

Application for Equitable Waiver Of Dimensional Requirement

It is recommended that Applicant consult with Land Use Coordinator before completing this Application.

ZONING BOARD OF ADJUSTMENT NEWBURY, NEW HAMPSHIRE

Property Owner: _____

Mailing Address: _____

Telephone: _____

Email: _____

LOCATION OF PROPERTY: _____

MAP# _____ LOT# _____

PROPERTY OWNER'S AGENT: _____

ADDRESS: _____ PHONE: _____

EMAIL: _____

(FOR MUNICIPAL USE ONLY)

Fee _____ Abutter List _____

NOTE: This application is not acceptable unless ALL required statements below have been answered. This information may be supplied on a separate sheet and attached to this application.

An Equitable Waiver of Dimensional Requirements is requested from article _____ section _____ of the zoning ordinance to permit _____

Equitable Waiver of Dimensional Requirements:

16.8.1 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, the Zoning Board of Adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver of dimensional requirement, if and only if the Board makes all of the following findings.

16.9.1.1 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 has 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;

16.9.1.2 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;

16.9.1.3 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 uses of any such property;

16.9.1.4 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 granted.

16.9.2 In lieu of the findings required by the Board under the first two subparagraphs above, 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.

16.9.3 Waivers shall be granted 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. The fact that a waiver is available under certain circumstances does not alter the principal that owners of land should understand all land use requirements. In addition, this ordinance does not impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or compliance of property inspected by them.

I have attached all the supporting documentation required and hereby certify that all of the information contained herein is true and accurate to the best of my knowledge.

Applicant _____ Date _____