

**TOWN OF WAKEFIELD
ZONING BOARD OF ADJUSTMENT**

2 High Street
Sanbornville, New Hampshire 03872

**APPLICATION FOR EQUITABLE WAIVER
OF DIMENSIONAL REQUIREMENT**

Instructions and Information:

Please read carefully prior to filling out the attached application.

ALL BLANKS MUST BE FILLED IN FULLY AND COMPLETELY AND APPROPRIATE DOCUMENTS ATTACHED. APPLICATION MUST BE CONSIDERED COMPLETE ENOUGH TO PROCEED IN ORDER TO SCHEDULE A HEARING.

The Board strongly recommends that before making any appeal to the Board, including the requesting of a variance, that you become familiar with the Wakefield Zoning Ordinance, and also the New Hampshire Statutes, RSA Chapters 672-677. You may review the Zoning Ordinance at the Town Hall.

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 is not considered to be a nonconforming use and the waiver does not exempt future use, construction or additions on the property from full compliance with the Zoning Ordinance.

For an Equitable Waiver to be legally granted, the Board (ZBA) may grant an equitable waiver **only** for existing dimensional nonconformities **provided the applicant can meet the required standards:**

1. The nonconformity was not discovered until after the structure was substantially completed or after a vacant lot in violation had been transferred to a bona fide purchaser,
2. The nonconformity was not an outcome of ignorance of the law or bad faith but was instead caused by a legitimate mistake.

If the above two conditions are satisfied, the ZBA can move on to the additional findings to grant the waiver:

3. The nonconformity does not constitute a public or private nuisance nor diminish the value or interfere with future uses of other property in the area; *and*
4. The cost of correction would far outweigh any public benefit to be gained.

In lieu of the requirements in paragraphs 1 and 2, above, the violation has existed for 10 years or more with no enforcement action, including written notice, commenced by the Town or persons affected thereby.

NOTE: Prior to submitting your application for Equitable Waiver, ensure that you have read and understand RSA 674:33-a, in its entirety, as the statute provides the statutory language which the ZBA must follow in evaluating and deciding your case. (This "statutory language" is duplicated on the application form, pages 3 and 4). DO NOT submit an application for Equitable Waiver unless you believe that you can produce *evidence* to support the application using the statutory requirements.

The ZBA 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 findings listed on Pages 3 and 4 of the attached "Application For Equitable Waiver of Dimensional Requirement," under paragraph F, "*Considerations...*"

If you are applying for an **Equitable Waiver**, you must first have some form of determination that the subject of the Equitable Waiver is not permitted. Most often, this determination is a denial of a building permit or some other document from the Code Enforcement official. A copy of this determination, whether it be a copy of a letter or notice, ***must be attached*** to your application. Should you discover a nonconforming condition outside of a process involving Code Enforcement or Planning Board procedures, you should contact the Code Enforcement official for an evaluation of the condition and receive a determination notice or letter.

You must also prepare and provide a list of all abutting property owners and attach a copy to your application. You must prepare two sets of mailing labels for the abutters, owners, and Association if your property is in an Association Subdivision. Information (tax maps, etc.) to assist you in compiling the abutters list is available at the Town Hall. NOTE: The abutters list must be current, with names and addresses being no older than 5 days prior to the date of the Variance Application.

Once your application is complete, you may either deliver the completed application, together with attachments, to the office of the Board of Selectmen or send the application by mail to the Clerk, Zoning Board of Adjustment, together with the following fees:

- **Application Fee - \$125.00**
- **Public Notice Fee - \$125.00, to include newspaper notice and any recording fee for the decision.**
- **Certified Mail Fee - \$6.00 each for applicant, each agent for applicant, each attorney for applicant, each abutter and each interested party entitled to notice under New Hampshire Law.**

The total check or money order must be made payable to the Town of Wakefield and must be paid in full at the time of filing your application.

Note: The applicant shall pay for all additional fees for public notice and certified mail as may be required by the Board's Rules of Procedure.

When your properly completed application is received and accepted as complete, the Board will schedule a Public Hearing within 30 days. Public Notice of the hearing will be posted in the Granite State News at least 10 days prior to the hearing, and notices of hearing will be mailed to you and to all abutters at least 5 days prior to the hearing. You and all other parties will be invited to appear in person or by agent or counsel to state reasons and give other information in support of the application.

