

# **Guidelines For Petitions**



## **Before The TOWN OF WATERTOWN ZONING BOARD OF APPEALS**

## **GUIDELINES FOR PETITIONS BEFORE THE ZONING BOARD OF APPEALS**

*This guideline booklet has been developed to assist you in preparing your petition before the Zoning Board of Appeals (ZBA). These guidelines are only intended as a general description. They are not official Town or Board of Appeals regulations and have not been adopted by the Board. These guidelines are not legal advice.*

### **YOU NEED TO PRESENT BEFORE THE BOARD OF APPEALS**

If you have been either told verbally or received a letter from the Zoning Enforcement Officer that:

- **your building permit/request cannot be issued/approved;**
- **your proposed use requires a Special Permit;**
- **you want to change your lot and/or structure and it no longer conforms to present Zoning Ordinances (non-conforming);**
- **you are seeking relief from a determination of the ZEO;**
- **Your proposed construction violates the Zoning Ordinance.**

### **WHO AND WHAT IS THE ZONING BOARD OF APPEALS?**

The Zoning Board of Appeals consists of five (5) members with two (2) associate members appointed by the Town Manager. These members volunteer their time and expertise at the meetings as well as doing site inspections of the properties prior to the meeting. As of June 2011, the members of the Zoning Board of Appeals are:

Melissa M. Santucci, *Chairman*  
Deborah Elliott, *Clerk*  
David Ferris, *Member*

Suneeth P. John, *Member*  
Christopher H. Heep, *Alternate Member*  
Vacant, *Alternate Member*

The ZBA or Board of Appeals (BOA) was established by virtue of the Massachusetts General Law (MGL), specifically Chapter 40A, Section (§)12 and will act in accordance with these laws relative to specific powers, procedures, and timing constraints stated therein. The ZBA interprets and enforces the Watertown Zoning Ordinance, subject to state law and court decisions. A copy of the *Watertown Zoning Ordinance* is available on the Town's website: [www.watertown-ma.gov](http://www.watertown-ma.gov) or may be purchased at the Planning Department in the Town Hall.

The ZBA acts on petitions for:

**Variances** are a waiver of the Watertown Zoning Ordinance as it pertains to dimensional setbacks and use. Variances allow the “varying” of the required setbacks that the Ordinance requires. A Variance once granted, runs with the land in perpetuity. Watertown Ordinances do not expressly authorize Use Variances. *See Variance Criteria in Appendix. (Use Variances are not authorized in the Ordinance)*

**Special Permits** provide for specific uses within a zoning district which are deemed necessary or desirable but which are not allowed as a matter of right because of possible potential incompatibility with the characteristics of the specific zoning district. Further, some special permits are required when the Ordinance allows an exception to the rule provided that the ZBA finds certain facts and conclusions. *See Special Permit Criteria in Appendix.*

**Special Permit Finding** is a type of Special Permit for uses and buildings that no longer conform with the Ordinance because the Ordinance changed after the building was built or the use began. The Finding allows for alterations, extensions, additions and/or modifications to a use or building if the ZBA finds that such non-conformity will not be increased and will not be substantially more detrimental than the existing non-conformity to the neighborhood. A Special Permit Finding is needed when extending or altering an existing legal non-conforming lot, structure, building, or use, without further increasing the non-conformities. *See Special Permit Finding Criteria in Appendix.*

**Appeal from Decision/Determination/Order of Zoning Enforcement Officer (ZEO)**

And

**Administrative Appeal to the Board by reason of his/her inability to obtain a permit or enforcement action.** - By aggrieved person from a Decision/Determination/Order of the Zoning Officer or Inspector of Buildings. Petition application must be first filed with the Town Clerk, having it stamped in with the date. A copy of the application showing the date stamped-in by the Town Clerk shall be submitted to the Zoning Office. The Appeals process is detailed in MGL Chapter 40A, §8 and §15.

## **WHAT IS THE TIME FRAME?**

Generally, you can estimate an approximate 60-90 days from the day you are told you need to go to the Board to the day you are issued a building permit. The ZBA acting under the guidelines of the state statute, Chapter 40A, has specific time constraints and procedures that must be adhered to.

