

NOTE: A letter of denial must accompany all applications from the Code Enforcement Officer stating the section of the Bylaw the project does not meet.

ZONING BOARD OF APPEALS AUBURN, MA

Variance _____ Special Permit _____ Appeal _____

Zoning District _____ Assessor's Map _____ Parcel _____

Aquifer Protection District: ZONE II _____ ZONE III _____ N/A _____

Flood Hazard District: _____ N/A _____

I, the undersigned, petition the Auburn Board of Appeals under the following Sections(s) of the Auburn Zoning Bylaw _____

To permit the following use(s) or structures: _____

Property Address: _____

Name of Property Owner: _____

Address of Property Owner: _____

Telephone of Property Owner: _____

Name of Petitioner: _____

(if different from Property Owner)

Address of Petitioner: _____

Telephone of Petitioner: _____

If there is an option to purchase the property, name of prospective purchaser: _____

The record title to the property is in the name of: _____

By a deed duly recorded in the Worcester Registry of Deeds: Book _____ Page _____

Property Owner's Signature: _____ Date _____

Petitioner's Signature: _____ Date _____

Application Fee: \$ _____
Postage \$ _____
Advertising Fee \$ _____
TOTAL FEES \$ _____

****Please make checks payable to the "Town of Auburn"***

AUBURN ZONING BOARD OF APPEALS

Information for Applicants

1. Reasons for Making an Application

- A. To Obtain a Special Permit: See Auburn Zoning By-Law Section 9.3 through 9.3.10, and Massachusetts General Laws Chapter 40A, Section 9 for requirements.
- B. To Obtain a Variance: See Auburn Zoning By-Law Section 9.5 through 9.5.8, and Massachusetts General Laws Chapter 40A, Section 10 for requirements.
- C. To Obtain a Special Permit for an Extension or Modification of a Non-Conforming Use: See Auburn Zoning By-Law Section 8.2 through Section 8.2.4, and Massachusetts General Laws Chapter 40A, Section 6 for requirements.
- D. To File an Appeal of a Decision of the Building Inspector (or other Administrative Official): See Auburn Zoning By-Law Section 9.1 and Massachusetts General Laws Chapter 40A, Section 15 for requirements.

The official copy of the Auburn Zoning By-Law may be obtained from the Code Enforcement/Building Department for \$10.00.

Applications to the Board of Appeals must be filed with the Town Clerk. All applications must be accepted as submitted. It is the applicant's responsibility to be sure that the application is complete and accurate. The Board may deny any application that is incomplete or inaccurate.

2. Payment of Expenses Connected with the Application

A. Application Fees

Application fees are determined by the proposed use of the property:
Residential use - \$100 per application
Business use or multi-family residential - \$300 per application
Industrial use - \$300 per application
Appeals - \$300
Comprehensive permit - \$750

Note: If an applicant is filing for a Variance under two or more separate sections of the Zoning By-law, or for a Special Permit under two or more separate sections of the Zoning By-law, only one application is needed. If an applicant is applying for both a Special Permit AND a Variance, two separate applications, one for the Special Permit(s), and one for the Variance(s), must be submitted. Separate fees will be charged for the Variance and Special Permit applications.

B. Postage

The Board of Appeals must hold a public hearing on each application for a Variance, Special Permit, extension or Appeal. A notice of the Board's public hearing on your application, and a "Notice of Decision" once the Board has made a decision, will be sent to each abutting property owner by First Class Mail. The cost of mailing these notices will be added to the cost of the application.

The cost is computed by figuring the number of abutters times twice the cost of First Class Postage. (For example, if there are 20 abutters, the cost would be $20 \times \$0.84 = \16.80)

C. Publication Fee

By State law, notice of the Board's public hearing on your application must also be published for two consecutive weeks in a local newspaper. The Board of Appeals will arrange for this publication in the "Auburn News." The fee for this publication must be paid at the time of application submittal. The fee is a flat rate of \$100 for the two (2) weeks.

(Please note: the application fee and mailing fee, may be paid with one check payable to the "Town of Auburn.")

3. Public Hearing

Regular meetings of the Board of Appeals are usually held the third Thursday of each month. Call the office to confirm the dates of all meetings. An application must be filed with the Town Clerk to meet the advertising deadlines in order to be placed on an agenda. If that deadline is not met, the public hearing will be scheduled for the following meeting. Notice of the date and time of the Board of Appeals' public hearing will be mailed to the applicant and the abutters.

The applicant should appear in person at the public hearing, but may be represented by an attorney or other representative. The applicant or representative will be given an opportunity to present witnesses and evidence. Other persons appearing in support of or opposition to the application will also be given an opportunity to be heard.

4. Conduct Of The Hearing

- A. The Chairperson of the Board of Appeals shall conduct the public hearing. Please note that this is a formal public hearing.
- B. After opening the hearing, the Chair shall read any recommendations from any other Town Boards or agencies. The Chair may then read any written comments received from other interested parties.
- C. The Secretary shall record the names and addresses of all abutters and interested parties present at the hearing.
- D. The Petitioner and/or his attorney may then present evidence in support of the application. Upon completion of the petitioner's presentation, members of the ZBA will be given an opportunity to question the Petitioner. The abutters and other interested parties will then be afforded an opportunity to be heard. No person shall address the Board unless and until he or she has been recognized by the Chair and identified for the record. All questions and comments shall be addressed to the Chair.
- E. Please note that the "closing" of the public hearing officially ends the input stage of the process but that people may remain or return to see and hear the deliberations if they wish.