During the Public Hearing, the Board will reach a decision to grant, conditionally grant, deny or continue the Public Hearing if deemed necessary by the Board to obtain further information. At the conclusion of the hearing or continued hearing, the Board will vote on your application, and you and other parties to the

If you believe the Board's decision is erroneous, **you and any other person** directly affected thereby has a right to appeal. To appeal, you must first (before proceeding to any Court) request a Rehearing in

writing, stating all reasons why the decision was erroneous under the law, unlawful or unreasonable, and/or present facts which were not presented, or were not available at the time of hearing, or were not considered by the Board in its determination of the case which would render the decision unlawful or unreasonable. This request, known as a ***Motion For Rehearing***, must be received by the Board's Clerk or filed with the Selectmen's Office, ***no later than 30 days following the date of hearing***. The request for rehearing may be in the form of a letter, signed by you or your agent/counsel, and must contain all bases for rehearing as described above. The request ***must set forth fully every ground upon which it is claimed that the decision complained of is unlawful or unreasonable***.

With regard to Rehearings, please review RSA 677:2 through 14, generally, and specifically RSA 677:3 (I) and (II), regarding the procedure followed by the Board when it receives such a request. With regard to appellate procedure following Rehearing, please review RSA 677:2 through 14, generally, and specifically RSA 677:4.

The attached application form must be properly and completely filled out. Follow the following checklist to ensure you have properly filled out the application, as well as you have attached the required documents and fees:

- a. All **"property owner"** and **"applicant"** information is complete, page 1 _____
- b. The **correct Map # and Lot #**, as well as **911 address, square foot and frontage information** is included, page 1 _____
- c. The **"Location of Property"** is complete. Write it as if you are giving directions to a friend coming from Rochester NH, page 1 _____
- d. The **Zone** is specified (check and circle the applicable zone), page 1 _____
- e. **Initial and date, bottom of page 1** _____
- f. **Each question is answered on page 2**, completely and fully _____
- g. Under **"Proposed Equitable Waiver Summary"**, paragraph D, page 2, be sure you have fully summarized **what and why you need the Waiver**, what requirement of the Zoning Ordinance is not met without the Waiver _____
- h. **Initial and date, bottom of page 2** _____
- i. **Complete the "Considerations" statements on page 3 & 4**, with all reasons and facts supporting each statement _____
- j. **Initial and date, bottom of page 3** _____
- k. **Answer questions G & H** on page _____
- l. **Read, sign and date the certifications on page 5** _____
- m. **Initial and date, bottom of page 5** _____

- n. **Complete the Abutter's List, page 6, and/or attach an Abutters List** which you may be able to receive from the Assessor's Office _____

- o. **Provide the requested information, signatures and date on the bottom of the Abutters List, page 6**, whether or not the list is used or another listing, such as one from the Assessor's Office is attached _____

- p. **Attach drawings, sketches, or plans** which show detail of the property, all structures, specifically those relevant to this Waiver request _____

- q. **Attach the required fees for the application** (See page 2 of instructions) in the form of a check or money order payable to the Town of Wakefield _____

- r. **Attach copy of Code Enforcement letter** or other notice of determination _____

