

Zoning Board of Adjustment Application Instructions

If you have questions on the application process, please call: (603) 352-5440 or
email: communitydevelopment@keenenh.gov



To file a petition before the Zoning Board of Adjustment, four items are required:

1. COMPLETED APPLICATION

Application requirements are specified in the [Land Development Code](#), **Article 25.2** though outlined here for reference. An applicant may request a pre-submission meeting with City Staff to identify any potential concerns with the project design and to ensure the applicant is aware of all information that must be submitted with the application.

A completed application will include:

- Submitted in accordance with the requirements of Article 25.2, Common Application & Review Procedures
- A signed application, filed with the Zoning Clerk, within the deadline adopted by the Zoning Board of Adjustment
- All applicable fees paid

An application may be withdrawn at any time prior to the final decision on the application. Requests for withdrawal shall be made in writing by the applicant to the Zoning Clerk. No refund of the fee or any part of the fee shall be made unless the application is withdrawn prior to noticing the application for a public hearing or decision, in which case, the applicant may be eligible for a refund of the notice fee. It shall be the sole responsibility of the applicant to demonstrate that their application satisfies all applicable standards of review.

2. PLOT PLAN

A scaled plot plan clearly displaying the location and dimensions of all structures and open spaces on the lot in question and on the adjacent lots, as well as any proposed changes on the site, such as, but not limited to, additions to existing structures or the construction of new structures.

3. CERTIFIED NOTICE LIST & MAILING LABELS

A certified notice list and two sets of mailing labels identifying any parties that require notice as part of the application process is required. **Such information shall be current to within 10 days of application submittal.** Per [NH RSA 676:7\(I\)\(a\)](#), the following parties must be noticed by verified mail no less than five days prior to the scheduled meeting:

- Property owner
- Applicant and, if appropriate, authorized agent
- All owners of property located within 200 feet of the subject parcel, as well as all owners of property that directly abuts and/or is directly across the street or stream from the subject parcel
- Holders of conservation, preservation, or agricultural preservation restrictions

The Notice List shall include the following:

- Property owner's name
- Property owner's mailing address
- Street address, if different from mailing address
- Property tax map parcel (TMP) number

The mailing labels shall include the following:

- Property owner's name
- Property owner's mailing address
- Property tax map parcel (TMP) number

The City of Keene's [GIS Database](#) (axisgis.com/keenenh/) can be used to generate a Notice List and mailing labels. Instructions for creating these can be found following this link [Notice List Instructions](#) or on the [Zoning Board of Adjustment](#) page on the City website, under *ZBA Applications*.

4. FEE SCHEDULE

The application fee as set forth in the Land Development Code Schedule of Fees in Appendix B of the City Code of Ordinances, includes the costs for published and mailed notices, which shall be Certified Mail. These fees can be included on one check made payable to "City of Keene" or made by credit card.

- Application fee.....\$100.00
- Mailed public notice for certified mail.....*Current USPS certified mail rate
- Published notice for legal advertisement in the newspaper.....\$62.00

* Please call the Community Development Department for the current certified mailing rate.

GENERAL INFORMATION

In addition to the common application and review procedures of Chapter 100, Article 25, the following review and approval procedures shall apply:

- Once an application is determined to be complete, the Zoning Administrator, or their designee, shall forward it to the Board for a public hearing
- The Zoning Administrator, or their designee, shall provide published and mailed notice of this public hearing pursuant to NH RSA 676:7
- Prior to deciding on the application, the Board shall render, as appropriate, findings of fact by majority vote

When the Zoning Board of Adjustment has completed its deliberation, it will either approve, approve with conditions, or disapprove an application. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial. An approval granted by the Board shall be void if the use or structure authorized by the application has not been begun within 2-years from the date of final approval. Any application for an extension shall be heard as a new application; any other time limitation shall be specifically prescribed by the Board.

