

CITY OF KEENE
NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT

PROCEDURE FOR FILING PETITIONS

1. To file a petition before the Zoning Board of Adjustment, three items are required:
 - A. **Completed Application.** The original application must be submitted. Forms may be obtained from the Code Enforcement Department. The forms provided by the City must be used. The accuracy of the information supplied shall be the responsibility of the applicant(s) at all times. To submit a proper application, the applicant must be either the title or record owner of the subject property, or such owner's duly authorized agent. Requests should be identified as one of the following: Appeal of an Administrative Decision, Change of a Nonconforming Use, Enlargement of a Nonconforming Use, Special Exception, Variance, or Equitable Waiver of Dimensional Requirements.
 - B. **Plot Plan.** A scaled drawing must be submitted, showing the locations and dimensions of all structures and open spaces on the lot in question and on the adjacent lots. Plans do not have to be professionally drawn. The plot plan must be 8 1/2" X 11".
 - C. **Abutters List.** A notarized statement must be submitted listing all abutting properties within two hundred feet (200') of the property in question. In some instances this may include properties across a street or highway or properties on another tax map. In the case of an abutting property being under a condominium or other collective form of ownership, the officers of the collective or association will be notified. The City tax maps are the accepted authority for this information, and the Assessing staff will provide assistance as needed though the process is outlined here for instruction with the ultimate responsibility for the abutters list falls on the applicant. An abutter list form is attached to this packet, may be obtained from the Clerk of the Board or the Code Enforcement Department. Two (2) sets of legible mailing labels (Avery 5160, 1"x2 5/8" or equivalent) for each abutter which will include the property owner and their designated agent will be submitted. Included on the label will be the property tax map number, property owner's name and mailing address (if different than the abutting property). The above information must be submitted to the Clerk of the Board by 4:30 PM on the day of the filing deadline. Deadlines and meeting dates may be obtained from the Clerk of the Board or the Code Enforcement Department. Until **all** of the required information is received, the petition **will not** be placed on the agenda.
2. The Clerk of the Board will set a date, time and place for a public hearing and shall notify the applicant(s) and all property owners within two hundred (200') feet of the property in question (using the information supplied in the notarized abutters list) by certified mail, and shall cause a public notice of the hearing to be published in a newspaper of general circulation in the area at least five (5) days prior to the date fixed for the hearing of the petition.
3. The applicant(s) shall pay to the Clerk of the Board at the time of filing, a non-refundable filing fee of \$100.00 plus the current USPS postal rate for certified mailings for each abutter, owner and applicant, and the cost of \$25.00 to publish a legal notice advertisement in the local newspaper.

GENERAL INFORMATION

The Zoning Administrator will be available to assist the applicant(s) with the application form, drawings and plans. Clarification of the Zoning Ordinance may be obtained from the Zoning Administrator. Legal assistance should be obtained from the applicant's personal attorney.

A decision is usually rendered by the Board at the same meeting at which the public hearing is held. In some instances, the decision may be made at a later date. If this is the case, the applicant(s) will be informed of when the decision is to be made. In making their decision, the Board will make findings of fact and then set forth the reasons for their decision.

If a petition is denied, the applicant(s) may file a motion for a rehearing specifying the grounds for rehearing the petition. Every ground upon which it is claimed that the decision rendered is unlawful or unreasonable must be set forth fully. Said motion for rehearing must be filed with the Clerk of the Board within thirty (30) days after the decision is rendered.

If a motion for rehearing is denied by the Board, the applicant(s) may appeal to the Superior Court within thirty (30) days after the decision has been rendered. The **only** grounds for appeal are those set forth in the motion for rehearing.

RULES OF PROCEDURE FOR CONDUCT OF MEETINGS

Every attempt is made to provide a five member Board however if, for any reason, five members are not available, the petitioner(s) may elect to postpone the hearing and decision until the next meeting of the Board at which five members are present.

For the benefit of those in attendance at public hearings, the Chairman will briefly explain the procedure before the hearings begin and introduce the members of the Board.

The public hearings will be held first with the applicant(s) and/or his/her representative presenting the petition. Then those wishing to speak in favor of the petition may do so, followed by those wishing to speak in opposition to the petition. After this the applicant(s) and those in favor may speak in rebuttal, followed by the rebuttal of those in opposition. The debate may be closed when the Chairman deems it appropriate. All public hearings and Board deliberations are tape recorded.

All comments must be addressed to the Chair. Anyone rising to address the Chair should identify him/herself, giving his/her name and address. No one will be allowed to speak twice until all who wish to speak have been heard.

Reasons will be given for all decisions of the Board and references made to the appropriate sections of the Zoning Ordinance. In the event the Board wishes to postpone making a decision, the applicant(s) will be so advised. All decisions will be announced by the Chair at the time they are made, and formal written notification will be mailed to the applicant(s) within seventy-two (72) hours after the decision is rendered.

In the event no one is available to present a petition to the Board at the public hearing, the petition will be automatically dismissed on the grounds that no public hearing has been held. A petition may be withdrawn by the applicant(s) by notifying the Clerk of the Board of this intention.

APPLICATION FOR APPEAL

Zoning Board of Adjustment
3 Washington Street, Fourth Floor
Keene, New Hampshire 03431
Phone: (603) 352-5440

For Office Use Only:

Case No. _____
Date Filed _____
Received By _____
Page _____ of _____
Reviewed By _____

The undersigned hereby applies to the City of Keene Zoning Board of Adjustment for an Appeal in accordance with provisions of the New Hampshire Revised Statutes Annotated 674:33.

TYPE OF APPEAL

- APPEAL OF AN ADMINISTRATIVE DECISION
- APPLICATION FOR CHANGE OF A NONCONFORMING USE
- APPLICATION FOR ENLARGEMENT OF A NONCONFORMING USE
- APPLICATION FOR A SPECIAL EXCEPTION
- APPLICATION FOR A VARIANCE
- APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

SECTION I - GENERAL INFORMATION

Name(s) of Applicant(s) _____ Phone: _____
Address _____
Name(s) of Owner(s) _____
Address _____
Location of Property _____

SECTION II - LOT CHARACTERISTICS

Tax Map Parcel Number _____ Zoning District _____
Lot Dimensions: Front _____ Rear _____ Side _____ Side _____
Lot Area: Acres _____ Square Feet _____
% of Lot Covered by Structures (buildings, garages, pools, decks, etc.): Existing _____ Proposed _____
% of Impervious Coverage (structures plus driveways and/or parking areas, etc.): Existing _____ Proposed _____
Present Use _____
Proposed Use _____

SECTION III - AFFIDAVIT

I hereby certify that I am the owner in fee or the authorized agent of the owner in fee of the property upon which this appeal is sought and that all information provided by me is true under penalty of law.

(Signature of Owner or Authorized Agent) Date _____
Please Print Name _____

PROPERTY ADDRESS _____

APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

- An Equitable Waiver of Dimensional Requirements is requested from Section (s) _____ of the Zoning Ordinance to permit:

DESCRIBE YOUR RESPONSE TO EACH REQUIREMENT:

- (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 this chapter, 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) 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.
 - (2) 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.
 - (3) 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.

- (4) 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.
- (b) In lieu of the first two findings required by the Board in subsections (a)(1) and (2) of this section, the owner may demonstrate to the satisfaction of the Board that the violation has existed for ten years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the City or any person directly affected.
- (c) Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5-7. Rehearings and appeals shall be governed by RSA 677:2-14.
- (d) 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 this chapter. 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.

