



TOWN OF STERLING

ZONING BOARD OF APPEALS

Butterick Building
1 Park Street * Sterling, Massachusetts 01564

Bus: (978) 422-8111 x2301 * FAX (978) 422-0289

VARIANCE APPEALS PROCESS

INSTRUCTIONS

1. Filing Process
2. Specification for Plans
3. Additional Information and Procedures for Variance
4. Fees

Form 1 Petition Cover Sheet

Form 2a Request for Findings of Fact in Connection with a Petition for a VARIANCE

Form 3 Certified List of Abutters and Planning Boards

GENERAL INFORMATION

The following instructions, forms, and information are designed to assist petitioners seeking relief from the provisions of existing zoning bylaws by grant of a Variance or Special Permit or filing an application for a Comprehensive Permit. The Zoning Board of Appeals (ZBA) has made an effort to conform to the procedural and substantive requirements prescribed by Article 6.2, "Board of Appeals," and Article 6.3, "Special Permits" of the Town of Sterling Protective Bylaws and Chapters 40A and 40B of the Massachusetts General Laws (MGL). Although references are made to certain sections of the Bylaws and the MGL, the information contained herein is not an exhaustive commentary on the laws governing the use of property in the Town of Sterling. Therefore, the PETITIONER IS ADVISED TO REVIEW THE LAW AND/OR SEEK ADVICE OF LEGAL COUNSEL OR OTHER CONSULTANTS prior to filing a petition for relief. IT IS PETITIONER'S RESPONSIBILITY TO PROVIDE ACCURATE INFORMATION ON THE FORMS AND TO THE ZBA.

NOTICE OF HEARING

Due notice of the Hearing date will be given to petitioners, abutters and other parties of interest. An applicant may appear personally and/or with representation by a duly authorized attorney or agent. The applicant will be given the opportunity to present witnesses and evidence. Persons appearing in opposition will be given an opportunity to be heard. In the event of the unexcused absence of the applicant or his/her representative at the hearing, the Board may issue a decision based on all information submitted and available.

NOTE: THE ZBA NORMALLY MEETS ON THE SECOND TUESDAY OF EACH MONTH

INSTRUCTIONS

1. FILING PROCESS

- a. **Documents:** Petitioner must complete the following forms (as accurately as possible) and file with the office of the Zoning Board of Appeals. If the petition is for an Administrative Appeal it must be filed within 30 (thirty) days of the decision which is being appealed.

Required Forms:

- (1) Petition Cover Sheet – Form 1
- (2) Applicable Petition Details (Please choose relevant form as per your petition.)
 - a. Form 2a: Request for Findings of Fact in Connection with a Petition for a VARIANCE
 - b. Form 3: Certified List of Abutters and Planning Boards
- (3) Plans per **SPECIFICATION FOR PLANS** (See following page for detailed description.)
- (4) Other documentation relevant to the petition (i.e. letter of denial from Building Inspector, etc.)
- (5) Applicable Fees: Please provide a check for the application fee and postage made payable to “The Town of Sterling.” **First class and/or certified postage (your choice) for each abutter and the applicant. Current postage is \$8.53 each for certified/return receipt and \$.63 each regular postage.**

b. Filing Procedure for ZBA Hearings

(1) Petitioner

Before the Hearing

- complete the petition documentation completely, accurately and legibly
- file the completed petition with the ZBA office during regular office hours a minimum of 35 days prior to the scheduled ZBA meeting (see dates on ZBA webpage). Note: If the above procedures are not followed or if the petition is incomplete, the hearing will be delayed
- file an appeal of Building Inspector orders within thirty (30) days of the date of the order, decision or action. Include a copy of the letter of notice from the Building Inspector as an attachment to the application. (MGL 40A §15)
- provide the original application to the ZBA office, **plus 8** full copies (total of 9) for ZBA, Planning Board, Board of Health, Conservation Commission, Building Inspector, Department of Public Works, Police Chief, and Fire Chief. (ZBA will distribute applications to appropriate department heads.)

After the Hearing

- if denied: you may appeal the ZBA decision to the appropriate Massachusetts Court within the 20 day Appeal period
- if granted: file and record certified Variance decision as an Attachment to the deed of the property at the Registry of Deeds in Worcester after the 20 day Appeal period
- file and record certified Special Permit decisions at the Registry of Deeds in Worcester after the 20 day Appeal period.