## **HOW DO I BEGIN?**

- Find your property on the Zoning Map to determine the Zoning District
- Find out which Sections of the Zoning Ordinance your project violates or which Section(s) require you to get a Special Permit, Special Permit Finding or Variance.

Both the Zoning Ordinance and Zoning Map are on file in the Town Clerk's office, Zoning Board of Appeals Office, Planning Department, the Watertown Public Library and available on-line at [www.watertown-ma.gov](http://www.watertown-ma.gov). The Zoning Map and Zoning Ordinance booklet may also be purchased from the Planning Department (3<sup>rd</sup> Floor, Town Hall).

## **DO I NEED A LAWYER OR AN ARCHITECT?**

It is not necessary to be represented by a lawyer to obtain a decision from the ZBA. It is important that you understand what action you are requiring from the ZBA and how to qualify for it. If you do not understand the Ordinance or what you need from the ZBA, a lawyer or a representative may be able to help you. You may also want to have a lawyer or representative present your case to the ZBA if you do not feel comfortable doing so yourself. The Zoning Office is available to answer any questions you have regarding the process.

It is not required that an architect prepare the plans you present to the ZBA. It is important, however, that your plans are clear and detailed so the ZBA can understand what you are proposing to do. The more detailed and accurate your plans are, the more easily the ZBA can reach a decision.

## **WHAT DOCUMENTS DO I NEED?**

After determining the type of petition and section(s) of the Zoning Ordinance in which you are seeking relief, you will need at least but not limited to, the documents listed below. A description of each document is provided.

- **Petition applications** are obtained in the Zoning Board of Appeals (Zoning) office. You will need to file 3 (three) forms with original signatures. If you are not the owner of the property, you will need to obtain original signatures from the owner as well.
- **Written supporting statement** is your explanation of your proposal. Your statement should be detailed sufficiently as if no plans for reference were attached. You must explain how you comply with criteria set forth in the Ordinance under §9.14 for Variance (address the points in the Appendix for Variance); §9.05 for Special Permit (address the points in the Appendix for Special Permit) or Special Permit Finding (address the point in the Appendix for SPF). If you are requesting other relief, refer to the Ordinance for specific compliance requirements. This is the statement you will read at the hearing. We suggest you include all information the ZBA should know, including any history of your property that explains your proposal. The ZBA will reject a proposal if you have not shown how you meet the criteria requirements of the Ordinance. The criteria requirements are listed in the appendix within this guideline booklet.
- **A Plot Plan** is a plan of your property prepared by a professional land surveyor showing the lot area and the dimensions along all sides, front and rear. To find a Land Surveyor, please refer to the Yellow Pages under Surveyors-Land. Sometimes, but not always, the Registry of Deeds may have a plan of your land on file. This plan must be updated with your existing dimensions; your proposed construction; proposed lot coverage and setbacks to lot lines. In some instances, such as dormers or altering an existing structure, a mortgage survey

plan may be acceptable.

- **Construction/Elevation Drawings** are also a requirement upon submittal of your building permit application. These drawings should clearly show the detail of construction with elevation plans and should be drawn to scale. The detail of drawings should be so that members know where and how your proposal will look. These drawings should also enable the Building Inspector to know if your plan complies with the State Building Code.
- **Parking, Landscaping, and Drainage site plans** are not generally required for homeowners unless you are creating additional bedrooms which would then require additional parking, constructing a new building, developing an undeveloped lot, or adding a business to the property.
- **Deed to property** is generally not required for homeowners but will need to be furnished upon request by the Board.
- **Release/Indemnification form to allow Board members onto your property.** This form is self-explanatory. You will need to sign it and have it notarized. A Notary may be on staff at the Main Library or your local bank.
- **Newspaper Billing Authorization form** is to allow the local newspaper (Watertown Tab) to bill you directly for the legal advertising for you petition. See below, 'Is there a fee?'
- **Certified Abutters' List** is a listing of your abutters and their abutters including those neighbors across the street from your property which are required to be notified in accordance with MGL Chapter 40A, Section 11. This is prepared by the Zoning office. This Abutter's List must be certified by the Board of Assessors at the time of your filing. In order for this to be accomplished by the deadline date, you must notify the Board's Clerk of your intent in filing (617-972-6427) and allow at least a 5 day turnaround time for this office to prepare the list and for the Chairman of the Board of Assessor's to certify. This certified Abutter's List is required for your application to be considered complete.

