

# Town of Milton

## Equitable Waiver Application Instructions

Instructions to applicant for an Equitable Waiver from the Milton New Hampshire Zoning Board of Adjustment. The Zoning Board of Adjustment strongly recommends that, before making any appeal, you become familiar with Milton's Zoning Ordinance and with New Hampshire Statutes Title LXIV, RSA Chapters 672 to 677, covering planning and zoning.

A landowner may obtain an "Equitable Waiver" from a zoning requirement when a lot or a structure "is discovered to be in violation of a physical layout or dimensional requirement" under a zoning ordinance, if certain other criteria are met. [RSA 674:33-a, I](#). However, an equitable waiver may only be granted from physical layout, mathematical or dimensional requirements, and not from use restrictions. [RSA 674:33-a, IV](#)

Your appeal for an **Equitable Waiver** will be granted if you can show that the following conditions are met:

1. The violation was not noticed or discovered until after a structure in violation had been substantially completed, or a lot or other division of land in violation had been conveyed to a bona fide purchaser for value.
2. The violation was caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in the interpretation or administration of this ordinance by the Code Enforcement Officer.
3. The violation does not constitute a nuisance, diminish the value of properties in the area, or adversely affect any present or permissible future uses of the premises.
4. Presuming construction or investment in ignorance of the facts constituting the violation, the cost of correction far outweighs any public benefit to be gained in requiring the violation to be corrected.
5. The violation has existed for ten (10) years or more and no enforcement action has been commenced against the violation during that time.

If you are applying for an equitable waiver, the application form must be properly filled out. Describe the property by giving the area, frontage, side and rear lines, slopes, natural features and any other pertinent information regarding the property. Attach sketches, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of prior applications concerning the property. Attach a plat drawing showing where the abutters abut your property. The ZBA may request additional information such as a professionally prepared site plan.

Pursuant to RSA 676:7 the State law of New Hampshire, the Town of Milton is required to notify the applicant and every abutter of the public hearing by certified mail, return receipt requested. The cost of required publication or posting of notice and the cost of mailing said notices, shall be paid by the applicant.

According to RSA 672:3, "abutter" is defined as "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. For purposes of receipt of notification by a municipality of a local land use board hearing, in the case of any abutting property being in condominium or other collective form of ownership, the term abutter means the officers of the collective or association, as defined in RSA 356:B, XXIII. Please note: All roads, highways, railroads, rivers, ponds and streams are neutral.

Prepare a list of all abutting property owners (use attached sheet), verify the list at Milton's Town Office, and return it with your application. List the names and mailing addresses of the applicant and/or property owner and authorized agent (surveyor), not more than five (5) days prior to submission, per RSA 676:4,1(b). The accuracy of the list is the applicant's responsibility.

The Zoning Board of Adjustment will schedule a public hearing within 30 days of receipt of your properly completed application. Public Notice of the hearing will be posted and printed in Fosters Daily Democrat and notice will be mailed to you, all abutters, and other parties whom the Board may deem to have an interest, at least five (5) days prior to the date of the hearing. You and all other parties will be invited to appear in person or by agent/counsel to state reasons why the appeal should or should not be granted.

After the public hearing, the Board will reach a decision. In granting a permit, the ZBA may attach appropriate conditions to the approval. You will be sent a Notice of Decision. If you believe the Board's decision is wrong, you have the right to appeal. The Selectmen or any party affected, have similar rights to appeal the decision in your case. To appeal, you must first ask the Board for a rehearing. The motion for rehearing must be in the form of a letter to the Board. The motion 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 rehearing if, in its opinion, good reason is stated in the motion. The Board will not reopen a case based on the same set of facts, unless its' convinced that an injustice would be created by not doing so. Whether or not a rehearing is held, you must have requested on before you can appeal to the courts. When a rehearing is held, the same procedure is followed as for the first hearing, including public notice (Fosters) and notice to all abutters. (Applicable fees will be charged to the applicant motioning for the rehearing).

Fees are charged to cover the cost of preparing and mailing the legally required notices:

Application Fee . . . . .	\$150.00
Abutter Notice . . . . .	\$8.53 each

Please make checks or money orders payable to the Town of Milton. Mail or deliver the completed application with all the necessary attachments to:

Zoning Board of Adjustment  
PO Box 310  
Milton NH 03851

**\*\*\*Important\*\*\***

Property Identification signs must be posted on the property for the 5-days prior to hearing. Failure to post may result in application not being accepted.

# Town of Milton Equitable Waiver" Application

Date Received: \_\_\_\_\_ Public Hearing Date: \_\_\_\_\_

Applicant(s) Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Landowner's Name(s): \_\_\_\_\_

Map # \_\_\_\_\_ Lot # \_\_\_\_\_ Zone: \_\_\_\_\_

Physical address of property: \_\_\_\_\_

*Note: This application is not acceptable unless all required statements have been made.*

An "**Equitable Waiver**" is requested from Article: \_\_\_\_\_, Section: \_\_\_\_\_ of the Milton Zoning Ordinance to permit:

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

1. Does the request involve a dimensional requirement, not a use restriction? \_\_\_\_\_

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:

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

\_\_\_\_\_ and  
how the violation was not an outcome of ignorance of the law or bad faith but resulted from the legitimate mistake:

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

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:

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

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Applicants signature: \_\_\_\_\_ Date: \_\_\_\_\_

Property Owners signature: \_\_\_\_\_ Date: \_\_\_\_\_

### **Site Walk Authorization**

The owner(s), by filing an application, hereby give permission for any member of the Milton Zoning Board of Adjustment and such agents or employees of the Town or other persons as the Zoning Board of Adjustment may authorize, to enter upon the property which is the subject of the application at all reasonable times for the purpose of such examinations and inspection as may be appropriate.

Owner(s) Signature: \_\_\_\_\_  
\_\_\_\_\_

Authorized Agent Signature: \_\_\_\_\_

