

Alan Kazanjian, Chairman
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CITY OF LOWELL
Zoning Board of Appeals

APPLICATION

Date of Application: _____

Name of Applicant: _____

Address: _____

Telephone: _____

Location of Property: _____

Petitioner's Relationship to Property: _____
(i.e. owner, tenant, prospective purchaser, lessee, etc.)

District/Zone of Property Location: _____

State present use of premises: _____

State proposed use of premises: _____

Give extent of proposed alterations, if any: _____

Request is for: **Special Permit(s)** **Variance(s)** **Other (specify)** _____

Type of Special Permit(s), Variance(s), or Other Relief requested: _____

Please state why you feel the requested relief sought should be granted (attach additional sheets if necessary):

Applicable sections of the Building Code/Zoning Ordinance: _____

Have you submitted plans for the above to the Building Inspector? YES or NO

Date of denial by Building Inspector
(if applicable – please attach denial letter): _____

Has any application, appeal, or petition for relief from the Zoning Ordinance been previously made with respect to this property? YES or NO

If so, please state when, what relief was sought and whether the relief was granted or denied:

I have read the instructions for Petitioner. The information contained in this application is true to the best of my knowledge and belief and I hereby request a hearing before the Zoning Board of Appeals with reference to the above-noted application, appeal or petition.

Signed: _____
Applicant/Petitioner/Appellant

Title: _____

Received from above Petitioner: the sum of \$100.00 to file this application/appeal/petition.

Initialed: _____



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CITY OF LOWELL
ZONING BOARD OF APPEALS
RULES OF PROCEDURE

PREFACE: These materials are offered and intended to aid the public in the petitioning process before the Zoning Board of Appeals. It should be clearly understood that the City of Lowell is not rendering legal advice.

1. GENERAL

- A. The Board of Appeals conducts scheduled hearings on the second and fourth Monday of each month. No hearing shall be held on any day on which a state or municipal election, caucus or a primary is held in the City of Lowell.
- B. There shall be no more than six (6) hearings scheduled for any given date, unless prior approval is received from the Chairperson. **Exception:** Comprehensive Permits shall be the only hearing on the given hearing date.
- C. Any proper party may petition the Board of Appeals pursuant to Massachusetts General Laws Chapter 40A for any of the following reasons:
 - Any aggrieved person or other party designated in MGL C.40A, Sec. 8 may appeal the decision of the Building Inspector or other administrative official of the City, as it pertains to Zoning.
 - To request a Variance from the City of Lowell Zoning Ordinance.
 - To request a Special Permit as specifically allowed under the City of Lowell Zoning Ordinance and MGL C. 40A, Sec. 9.
 - To request a Comprehensive Permit, as allowed under Massachusetts General Laws, Chapter 40B.
 - To hear and decide other actions as allowed by Massachusetts General Laws, Chapter 40A, 40B, 41 or provision of the City of Lowell Zoning Ordinance.

2. PREPARATION FOR THE PUBLIC HEARING

- A. The public hearing will be held within sixty-five (65) days after the application, appeal or petition and accompanying documentation (**AND ALL OTHER INFORMATION DEEMED NECESSARY BY THE BOARD**) is filed with the Clerk of the Zoning Board of Appeals and the Board is given notice of the appeal/application or petition.
- B. The application will state in precise language the reasons for the application (For example: insufficient frontage, insufficient lot area, insufficient rear yard setback, Request for a Special Permit; Home Occupation, ... etc.) and filed on the form approved by the Board.
- C. The following are the required fees to be paid by Certified Check payable to the "City of Lowell" and given to the Clerk at the time of submittal of the application: Application **fee of \$100.00**
- D. The petitioner shall obtain a "Certified List of Abutters" and other parties in interest as defined in 40A, Sec.11 from the Board of Assessors and a "Certificate of the Treasurer" that taxes, etc., are paid. The petitioner will then include the list and certificate with the application to the Board of Appeals. The parties in interest shall be notified by mail by the Secretary of the Zoning Board of Appeals. The notice shall be a duplicate of the Legal Notice.

