



# PROCEDURES FOR FILING AN EQUITABLE WAIVER

Certain development proposals and uses of land require the approval of an “equitable waiver” from the Nashua Zoning Board of Adjustment (ZBA). An Equitable Waiver is designed to address the plight of a property owner who discovers that a building or other improvement was improperly laid out, encroached in a setback, or violated some other dimensional requirement of the Zoning Ordinance.

For many, appearing before the ZBA represents a new experience. The purpose of this handout is to provide information necessary for proceeding with this process. It is recommended that you carefully read the following instructions and contact the Planning Department (603-589-3090) should you have any questions or desire additional information.

## 1. HOW TO COMPLETE THE ZBA APPLICATION

- a. Obtain a ZBA application form. Forms are available at the City of Nashua Planning Department, City Hall, 229 Main Street, Second Floor, Nashua, New Hampshire. It is also available at [www.nashuanh.gov](http://www.nashuanh.gov). Complete the application, including all necessary signatures. Applicants must secure the owner’s written authorization as provided on the application form.
- b. All applications must be submitted with a plot plan denoting the location of property lines, all existing and proposed buildings/structures in relation to the property lines, paved or parking surfaces, and appropriate measurements. Plot plans do not need to be completed by a professional engineer or surveyor; however, such plans must be drawn to scale and accurately reflect existing and proposed conditions. It is recommended that plot plans be drawn on an 8½” x 11” sheet of grid paper. (See example of plot plan attached.)
- c. Applications must be submitted with appropriate application fees payable to the City of Nashua, in order to defray costs associated with legal notification, advertising, and administrative expenses. The application fees vary depending on the type and number of requests being sought. Refer to #4 below for determining appropriate application fees.
- d. Submit a completed application, plot plan, and application fee to the Planning Department.
- e. Upon receipt of a complete application, your request will be scheduled for a public hearing. Refer to the attached schedule of hearing dates and corresponding deadline dates for submitted applications.
- f. The Planning Department will notify applicants by certified mail approximately ten (10) days prior to the hearing confirming the time and location of the meeting. As a general rule, hearings are held at 6:30 p.m. in the third floor auditorium in City Hall. It is important, however, to refer to your notification letter in the event of a change in time or location.

## 2. THE PUBLIC HEARING

- a. Attendance at the ZBA public hearing is mandatory by either yourself or your representative. When your case is called, approach the podium, give your name and address for the record, and proceed to explain the nature of your request. When considering an application, the ZBA can weigh only the following conditions of law relative to an equitable waiver. Therefore, it is important that you explain how each condition applies to your case.
  1. The dimensional violation cannot constitute a nuisance, diminish the value of surrounding properties, or adversely affect either present or permissible future uses of the property.
  2. The cost of correcting the dimensional violation must be far greater than any public benefit to be gained by requiring its correction.
  3. The applicant must show that the dimensional violation was not discovered until after the affected structure was substantially complete or until the affected lot was sold to a bona fide purchaser for value.
  4. The applicant must show that the violation was the result of a good faith error, and not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on part of the owner.

- b. Members of the public may speak either in support or opposition to an equitable waiver once the petitioner has addressed the conditions of law. Both parties may offer rebuttal to previous testimony prior to concluding the case. The deliberation and decision of each case occurs after the case has been presented.

**3. ADDITIONAL PROCEDURES – REQUEST FOR REHEARING**

- a. If you are aggrieved by a ZBA decision, you may file a Request for Rehearing within thirty (30) calendar days following the decision. It is recommended that the Request for Rehearing be hand delivered to the Office of Zoning. A Request for Rehearing, presented in letter format and addressed to the ZBA, should outline the basis for the rehearing request. The ZBA is empowered to grant a rehearing if it is found a procedural error has occurred or if the Request for Rehearing contains new evidence not presented during the initial hearing.
- b. If a rehearing is granted, you must submit a new application to the ZBA to schedule a new hearing. A Request for Rehearing that is denied may be appealed to the New Hampshire Superior Court within thirty days from the date of decision.

