

INSTRUCTIONS

1. FILING PROCESS

a. **Documents.** Petitioner must complete the following forms and file same with the Town Clerk. If the petition is for an Administrative Appeal it must be filed within thirty days of the decision which is being appealed.

- (1) Petition Cover Sheet – [Form 1](#)
- (2) Applicable Petition Details
 - Request for Findings of Fact in Connection with a Petition for a VARIANCE - [Form 2a](#)
 - Request for Findings of Fact in Connection with a Petition for a SPECIAL PERMIT – [Form 2b](#)
 - Request for Findings of Fact in Connection with a Petition for a COMPREHENSIVE PERMIT – [Form 2c](#)
 - Petition for Hearing on an Administrative Appeal – [Form 5](#)
 - Petition for Amendment or Modification of Special Permit or Variance – [Form 4](#)
- (3) Certified List of Abutters and Planning Boards – [Form 3](#)
- (4) Plans per [SPECIFICATION FOR PLANS](#)
- (5) Other documentation relevant to the petition
- (6) Applicable Fee
- (7) Two sets of stamps for each primary and secondary abutter. Set one, postage for certifying delivery of notice of hearing. Set two, First Class postage for notification of ZBA decision

b. Filing Procedure for ZBA Hearings

(1) Petitioner

- complete the petition documentation completely, accurately, and legibly
- file the completed petition with the Town Clerk during regular office hours before the end of the second week of the month previous to the scheduled ZBA meeting. Note: If the above procedures are not followed or if the petition is incomplete, the Town Clerk will not accept this application and the hearing will be delayed
- file an appeal of Building Inspector orders within thirty (30) days of the date of the order, decision or action. Include a copy of the letter of notice from the Building Inspector as an attachment to the application. (MGL c40A, Zoning Act, Sec 15)
- provide the original application to the Town Clerk with full copies for each of the ZBA, Planning Board, Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Police Chief, and Fire Chief.
- appeal of ZBA decision, if desired, must be made to appropriate Massachusetts Court within the 20 day holding period
- file and record certified Variance decisions as an attachment to the deed of the property at the Registry of Deed in Worcester.

(2) Town Clerk

- receive and date stamp the original application
- return any incomplete application to the applicant without action
- maintain the original application on file for public inspection
- distribute the copies to town boards and officials as noted above
- forward the check to the ZBA Administrative Assistant
- hold ZBA decision on file for a period of 20 days
- certify ZBA decisions, if no appeal is filed, at the end of the 20 day holding period

(3) ZBA Administrative Assistant

- prepare and send the legal notice for publication in the newspaper
- give the check to the Town Treasurer and provide a copy of receipt to the Town Accountant
- post a notice of hearing at the Town Hall
- prepare and send the First Class and Certified abutter notices
- reproduce copies of the application for ZBA members as necessary

- record the proceedings of the hearing
- prepare and publish ZBA decision within 14 days of the action
- notify applicant, abutters, and parties in interest of ZBA decision

(4) **ZBA**

- at duly announced open meeting hear the applicant plead the case
- at open meeting determine and assess any additional fees for engineering, legal and/or consultant expense
- deliberate decision based on information documented in the application and presented at the hearing, the requirements of the ByLaws, and the provisions of the MGL
- In most cases, make a decision immediately following the closing of the hearing. If a decision is not reached at the hearing, it will be made at an open meeting of the ZBA as follows:
 - (a) decision for a Variance will be made within 75 days of the date of filing of the petition with the Town Clerk
 - (b) decision for a Special Permit will be made within 90 days of the date of hearing.

2. **SPECIFICATION FOR PLANS**

Each application, petition or appeal shall be accompanied by a plan of at least 8.5" x 11" or 11" x 16", drawn to a scale of 1" equals 40', or an appropriate legible size, containing the following information:

- Assessors Map and Lot Number
- An accurate instrument survey showing all structures, adjacent roadways and lot lines, signed by a professional land surveyor or a professional engineer
- Property lines and boundaries
- Name and address of record owner
- Names and location of adjacent streets
- North arrow and scale
- Zoning District and any zone lines in vicinity
- Existing and proposed buildings or additions including number of stories and height of all structures
- Plan(s) of any buildings or proposed buildings and all information pertinent to the application to include elevations and floor plans for new or remodeled construction
- Paved areas, existing and proposed parking or loading spaces
- Existing utility lines including septic, sewer, and underground structures
- Location of structures on adjoining property
- Lot area and dimensions, including setbacks where new construction or additions are proposed
- Detailed elevations for standing signs
- Other information as required in the Zoning bylaws unique to the type of relief being sought (e.g. Special Permits, Variances, uses requiring site plan review).
- Comprehensive Permits may require a detailed plan and data map and/or plot plan of the subject parcel of land with existing or proposed building(s) clearly indicated.