(2) Town Clerk

- receive and date/time stamp the original application and all copies (after submittal to ZBA)
- maintain the original application on file for public inspection
- post a notice of hearing at the Town Hall
- hold ZBA decision on file for a period of 20 days
- certify ZBA decisions, if no appeal is filed at the end of the 20 day Appeal period

(3) ZBA Administrative Assistant

- check application for completeness and inform applicant of any missing information
- prepare and send the legal notice for publication in the newspaper
- prepare and send the abutter notices to applicant, abutters, and all Parties in Interest
- distribute the application copies to ZBA members, town boards and officials as noted above
- give the check to the Town Treasurer and provide a copy of receipt to the Town Accountant
- provide full copy of application and notice for Town Clerk to maintain
- record the proceedings of the hearing
- prepare ZBA decision within 14 days of the action to be filed with Town Clerk
- notify the owner and to the applicant, if other than the owner, and interested parties of ZBA decision

(4) Zoning Board Appeals

- at duly announced open public meeting, hear the applicant plead the case
- at open meeting determine and assess any additional fees for engineering, legal and/or consultant expense
- deliberate decision based on information documented in the application and presented at the hearing, the requirements of the Bylaws, and the provisions of MGL
- In most cases, make a decision immediately following the closing of the hearing.
If a decision is not reached at the hearing, it will be made at an open meeting of the ZBA as follows:
 - (a) decision for a Variance will be made within 100 days of the date of filing of the petition with the Town Clerk
 - (b) decision for a Special Permit will be made within 90 days of the date of hearing.

2. SPECIFICATION FOR PLANS

Each application, petition or appeal shall be accompanied by a plan of at least 8.5" x 11" or 11" x 17", drawn to a scale of 1" equals 40', or an appropriate legible size, containing the following information:

- Assessors map and lot number (Parcel ID)
- An accurate instrument survey showing all structures, adjacent roadways and lot lines, signed by a professional land surveyor or a professional engineer
- Property lines and boundaries
- Name and address of owner of record
- Names and location of adjacent streets
- North arrow and scale
- Zoning District and any zone lines in vicinity
- Existing and proposed buildings or additions including number of stories and height of all structures
- Plan(s) of any buildings or proposed buildings and all information pertinent to the application to include elevations and floor plans for new or remodeled construction
- Paved areas, existing and proposed parking or loading spaces
- Existing utility lines including septic, sewer, and underground structures
- Location of structures on adjoining property
- Lot area and dimensions, including setbacks where new construction or additions are proposed
- Detailed elevations for standing signs
- Other information as required in the Zoning Bylaws unique to the type of relief being sought (i.e. Special Permits, Variances, and uses requiring site plan review.)
- Comprehensive Permits may require a detailed plan and data map and/or plot plan of the subject parcel of land with existing or proposed building(s) clearly indicated.

3. ADDITIONAL INFORMATION AND PROCEDURES FOR VARIANCE

- a. **"Variance" as defined - MGL 40A §10:** "The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority

specifically finds that 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, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