### **FILING DEADLINE**

There is a deadline for filing petitions. It is always best to check the calendar on the website as it may vary depending on holidays. <http://www.watertown-ma.gov/DocumentView.aspx?DID=2871>

This deadline is the **last day** in which you can file for the next month's hearing. By all means, file early to reserve a spot. The Board does limit the number of cases each month. Contact the Zoning Board of Appeals Office to be sure of the filing deadline date (617) 972-6427.

### **IS THERE A FEE?**

Yes, there is a fee. Fees are determined by the type and number of requests you make. A detailed fee schedule is in the Board's Rules of Practice and Procedure Booklet. The minimum cost is \$150 but it can be higher. The fee will be determined at the time of filing your application, and is payable by check or money order to the Town of Watertown. In addition, it is required by MGL c. 40A, Section 11, that a legal notice be published in the local newspaper (usually the Watertown Tab) for two consecutive weeks. The Zoning Office will prepare and submit the legal notice to the newspaper for the required timeframe. A signed authorization form from you for the newspaper to bill you, the petitioner, directly will be sent along with the legal advertising to the newspaper.

### **MEETING DATES:**

You will attend **two** meetings. The first meeting is in front of the Planning Board and is generally held on the SECOND Wednesday of the month starting at 7:00 p.m. in the Town Hall. Again, check the calendar for dates. After the Planning Board has made their determination, they will make a recommendation to the Zoning Board of Appeals. You will present in front of the Zoning Board of Appeals, which is generally – but not always -- the LAST Wednesday in the month starting at 7:00 p.m.

### **WHY TWO MEETINGS?**

All petitions going before the Board of Appeals are first presented to the Planning Board for their recommendations.

### **WHY THE PLANNING BOARD?**

The Planning Board, like the Board of Appeals, consists of five (5) professionals who are appointed by the Town Manager and volunteer their time. The Planning Board along with the Staff assists the Board of Appeals in reviewing your petition. You will be asked to either read your written statement in support of your petition or give a brief summary. The Planning Board makes recommendations to both you and the Board of Appeals. They will vote on your petition that evening and include any conditions they feel necessary to insure compliance. In some instances, you will be asked to provide additional information or amend your plans. If by some chance your petition is not acted upon that evening at the Planning Board, you cannot go to the next meeting, which is the Board of Appeals. The Board of Appeals will not act on any petition that the Planning Board has not acted on. REMEMBER, the Planning Board is the first of the two meetings. The Board of Appeals is where the final decision is made.

### **WHAT'S NEXT – NOW THAT I'VE FILED EVERYTHING?**

The internal process now starts. The Planning Staff will review your documents. The Senior Planner may contact you if there is a need for clarification or additional information. The Director of Community Development and Planning, the Senior Planner and the Zoning Enforcement Officer view the site. The Senior Planner prepares a Staff Report which accompanies your petition to the Planning Board prior to the meeting. The report outlines your proposed request; shows an analysis in conformity with specific criteria and then reports a recommendation.

You MUST attend the Planning Board meeting as stated above. The Planning Board votes its recommendation to the ZBA. The recommendation may be to approve or deny your petition. Recommendations for approval always include recommended conditions. The Senior Planner then writes a Report of the Planning Board and forwards it to the ZBA. You can obtain a copy of this report from the Planning Department.

### **NOTICES TO ABUTTERS**

Both the Planning Board and the ZBA mail a copy of the prepared legal notice to all of your abutters outlining your request and the meeting dates. This is required by MGL Chapter 40A, Section 11.

### **SITE VISIT BY MEMBERS**

Members of both the Planning Board and the Zoning Board of Appeals may visit any site prior to acting on a petition. If you are requesting something that does not require an interior visit, you need not be there. The indemnification form that you will sign allows for the members to access your property. These inspections are often done at various times prior to the meeting night; however, for interior inspections a convenient time will be established with you.