**4. FEES (See Article XLIII, C. (1) and (2) for more information)**

- a. **Basic fee for all petitions except as otherwise noted** **\$330.00**
- b. Basic fee for special exception petitions involving the following:
  - 1. Filling of floodplains \$440.00
  - 2. Filling of wetlands \$440.00
  - 3. Planned business developments \$440.00
  - 4. Planned industrial developments \$440.00
  - 5. Processing/removal of raw material \$440.00
- c. Basic fee for use variance \$900.00
- d. Applications with more than one request \$200.00
- e. The abutter notification fee shall be \$3.00 per abutter, plus any necessary postal fees.  
Notification fees do not apply to existing residential structures on lots containing three residential units or less. The time and date of the hearing shall not be set, nor shall notices be sent out, unless and until all the supporting documents, including all permits, plans, approvals and other documents required for the application have been filed with the administrative officer. Additionally, any postponement caused by the applicant, unless the direct result of Zoning Board action shall necessitate the payment of a processing fee of \$100.00.
- f. The applicant shall pay \$15.00 for each required on-site notification sign. A recovery fee of \$100.00 shall be paid by the applicant for each sign remaining on-site in excess of seven days of the public hearing.



**City of Nashua**  
**Planning Department**  
229 Main Street  
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
WEB www.nashuanh.gov

**EQUITABLE WAIVER APPLICATION (ZBA)**

**PLEASE NOTE: INCOMPLETE OR ILLEGIBLE APPLICATIONS WILL BE RETURNED TO APPLICANT.**

This application must be completed and submitted to the Planning Department no later than the dates listed on the Zoning Board of Adjustment (ZBA) schedule sheet. Please print clearly or type.

**1. EQUITABLE WAIVER INFORMATION**

a. ADDRESS OF REQUEST \_\_\_\_\_

Zoning District \_\_\_\_\_ Sheet \_\_\_\_\_ Lot \_\_\_\_\_

b. DESCRIPTION:

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

**2. GENERAL INFORMATION**

a. **APPLICANT / OPTIONEE** (List both individual name and corporate name if applicable)

**(Print Name):** \_\_\_\_\_

Applicant's signature \_\_\_\_\_ Date \_\_\_\_\_

Applicant's address \_\_\_\_\_

Telephone number H: \_\_\_\_\_ C: \_\_\_\_\_ E-mail: \_\_\_\_\_

b. **PROPERTY OWNER (Print Name):** \_\_\_\_\_

\*Owner's signature \_\_\_\_\_ Date \_\_\_\_\_

Owner's address \_\_\_\_\_

Telephone number H: \_\_\_\_\_ C: \_\_\_\_\_ E-mail: \_\_\_\_\_

\*Agents and/or option holders must supply written authorization to submit on behalf of owner(s).

<b>OFFICE USE ONLY</b>	Date Received _____	Date of hearing _____	Application checked for completeness: _____
A# _____	Board Action _____		
\$ _____ application fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ signage fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	
\$ _____ certified mailing fee <input type="checkbox"/>	Date Paid _____	Receipt # _____	

**3. PURPOSE OF REQUEST**

Answer all questions below. Provide as much information as available to give the ZBA the necessary facts to review your case. Attach additional sheets if necessary.

- 1. Explain how the violation was not noticed or discovered by any owner, former owner, owner’s agent or representative, or municipal official, until the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance.

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- 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 the owner or owner’s agent or representative, but was instead caused by either a good faith error in measurement or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit.

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- 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 future uses of such property.

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- 4. Explain how, due to the degree of past construction or investment made in ignorance of that facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, and it would be inequitable to require the violation to be corrected.

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*I hereby acknowledge that I have read this application and state that the above is correct and agree to comply with all the city ordinances and state laws regulating construction. I understand that only those point specifically mentioned are affected by action taken on this appeal.*

