

# Town of Auburn, Massachusetts

## Department of Development & Inspectional Services

Ed Kazanovicz  
Town Manager



Zoning Board of Appeals

### Zoning Board of Appeals Application

Date: \_\_\_\_\_

Variance: (Use / Dimensional) Type / Types \_\_\_\_\_

Bylaw Section / Sections \_\_\_\_\_

Appeal: Bylaw Section / Sections \_\_\_\_\_

Special Permit: (Aquifer/ Standard) Type / Types \_\_\_\_\_

Bylaw Section / Sections \_\_\_\_\_

Comprehensive Permit In accordance with M.G.L. Chapter 40B

To the Auburn Zoning Board of Appeals: The undersigned herewith, submits the accompanying Plans / Documents entitled “\_\_\_\_\_” and dated \_\_\_\_\_ for approval under the provisions of the Zoning Bylaw of the Town of Auburn.

#### APPLICANT INFORMATION

Name of Applicant(s)	
Address of Applicant(s)	
Phone # & Email of Applicant(s)	
Name of Owner(s)	
Address of Owner(s)	
Phone # & Email of Owner(s)	
Name of Engineer	
Phone # & Email of Engineer	
Name Primary Contact	
Phone # & Email Contact	

## PROJECT INFORMATION

Project Address:		Zoning District	
Assessors Map & Parcel #		Deed Reference (Book & Page)	
The record title stands in the name of:			
If there is option to purchase property, Name of prospective purchaser.			
Applicable Zoning Bylaw Section(s)			
Proposed Land Use			
Existing Land Use			
Aquifer & Watershed Protection District (select one)	Zone II	Zone III	Not located in Aquifer
Special Flood Hazard Area			
Size of Proposed Structure(s)			
Total Lot Area			
Water Source (select one)	Private Well	Auburn Water District	Elm Hill Water District
Sewer Source (select one)	Private Septic System	Auburn Sewer	

**\*A letter of denial from the Building Commissioner stating the section of the Bylaw the project does not meet must accompany all Variance or Appeal applications**

**\*The Special permit granting authority reserves the right to continue hearings with incomplete applications; it is the applicant's responsibility to ensure that their application is complete.**

**\*Revised plans or additional information that is submitted by the applicant must be received by DDIS at 12:00pm eight (8) days before a public hearing.**

Signature of Applicant(s): \_\_\_\_\_

Signature of Owner(s): \_\_\_\_\_

Filing Fee: \_\_\_\_\_

Advertising: \$130 \_\_\_\_\_

Mailing \$2.00 per abutter: \_\_\_\_\_  
Total fee: \_\_\_\_\_

### **Information for Applicants**

#### **1. Reasons for making an application**

- A. To File an Application for a Special Permit: See Auburn Zoning By-Law Section 9.3 through 9.3.13, and Massachusetts General Laws Chapter 40A, Section 9 for requirements.
- B. To File an Application for 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 File an Application for a Special Permit for an Extension or Change 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.
- E. To File an Application for a Comprehensive Permit See Massachusetts General Laws Chapter 40B, for requirements.

An 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**

Residential Use (1-2 Family) - \$100 per application  
Multi-family Residential Use (3 Family or More)-\$300 per application  
Business use or 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 per parcel. 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 charges 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, Comprehensive 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 out the number of abutters times twice the cost of First-Class Postage. **(For example, if there are 20 abutters, the cost would be 20 X \$2.00 = \$40.00.)**

### **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 \$130 for the two (2) weeks.

## **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 Appeal's 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. 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, an 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 (**Must be within 6 months of application date**)
- E. Zoning Interpretation Form or Denial Letter (Variance or Appeal only)
- F. PDF file of plans to [zoning@town.auburn.ma.us](mailto:zoning@town.auburn.ma.us)
- G. Drainage Calculations (if applicable)
- H. Filing fee

## 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 Special Permit or 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 ½" by 11" drawn to 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 show. 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 application 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, based upon Massachusetts General Laws Chapter 40A, section 10, the board must make mandatory findings and the following points should be clearly identified and factually supported:

- a. The particular used 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 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 a Variance. For 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 Bi-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 replying. 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 sign the decision at the next regularly scheduled meeting of the ZBA and file said decision with the Town Clerk the first business day following that meeting.

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 the 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 then record the decision at the Worcester County 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 and DDIS.

## **FEE SCHEDULE 2022**

### **Description**

### **Fee**

**Residential (1-2 Family Home)**

Variance or Special Permit	\$ 100.00
<u>Multifamily Dwelling</u> (3 Family and above) Variance or Special Permit	\$ 300.00
<u>Commercial/Industrial</u> Variance or Special Permit	\$ 300.00
<u>Appeals</u>	\$ 300.00
<u>Comprehensive Permits</u>	\$ 750.00
<u>Advertising</u> <i>All applications</i>	\$ 130.00
<u>Postage</u> <i>All applications</i>	\$ 2.00 per abutter

\*\*A filing with multiple variances or special permits is handled under one fee.

\*\*Two separate fees apply if you are applying for special permits and variances.