CONDUCT OF THE PUBLIC HEARING

Public hearings shall be conducted in accordance with all applicable requirements of Chapter 100, the City Code of Ordinances, state law and the rules of the Board. During the public hearing, the following may occur:

- The presiding officer shall call the proceedings to order and announce that the public hearing has begun;
- The applicant or their legal counsel or representatives shall present in support of the application, and answer questions from the Board;
- City staff may present on the application, with respect to its conformance with the regulations in Chapter 100 and shall share comments from other City departments that reviewed the application. City staff may also answer questions from the Board;
- The presiding officer shall open the public hearing for public testimony;
 - ◇ Each person who speaks at a public hearing shall state their name and address for the record ;
 - ◇ Any abutter or other person with a direct interest in the application may testify at the public hearing or in writing either before or at the public hearing. Other persons may testify at the discretion of the Board;
- The applicant shall be given an opportunity to respond to any testimony raised by City staff or the public, and to answer any questions raised by the Board;
- The presiding officer shall close the public hearing following public testimony, and the Board shall openly deliberate on the application before reaching a decision;
- The Board shall evaluate the application based upon the submitted application materials and any evidence presented at the public hearing, pursuant to any applicable approval standards or regulations in Chapter 100;
- Once a public hearing is closed, no further public testimony shall be taken, unless the presiding officer chooses to reopen the public hearing for additional testimony or argument.

When the decision making authority has completed its deliberation, it will either approve, approve with conditions, or disapprove an application. All decisions shall be delivered in writing to the applicant and shall include any conditions for approval or reasons for denial.

The Board conducting the public hearing, upon a majority vote of its members, may continue a public hearing. No new notice (published, mailed or on-site) is required to reopen the public hearing if the hearing is continued to a date specific, provided that a public announcement of the future date, time and place of continued hearing is made and recorded in the minutes.

APPLICATION DESCRIPTION

Below is a description of each Zoning Board of Adjustment application as outlined in the [Land Development Code](#), Article 25. For more information and/or to discuss the application process with staff, contact the Community Development Department at (603) 352-5440.

- **Variance**: Per Article 25.5, zoning variances are intended to address unnecessary hardships or practical difficulties resulting from the strict application of the Zoning Regulations. the purpose of the variance process is to provide a narrowly limited means by which relief may be granted from the unforeseen applications of the Zoning Regulations.
- **Special Exception**: Per Article 25.6, a special exception seeks permission to do something that the Zoning Regulations permit only under certain special circumstances. All special exceptions shall be made in harmony with the general purpose and intent of the Zoning Regulations and shall be in accordance with the rules contained therein.
- **Expansion or Enlargement of a Nonconforming Use**: Per Article 25.7, a nonconforming use of a structure or land may be expanded or enlarged with approval from the Zoning Board of Adjustment, provided such expansion or enlargement does not violate any of the basic zone dimensional requirements of the zoning district in which it is located.
- **Equitable Waiver of Zoning Dimensional Requirements**: Per Article 25.8, in situations where a lot or structure is discovered to be in violation of a physical payout or dimensional requirement of the Zoning Ordinance, and such lot or structure is not legally nonconforming, a waiver from the requirement may be sought under certain conditions.
- **Appeal of Zoning Board of Adjustment Decision**: Per Article 26.1, appeals concerning any matter within the authority of the Zoning Board of Adjustment shall be in the manner provided for by NH RSA 676:5-7. In accordance with NH RSA 677:1-14, any person aggrieved by the decision of the Zoning Board of Adjustment shall file a motion for a rehearing with the Community Development Department within 30 calendar days after the date of the Zoning Board of Adjustment decision.
 1. The motion for rehearing shall fully set forth every ground upon which it is claimed that the decision rendered is unlawful or unreasonable.
 2. The Zoning Board of Adjustment shall deliberate the motion for rehearing within 30 calendar days of the date of the filing of the motion.
 3. If the Zoning Board of Adjustment grants a motion for rehearing, the new public hearing shall be held within 30 calendar days of the decision to grant the rehearing, provided all applicable fees are paid and an updated abutters list, including all owners of property within 200-ft of the subject parcel, is submitted by the party requesting the rehearing. Notice of the rehearing shall follow the procedures set for in NH RSA 676:7.
 4. If a motion for rehearing is denied by the Zoning Board of Adjustment, the applicant may appeal to the Superior Court within 30 calendar days after the date upon which the Board voted to deny the motion for rehearing.
 5. Any further appeal of a final decision or order of the Zoning Board of Adjustment shall be in accordance with NH RSA 677:4.
- **Appeal of Zoning Administrative Decision**: Per Article 26.2, in accordance with NHRSA 676:5, appeals to written decisions of the Zoning Administrator shall be made to the Zoning Board of Adjustment, provided the notice of appeal is filed with the Community Development Department within 30 calendar days after the date of the Zoning Administrator's decision. The notice of appeal shall specify all grounds on which the appeal is based, and why the request of appeal should be granted. Any person aggrieved by the decision of the Zoning Board of Adjustment shall petition for a rehearing, in accordance with NHRSA 677:1-14, before appealing the decision to the Superior Court.

