



BELMONT ZONING BOARD OF ADJUSTMENT APPLICATION INSTRUCTIONS - EQUITABLE WAIVER

An Equitable Waiver of the dimensional requirements of the Zoning Ordinance for existing construction may be applied for if the situation conforms to the criteria of RSA 674:33-a. All forms, schedules and Rules of Procedure are available on line and in the Land Use office. Correctness of information is the responsibility of the Applicant. Applications must be complete and legible, either typed or printed in ink. Incomplete or illegible applications will be returned and must be resubmitted. Applicants having questions regarding the application process may contact the Land Use Office.

Application

Each application for a hearing before the Board shall be made on the most current forms provided by the Land Use Office following the instructions attached thereto. All physical evidence submitted to the Board as part of the application or during the public hearing will be retained by the Board as part of the record of the application. By signing the application the applicant authorizes members of the Board and/or staff to enter onto and view the premises for the purpose of understanding the request being made. The subject property must be clearly marked with the 911 street address to facilitate such views. At a minimum, the following shall be required:

1. Notification List – seven copies of the attached notification list with all names and mailing addresses for everyone who will receive notification of the public hearing:
 - A. Owner of property. In the case of a condominium or when the building is owned by another, the condo/building owner is the applicant and the condo association, etc. is the landowner.
 - B. Applicant (if different from owner).
 - C. Agent(s) (if different from owner & applicant and not already included in #f below).
 - D. Owners of record of all abutting properties (directly abuts the lot in question or is directly across a street or stream from the lot in question) as indicated in the Town Records not more than 5 days before the date of filing, identified by the map and lot numbers as shown on the Belmont Tax Map. Abutting condominiums or associations shall receive notice to the officers of the condominium or association. Abutting manufactured housing parks shall receive notice to the park owner and those tenants who own manufactured housing which adjoins or is directly across the street or stream from the lot in question.
 - E. All individuals or entities holding a mortgage or lien on the subject property as of the date the application is submitted - You must indicate on the application form with a signed statement whether or not there are any lien holders;
 - F. All individuals whose professional seal appears on any plan submitted;
 - G. All holders of conservation, preservation, or agricultural preservation restrictions as defined under NH RSA 477:45.
2. Envelopes
 - A. one 4"x9-1/2" (#10 business-sized) envelope with the name and address for each name on the above notification list, typed or printed legibly on the envelope and a return address to the Belmont Zoning Board, P.O. Box 310, Belmont, NH 03220. Do not put postage on envelopes and do not include any certified or return receipt labels.
 - B. two extra envelopes each (for a total of 3 envelopes) for Owner, Applicant, and Agents.
3. Fees – Fees are non-refundable. Check for filing and notification fees to be made payable to Town of Belmont. Check for Notice of Decision recording fee to be made payable to Belknap County Registry of Deeds.
4. Application Form - Seven copies of the completed most current application form signed by property owner. In the case of a condominium or building owned by another, signature of both the condo/building

owner **and** the landowner. Signature by anyone else or other representation at the meeting must be approved in writing by the land owner.

5. Plan – Seven copies of a survey, plot plan or accurate scaled drawing must be submitted showing the location and dimensions of all structures, property lines and other pertinent data, including adjacent streets and roads.

If the application is for dimensional relief, an “As-built survey” performed to detail the horizontal and vertical positions of the physical improvements of all or part of a tract, parcel or lot of land as defined in the New Hampshire Code of Administrative Rules Lan 503.02 (a) shall be submitted. The survey need only be made with enough detail to clearly delineate the area for which the dimensional relief is being sought.

If the original-scale survey, plot plan or accurate scaled drawing is 11”x17” or smaller, ten copies shall be submitted. If it is larger than 11”x17”, three copies at the original size are required and Seven copies of the plan reduced in size to no larger than 11”x17” are also required.

