



William Bailey
Chairman

Petition/Application Checklist:

***NOTE** - It is strongly recommended that every application receive a preliminary review by this office before final submittal and before being scheduled as an agenda item for public hearing. Please contact this office when the following submittal documents have been prepared:

- Completed Application **for each request, and for each parcel.**

PLEASE NOTE: Fourteen copies of the application packet will be required at the time of submittal.

- Four (4) original certified ZBA Plot Plan(s) and completed Zoning Analysis worksheet** of the property(ies) 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. (including a locus map, a reference table, and zoning analysis).

NOTE: The Plan(s) 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(s) should show the abutting properties with approximate dimensions of existing structures.

NOTE: A certified plot plan may not be required for applications for Special Permit to allow the internal illumination of **wall signs**.

- Certified List of Parties in Interest and Labels

NOTE: Obtaining the Certified List must be done prior to filing the application/appeal or petition.

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.

Petition/Application Checklist (cont.):

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

1. Petitioner/Applicant/Appellant;
 2. Owners of land directly opposite on any public or private street or way;
 3. 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;
 4. The Planning Board of the City of Lowell; and
 5. The Planning Board of every abutting city or town.
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- Certificate of Tax Status provided by the City Treasurer.
 - Copy of Deed, Purchase and Sale Agreement, Lease or other document which shows the applicant's, appellant's, or petitioner's relationship to the subject property.
 - Design Plan of proposed construction/signage that shows the appearance and design of the proposed structure(s) and/or sign(s).
 - Proposed findings and hardship statements are to be submitted with the application. (ie. Proposed decision may be requested by the Board)
 - Building Permit Denial (if applicable)
 - Contact Information Sheet for The Lowell Sun (billing for Legal Advertisement)
 - Any other information (i.e.: letters of support, photos, petitions, etc.) that the petitioner feels may be beneficial to the proposal may be submitted; however, this is completely optional.
 - Proposed Decision (may be requested by the Board)
 - Filing Fee** in the form of a personal check, money order or bank check for each request; plus a fee of \$1.00 per abutter and additional parties of interest to be notified.

An original set of application documents must be submitted with four (4) original certified plot plans, with completed Zoning Analysis worksheet and; 14 collated sets of the application packet by the submittal deadline for inclusion on the open agenda.

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, it is recommended that you have your plans reviewed by the Planning Board 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.
4. All documents intended for the BOA's review prior to a decision will need to be submitted in complete form at least 2 business days prior to the meeting. If the applicant does not have all information submitted in time as stated above, the Members will likely need to either not include the material in their deliberations or vote to continue the matter

Please note: *if any or all of these items are missing, the petition may be postponed. It is recommended that you schedule a preliminary review of the application before your final submittal.*

Contact – Responsible Party

Date: _____

Applicant Name & Address: _____

Applicant Phone Number: _____

Subject Location: _____

Scheduled Hearing Date: _____

Petition Number: _____

Re: ZBA Notice of Public Hearing Advertisement with The Lowell Sun

Dear Applicant,

Please be advised that the Administrator of the Zoning Board of Appeals will arrange the publication of your advertisement for Notice of Public Hearing. In accordance with the requirements of Mass General Law, this advertisement will be published in the legal section of the paper on second and fourth Sundays preceding the date of the Public Hearing. As the applicant, you must pay for the actual cost of this advertising. The Lowell Sun will contact and/or bill you directly for this advertisement.

If you have any questions, please contact the Zoning Board of Appeals at the number above.

Thank you,

**William Bailey, Chairman
Zoning Board of Appeals**

Cc: The Lowell Sun Legal Advertising

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)**_____

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

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



DEVELOPMENT SERVICES DIVISION
TAX STATUS CERTIFICATION

Master Parcel Address: _____

Property Owner: _____

Municipal Charge Liens for fees/ violations:

_____ No Outstanding Charge Liens

_____ Charge Lien Outstanding

_____ Charge Lien Paid, Not Yet Discharged Date Paid: _____

Clerk Initials: _____

Date: _____

TREASURERS OFFICE USE ONLY

_____ Taxes are current on the property

_____ Customer has made a payment plan and is current on payments

_____ Customer is in TAX TITLE and has NOT made any payment plan with the Treasurer

_____ Water and Sewer are current on this property

_____ Parking Tickets/Excise Tax on this customer are current

OTHER: _____

SPECIAL INSTRUCTIONS FOR HOMEOWNERS

The following information is specifically intended for the homeowners interested in undertaking all or part of an application to the Board of Appeals. This document is informational only and is not intended to act as regulation. All ZBA applicants should carefully read the “Rules of Procedure”.

How long will it take to get approved? Due to the requirements for legal advertisement in the newspaper, the legal appeal period after the decision is filed with the City Clerk, and the ZBA meeting schedule, the process of getting approval from the Board generally takes a minimum of two months. Depending on meeting schedules, the complexity of the application, and other issues, the process can take longer.

Meeting Schedule: The ZBA normally meets on the second and fourth Monday of each month at 6:30 p.m. in the City Council Chambers. There are generally no more than six items of new business scheduled for each hearing.

