

**ZONING BOARD OF ADJUSTMENT
APPLICATION FOR APPEAL
TOWN OF EATON, NH**

1. The applicant must provide all information required at time of filing.
2. In the event that the owner of the property is not available to sign the application, this requirement may be waived. However, a written statement from the owner will be required for presentation to the Zoning Board of Adjustment at the hearing stating the owner's approval of the action being requested and their intent to abide by any conditions imposed by the Board.
3. The applicant must list the names and mailing addresses of all present owners of abutting properties. This information may be gained from tax or assessing records at the Town Office. Three (3) sets of completed mailing labels must be submitted with the application to be considered complete.
4. Types of Appeals:

APPEAL FROM ADMINISTRATIVE DECISION: If you have been denied a building permit or are affected by some other decision regarding the administration of the Zoning Ordinance, and you believe that the decision was made in error under the provisions of the Ordinance, you may appeal the decision to the Zoning Board of Adjustment. The appeal will be granted only if you can show that the decision was indeed made in error. A copy of the decision appealed from must be attached to your application.

SPECIAL EXCEPTION: Certain sections of the Zoning Ordinance provide for a Special Exception if specified conditions are met. All conditions as specified in the Ordinance must be met for an appeal to be granted. A detailed site plan showing (at a minimum) all setbacks and building dimensions must be attached to your application.

VARIANCE: A Variance is an authorization which may be granted under special circumstances, to use your property in a way that is not permitted under the strict terms of the Zoning Ordinance. For application, you must first have some form of determination that the proposed use or dimensional layout is not permitted without a Variance. Most often, this determination is a denial of a building permit. A copy of the determination must be attached to your application. For a Variance to be legally granted, you must show that your proposed use meets all five conditions:

- (1) The variance will not be contrary to the public interest;
- (2) The spirit of the ordinance is observed
- (3) Substantial justice is done;
- (4) The values of surrounding properties are not diminished; and
- (5) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
 - (a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(1) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property and (2) the proposed use is a reasonable one.

- (b) If the criteria in subparagraph (a) above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The definition of “unnecessary hardship” set forth in paragraph 5 shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use or any other requirement of the ordinance.

EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS: When a lot or structure is discovered to be in violation of a physical or dimensional requirement, a waiver may be granted only if each of the four findings as outlined in the Statute and listed in the application is made. Equitable waivers may be granted only from physical layout, mathematical or dimensional requirements and may not be granted from use restrictions. Once a waiver is granted, the property does not exempt future use, construction, reconstruction or additions on the property from full compliance with the Ordinance. A detailed site plan showing the violation of the physical layout or dimensional requirement in relation to the property boundary lines must be attached to your application.

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 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.

2. In lieu of the findings required by the board under subparagraphs 1(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.
3. 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.
4. 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.
5. Applicant is responsible to provide sketches, plot plans, pictures, construction plans or whatever may help explain the proposed appeal. Pictures of the property are particularly useful. Include copies of any prior applications concerning the property. Also include an explanation of why the appeal should be granted.
6. Mail or deliver the completed Application with all attachments to the Office of the Selectmen. Make checks payable to the TOWN OF EATON and remit with your application.
7. The ZBA meets at the Town Hall on the third Monday of the month. Completed applications must be received 20 days prior to the regularly scheduled Meeting.
8. To appeal a decision of the Zoning Board, Motion for Rehearing must be submitted to the ZBA within 30 days of the decision (day 1 being the day after the 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 reopen an Appeal based on the same set of facts unless it is convinced that an injustice would be created by not doing so. (See RSA Chapter 677 for more information)

**APPLICATION FOR APPEAL
BOARD OF ADJUSTMENT**
FEE: \$150 PLUS \$40 FOR NEWSPAPER NOTICE
AND \$10 FOR EACH ABUTTER NOTIFICATION

Case #: _____
Fee: _____
Check #: _____

MAP: _____ PARCEL: _____

PROPERTY OWNER INFORMATION:

NAME(S): _____
MAILING ADDRESS: _____
TELEPHONE #: _____
EMAIL ADDRESS: _____

APPLICANT(S) INFORMATION:

NAME(S): _____
MAILING ADDRESS: _____
TELEPHONE #: _____
EMAIL ADDRESS: _____

PROPERTY INFORMATION:

ZONING DISRICT: _____

PROPERTY ADDRESS: _____

EXISTING USE: _____

THE APPLICANT HEREBY REQUESTS:

ARTICLE/SECTION #

- Appeal from Administrative Decision** in relation to _____
- A **Special Exception** as provided in _____
- A **Variance**, and asks that said terms be waived as stated in _____
- An **Equitable Waiver of Dimensional Requirement** _____

TO PERMIT THE FOLLOWING: _____

The applicant alleges that the following circumstances exist which prevent the proper enjoyment of their land under the strict terms of the Zoning Ordinance and thus constitutes unnecessary hardship:

Signed: _____ Signed: _____
(Owner) (Applicant)

NOTE: Please attach plan and all documents necessary to support your application. All forms must be completely filled out and signed by the applicant and their representative before they will be accepted. An application fee of \$150, along with a fee of \$40 for newspaper notification and \$10 for each abutter notification must be submitted with the application. The applicant or representative is requested to attend the public hearing held on the above request.

