

Application #: _____
Date Submitted: _____

**Application For Appeal
Zoning Board Of Adjustment (ZBA)
Franklin, New Hampshire**

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS (RSA 674:33-a)

Please complete the entire application. Failure to do so will delay processing it. PRINT legibly and in INK. The application must be signed and dated. The owner must sign the application or a letter of authorization from the owner must be attached.

This application is to be completed by anyone requesting an Equitable Waiver of Dimensional Requirements, as defined in RSA 674:33-a.

1. Location of property for which the appeal is being applied: Tax Map and Lot #: _____
Street Address: _____

	OWNER	PERSON COMPLETING APPLICATION
2. Name:	_____	_____
Address:	_____	_____
Phone #:	_____	_____

3. Zoning Classification: _____

4. Identify the properties use(s) within 200 feet of the site in all directions: Site _____,
Abutting property to the N _____, S _____ E _____,
And W _____.

5. Briefly describe all the PROPOSED uses of the site, be specific:

6. Attach a copy of a survey plan.

7. Please attach to the application a plot plan, on an 8 1/2" x 11" sheet of paper (same size as the application), this plot plan must be signed and dated and show the following information:

- a. Relative location of all structure(s) and facilities on the site (septic and well) if applicable;
 - b. Label as existing or proposed: Buildings (uses), well, septic, driveway, easements, rights of way, parking spaces and signs;
 - c. Label and show all wet areas, areas of steep slope, flood area, and other limiting natural features;
 - d. The dimensions of the buildings; and,
 - e. Indicate the setback distances from all existing structures and proposed structures to the boundary lines.
- Note: The Zoning Administrator and/or the Zoning Board of Adjustments may require more detail if necessary.

8. Indicate the location of wetlands, flood zones and other limiting natural features on the plan.

9. Site has (Check appropriate response): City Water City Sewer Well Septic

10. Was a variance previously granted for this site: Yes No

11. Additional Comments, if any:

Please respond to whether the following is a true statement or a false statement. If the statement is true or false, please explain:

A. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the Zoning Board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings.

1. That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official until after a 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. True False

2. That 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 measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority. True False

3. That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property. True False

4. 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. True False

Your application is incomplete unless the following are submitted:

- i. Letter of Authorization, if you are not the owner;
- ii. Plot Plan sketch (refer to Letter A #8);
- iii. Abutter's List, blank form attached; and,
- iv. All fees are paid.

Note: The Zoning Administrator and/or the Zoning Board may require more information if necessary.

Note: The Zoning Board of Adjustment Members may conduct a site visit. At the time of their visit, you SHALL NOT make contact with them. A board member is not allowed to have a conversation with any applicant outside of a Meeting atmosphere.

Signature of Applicant _____

Date _____

DO NOT WRITE IN THIS SPACE-	OFFICE USE ONLY!!
1. Date Application Submitted: _____	
2. Fee Collected <input type="checkbox"/> Yes <input type="checkbox"/> No Amount: \$ _____	
Form of Payment: <input type="checkbox"/> Cash <input type="checkbox"/> Check # _____	
3. Date of Public Hearing: _____	
Date Notice Sent to Applicant Explaining Board Action: _____	
Zoning Board Decision: <input type="checkbox"/> Granted <input type="checkbox"/> Denied	
4. Comments, if any: _____	

**TITLE LXIV
PLANNING AND ZONING
CHAPTER 674
LOCAL LAND USE PLANNING AND REGULATORY POWERS
Zoning Board of Adjustment and Building Code Board of Appeals
Section 674:33-a**

674:33-a Equitable Waiver of Dimensional Requirement. –

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a 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;

(b) That 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 measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) 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.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

Source. 1996, 226:4, eff. Jan. 1, 1997.