



## RULES OF PROCEDURE

### ZONING BOARD OF APPEALS

#### PERMIT GRANTING AUTHORITY

One Main Street, Box 16 Upton, MA 0156

### INSTRUCTIONS TO APPLICANTS

No Petition seeking relief from the Board of Appeals will be accepted unless accompanied by a check in the amount of \$250.00 for residential Petitions and \$350.00 for general business Petitions payable to the Town of Upton.

All petitions and any accompanying plans or documents must be filed with the Town Clerk. There shall be two copies and an original of all applications for variances, special permits, or appeals from decisions or orders of the Building Inspector or other officer or board of Upton. ALL QUESTIONS ON THE APPLICATION FORMS MUST BE ANSWERED. FAILURE TO ANSWER ANY QUESTIONS MAY RESULT IN REJECTION OR DENIAL OF THE APPLICATION OR PETITION. Accompanying such filing shall be copies of the following:

- A. Town of Upton Tax Map(s) showing the subject property, the land immediately abutting said property and all parcels adjoining the land of the immediate abutters. (May be obtained in the office of the Board of Assessors).
- B. A plot plan of the property, drawn to accurate scale, with all dimensions accurately marked and north directional arrow properly oriented, and including all existing or proposed buildings, with their locations on the plot. The name of owners of abutting property should be shown also. Said plan shall show, to within a tolerance of two feet, more or less, the nearest side of any and all structures, wells, and leach fields on adjacent properties within fifty feet of the subject lot. Pertinent and/or restrictive topographical features should be shown (i.e., ledge, wetlands) as well as rights of way, utility easements and all other unusual conditions. If applicable, dimensional areas for vehicular parking, driveways, for open space and/or recreations must be shown. See attached sample plan.
- C. Listings of the names and addresses, as they appear on the most recent local list (not older than six months) available in the Assessors' Office, of all abutters, owners of land directly opposite on any public or private street or way and owners of land within three hundred (300) feet of the property lines. The Town Assessors must certify these listings. The board's secretary will provide this list to the applicant.

After filing, the Board's Secretary will provide the applicant with the abutter's letter (aka Notice of Hearing) containing date and time of hearing. **The applicant or petitioner must notify, by certified mail, returned receipt, all abutters on the aforementioned list a Notice of Hearing. Receipts from all certified notices must be presented at hearing.** Please note the USPS offers electronic notices that are also accepted. Lastly, please be prepared to **present business size envelopes with first class postage affixed, addressed to each abutter at the hearing.** Mailings must be posted a minimum of two weeks prior to hearing date. The required notice for posting will be provided by the Board.

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## **CONDITIONS TO BE MET:**

Before making formal application for a variance from the town of Upton Zoning By-Laws, you, the applicant, must be aware of the conditions that must be met before the Zoning Board of Appeals may act favorably upon your request:

- A. Unique circumstances exist relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures, but not affecting generally other parcels within the zoning district.
- B. A literal enforcement of the provisions of the ordinance or By-Law would involve substantial hardship, financial or otherwise, to the petitioner. The financial hardship described in inured to all owners of the land as a result of its unique conditions, not merely to the present owner owing to his peculiar personal or financial status. A variance may be based only upon circumstances, which directly cause personal hardship to the owner. Financial hardship, by itself, is not reason for granting a variance. Loss of profits on a possible resale is not a hardship. The fact that the plaintiff is unable to put the premises to a more profitable use is not adequate cause for granting a variance.
- C. A variance may be granted without substantial detriment to the public good. For example, excess traffic would not result by the granting of the variance, or that the rights of your neighbors would not be infringed Upton.
- D. The variance cannot substantially derogate for the intent and purpose of the By-Law. Putting a retail store in a residential district is substantial derogation from the intent and purpose of the by-Law. Varying a front yard setback from 30 feet to 10 feet would be, in most instances, substantial derogation from the intent and purpose of the Town of Upton Zoning By-Law.