- E. The Secretary of the Board shall publish notice of the hearings in the local Newspaper, The Lowell Sun, once in each of two (2) successive weeks. The first publication is to be not less than fourteen (14) days prior to the scheduled hearing date. The Secretary of the Board shall also cause notice of said hearing to be posted on the official bulletin board of Lowell City Hall not less than fourteen (14) days prior to said hearing.
- F. Non-Complying Applications: Upon preliminary review, if the Chairperson, or a member of the Board designated by the Chairperson, finds that the application, petition, or appeal does not comply with the requirements of the Board herein or with MGL C. 40A, or is otherwise incomplete or not properly filed, the petitioner will be so notified and given the opportunity to bring the application into compliance. An application, appeal, or petition which is the subject of such notice but is not brought into compliance before the date specified in such notice may be denied at hearing for failure to comply with the Board's Rules of Procedure.

3. REQUIRED DOCUMENTATION

- A. The petitioner shall file with the Clerk of the Zoning Board of Appeals when petitioning the Board fourteen (14) or more copies of the Application/ Petition/ Appeal.
- B. A petitioner/applicant for a variance or special permit shall also file fourteen (14) copies of the following:
- A Plan of the property in question prepared for the Board of Appeals. This Plan shall be drawn to scale showing all existing structures and all proposed additions or other information pertinent to the application. (It shall include a locus map).
NOTE: The Plan shall be signed and stamped by Certified Land Surveyor from the State of Massachusetts.
NOTE: Mortgage Inspection Plans **will not** be accepted.
NOTE: The Plan should show the abutting properties with approximate dimensions of existing structures.
 - Certified List of Parties in Interest
NOTE: Obtaining the Certified List must be done prior to filing the application/appeal or petition.
 - Copy of Deed, Purchase and Sale Agreement, Lease or other document which shows the applicant's, appellant's, or petitioner's relationship to the property.
 - Design Plan of proposed construction that shows the appearance of the proposed structure.
 - Certificate of Tax Status from the City Treasurer
 - Building Permit Denial (if applicable)
 - Proposed Decision (may be requested by the Board)
- C. Filing Fee of \$ 100.00

PLEASE NOTE: The Board shall reserve the right to ask any petitioner to submit additional documentary evidence and revised plans in order for a proper determination to be made of a given appeal, application or petition.

4. HEARING PROCEDURE

- A. Hearings shall commence at 6:30 PM and shall be conducted under the "Open Meeting Law". The Secretary shall record the hearings electronically as well as maintain a written detailed record of the proceedings.
- B. The hearing sequence will be the recording time/date when the application and appropriate completed documentation are received and recorded by the City Clerk's office, unless the Chairperson determines that another hearing sequence is more appropriate.
- C. The Chairperson opens the Hearing by reading, or causing to be read, the notice as advertised.
- D. The petitioner or his representative is then called upon to present evidence to the Board supporting his/her position

- E. **For a Variance**, the petitioner must demonstrate, according to Massachusetts General Laws Chapter 40A, the following:
1. A literal enforcement of the provisions of the zoning by-law would involve a substantial hardship, financial or otherwise to the petitioner or appellant.
 2. The hardship is 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.
 3. Desirable relief may be granted without substantial detriment to the public good.
 4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance.
- F. For a **Special Permit**, the petitioner must demonstrate, according to Massachusetts General Laws Chapter 40A, the following:
1. The petitioner shall present his case in the same manner as the applicant for a Variance.
 2. Special Permits may be issued only for uses that are in harmony with the general purpose and intent of the ordinance and shall be subject to general or specific provisions set forth therein; and may also impose conditions, safeguards and limitations on time or use.
 3. When the petitioner has concluded his/her remarks, the Chairperson shall allow those in the audience to speak in favor and then those to speak in opposition.
NOTE: Those wishing to speak must raise his/her hand and be recognized by the Chairperson. The individual recognized, shall give his/her name and address prior to speaking.
- G. The petitioner may with the permission of the Chairperson address the concerns raised during the hearing. There shall be no rebuttals by the audience.
- H. During the entire process, the Board may ask questions of the petitioner and also to members of the audience.
- I. When all the facts have been presented, the Chairperson shall close the discussion by petitioner/appellant/applicant and opponents on the application/petition or appeal.

NOTE: Pursuant to Mass. General Laws, Chapter 39, Section 23C: "No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned."

NOTE: No request for Variance or Special Permit may be withdrawn following the publication of the hearing in the local Newspaper, unless requested and approved by the Board at the Public Hearing. Any petitioner, who withdraws his/her petition, must do so in writing and shall not be entitled to a refund of his/her filing fee.

