

GILMANTON ZONING BOARD of ADJUSTMENT

INSTRUCTIONS TO APPLICANTS APPEALING TO THE BOARD OF ADJUSTMENT

IMPORTANT: READ CAREFULLY BEFORE FILLING OUT ATTACHED APPLICATION.

The Board strongly recommends that, before making any appeal, you become familiar with the Zoning Ordinance, and also with the New Hampshire Statutes TITLE LXIV, RSA Chapters 672-677, covering Planning and Zoning. The office staff is available to help you.

RSA 674:33-a Equitable Waiver of Dimensional 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.
- 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.

The application form is intended to be self-explanatory, but be sure that you show:

WHO owns the property? If the applicant is not the owner, this must be explained and written authorization from the owner must be attached.

WHERE is the property located? Please provide specific directions as to how to get there as all properties may be visited by the ZBA and Conservation Commission. Please mark your property with a stake and cloth or surveyor tape at the top so we can identify your property easily.

DESCRIBE the property. Give area, frontage, side and rear lines, slopes and natural features, etc. Are there any streams, wetlands or flowing water?

WHAT do you propose to do? Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior applications concerning the property. If your application is for a new home, addition or other structure, please put stakes with cloth or tape at each corner of the proposed structure.

WHY does your proposed use require an appeal to the Board of Adjustment?

WHY should the appeal be granted?

PREPARE A LIST of all abutting property owners, have it verified at the Town office, and attach it to your application. If you have any difficulty, consult the assessor's office, but the accuracy of the list is YOUR responsibility. A list can be printed by utilizing the online tax maps.

ABUTTER: (RSA 672:3) "Abutter" means any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

MAIL or DELIVER the completed application, with all attachments to the Community Development Department within the Selectmen's Office. Application should include 7 plan copies to scale, 1 digital copy of the plan, 3 mailing labels of each abutter including owner, applicant, and agent, and fees.

FEES for the application are \$85 plus \$8 per notice to the owner, applicant, agent, and abutters.

UPON RECEIPT OF YOUR PROPERLY COMPLETED APPLICATION

- The Board will schedule a public hearing.
- Public notice of the hearing will be posted and printed in a newspaper, and notice will be mailed to you, to all abutters, and to other parties whom the Board may deem to have an interest, at least 10 days before the date of the hearing.
- You and all other parties are invited to appear in person or by agent or counsel to state reasons why the application should or should not be granted.
- After the public hearing, the Board will reach a decision.
- You will be sent a notice of decision.

YOU HAVE THE RIGHT TO APPEAL if you believe the Board's decision is wrong. The Selectmen, or any party affected, have similar rights to appeal the decision in your case.

- To appeal, you must ask the Board for a re-hearing, in the form of a letter to the Board.
- The letter must be made within 30 days of the Board's decision, and must set forth the grounds on which it is claimed the decision is unlawful or unreasonable.

The Board may grant such a re-hearing if, in its opinion, good reason is stated in the letter.

The Board will not reopen a case based on the same set of facts unless it is convinced that an injustice would be created by not doing so.

Whether or not a re-hearing is held, you must have requested one before you can appeal to the courts.

When a re-hearing is held, the same procedure is followed as for the first hearing, including public notice and notice to abutters. See RSA Chapter 677 for more detail on re-hearing and appeal procedures.

APPLICATION FOR AN EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS

To: Zoning Board of Adjustment,

Town of Gilmanton

Name of Applicant _____

Address _____

Phone# _____ Email _____

Owner _____
(if same as applicant, write "same")

Location of Property _____
(address) (map & lot number)

NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if the space provided is inadequate.

Application for an Equitable Waiver of Dimensional Requirements

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 () 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 nonconformity was discovered after the structure was substantially completed
or after a vacant lot in violation had been transferred to a bona fide purchaser.

Do not write in this space.

Case No. _____

Date Filed _____

(signed - ZBA)

- and -

How the violation was not an outcome of ignorance of the law or bad faith but resulted from a good faith error in measurement or calculation. _____

3. Explain how the nonconformity does not constitute a nuisance nor 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. _____

Please provide the following information regarding the subject property:

1. Is the land, building or structure in question located on a Class V road? _____
2. What is the frontage of the lot? _____
3. What is the height of the structure? _____
4. Does the proposed construction involve the addition of any bedrooms to an existing home? _____
5. Is a septic system design approval from the NH Department of Environmental services necessary for the proposed construction? _____
If so, what is the State approval number? _____

If the previous questions are not answered completely, the applicant may be notified that this appeal could be rejected for lack of information.

I understand that I must appear in person or be represented by my agent at the public hearing. The agent who represents me at this hearing must be familiar with the case and I agree to be bound by his or her testimony.

By signing this application, you as owner or applicant representing the owner, hereby give permission for any member of the Zoning Board of Adjustment or Conservation Commission, to enter onto the property in order to make a decision based on attributes of the property.

Applicant _____ Date _____
(Signature)

Applicant _____ Date _____
(Signature)