b. General Information Relating to Granting of a Variance

- (1) Chapter 40A, §10 of the MGL provides that a ZBA may grant a Variance from the provisions of the Town’s Bylaw only if the following conditions are established by the petitioner:
 - *That owing to circumstance relating to the soil conditions, shape or topography of the land or structures, and especially affecting such land or structures by not affecting generally the zoning district in which it is located,*
 - *A literal enforcement of the provisions of the town’s zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner; **and***
 - *That relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the bylaw*
- (2) Be advised that statutory requirements for the grant of a Variance are conjunctive, not disjunctive, and a petitioner’s failure to establish any one of them is fatal to the grant of variance. Therefore, all of the following conditions must be met:
 - The petitioner must show that literal enforcement of the provision of the Bylaws creates a substantial personal hardship, financial or otherwise to the petitioner. Grant of the Variance may be based only upon circumstances which directly cause personal hardship to the owner. For example: 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 petitioner is unable to put the premises to a more profitable use is not adequate cause for granting a Variance.
 - Example of hardship of land: Ledge or rock condition existing on the property which does not allow construction within the conformity of the Bylaws.
 - The condition affecting the property is incidental to that property and does not generally affect other parcels within the zoning district.
 - The Variance will not result in substantial detriment to the public good. For example: excess traffic will not result by granting the Variance, or that the rights of neighbors will not be infringed upon.
 - The Variance will not substantially derogate from the intent and purpose of the bylaws. For example, putting a retail store in a residential district is substantial derogation from the intent and purpose of the Bylaws. 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 Bylaws
- (3) The petitioner’s presentation before the ZBA should specifically relate to all of these conditions. If in doubt, contact an attorney before filing an appeal. When an appeal is denied there is a two year waiting period before the appeal may be reheard by the ZBA. It is best to be fully prepared at the time of the hearing. (MGL 40A, Zoning Act, §10).
- (4) Complete the “Request for Findings of Fact” sheet in full. It is the petitioner’s responsibility to present the facts of the case clearly and fully.
- (5) In order to expedite consideration of the appeal, include all factors that may be relevant to the question of hardship, financial or otherwise, as detailed above and how hardship may be overcome by grant of a Variance.

4. FEES

- a. Single Family Residential: Variance, Special Permit, Amendment or Modification of Permit or Variance, Appeal or Order of Zoning Enforcement Officer, or Administrative Appeal. Filing fee of \$400 plus the cost of postage for First Class and/or certified mailing for the notices to each of the abutters as required by the Bylaws.
- b. Commercial, Industrial, and All Others: Variance, Special Permit, Cell Tower Permit, Amendment or Modification of Permit or Variance, Appeal of Order of Zoning Enforcement Officer, or Administrative Appeal. Filing fee of \$400 plus:
 - (1) Reimbursement of all administrative costs and mailing expenses
 - (2) Reimbursement of all attorney and professional consultant fees



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Town Clerk:

Tax Collector :
(MGL 40, § 57)

PETITION COVER SHEET

TO THE ZONING BOARD OF APPEALS (ZBA) OF THE TOWN OF STERLING:

The undersigned respectfully petitions your Honorable Board for a **VARIANCE**:

1. The undersigned is the owner(s)/lessee(s)/optionee(s) (***circle one***) of the subject property located at: _____
The record title stands in the name of: _____
by a Deed recorded at the Worcester District of Deeds, Book: _____ Page: _____
and the Sterling Board of Assessors: Map No. _____ Lot No. _____
2. Said premises are situated in the Zoning District classified under the Protective Bylaws of the Town of Sterling as: _____
3. If this petition is for a **Special Permit** state the Article(s) of the Protective Bylaws which allows the ZBA to grant the permit: _____
4. The following is currently located on the property: _____

5. The petitioner seeks to do the following on the premises: _____

The applicant shall obtain a Certified List of Abutters (parties in interest within 300 feet of the property line) from the Assessor's office.

The undersigned submits the following to the Town Clerk:

- The original plus 8 copies of this petition
- Request for Findings of Fact (Form 2a, 2b or 2c)
- Scaled Plans. The Plans show the parcel in question, location of abutters, and the location of existing and proposed buildings. The Plan indicates the scale and includes a north arrow. Front and side elevations and floor plans are included for proposed new or remodeled structures.
- Copy of the written decision which is being appealed, if indicated
- Fee of _____

Applicant Signature _____

Name Printed _____

Address _____

Telephone _____

Email _____

Owner Signature _____

(if different than above)

Name Printed _____

Telephone & Email _____

Answer all applicable questions fully. If more space is needed, attach additional sheets. Please note that additional licenses or permits may be required from the Board of Selectmen or other boards and/or officials.