3. **ADDITIONAL INFORMATION AND PROCEDURES FOR VARIANCE**

a. Variance Extract from MGL 40A - “The permit granting authority shall have the power, after public Hearing for which notice has been given by publication and posting as provided in section eleven by mailing to all parties in interest, to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or bylaws where such permit granting authority specifically find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.”

b. General Information relating to granting of a Variance

- (1) [Chapter 40A, section 10](#) of the MGL provides that a ZBA may grant a variance from the provisions of the town's bylaw only if the following conditions are established by the petitioner:
 - *that owing to circumstances relating to the soil conditions, shape or topography of the land or structures, and especially affecting such land or structures but not affecting generally the zoning district in which it is located,*
 - *a literal enforcement of the provisions of the town's zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner; **and***
 - *that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the bylaw*
- (2) Be advised that the statutory requirements for the grant of a variance are conjunctive, not disjunctive, and a petitioner's failure to establish any one of them is fatal to the grant of variance. Therefore, all of the following conditions must be met:
 - The petitioner must show that literal enforcement of the provision of the ByLaws creates a substantial personal hardship, financial or otherwise to the petitioner. Grant of variance may based only upon circumstances which directly cause personal hardship to the owner. For example: financial hardship, by itself, is not reason for granting a variance. Loss of profits on a possible resale is not a hardship. The fact that the petitioner is unable to put the premises to a more profitable use is not adequate cause for granting a variance.
 - Example of hardship of the land: Ledge or rock condition existing on the property which does not allow construction within the conformity of the ByLaws .
 - The condition affecting the property is incidental to that property and does not generally affect other parcels within the zoning district.
 - The variance will not result in substantial detriment to the public good. For example: excess traffic will not result by granting the variance, or that the rights of neighbors will not be infringed upon.
 - The variance will not substantially derogate from the intent and purpose of the bylaws. For example: putting a retail store in a residential district is substantial derogation from the intent and purpose of the Bylaws. Varying a front yard setback from 30 feet to 10 feet would be, in most instances, substantial derogation from the intent and purpose of the Bylaws.
- (3) The petitioner's presentation before the ZBA should specifically relate to all of these conditions. If in doubt, contact an attorney before filing an appeal. When an appeal is denied there is a two year waiting period before the appeal may be reheard by the ZBA. It is best to be fully prepared at the time of the hearing. (MGL c40A, Zoning Act, Section 10)

- (4) Complete the "Request for Findings of Fact" sheet in full. It is the petitioner's responsibility to present the facts of the case clearly and fully.
- (5) In order to expedite consideration of the appeal, include all factors that may be relevant to the question of hardship, financial or otherwise as detailed above and how hardship may be overcome by grant of a variance.

4. ADDITIONAL INFORMATION AND PROCEDURES FOR SPECIAL PERMIT

- a. **Special Permit Excerpt from MGL 40A.** Special Permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or bylaw, and shall be subject to general specific provisions set forth therein; and such permit may also impose conditions, safeguards and limitations on time or use.
- b. **General Information relating to granting of a Special Permit.** The petitioner for a Special Permit must be prepared to present data to show:
 - (1) that the public convenience and welfare will be substantially served by granting the Special Permit
 - (2) that the Special Permit requested will not impair the status of the neighborhood
 - (3) that the Special Permit requested will be in harmony with the general purpose and intent of the regulations in the Zoning By-law, and
 - (4) that the advantages of the proposal out-weigh the detrimental factors.

5. ADDITIONAL INFORMATION AND PROCEDURES FOR COMPREHENSIVE PERMIT

- a. When reviewing an application for, or when conducting inspections in relation to, a Comprehensive Permit application, the ZBA may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the Comprehensive Permit application. Whenever possible, the ZBA shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the ZBA may, by majority vote, require that the Applicant pay reasonable "project review fee" of a sufficient sum to enable the ZBA to retain consultants chosen by the ZBA alone. The ZBA may require that an applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the ZBA may require additional deposits.
- b. In hiring outside consultants, the ZBA may engage engineers, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the ZBA in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the ZBA's decision or regulations, or inspecting a project during construction or implementation.
- c. Funds received by the ZBA pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the ZBA without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application. The account established shall be in accordance with MGL, [Chapter 44, Section 53G](#).
- d. At the completion of the ZBA's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to

the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the ZBA with documentation establishing such succession in interest.

- e. Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 (twenty) days after the ZBA has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the ZBA shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the ZBA shall stand.

6. **FEES**

- a. **Single Family Residential: Variance, Special Permit, Amendment or Modification of Permit or Variance, Appeal of Order of Zoning Enforcement Officer, or Administrative Appeal.** Filing fee of \$400 plus the cost of postage for First Class and Certified mailing for the 2 notices to each of the primary and secondary abutters as required by the ByLaws.
- b. **Comprehensive Permit (40b), Subdivision, and/or Market Rate Multifamily Development, or Administrative Appeal.** Filing fee of \$400 plus
 - (1) Reimbursement of all administrative costs and mailing expenses
 - (2) Reimbursement of all attorney and professional consultant fees, and
 - (3) An impact fee to the Town of Sterling, amount and use to be determined prior to approval of the application/petition.
- c. **Commercial, Industrial, and All Others: Variance, Special Permit, Cell Tower Permit, Amendment or Modification of Permit or Variance, Appeal of Order of Zoning Enforcement Officer, or Administrative Appeal.** Filing fee of \$400 plus
 - (1) Reimbursement of all administrative costs and mailing expenses
 - (2) Reimbursement of all attorney and professional consultant fees, and
 - (3) An impact fee to the Town of Sterling, amount and use to be determined prior to approval of the application/petition.