- s. Read "**Plan or Sketch Requirements**" (page 6 of these instructions) _____

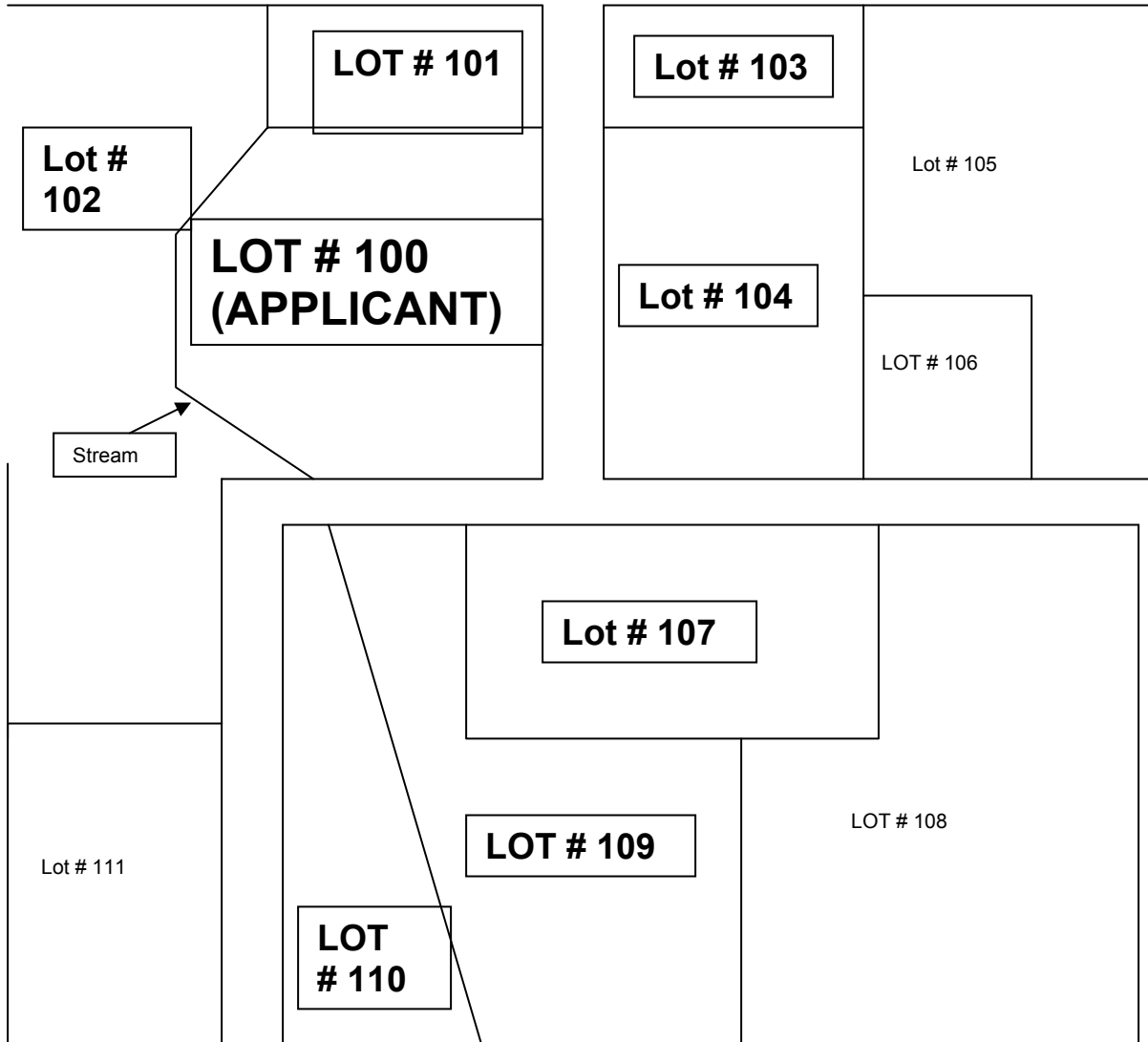
- t. **Detach the five pages of instructions and keep the instructions**, prior to submitting your application _____

PLAN OR SKETCH REQUIREMENTS
ZONING BOARD OF ADJUSTMENT

A plan or detailed sketch is required as part of your application and presentation of your application to the ZBA. Since a similar plan is may have been necessary for a building permit application and/or for the Planning Board in a Site Review, that plan may serve both purposes. Although a hand-drawn sketch may be used, *it must be to scale, be detailed enough to provide dimensions of property, applicable structures and specific to the dimensional requirement you intend to address and which is subject of the application.* The more information you provide on the plan or sketch, the better the Board will understand your appeal. This plan or sketch shall contain the following features, if relevant:

For all appeals seeking Dimensional Relief, a stamped, certified survey may be required. However, all plans submitted should include as much of the following information as is reasonable.

1. Submitted plans must be current and up to date.
2. Drawn to scale, with drawing number and north arrow.
3. Signature and name of the plan preparer.
4. The lot dimensions, bearings and any bounding streets and their right-of-way widths or half sections.
5. Location and dimensions of existing or required service areas, buffer zones, landscaped areas, recreation areas, safety zones, signs, rights-of-way, streams, drainage, conservation or other easements, wetlands, steep slopes.
6. All existing buildings or other structures with their dimensions including encroachments.
7. All proposed buildings, structures with their dimensions and encroachments indicating "proposed" on the plan for each.
8. All setback dimensions.
9. Elevations, curb heights and contours.
10. Location and numbering of parking spaces and lanes with their dimensions. Indicate how required parking spaces are computed.
11. Dimensions and directions of traffic lanes and exits and entrances.
12. Any required loading and unloading and trash and snow storage areas.



AN ABUTTER IS DEFINED AS ANY PROPERTY EITHER **DIRECTLY ADJACENT TO, DIAGONALLY ACROSS FROM, OR ACROSS THE STREET OR STREAM FROM** THE PROPERTY IN QUESTION. IN THE EXAMPLE ABOVE, WITH THE LOT IN QUESTION BEING **#100**, THE ABUTTERS WOULD BE THE FOLLOWING: **101, 102, 103, 104, 107,109 AND 110,**