### **ZONING BOARD OF APPEALS MEETING**

An agenda will be mailed to you prior to this meeting to indicate the order the cases will be heard that evening. The meeting starts at 7:00pm and is televised on the local cable channel (channel 3). YOU or YOUR REPRESENTATIVE MUST ATTEND TO HAVE YOUR CASE HEARD. As your case is called, you will be asked to read your supporting statement and answer any questions the Board may have. The Board will then ask any supporters of your proposal to speak in favor of your petition, followed by any opponents. All statements and questions are to be directed to the Chairperson of the Board, not to other people attending the hearing. The hearing is not a trial and you will not be allowed to question other people who testify. Anything you want to tell the Board should be said during this part of the meeting. When the Board has no further questions, they will close the public hearing and go into the Business meeting. Only Board members may discuss the proposal in this portion of the meeting. It is this portion of the hearing that the Planning Board Report is read and a discussion of conditions, if any, takes place. The Board then votes to approve or deny your request.

### **I'VE RECEIVED THE DECISION – CAN I START MY WORK?**

Unfortunately you cannot start right away. The Board of Appeals must complete the written decision within 14 days from the meeting date and file it in the Town Clerk's office. You will receive a copy of the decision at this time. From the day the decision is filed in the Clerk's office, you must wait for a twenty (20) day appeal period to have lapsed. This 20-day appeal period is for any person aggrieved by the Board's decision to appeal to either the Land Court or the Superior Court. More importantly, the Certificate of Grant must be stamped by the Clerk's office indicating the lapse of the 20-day appeal period. You will also receive this in the mail.

## **DECISION AND FILING AT THE REGISTRY OF DEEDS**

In order for this decision to become effective, the decision along with the Certificate of Grant **must** be filed at the Middlesex Registry of Deeds in Cambridge. Evidence of this recording (a certified copy and receipt) is necessary before approval can be given for the issuance of any building permit/occupancy permit.

For more details on this process you may refer to Massachusetts General Laws, Chapter 40A.

# **APPENDIX**

## **CRITERIA/POINTS OF A VARIANCE**

If you are seeking a Variance, and before a variance may be authorized, the Board of Appeals shall, as required by MGL Chapter 40A, §10, find that all of the conditions of said section, as summarized below and §9.14(b), Zoning Ordinance, have been met.

**It is essential that you include in your supporting statement ALL of the following criteria:**

- (1) The variance is sought because of 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.
- (2) Literal enforcement of the Zoning Ordinance would involve a substantial hardship, financial or other, to the appellant.
- (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 of this Zoning Ordinance.

## **CRITERIA/POINTS OF A SPECIAL PERMIT**

If you are seeking a Special Permit, the Board of Appeals shall not approve any such application unless it finds that in its judgment all of the following conditions are met:

- (1) The specific site is an appropriate location for such a use, structure or condition;
- (2) The use as developed will not adversely affect the neighborhood;
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians;
- (4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

## **CRITERIA/POINTS OF A SPECIAL PERMIT FINDING**

If you are seeking a Special Permit Finding, and before a finding may be authorized, the Board of Appeals shall, as required by Massachusetts General Laws Chapter 40A Section 6, and the Watertown Zoning Ordinance Section 4.06(a), not approve any such application, until they find that the following condition of said section, as noted below, has been met.

- (1) Pre-existing, non-conforming structures or uses may be extended or altered provided that such change extension or alteration **shall not be substantially more detrimental than the existing structure/use to the neighborhood.**



**Permission to Inspect Premises With  
RELEASE, INDEMNIFICATION, AND WAIVER  
For An Individual**

I, \_\_\_\_\_ of \_\_\_\_\_ and my successors and assigns, give and extend to the Zoning Board of Appeals of Watertown and to the Town of Watertown, a municipality in the County of Middlesex and the Commonwealth of Massachusetts, my express permission to come onto the premises owned by, occupied by or under the control of the above named individual, to any member or agent of the Zoning Board of Appeals, Planning Board or respective staff members of Watertown for the purpose of conducting an inspection of the premises which has been brought to the attention of the Zoning Board of Appeals or Planning Board of Watertown as a result of the petition that I have placed before it. The permission to conduct an inspection shall extend for the full time period during which the petition before the respective Boards of Watertown is pending and any related period of decision. I hereby forever discharge and release and will at all times, defend and save and hold harmless the Town of Watertown, the members of the Zoning Board of Appeals and Planning Board, and any of the officers, employees, and agents of either who direct or conduct said inspections from any and all claims, demands, civil action, suits, liabilities, judgments, or damages of any kind, including but not limited to those for alleged trespass, invasion of privacy or warrantless search, in any way arising out of any inspection by the Respective Board members or their agents or the Town's agents, and hereby waive any and all claims that I may now have or may ever have against the Town or any of its officers, employees or agents for such inspections.

