

February 13, 2025

Selectmen,

Before Gail left, she had been working on an Equitable Waiver of Dimensional Requirements application.

I completed the research she had started and have drafted an application.

If this is approved by the Selectboard, I will add it to the Website, etc.

Thank you,

Jan

**TITLE LXIV**  
**PLANNING AND ZONING**  
**CHAPTER 674**  
**LOCAL LAND USE PLANNING AND REGULATORY POWERS**  
**Zoning Board of Adjustment and Building Code Board of Appeals**  
**Section 674:33-a**

**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.

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.

**Source.** 1996, 226:4, eff. Jan. 1, 1997.



Town of Canterbury  
Zoning Board of Adjustment

Application  
EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENT

Submit application, plans (2 sets), supporting documents & abutters list.  
21 days before a regularly scheduled meeting of the ZBA  
Application Fee is \$100.00 plus \$11.00 per abutter (per RSA 676:7) including applicant.

FOR OFFICE USE ONLY

Case: \_\_\_\_\_ Date Received: \_\_\_\_\_ Received by: \_\_\_\_\_

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

Applicant Address: \_\_\_\_\_

Email: \_\_\_\_\_

Name of Property Owner(s): \_\_\_\_\_

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

Location and Description of Property: \_\_\_\_\_

Map # \_\_\_\_\_ Lot# \_\_\_\_\_ Zoning District: \_\_\_\_\_

Proposed Use: \_\_\_\_\_

Details of Request: \_\_\_\_\_

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

The undersigned hereby requests the following equitable waiver from dimensional requirement(s) imposed by Article(s) \_\_\_\_\_ Section(s) \_\_\_\_\_ of the Town of Canterbury Zoning Ordinance:

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The undersigned alleges that the following legal criteria are satisfied. The application shall include submission of statements in writing together with plans (no larger than 11" X 17"), records, photographs, and such other materials as necessary to justify granting the equitable waiver. ***The applicant bears the burden of proof to present sufficient evidence to the ZBA to grant the relief being sought.***

Criteria for Equitable Waiver from Dimensional Requirement per RSA 674:33-a and Zoning Ordinance Section 5.2:

- a) That the violation has been unknown to the owner or owner's predecessors or agents or municipal officials until the structure has been substantially completed, or a lot has been conveyed to a bona fide purchase for value (i.e. an innocent purchaser who had no knowledge or reason to know of any problems and who, in good faith, paid full value).

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- b) The violation was caused by a good faith error in measurement or calculation by owner of agent or an error in interpretation of the ordinance or its applicability by a municipal "in the process of issuing a permit" while the official was acting within the scope of his/her authority.

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- 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, does not interfere with or adversely affect any present or permissible future uses of any such property; and

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- d) And, due to the degree of past construction or investment, the cost to correct the violation so far outweighs the public benefit to be gained that it would be inequitable to require correction.

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Pursuant to RSA 674:33-a (II), in lieu of the findings required by the ZBA under paragraphs (a) and (b) above, the applicant may demonstrate to the satisfaction of the ZBA that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violations, has been commenced against the violation during the time by the Town of Canterbury or an person directly affected.

Note: The equitable waiver applies to lots or structures, which are in violation of dimensional requirements (e.g., Setbacks, frontage, or area) established by the Zoning Ordinance. ***It does not apply to use restrictions.***

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Applicant's Signature

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Owner's Signature

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Print Name

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Print Name

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Date

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Date

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Applicant's Signature

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Owner's Signature

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Print Name

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Print Name

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Date

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Date