Attachments:

- _____ Form 2a – Request for Findings of Fact in Connection with a Petition for a Variance
- _____ Form 3 -- List of Abutters and Planning Boards
- _____ Form 4 -- Petition for Amendment or Modification of Special Permit or Variance
- _____ Scaled Plans
- _____ Copy of the written decision which is being appealed, if indicated
- _____ Filing Fee of _____
- _____ Postage for _____ Abutters (\$8.53 for Certified, or, \$0.63 for Regular Mail – per individual)
- _____ Copies of Petition (8) for Town Officials and Boards
- _____ Additional documentation in support of this petition



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**REQUEST FOR FINDINGS OF FACT IN
CONNECTION WITH A PETITION FOR A VARIANCE**

Now comes the petitioner(s) _____

who has petitioned this Honorable Board for a **Variance** for property located at:

and asks that said Board make the following findings of fact:

That owing to circumstances relating to the soil conditions, shape or topography of the land or structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the Town of Sterling's Protective Bylaws would involve substantial hardship, financial or otherwise, to the petitioner(s) for the following reasons:

That no substantial detriment to the public good would result from granting the Variance for the following reasons:

That no nullification or substantial derogation from the intent or purpose of the Town of Sterling's Protective Bylaws would result from granting the Variance for the following reasons:

Respectfully Submitted By: _____

Date: _____

(Note: Attach additional sheets if needed)



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LIST OF ABUTTERS AND PLANNING BOARDS

OWNERS NAME: _____

ADDRESS OF PROPERTY: _____

MAP AND PARCEL: _____

The following is a list of all parties of interest as defined by Massachusetts General Laws, Chapter 40A, § 11.

"Parties in interest" shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred 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, the planning board of the city or town, and the planning board of every abutting city or town. The assessors maintaining any applicable tax list shall certify to the permit granting authority or special permit granting authority the names and addresses of parties in interest and such certification shall be conclusive for all purposes.

APPLICANT: _____

LEGAL MAILING ADDRESS: _____

OWNER: _____

AGENT/ATTORNEY: _____

Planning Boards of Abutting Towns/Municipalities

Boylston Planning Board
Clinton Planning Board
Holden Planning Board
West Boylston Planning Board
Lancaster Planning Board
Princeton Planning Board
Leominster Planning Board

Boylston Town Offices
Clinton Town Hall
Holden Town Hall
West Boylston Town Hall
Lancaster Town Hall
Princeton Town Hall
Leominster City Hall

221 Main St.
242 Church St.
1196 Main St.
140 Worcester St.
695 Main St., Suite 4
6 Town Hall Dr
25 West St.

Boylston, MA 01505
Clinton, MA 01510
Holden, MA 01520
West Boylston, MA 01583
Lancaster, MA 01523
Princeton, MA 01541
Leominster, MA 01453

Attach the required list of abutters Certified by the Sterling Board of Assessors to the application.

Respectfully Submitted By: _____ Date: _____

Checklist for Filing an Appeal

- ✓ Check the Zoning Bylaws for applicability and obtain a Zoning Determination from the Building Commissioner and include with application.
- ✓ Fill out appropriate Application. (Variance, Special Permit, Comprehensive Permit, Modification or Administrative Appeal).
- ✓ Certified List of Abutters must be obtained from the Assessor's office and included with the application.
- ✓ Include all other necessary paperwork, such as maps, plans, forms and fees.
- ✓ For Fees: One check for the application fee (\$500 for Comprehensive and \$400 for all others) and the postage made payable to "The Town of Sterling." (Postage is currently \$8.53 for Certified/Return Receipt or \$.63 for regular mail, for each of the abutters.)
- ✓ Submit original application, **plus** 8 full copies along with the fees to the Zoning Board of Appeals office. If the application is complete, it will then be stamped in with the Town Clerk.
- ✓ Deadline: If all paperwork is completed and submitted a minimum of 35 days before the next meeting, you will be placed on the meeting agenda and notified of the meeting (Check the Zoning Board of Appeals website for dates, or email ppage@sterling-ma.gov).
- ✓ After the Public Hearing and the decision is made, the ZBA will file the decision at the Town Clerk's office within 14 days of the close of the Public Hearing. The 20 Day appeal period begins at the time of filing with the Town Clerk.
- ✓ The certificate of No Appeal will be released by the Town Clerk after the 20th day. You must obtain the certificate of No Appeal from the Town Clerk and record the decision with the Worcester Registry of Deeds. There is a filing fee (please check with them for any current procedures). Please call the Clerk's office to arrange a time to pick up your certificate.
- ✓ Provide a copy of the recorded decision to the Building Department with permit application.

If you have any questions please contact the Zoning Board of Appeals office at 978-422-8111 x2301 or email ppage@sterling-ma.gov