I further state that I carefully read the foregoing Permission with Release, Indemnification, and Waiver and know the contents thereof, and I sign the same as my own free act.

In witness whereof, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Petitioner's Name and Address

**COMMONWEALTH OF MASSACHUSETTS - County of Middlesex, ss.**

On this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, \_\_\_\_\_,  
Day Month Year Name of Notary Public

Personally appeared:

\_\_\_\_\_  
Name(s) of Signer(s)

Proved to me through satisfactory evidence of identity, which was/were:

\_\_\_\_\_  
Description of Evidence of Identity

To be the person(s) whose name(s) was/were signed on the preceding or attached document in my presence, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary

Place Notary Seal above

My Commission Expires \_\_\_\_\_

TOWN OF WATERTOWN  
**Zoning Enforcement Office**  
149 Main Street  
Watertown, MA 02472  
[www.watertown-ma.gov](http://www.watertown-ma.gov)

Telephone (617) 972-6427  
Facsimile (617) 926-7778

## Authorization Form

To: Legal Advertising Department  
Community Newspapers (Watertown Tab)

From: Watertown Zoning Board of Appeals

RE: Billing Authorization Form

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I hereby authorize Community Newspaper Company to bill me directly for the attached Legal Notice(s) to be published for two consecutive weeks in the Watertown Tab on the following dates: \_\_\_\_\_ and \_\_\_\_\_ for the property located at: \_\_\_\_\_, Watertown, MA.

Bill To: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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Signature

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Date

Attachment

# Planning Board and/or Zoning Board of Appeals

## Application Preparation Checklist

The following checklist is a summary of documentation required by the Watertown Zoning Board of Appeals in the submission of petitions for a **Special Permit, Special Permit with Site Plan Review, Special Permit Finding, Variance, Appeal or Reconsideration.**

The Petitioner shall review the contents of the application with the Clerk of the Board specific to this checklist. The petition submitted before the Clerk of the Board will be considered incomplete and not accepted for processing if the documentation summarized herein is not provided at the time of application filing or is judged to be non-conforming with the standards as set forth in the Board's Rules of Practice and Procedure.

Subject Property	Petitioner
	<u>Y/n</u>
Three (3) copies of the application form:	_____
Application forms signed by the petitioner AND owners?	_____
Is the ordinance section specified?	_____
What specific scope of work is requiring the relief?	_____

Twenty (20) copies of narrative report (supporting statement)	_____
Does the statement cite the ordinance and the reasons the relief should be granted?	_____
Have the required criteria from §9 been addressed?	_____
Twenty (20) copies of subject property plot plan	_____
Is there a Registered Land Surveyor signature, stamp and date?	_____
Other: (20 copies)	Title, Date, Page, Revision
Architect Drawings:	_____
Traffic Analysis:	_____
Landscape Design:	_____
Storm water/Drainage:	_____
Submittal should be collated – 1. Statement, 2. Plot plan, 3. Drawings, 4. etc. (all folded to 8.5 x 11, if possible)	

Signed and Notarized Indemnification Form \_\_\_\_\_

Signed Newspaper Billing Authorization Form \_\_\_\_\_

Assessor's Office Abutter's Certification \_\_\_\_\_

Application Filing Fee \$ \_\_\_\_\_  
 Base fee \$150 plus: refer to Rules of Practice and Procedure, §5 \_\_\_\_\_

Site Plan Review \_\_\_\_\_  
 Approval from Director of Community Development and Planning Required \_\_\_\_\_  
Signature of Director, DCDP

1. I have reviewed the petition and find the minimal requirements for an application have been met:  
 Signature of Zoning Office Clerk: \_\_\_\_\_ Date \_\_\_\_\_  
 \*\*\*\*\*

2. I have reviewed and determined the application complete and may now be filed with the Town Clerk  
 Signature of Zoning Enforcement Officer or Senior Planner: \_\_\_\_\_ Date \_\_\_\_\_