or structure was legally in existence on April 25, 1998. Means of egress or access serving structures constructed after April 25, 1998, shall conform to the dimensional requirements of this chapter.
- (3) The requested stairway or ramp is, dimensionally, the minimum structure that will satisfy the Town of Wells Building Code.
- (4) Due to the physical features of the lot or location of structures on the lot, it would not be practical to construct the proposed stairway or ramp in conformance with applicable dimensional requirements.

**§ 145-14. Nonconforming lots.**

- A.  A nonconforming lot of record may be built upon, without obtaining a variance, if new structures or additions to existing structures meet all the requirements of this chapter and the lot conforms to all the provisions of this chapter except for the minimum lot size and/or minimum street and shore frontage requirements.
- B.  On a nonconforming lot of record which has less than 75% of the required street frontage, the required setback from lot lines which intersect the street(s) may be reduced by 25%, but in no case shall the setback be reduced to less than 10 feet.

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Signature of Appellant

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Date



## TOWN OF WELLS APPLICATION PROCESS FOR THE ZONING BOARD OF APPEALS

**Twelve (12) separate packets of the following must be submitted to hold a place on the agenda:**

- a. Copy of Appeal application.
- b. Cover letter addressed to the Zoning Board of Appeals stating what you want to do.
- c. Plot plan showing the site and location of all structures, existing and proposed, in relation to the lot lines and, if applicable. Indicate parking. Lot size and setback dimensions must be shown.
- d. Floor plan, if applicable, showing dimensions of existing and proposed rooms and /or structures.
- e. Copy of the tax map (obtained in the Assessor's Office) with the property highlighted.
- f. Photos of property.
- g. Deed, sales agreement, lease or intent to lease.
- h. Owner, lessee, prospective purchase or legal representation must sign the application.
- i. A letter from the property owner giving permission to the application to represent the property if applicable.
- j. A list of all direct abutters located within 100 feet of the property, along with their mailing addresses.
- k. All plans must also be folded neatly with each packet and banded.

If additional information is needed to complete the packet for the Zoning Board of Appeals, you will be notified. Please make sure you include a contact phone number and email address on your cover letter. If we cannot contact you, the item may be tabled until the next regular meeting.

The application fee is \$200.00 with an Escrow of \$500 to appear before the Zoning Board of Appeals. Please note that the Escrow Deposits required throughout the application process is for direct reimbursable expenses such as postage costs, public notice advertising costs and copying.

You may apply for an appeal/permit at the Town Hall, Code Enforcement Office, Monday through Friday between 8:00 a.m. and 3:00 p.m. **If you choose to file on the deadline date, please note that applications are accepted only until noon on that day.**

You will be sent a email confirming the time and date of the scheduled meeting along with an Agenda.

## **CHAPTER 145.LAND USE**

### **Article IX. Zoning Board of Appeals**

#### **§145-68. Considerations and conditions.**

In hearing appeals under this chapter, the Zoning Board of Appeals shall consider the conformance of the proposed use and structures with the provisions of this chapter. In granting appeals under this chapter, the Zoning Board of Appeals may impose such reasonable conditions as it deems necessary to fulfill the intent and purpose of this chapter.

#### **§145-69. Appeal procedure.**

A. In all cases, a person aggrieved by a decision of the Code Enforcement Officer shall file an appeal within 31 days after the issuance of the written decision from the Code Enforcement Officer. The appeal shall be filed with the Zoning Board of Appeals on forms to be approved by the Board, and the aggrieved person shall specifically set forth on the form the grounds for the appeal. A filing fee as established by the Board of Selectmen, following notice and a public hearing, shall accompany any appeal. The Board shall also be reimbursed for the cost of the notification of the abutters before the public hearing.

B. Before taking action on any appeal, the Zoning Board of Appeals shall schedule a public hearing within 31 days of the filing of an appeal, and the hearing shall be publicly advertised 10 days before the specified date of such hearing. In the case of administrative appeals pursuant to § 145-67A (1), such hearing shall be held within 60 days of the filing of the appeal. The Zoning Board of Appeals shall notify by mail, at least 10 days before the hearing, the owners of lots butting the subject lot, of lots directly across a street or water body (less than 200 feet in width from the lot on which an appeal is taken and of lots located within 100 feet of the property lot on which the appeal is taken of the nature of the appeal and of the time and place of the public hearing thereon. [Amended 4-18-1998; 4-12-2003]

C. For this section, the owners of a lot shall be considered to be the parties listed by the Assessor of taxes for the Town of Wells as those against whom taxes are assessed. Failure of any lot owner to receive a notice of public hearing shall not necessitate another hearing nor invalidate any action by the Zoning Board of Appeals.

D. The Zoning Board of Appeals shall notify the Code Enforcement Officer, Board of Selectmen and Planning Board of the appeal at least 14 days before the hearing.

