

**APPLICATION FOR EQUITABLE WAIVER**

**FEES: \$100 PLUS ABUTTER NOTIFICATION FEES**

I hereby apply for a hearing requesting:

**EQUITABLE WAIVER** to the terms of Article \_\_\_\_\_ Section \_\_\_\_\_

NAME OF APPLICANT \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

TELEPHONE (\_\_\_\_\_) \_\_\_\_\_

OWNER OF PROPERTY \_\_\_\_\_

MAILING ADDRESS \_\_\_\_\_

(If Applicant and Owner are the same person, write "SAME")

LOCATION OF PROPERTY \_\_\_\_\_

(include tax map number and street)

PROPOSAL \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Attach plot plan to show front, side and back lot lines and setbacks.**

It is the responsibility of the applicant to provide current names and **mailing** addresses of abutters. A form is provided in this application.

*(Abutters include owners of all property touching lot in question in ANY way and directly across the street.)*

APPLICANTS SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

FOR OFFICE  
USE ONLY

Date accepted \_\_\_\_\_ by \_\_\_\_\_  
Fee Paid Check # \_\_\_\_\_ Cash \_\_\_\_\_

**NOTE: Please include name of applicant and owner of parcel.**





# APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT

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 or ( ) No

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

\_\_\_\_\_  
\_\_\_\_\_

-or -

Explain how the non-conformity 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 or diminish the value or interfere with future uses of other property in the area.

\_\_\_\_\_  
\_\_\_\_\_

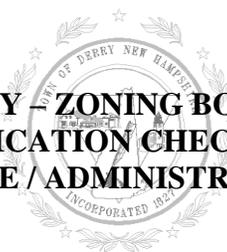
4. Explain how the cost of correction far outweighs any public benefit to be gained. \_\_\_\_\_

\_\_\_\_\_

Applicant (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**TOWN OF DERRY – ZONING BOARD OF ADJUSTMENT  
APPLICATION CHECKLIST  
FOR VARIANCE / ADMINISTRATIVE APPEAL**

FOR AN APPLICATION TO BE CONSIDERED COMPLETE AND PLACED ON AN AGENDA, YOU MUST HAVE THE FOLLOWING:

1. Application Form Completed (\_\_\_)
2. Complete Abutters List (\_\_\_)
3. Letter of Explanation – 10 copies (\_\_\_)
4. Letter from Owner authorizing applicant to file on owner’s behalf or a Purchase & Sales Agreement (if not the owner) (You may blank out confidential information regarding sales price, etc.) (\_\_\_)
5. Filing Fee: \$100.00 – plus abutter notification fees (\_\_\_)
6. Vicinity Ownership Map: (\_\_\_)  
10 copies of Plot Plan/Tax Map
7. Current Recorded Deed with copy of any covenants. (book & page) (\_\_\_)
8. 10 Copies of Certified Plot Plan (recommended) clearly showing the proposed use. (\_\_\_)  
Commercial Site/Subdivision Plan (\_\_\_)

**PLAN MUST SHOW**

- A. Location of existing and proposed buildings and additions and their dimensions in square feet. (\_\_\_)
- B. Distances on all sides between buildings and property lines. (\_\_\_)
- C. Generalized floor plan showing dimensions and the square Footage of areas for proposed uses. (\_\_\_)
- D. Information on septic system – existing or proposed (\_\_\_)

You should be prepared to make a presentation to the Board of Adjustment at the public hearing addressing the criteria. If your request is granted – you may apply for a building permit after waiting the 30 day appeal period.

**NOTE: PLEASE MAKE SURE THAT ALL PAPERWORK SUBMITTED TO THE BOARD HAS YOUR NAME/ADDRESS ON IT FOR PROPER IDENTIFICATION.**

Should you require further assistance contact the Administrative Secretary of the Building Dept. @ (603) 432-6148

**674:33-a - Equitable Waiver of Dimension Requirement.**

- 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.