5. Deliberations and Decision

In most cases, Board deliberations and decisions will occur at the same meeting, following the closing of the public hearing or hearings. If a decision is not made at the same meeting as the hearing, it will be made at a later open meeting of the Board of Appeals as follows:

- A. In the case of a Variance or an Appeal, a decision must be made by the Board and filed in the Town Clerk's office within 100 days of the date the application was originally filed with the Town Clerk.

- B. In the case of a Special Permit, a decision must be made by the Board and filed in the Town Clerk's office within 90 days of the close of the public hearing.

The applicant and abutters will be notified in writing of the decision of the Board of Appeals.

Pursuant to Massachusetts General Laws, Chapter 40A, Section 17, any appeal of a Board of Appeals decision must be made to a court within 20 days of the date the decision (called the "Statement of Facts") has been filed in the Town Clerk's office. Notice of this appeal, with a copy of the complaint, must be given to the Town Clerk's office within this 20-day period. See Massachusetts General Laws, Chapter 40A, Section 17 for specific requirements.

6. Forms and Documents to be submitted

Please submit 10 copies of each of the following to the Town Clerk's office along with the filing fee:

- A. Application
- B. Plans – See p. 4 for specifications required
- C. Brief to the Board – See p. 4 for explanation
- D. A certified copy of the list of abutters, which may be obtained from the Board of Assessors.
- E. A letter of denial from the Code Enforcement Officer.

7. Extensions

An extension of time for commencing the construction or use permitted by a Variance or Special Permit may be granted by the Board, after a public hearing, at its discretion, provided the application for such extension has been made to the Board prior to the expiration of the applicable time limit and after the Variance or Special Permit has been registered at the Registry of Deeds. The Board may grant an extension of a Variance for a period not exceeding six months. Extension requests must be accompanied with proof of the registration of the permit with the Registry of Deeds.

8. Other Licenses, Permits Required

If a Variance or Special Permit is granted for a use which also requires a license or permit from some other Town authority, the applicant must also apply for and obtain such a license or permit prior to commencing any construction in connection with the intended use.

Specification for Plans

An accurate plan stamped and signed by a Professional Engineer or Professional Land Surveyor showing the proposed structures and uses must be submitted with the application. The plan shall be at least 8 1/2" by 11" drawn to a scale of 1 inch = 40 feet, or some other suitable scale. The plan must have a north arrow, zoning districts, names of streets, names of owners of properties directly abutting the subject property, property lines and approximate location of buildings on surrounding properties. The location of buildings or use of the property where a Variance or Special Permit is required and distances from adjacent buildings and property lines shall be verified in the field and shown on the plan. If construction is to be of more than one story, front and side elevations must be submitted. All pertinent and/or restrictive topographical features (i.e. ledge, wetlands, etc.) should be shown, as well as rights of way, easements, and other conditions affecting the use of the land.

The dimensions of the lot and the percentage of the lot covered by the principal and accessory buildings and the required parking spaces shall be shown. Entrances, exits, driveways, etc., that are pertinent to the granting of the Variance or Special Permit shall be shown. A floor plan must be submitted showing conversions and any other pertinent data. All proposed data shall be clearly noted.

Brief to the Board

It is recommended that every Appeal, and every application for a Variance or Special Permit, be supported by a written statement setting forth, in detail, all facts relied upon by the applicant which justifies the granting of the Variance, Special Permit or Appeal.

In the case of a Variance, it is to the applicant's advantage that the following points, based upon Massachusetts General Laws Chapter 40A, Section 10, be clearly identified and factually supported:

- a.) The particular use proposed for the land or buildings.
- b.) The circumstances relating to the soil conditions, shape or topography of such land or structures for which a Variance is sought and especially affecting such land or structure but not affecting generally the zoning district in which it is located. Therefore, unusual soil conditions will not justify a granting of a Variance if they are shared throughout a zoning district.
- c.) Facts which make up a substantial hardship to the petitioner which results from the literal enforcement of the applicable Zoning By-law with respect to the land or structure for which a Variance is sought. The hardship required by Chapter 40A must affect all present and future owners of this land and not merely the present owners owing to their peculiar personal or financial status. A Variance may be based only upon circumstances which directly affect the real estate and not upon circumstances which cause or may cause personal hardship to the owner. Financial hardship by itself, without the factors in paragraphs "b" and "d", is not justification for granting a Variance.
- d.) Facts relied upon to support a finding that the desired relief may be granted [1] without substantial detriment to the public good, and [2] without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. (For an example of [1], an applicant might show facts indicating that excessive noise, light, traffic, air or water pollution, etc. would not result from the granting of the Variance. For an example of [2] putting a retail business in a residential district would tend to be a substantial derogation from the intent and purpose of the By-Law, and such an applicant would have to show facts indicating that it would not be.)

Your brief should specifically relate to all of the above requirements. If in doubt, contact an attorney to assist you. Please note that the law does not confer upon any landowner any legal right to a Variance.

In case of a Special Permit, the applicant should give factual evidence concerning the criteria set forth in Section 9.3.5 of the Auburn Zoning By-Law.

If the ZBA denies your application then you may have to wait two years before reapplying. Therefore, it is best to be fully prepared at the time of the hearing.

If the ZBA grants your Variance and/or Special Permit, the ZBA will try to file the decision with the Town Clerk in about two to three weeks from the date the Variance and/or Special Permit is voted. There is a twenty (20) day appeal period after the decision has been filed with the Town Clerk. If no appeal has been filed within twenty (20) days, then the applicant should pick up the original decision from the Town Clerk, which the Town Clerk will sign stating that no appeal has been taken. The applicant or owner must record the decision at the Worcester District Registry of Deeds. (Note that if the decision involves "registered land," it must be registered upon the owner's Certificate of Title.) The fee for recording or registering shall be paid by the owner or applicant. Proof of recording and a copy of the recorded decision should be returned to the Town Clerk.