



TOWN OF WELLS ZONING BOARD

VARIANCE APPEAL 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

Justification of Variance

The Wells Zoning Board of Appeals will decide your appeal based on your answers, responses and testimony to the four following questions. Please be very exact and as detailed as possible.

Please use additional sheets of paper as needed.

Chapter 145-67 A. (3)... A variance may be granted by the Board only where the strict application of the requirements of this chapter to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this chapter shall mean:

(a) That the land in question cannot yield a reasonable return unless a variance is granted;

(b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

(c) That the granting of a variance will not alter the essential character of the locality; and

(d) That the hardship is not the result of action taken by the applicant or a prior owner.



TOWN OF WELLS ZONING BOARD OF APPEALS APPLICATION PACKET REQUIREMENTS

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

- a. Copy of completed 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 an email confirming the time and date of the scheduled meeting along with an Agenda.

Chapter 145. Land Use
Article IX. Zoning Board of Appeals

§ 145-65. Membership; qualifications; terms of office.

The Board of Selectmen of the Town of Wells shall appoint a Zoning Board of Appeals consisting of five members and three associate members who shall all be residents of the Town of Wells. The appointments shall be for three years with the terms being staggered. Neither a Selectman nor his spouse may be a member or associate member of the Board. A member of the Board may be dismissed for cause by the Board of Selectmen, after a public hearing, before the expiration of his term.

§ 145-66. Associate members; officers; quorum; conflicts of interest.

A. An associate member, selected by the Chairman, shall act in place of any member who may be unable to act due to interest, absence or physical incapacity.

B. At the first meeting of the calendar year the Board shall elect from its membership a Chairman to preside at all meetings of the Board, a Vice Chairman and a Secretary, who shall provide for the keeping of the minutes of the proceedings of the Zoning Board of Appeals, which shall show the vote of each member upon each question.

C. A quorum shall consist of four members, and all motions shall require an affirmative vote of at least a majority of the full Board to pass.

D. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a member from voting thereon shall be decided by a majority vote of the members, except the member who is being challenged.

§ 145-67. Powers and duties.

[Amended 11-8-1994; 4-28-1995; 4-19-1997]

A. The Zoning Board of Appeals shall have the following powers and duties:

(1) Administrative appeals.

(a) To hear and decide where it is alleged there is an error in any written order, requirement, decision or determination made by the Code Enforcement Officer to:

[1] Approve or deny a building permit pursuant to § **145-61C**;

[2] Determine the proper reviewing authority for a site approval application pursuant to § **145-74A(1)**;

[3] Determine whether or not the proposed use in a site plan approval application is a permitted use and meets the requirements of Article **V** pursuant to § **145-74A(1)**;

[4] Determine whether or not an application for site plan approval meets the requirements of Articles **V**, **VI** and **VII** pursuant to § **145-74B, C** or **D**; or

[5] Issue or fail to issue a certificate of occupancy pursuant to § 145-62.^[1]
[Amended 6-13-2017]

[1] *Editor's Note: Former Subsection A(1)(a)[6], which immediately followed, which listed issuing a notice of violation pursuant to § 145-63, as amended, was repealed 11-6-2012.*

(b) The action of the Code Enforcement Officer may be upheld, modified or reversed by the Zoning Board of Appeals by majority vote.

(2) To permit variations in nonconformance as prescribed in Article III.

(3) Variance appeals. To hear and decide, upon appeal, in specific cases such variance from the dimensional requirements of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the dimensional requirements of this chapter would result in undue hardship. A variance may be granted by the Board only where the strict application of the requirements of this chapter to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this chapter shall mean:

(a) That the land in question cannot yield a reasonable return (use) unless a variance is granted;

(b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

(c) That the granting of a variance will not alter the essential character of the locality; and

(d) That the hardship is not the result of action taken by the applicant or a prior owner.

(4) Disability variance. To hear and permit a variance, pursuant to 30-A M.R.S.A. § 4353(4-A)(B), to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than two times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this subsection to the Board. The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

[Amended 11-7-2000; 6-10-2014]

(a) For purposes of this subsection, "noncommercial vehicle" means a motor vehicle as defined in 29-A M.R.S.A. § 101(42) with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A M.R.S.A. § 521 and owned by the person with the permanent disability.

(5) Mislocated building appeal. To hear and decide upon appeal in specific cases where existing buildings are found to be in violation of the setback requirements and where such location of buildings will not be contrary to the public interest whether an appeal should be granted. In order to grant a mislocated building appeal the Board must find that there was no willful or premeditated action (or gross negligence) to build within the setback.

(6) To permit roads and driveways in the Resource Protection District as authorized by § [145-32E\(2\)](#) and in the Shoreland Overlay District as authorized by § [145-33F\(1\)](#).
[Amended 11-2-2010]

(7) To permit additional off-premises business directional signs as authorized in § [145-40I](#).

B. Any appeal, the granting of which would allow a structure within the required setbacks from water bodies, tributary streams or wetlands or within the Resource Protection District, may only be granted if the Board finds that the proposed construction will not result in unsafe or unhealthful conditions; erosion or sedimentation; water pollution; or damage to spawning grounds of fish, aquatic life or other wildlife habitats and will conserve shoreland vegetation and, to the extent possible, visual access to waters as viewed from public facilities, points of public access to waters and natural beauty and will avoid problems with floodplain development and use.

§ 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 abutting 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 and 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 an 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 a 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 appeal 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 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 occasions 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 will be made at that time.
- The Chairperson will then proceed with other business, approval of minutes and adjourn the meeting.
- At the next meeting, once the decisions have been made 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.