5. **DECISIONS**

- A. **Variances**
Under Massachusetts General Laws Chapter 40A, section 15, the decision on a variance must be made within one hundred (100) days after the date of the filing of the petition for the variance. The written decision shall be filed with the City Clerk within fourteen (14) days of the Board's decision.
- B. **Special Permits**
Under Massachusetts General Laws Chapter 40A sections 9 and 15 the Board of Appeals shall make a decision within ninety (90) days following the date of the public hearing. The written decision of the Board must be filed with the City Clerk within fourteen (14) days after its decision.
- C. **Comprehensive Permits**
Pursuant to section 21 of Massachusetts General Laws Chapter 40B, the Board of Appeals must hold a public hearing within thirty (30) days of receipt of the application for a Comprehensive Permit and must render a decision within forty (40) days after the termination of the public hearing.

D. Special Requirements

- The concurring vote of 4 members of the Board is required to reverse any order or decision of an administrative official or to grant a variance or special permit.
- The Comprehensive Permit requires an affirmative vote of at least three (3) members of the Board.
- The Board shall set forth reasons for granting or denying Variances, Permits, or other requested relief.

E. Extension of Time Limits

The required time limits for a public hearing and decision may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed with the City Clerk.

6. RECORDING OF THE DECISION

A. The written decision shall be filed with the City Clerk within fourteen (14) days after the rendering of the decision. A copy of the decision shall be forwarded to the:

- Owner of the land (and applicant, if other than the owner);
- "Parties in Interest" as defined in C. 40A, Sec.11; and
- Any person present at the hearing that requests that the notice be sent to him/her and provides his/her name and address to the Board.

B. Notice of Decision is to be mailed forthwith to:

- The owner of the land (and applicant, if other than the owner);
- All "parties in interest" as defined in Mass. Gen. Laws C.40A, Sec.11;
- And every person present at the hearing who requested that notice be sent to him/her and stated the address to which such notice was to be sent.

C. The appellant may not request to withdraw a petition after the Board has rendered the decision.

D. Special Instructions to the Applicant:

Mass. General Laws, Chapter 40A, Section 17 provides in part: "Any person aggrieved by the decision of the Board of Appeals or any special permit granting authority or by the failure of the board of appeals to take final action concerning any appeal, application or petition within the required time or by the failure of any special permit granting authority to take final action concerning any application for a special permit within the required time, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the land court department, the superior court department in which the land concerned is situated or, if the land is situated in a county, region or area served by a division of the housing court department either to said superior court department or to the division of said housing court department for said county, region or area, or to the division of the district court department within whose jurisdiction the land is situated except in Hampden county, by bringing an action (within twenty days) after the decision has been filed in the office of the city or town clerk."

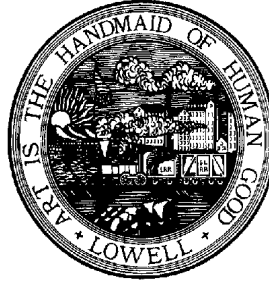
Massachusetts General Laws: Chapter 40A, Section 11, states that, "**No such Variance or Permit shall take effect until such notice is recorded in the Registry of Deeds for the County in which the land is located.**" The matter of recording such notice is the responsibility of the party or parties receiving the Variance or Permit.

"Parties in interest" are defined in MGL, C.40A, Sec.11

- (1) Petitioner/Applicant/Appellant;
- (2) Abutters;
- (3) Owners of land directly opposite on any public or private street or way;
- (4) Abutters to the abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town;
- (5) The Planning Board of the City of Lowell; and
- (6) The Planning Board of every abutting city or town.

How To Obtain "CERTIFIED LIST OF PARTIES IN INTEREST"

It is the applicant/petitioner's responsibility to obtain a list of certified abutters and must apply for the list with the Assessor's Office. The Assessor's Office will prepare and certify the list of abutters located within a 300 ft. radius. The applicant will be notified by the Assessor's Office when the list is ready. There is an administrative fee for the certified abutters list.



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CITY OF LOWELL ***Zoning Board of Appeals***

GENERAL INFORMATION

1. If you are applying for a Special Permit for a Sign, you must have your request reviewed by Planning and Development (DPD) and a letter forwarded to the Zoning Board.
2. If you are applying for a Variance on a property that involves a subdivision or the splitting of one lot, you must appear at the Planning Board for a review of your plans before you come before the Zoning Board.
3. If your property abuts a wetlands area, you must go to the Conservation Board and receive a Statement of Conditions before appearing at the Zoning Board.

If any/all of these items are missing, your petition may be postponed or denied.