Zoning Board of Adjustment Equitable Waiver Application



For Office Use Only:
Case No. _____
Date Filled _____
Rec'd By _____
Page _____ of _____
Rev'd by _____

*If you have questions on how to complete this form, please call: (603) 352-5440 or
email: communitydevelopment@keenenh.gov*

SECTION 1: CONTACT INFORMATION

I hereby certify that I am the owner, applicant, or the authorized agent of the owner of the property upon which this appeal is sought and that all information provided by me is true under penalty of law. If applicant or authorized agent, a signed notification from the property owner is required.

OWNER / APPLICANT

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

APPLICANT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

AUTHORIZED AGENT (if different than Owner/Applicant)

NAME/COMPANY:

MAILING ADDRESS:

PHONE:

EMAIL:

SIGNATURE:

PRINTED NAME:

SECTION 2: GENERAL PROPERTY INFORMATION

Property Address:

Tax Map Parcel Number:

Zoning District:

Lot Dimensions: Front: Rear: Side: Side:

Lot Area: Acres: Square Feet:

% of Lot Covered by Structures (buildings, garages, pools, decks, etc): Existing: Proposed:

% of Impervious Coverage (structures plus driveways and/or parking areas, etc): Existing: Proposed:

Present Use:

Proposed Use:

SECTION 3: WRITTEN NARRATIVE

Article 25.8.5.A.: Describe the property location, owner of the subject property, and explain the purpose and effect of, and justification for, the proposed waiver.

SECTION 4: APPLICATION CRITERIA

An Equitable Waiver of Dimensional Requirements is requested from Article _____ of the Zoning Ordinance to permit:

Briefly describe your responses to each criteria, using additional sheets if necessary:

1. 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.

2. The violation was not an outcome of ignorance of 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.

3. 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. 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.

5. In lieu of the first two findings in this list, the owner may demonstrate that the violation has existed for 10 or more years, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the City or any person directly affected.

Community Development Department Certified Notice List



If you have questions about how to complete an application, please call: (603) 352-5440 or email: communitydevelopment@keenenh.gov

Per Article 25.2.4 of the [Land Development Code \(LDC\)](#) and in accordance with state law, certain Zoning Board of Adjustment (ZBA), Planning Board, and Historic District Commission (HDC) applications require mailed notice.

The lists below outline the information that needs to be included on a notice list and mailing labels for applications submitted to the Community Development Department.

Instructions for creating a notice list for Planning Board and Zoning Board of Adjustment applications can be found on the [City of Keene's YouTube channel](#).

The following parties are required to be noticed as part of the application process:

- Property owner
- Project applicant
- Authorized agent (if applicable)
- All direct property abutters (including those across water bodies and roads), as well as all properties within 200-ft of the subject parcel
- Every engineer, architect, land surveyor, or soil scientist whose professional seal appears on any plan
- Holders of conservation, preservation, or agricultural preservation restrictions on the property

**Note: Only direct abutters must be noticed as part of HDC applications.*

For these applications, the following items must be submitted:

- A list of all persons entitled to notice
- 2 sets of mailing labels
- Notice certification form
- Mailing fee (current USPS certified mailing rate* x number of abutters)

**Please call the Community Development Department for the current certified mailing rate.*

The notice list shall include the following information:

- Property owner's name
- Property owner's mailing address
- Property owner's street address,
- The tax map parcel (TMP) number(s) (15-digit number)

The mailing labels shall include the following information:

- Property owner's name
- Property owner's mailing address
- The tax map parcel (TMP) number(s)

The City of Keene's [GIS Database](https://next.axisgis.com/KeeneNH/#) (<https://next.axisgis.com/KeeneNH/#>) can be used to generate an abutters list and mailing labels.

PLEASE MAKE SURE THAT ALL PARTIES INCLUDED ON THE NOTICE LIST ARE ALSO INCLUDED ON THE MAILING LABELS.

CERTIFICATION OF ACCURACY

By signing below, you are certifying that the submitted notice list is accurate and true to the best of your ability and that per **Article 25.2.4.A.3** of the LDC, the notice list is **current to within 10 days of the application submittal**.

Print Name

Date

Signature