6. Photos - Seven copies clearly showing the area of the property for which relief is being sought, including a photo showing the entrance to the property from the main road to facilitate locating the property for inspection purposes. The property street number must be easily seen from the main road.
7. Decision Being Appealed – Seven copies of decision being appealed/denial or the determination by the zoning administrator that ZBA action is required.
8. Other Permits - Seven copies of all required other agency permits (NH DES, NH DOT, etc.)
9. Additional documentation - Seven copies of any other information that the applicant wishes the Board to consider at the public hearing (letters, deeds, etc.).
10. Completed application packets shall be delivered during regular business hours to the Land Use Office where the application shall be date-stamped upon receipt. Completed applications are considered received for the purposes of scheduling on the date so stamped.

PLEASE NOTE: Your completed application along with all other necessary paperwork and fees must be submitted to the Land Use Office by the closing date of the meeting you wish to attend (see meeting and closing date schedule). A date, time and place will be set for the public hearing and notice will be sent to the Applicant and all other necessary individuals. The Town will publish notice of the meeting in a newspaper of general circulation.

In signing the application form, the landowner and condo/building unit owner (if applicable) or authorized applicant authorizes members of the Board and/or staff to enter onto and view the premises for the purposes of understanding the request being made. Board members and/or staff may or may not choose to view the site. The site must be clearly marked with the 911 street address to facilitate inspection. You or your representative must attend the Zoning Board hearing. If no one is present at the meeting to present your application, it will be denied without prejudice and must be resubmitted. Decisions are usually rendered by the Board at the same meeting at which the public hearing is held. In some instances, decisions may be made at a later date. The findings of the Board will be forwarded to the Applicant.

The public hearing will be held first, with the Applicant or his representative presenting his petition. Following this, those wishing to speak in favor or in opposition may do so. All comments must be directed to the Chair. Everyone rising to address the Chair shall identify himself or herself, giving his or her name and address.

In the instance where a full five-member voting Board cannot be seated, the chair will offer the applicant the opportunity to proceed with a reduced Board, or to have the hearing postponed until the next regular meeting

date, with the understanding that an affirmative vote of three members is required to decide in favor of any appeal and that action by a reduced Board is not, in and of itself, grounds for a rehearing.

Reasons are given for all decisions of the Board. If the Board wishes to wait to make a decision, the Applicant will be notified. Decisions will be announced by the Chair at the time they are made, with a copy mailed to the Applicant. For additional information, see ZBA Rules and Regulations. Any party affected by the decision of the Board has the right to appeal. Please refer to the Ordinance, RSA's or contact the Land Use Office for further information on requesting a rehearing and what form that request must take.

Please note: A request for rehearing must be filed no more than 30 days from the date the Board took the action being appealed. You must request a rehearing and the Board must act to grant or deny such request before you can appeal to the courts.

SAMPLE ENVELOPE

SAMPLE OF ENVELOPE THE APPLICANT MUST PROVIDE FOR EACH NOTIFICATION

Belmont Zoning Board P.O. Box 310 Belmont, NH 03220	Do Not Attach Postage
Notification Name Full Mailing Address	

APPLICATION CRITERIA

The Zoning Board must base its action regarding your application on the following criteria. Address the criteria fully in your application and in your presentation to the Board during the public hearing. If you have any questions regarding the criteria, contact your legal counsel or the Land Use Office. The Board suggests you attend a Zoning Board hearing to become familiar with the process prior to submitting your application if possible. Please refer to the Zoning Ordinance and RSA's for further information on these matters.

EQUITABLE WAIVER CRITERIA:

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.

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.

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.

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.

COMPLETE THE FOLLOWING FOR AN EQUITABLE WAIVER REQUEST

(Use additional sheet if necessary)

1. Describe the circumstances that resulted in the violation not being 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.

2. Explain how 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.

In lieu of the findings required by the Board under 1 and 2 above, 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. Explain how 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.

4. Describe how 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.