What do I need to include with my application? The specific application requirements are included in the “Rules of Procedure” and on the “Application Checklist”. Please review all required documentation to ensure that the requirements for submittal have been met. And be sure to include 4 original plot plans, 14 sets of the application package along with the original documents, and payment of the filing fee in the form of a check, and \$1.00 per abutter and/or parties of interest to be notified. When you are ready to apply, the following documents should be in your application package:

Application Form: The form is included in the application package for the ZBA available in the Inspectional Services office, as noted above. The application should state in precise language the nature of the petition and a substantial reason why the board should grant the relief requested, why the proposal is of no detriment to the surrounding neighborhood, or the hardship which justifies the granting of a variance.

Certified Plot Plan: You will need to hire a duly licensed and certified land surveyor to prepare this plan. It will show property lines, buildings (both existing and proposed), the distances and setbacks of all buildings and structures, and abutting property lines. If an addition, or new structure is proposed, the plot plan must also show the proposed location and setbacks to the lot lines. The Plot Plan must be stamped and signed by a Registered Land Surveyor licensed to work in the State of Massachusetts. Four plans must bear the original stamp and signature of the surveyor; the remaining 14 copies can be copies, but must be provided to scale and with the Zoning Analysis worksheet.

IMPORTANT! Mortgage Inspection Plans and Mortgage Surveys are NOT acceptable. Also, any plan that includes marks other than those of a surveyor are unacceptable. If the plan submitted is not a Certified Plot Plan as described above, the application will be rejected.

Tax Certification: Certificate of Tax Status provided by the City Treasurer certifying that taxes and property bills are paid and current. There is no charge for this certificate and can be obtained from the Treasurers Office.

Certified List of Abutters: You will need to obtain a Certified List of Abutters from the Assessors Office and include this list with the original application packet **for each subject parcel**, as well as the 14 application packets. Applicants should request the Certified List of Abutters early in the process; it can take up to ten (10 days) for the Assessors to prepare and certify the list of abutters.

SPECIAL INSTRUCTIONS FOR HOMEOWNERS (cont.)

Copy of Deed, Purchase and Sale Agreement, Lease or other document that shows the applicant's, appellant's, or petitioner's relationship to the subject property.

Design Plan of Proposed Construction: If possible, it is helpful to provide a design plan to the board that shows the appearance and design of the proposed structure(s).

Application Fee: A complete application packet (original documents plus 14 sets) must be submitted with check, cashier's check or money order for the applicable filing fee, plus \$1.00 per abutter or party of interest to be notified, by the application deadline (always a Friday by noon) to be placed on the open agenda for the corresponding hearing date.

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. **Filing Fee** in the form of a personal check, money order or bank check payable to the "City of Lowell" for each request; plus a fee of \$1.00 per abutter and additional parties of interest to be notified. The required fees are due at the time of submittal of the application. Please see the attached Fee Schedule.

RULES OF PROCEDURE: (cont.)

- 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 and 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:** The petitioner shall file with the Clerk of the Zoning Board of Appeals four (4) original certified plot plans with completed Zoning Analysis worksheet, in addition to an original set of application documents and fourteen (14) collated copies of the Application/Petition/Appeal for submission and placement on an open agenda.

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. See Item 2F above.

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

RULES OF PROCEDURE: (cont.)

- 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.

RULES OF PROCEDURE: (cont.)

5. DECISIONS

A. Variations

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. Priority Development Site Special Permits

Under the Lowell City Council's adoption of Massachusetts General Laws Chapter 43D and Section 9.5 of the Lowell Zoning Ordinance, all special permits decisions for projects located within established Priority Development Sites, as shown on the City of Lowell Zoning Map, shall be issued within 180 calendar days after the filing of a complete application with the Zoning Board of Appeals as specified in the Lowell Zoning Ordinance. Decisions may include approval, approval with conditions, or denial of the proposed project.

E. 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 Variations, Permits, or other requested relief.

F. 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.

RULES OF PROCEDURE: (cont.)

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

NOTE: It is also the petitioner's responsibility to ensure that a building permit is obtained to exercise any relief or Special Permit granted by the Board. No building permit will be issued without a copy of the recorded decision submitted to the Building Inspector at time of application.

City of Lowell Zoning Ordinance, Sec. 11.3.8: **Special Permits** shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, **within 24 months** following the filing of the special permit approval.

Massachusetts General Laws: Chapter 40A, Section 10, states that, "If the rights authorized by a **variance** are not exercised **within one year** of the date of the grant of such variance such rights shall lapse;"

Massachusetts General Laws, Chapter 40A, Zoning, reads in part, the following:

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE VII. CITIES, TOWNE AND DISTRICTS

CHAPTER 40A. ZONING

Section 7. Enforcement of zoning regulations; violations; penalties; jurisdiction of superior court

No local zoning law shall provide penalty of more than **three hundred dollars per violation**; provided, however, that nothing herein shall be construed to prohibit such laws from providing **that each day such violation continues shall constitute a separate offense.**

Section 14. Boards of appeal; powers

In exercising the powers granted by this section, **a board of appeals may**, in conformity with the provisions of this chapter, **make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision**, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.