## **CONDUCT OF HEARING:**

The Chairman of the Board of Appeals shall conduct the hearing. No person shall speak until recognized by the Chair. All questions and comments shall be addressed to the Chair.

After opening the hearing, the Chairman shall read any recommendations from other Town board or agencies. The Chairman may then, in his direction, read any written comments received from other interested parties.

The Secretary shall record the names and addresses of all interested parties present at the hearing. No person shall address the Board unless and until he or she has been identified for the record.

The petitioner and/or his attorney shall then present evidence in support of the application, including any testimony. Upon completion of the petitioner's presentation, members of the Board will be given an opportunity to question the petitioner. The abutter and other interested parties' will then be afforded an opportunity to be heard.

Before the commencement of any hearing, the Chairman may remove himself from the voting on the petition and designate a duly appointed alternate member to act in his stead. The Chairman may still conduct the hearing.

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YOUR presentation before the board should specifically relate to ALL ABOVE PREREQUISITES. If in doubt, contact an attorney before filing your appeal. If your appeal is denied, then you may have to wait two years before reapplying. It is best to be fully prepared at the time of the hearing.

If the Board finds that all of the conditions set forth in General Laws Chapter 40A, S 10 are satisfied, it may, in its discretion, grant a variance. But even under those circumstances, THE LAW DOES NOT CONFERS upon the landowner ANY LEGAL RIGHT to a variance.

In the case of a SPECIAL PERMIT, the following points, based on Massachusetts General Laws, Chapter 40A, should be clearly identified and factually supported:

- A. The particular type of use proposed for the land or structure, if any.
- B. The conditions and character of operations of the proposed use which show that it will be in harmony with the general purpose and intent of the district and the By-Law
- C. The nature of the proposed use in relation to both the general and specific provisions of the By-Law governing that use and the district in which it is located.

Such information shall be indicated on the application form and presented verbally or in writing at the public hearing.

### **POLICIES AND ADVICE:**

It is strongly recommended that all new appeals, petitions and applications be first reviewed with the Building Inspector to assure their correctness, completeness and clarity.

Any advice, opinion, or information given by any Board member or any other official or employee of the town shall not be binding on the Board. Because of the problems caused by individuals appealing personally to member of the Board, it is declared to be the policy of the board to discourage any such personal appeals.

DO NOT attempt to discuss the merits of your case with any member of the Zoning Board of Appeals AT ANY TIME AFTER FILING this application prior to the public hearing thereof.

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### **Checklist for applying for a Variance or Special Permit:**

- Obtain application and instructions from Town Clerk or on the web page at [www.UptonMA.gov](http://www.UptonMA.gov)
- Deliver a signed application and supporting documentation to the Town Clerk with a check for the applicable fee.
- Obtain list of abutters from Board of Assessors (508-529-1002). This list may take up to a week for the Assessors to prepare.
- Wait to receive the Notice of Hearing from the Zoning Board of Appeals to know the date of your hearing.
- Copy and mail this Notice of Hearing certified and returned receipt to every abutter on your list. Bring the green cards or electronic notice of delivery to the hearing as proof that this mailing occurred.
- Address and stamp business size envelopes to your list of abutters and bring these envelopes to the hearing. These envelopes will be used to mail the decision of the Zoning Board of Appeals to your abutters.
- Attend hearing with the following:
  - ✓ 2 copies of your application and supporting documents for yourself and the board records
  - ✓ Copy of the abutter list for the board records
  - ✓ Proof of certified mailing
  - ✓ Addressed and stamped business size envelopes

If the variance or special permit is approved, contact the Town Clerk 21 days after the hearing. Town Clerk will supply a certificate of No Appeal along with the decision. These documents need to be recorded with the Registry of Deeds in Worcester in order to complete the process.

**\*\* Please Note:** A scam using information from municipal meeting materials/agendas requesting payments from project applicants has been brought to our attention. Please be aware that the Town of Upton and its Zoning Board will never request wire payments, send invoices, or require online payment submissions. If you receive any correspondence requesting payment, please contact our office (508) 529-2633.