E. Written notice of the decision of the Zoning Board of Appeals shall be sent to the appellant, his representative or agent, the Code Enforcement Officer, the Maine Department of Environmental protection (if the subject property is located within the Shoreland Overlay District or Resource Protection District), the Board of Selectmen and the planning Board within seven days of the decision. The decision shall be deemed rendered at the time the Board shall vote thereon.

F. The Code Enforcement Officer or the designated assistant shall attend all hearings may present to the Zoning Board of Appeals all plans, photographs or other material needed to understand the appeal.

G. The petitioner's case shall be heard first. To maintain an orderly procedure, each side shall proceed without interruption. Questions may be asked through the Chair. All persons at the hearing shall abide by the order of the Chairman. The concurring vote of a majority of the members of the Zoning Board of Appeals present and voting shall be required to reverse and order, requirement, decision, or determination of the Code Enforcement Officer, to grant a variance, to grant a mislocated building appeal, to permit roads and driveways in the Resource Protection District and in the Shoreland Overlay District, to permit additional off-premises business directional signs, or to decide in favor of the applicant on any matter which the Zoning Board of Appeals is required to decide under this chapter. The applicant shall have the burden of proof. The Zoning Board of Appeals may modify or reverse a decision of the Code Enforcement Officer only if it finds an error of law, misinterpretation of this Code or misapplication of the law to the facts. If the Zoning Board of Appeals modifies or reverses a decision of the Code Enforcement Officer, the Zoning Board of Appeals shall remand with instructions for such further action as may be necessary. The Zoning Board of Appeals may receive and consider evidence and testimony and oral or written argument; however, the Chairperson may exclude any irrelevant or redundant testimony or other evidence. **[Amended 4-12-2003]**

H. If the Zoning Board of Appeals shall deny an appeal, a second appeal of similar nature shall not be brought before the Board within one year from the date of denial by the Board of the first appeal, unless in the opinion of a majority of the Board substantial new evidence shall be brought forward or unless the Board finds that an error, mistake or misunderstanding of facts has occurred.

I. Any appeals granted under the provisions of this chapter by the Zoning Board of Appeals shall expire if:

(1) The work or change involved is not started within one year of the date on which the appeal is granted and /or if the work or change is not substantially completed within two years of the date on which the appeal is granted unless otherwise specifically provided for by the Zoning Board of Appeals; and

(2) A certificate indicating the name of the current lot owner, identifying the lot by reference to the last recorded deed in its chain of title and indicating that a variance has been granted, including any conditions on the variance and the date the variance was granted, is not recorded at the York County Registry of Deeds within 90 days of the final written approval.

J. Appeal of Board's decision. Any decision of the zoning Board of Appeals may be appealed to Superior Court within 45 days after the decision is rendered according to the Maine Rules of Civil Procedure, Rule 80B.



## TOWN OF WELLS

### ZONING BOARD OF APPEALS

### MEETING PROCESS

- You or your representative must attend the Zoning Board meeting in order to present your case and to answer any questions the Board may have concerning your Appeal.
- Have a copy of your Appeal packet with you.
- First, the Chairperson will call the meeting to order and read/explain the Board procedures. Next, roll call of Board members present will take place.
- The meeting will then open to the first Appeal on the Agenda.
- The first Applicant will come forward to the small front table and give a verbal summary of what it is that they are appealing to the Board. You then may need to answer questions from the Board.
- The Public will have a chance to respond when the Chair first asks the public as to who would like to respond to the Appeal application. The Applicant will be able to respond after all the public comments.
- When the Board is satisfied that they have all the information they need to make a decision, the Chairperson will close the meeting to public comment and the Board will move on to the next appeal.
- The Board will then ask the next Applicant to come forward.
- The process continues until all appeals are heard. The Board will make a motion (usually in the affirmative) and then further discuss the issues involved.
- On rare occasion the Board may open the public portion again temporarily to ask another question to the applicant.
- After deliberations on each appeal, the Board will confirm which one of the members will write the Findings of Fact for the perspective appeals.
- Findings of Fact will be reviewed at the next regularly scheduled meeting (usually in two weeks) and a decision rendered at that time.
- The Chairperson will then proceed onto other business, approval of minutes and adjourn the meeting.
- At the next meeting, once the decisions have been rendered on these appeals, a copy of the Board's decision will be mailed to you. We will also include a building permit application if deemed necessary.
- The Building Permit Application will have to be filled out and returned to the Code Enforcement Office on the second floor of Town Hall, along with the appropriate fees as indicated on the permit application, along with the specifications of that particular permit application. Please note that all those specifications are your responsibility to bring with you, not the Town to copy and add into your submissions.
- Any submissions that were in your Appeal packet and are necessary for the building permit, but are missing, will be copied from the Appeal packet and billed to you at \$0.50 per page.
- The Building Permit Application will then be processed. It takes approximately 14 business days to approve the permit.
- You must call and schedule inspections as stated in your permit application packet.
- If a Certificate of Occupancy is necessary, you must call and schedule with us at 646-5187. Once the inspector is satisfied you have complied with all State and local regulations, a Certificate of Occupancy will be issued.