



APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

Zoning Board of Adjustment
Town of Fremont
P.O. Box 120
Fremont, New Hampshire 03044

Do not write in this space.

Case # _____

Date filed: _____

Hearing Date: _____

Total Fees Received: _____

Signed : _____

ZBA

Name of applicant: _____

Address: _____

Phone: _____

Owner: _____
(if same as applicant, write "SAME AS")

Location of property Map # _____ Lot # _____

(street address)

Signed: _____
(Actual property owner)

NOTE: This application is not acceptable unless all required statements in the appropriate section have been completed. **Additional information may be supplied on a separate sheet if the space provided is inadequate.**

APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

An Equitable Waiver of Dimensional Requirements is requested from Article _____ Section _____ of the zoning ordinance to permit

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

() yes () no

2-a. Explain how the violation has existed for 10 years or more with no enforcement action, including written notice, being commenced by the town

- or -

2-b. Explain how the nonconformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser

and how the violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake

3. Explain how the nonconformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area

4. Explain how the cost of correction far outweighs any public benefit to be gained

Signed: _____

(Actual property owner)

Mail or deliver the completed application, with all attachments, to the Clerk of the Board of Adjustment. A fee is charged sufficient to cover the cost of preparing and mailing the legally required notices. Make your check payable to the Town of Fremont and remit it with your application.

The Board will schedule a Public Hearing within thirty (30) days of the receipt of your properly completed application. Public notice of the Hearing will be posted at the Fremont Town Hall and the Fremont Post Office and printed in a newspaper of general circulation, usually the Rockingham County News, and notice will be mailed to you and all abutters by certified mail and to other parties whom the Board may deem to have interest, at least five (5) days before the date of the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state reasons why the appeal should or should not be granted.

After the Public Hearing, the Board will reach a decision. You and all other parties to the case will be sent a Notice of Decision, again by certified mail.

If you believe the Boards’ decision is wrong, you have the right to appeal. The Selectmen, or any party affected, have similar rights to appeal the decision in your case. To appeal you must first ask the Board for a rehearing. The motion for rehearing may be in the form of a letter to the Board. The motion must be made within twenty (30) days of the Board’s decision and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a rehearing if, in its opinion, good reason is stated in the motion. 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. Whether or not a rehearing is held, you must have requested one before you can appeal to the courts. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

APPLICATION and PROCEDURE

PROCEDURE – To apply to the Zoning Board of Adjustment for relief, you must follow these steps:

- a. Obtain a letter of denial from the Board of Selectmen or Building Inspector.
- b. Compile a typed list of the names and addresses of all current abutters. This is to be obtained from the Fremont Selectmen's Office. An abutter is anyone whose property physically abuts the subject property or is directly across a street or river. Please include the subject property, applicant, and anyone whose seal or stamp appears on the plan.
- c. All requests for required reports or other correspondence (such as indicated in Article IX Section H) must be sent by the applicant via certified mail with return receipt requested. This is for proof and record of mailing. The hearing will not be scheduled before the 30 day time frame has lapsed from the date of mailing requests to pertinent officials.
- d. Applications can be left at the Town Hall at 295 Main Street in Fremont; or Mailed to the Town at the address above. Submit a check made payable to the Town of Fremont with your application for the fees due.

CHECKLIST FOR APPLICATION

This Application Includes:

_____ Letter of denial
_____ 6 sets of plans
_____ cover letter of intent
_____ current abutters list
_____ proper check amount
_____ letter of approval to allow representation

FEE SCHEDULE

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS **\$150.00 = \$** _____
For the first request, and \$50.00 for each additional request if a separate Zoning Article

ADVERTISING *(current rate of expense)* **\$115.00 = \$** _____

ABUTTER NOTIFICATION *(per abutter)* **\$ 12.59 = \$** _____
(See (b) above for definitions of an abutter)

TOTAL FEES SUBMITTED = \$ _____

INSTRUCTIONS TO APPLICANTS APPEALING TO THE ZONING BOARD OF ADJUSTMENT

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

State of New Hampshire - RSA 674:33a

When a lot or structure is discovered to be in violation of physical layout or dimensional requirement the ZBA may grant a waiver only if each of the four findings as outlined in the Statute (RSA 674:33-a) are made:

- a. Lack of discovery
- b. Honest mistake
- c. No diminution in value of surrounding property
- d. The cost of correcting the mistake outweighs any public interest.

For any appeal, the application form must be properly filled out. The application form is intended to be self-explanatory, but be sure that you show:

1. **Who owns the property?** If the applicant is not the owner, this must be explained.
2. **Where is the property** located?
3. **Describe the property.** Give area, frontage, side and rear lines, slopes and natural features, etc.
4. **What do you propose** to do? In addition to describing your intention on the application, attach sketches, plot plans, pictures, construction plans or whatever may help explain the proposed use. Include copies of any prior applications concerning the property.
5. **Why does your proposed use require an appeal** to the Board of Adjustment?
6. **Why should the appeal be granted?**

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.

Prepare a list of all abutting property owners, have it verified at the Town Office, and attach it to your application. **THE ACCURACY OF THE ABUTTERS LIST IS YOUR RESPONSIBILITY.**