

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

**Instructions:** Before filing the attached forms, please read instructions carefully.

1. The applicant must provide all information required as fully as possible at time of filing. Any questions may be referred to the Zoning Officer.
2. In the event that the owner of the property is not available to sign the application for appeal, 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 his intent to abide by any conditions imposed by the Board of Adjustment.
3. The applicant must list the names and mailing addresses of all present owners of property, which either abuts or is directly across from the property under appeal. This information may be gained from tax records at the Town Office. Two (2) sets of completed mailing labels must be submitted with this application to be considered complete.
4. Types of Appeal:
  - A. Administrative Decision - a claim that the enforcement officer is in error in interpreting a particular provision of the ordinance.
  - B. Special Exception - the particular exception must be specifically stated in the ordinance. All conditions, as stated in the ordinance, must exist for the Zoning Board of Adjustment to grant this request.
  - C. Variance - the Board may relax the strict interpretation of the ordinance if each of the following five conditions exists:
    - (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:
        - (i) 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
        - (ii) The proposed use is a reasonable one.
      - (B) If the criteria in subparagraph A 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 subparagraph 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.

D. Equitable Waiver of Dimensional Requirement

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.

APPLICATION FOR APPEAL  
BOARD OF ADJUSTMENT

Case # \_\_\_\_\_  
Fee \_\_\_\_\_  
Ck# & Name \_\_\_\_\_

OWNER \_\_\_\_\_

OWNER ADDRESS \_\_\_\_\_

APPLICANT \_\_\_\_\_

APPLICANT ADDRESS \_\_\_\_\_

TELEPHONE \_\_\_\_\_

PROPERTY ADDRESS \_\_\_\_\_ MAP \_\_\_\_\_ PAR \_\_\_\_\_

DESCRIPTION OF PROPERTY: \_\_\_\_\_

Acreage \_\_\_\_\_ Zone \_\_\_\_\_ Bldg/Sign Setback  
ROW or Centerline \_\_\_\_\_

Lot Dimension: Frontage \_\_\_\_\_ Left Side \_\_\_\_\_ Right Side \_\_\_\_\_ Rear \_\_\_\_\_

Existing Use \_\_\_\_\_

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THE APPLICANT HEREBY REQUESTS:                      ARTICLE      SECTION

( ) Appeal from an 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 his/her land under the strict terms of the Zoning Ordinance and thus constitutes  
unnecessary hardship: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signed: \_\_\_\_\_  
(Owner)

Signed: \_\_\_\_\_  
(Applicant)

**NOTE:** Please attach plan and all documents necessary to support your application to this  
form. All forms must be completely filled out and signed by the applicant and his/her  
representative before they will be accepted. An application fee of \$100, along with a fee of  
\$5 for each abutter notification must be submitted with the application. The applicant or  
his/her representative is requested to attend the public hearing held on the above request.

**TO ALL APPLICANTS:**

The undersigned applicant hereby certifies under oath that the following list contains all present owners by name, mailing address, and zip code, which abut or are directly across from the property in question.

**TWO (2) SETS OF COMPLETED MAILING LABELS MUST BE SUBMITTED WITH THIS APPLICATION TO BE CONSIDERED COMPLETE**

\_\_\_\_\_  
(Applicant)

**OATH TO BE ADMINISTERED BY NOTARY PUBLIC OR JUSTICE OF THE PEACE:**

\_\_\_\_\_ personally appeared \_\_\_\_\_  
(Date)

and under oath the above applicant swore the above list of abutters to be correct and true and complete to the best of his/her knowledge and belief.

\_\_\_\_\_  
(Notary)

**ALL FEES MUST ACCOMPANY APPLICATION.  
Filing Fee: \$100.00 Notification Fee: \$5.00 for each abutter notified**