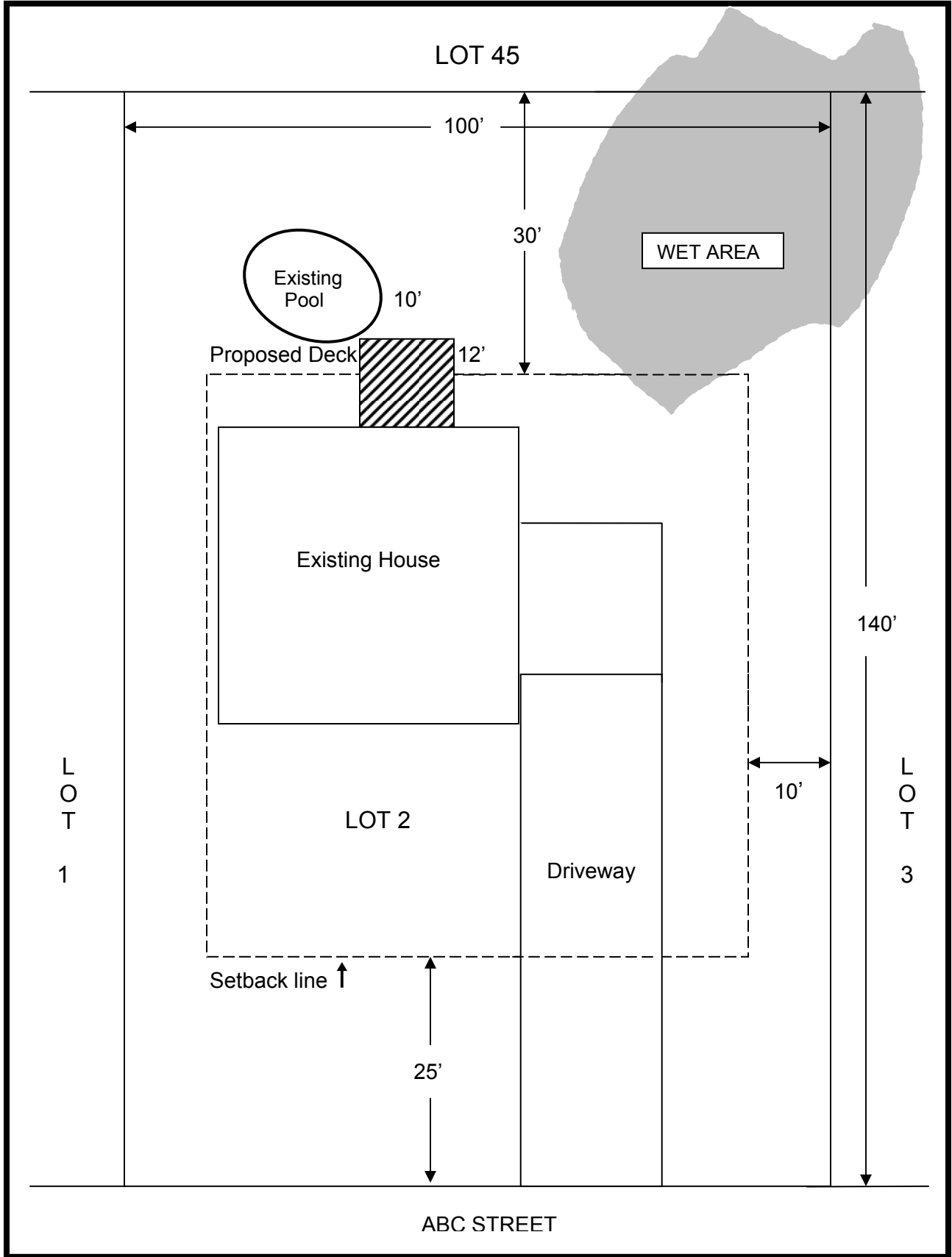
\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

# SAMPLE PLOT PLAN



35 ABC Street

1/2" = 10 feet



**City of Nashua**  
*Planning Department*  
229 Main Street  
Nashua, New Hampshire 03061-2019

Planning & Zoning 589-3090  
Fax 589-3119  
WEB [www.gonashua.com](http://www.gonashua.com)

**NASHUA CITY ZONING BOARD**  
**2023 Meeting and Deadline Dates**

The following deadlines and meeting dates are now in effect:

<u>APPLICATION DEADLINE</u>	<u>ABUTTER NOTIFICATION</u>	<u>HEARING</u>
December 13	December 27	January 10
December 27	January 10	January 24
January 17	January 31	February 14
January 31	February 14	February 28
February 14	February 28	March 14
February 28	March 14	March 28
March 14	March 28	April 11
March 28	April 11	April 25
April 11	April 25	May 09
April 25	May 09	May 23
May 16	May 30	June 13
May 30	June 13	June 27
June 13	June 27	July 11
June 27	July 11	July 25
July 11	July 25	August 08
July 25	August 08	August 22
August 15	August 29	September 12
August 29	September 12	September 26
September 12	September 26	October 10
September 26	October 10	October 24
October 17	October 31	November 14
October 31	November 14	November 28
November 14	November 28	December 12