



# TOWN OF HOPKINTON

OFFICE OF  
**BOARD OF APPEALS**

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## **General Filing Instructions**

The Board of Appeals is very different from Hopkinton's other town boards. Under Massachusetts General Laws (MGL), Chapter (c.) 40A, our board has *quasi-judicial authority* 1) to hear and decide appeals by persons aggrieved by decisions of Administrative Officials {for example, the Director of Municipal Inspections acting as the Zoning Enforcement Officer, and the Planning Board under Site Plan Review}, 2) to issue Special Permits for various property uses, and 3) to grant relief from the literal enforcement of zoning by-laws adopted by the Citizens of Hopkinton at Town Meeting. The Board of Appeals also hears appeals of decisions by the Hopkinton Housing Authority pursuant to Hopkinton General By-law 125-5 and issues Comprehensive Permits for affordable housing under MGL c. 40B.

The purpose of zoning is to regulate the use of land. Under the zoning by-laws, permitted uses may be allowed as a matter of right or only with a special permit. All other uses are not permitted because they are either expressly disallowed under the zoning by-laws or because they are not mentioned as an allowed use. Any use that is not expressly allowed is prohibited.

## **Burden of Proof & Preparation**

The Applicant / Petitioner generally bears the burden of proof on all matters. Therefore, it is therefore extremely important that you prepare in advance prior to filing with the Board of Appeals. On occasion unprepared citizens appear before our Board and fail to present sufficient rationale or evidence in support of their request for relief. When this happens, the Board only has two alternatives, 1) close the public hearing and decide the case based upon the inadequate information before us<sup>1</sup>, or 2) consider a request to continue the public hearing for a period of time to allow a party to properly prepare or provide the Board with the information or documentation necessary for the Board to grant the relief requested. Therefore, your failure to properly prepare and present a reasoned argument can lead to delays in obtaining a decision on your request for relief. In practical terms, a public hearing is closed only when the parties have placed all pertinent information on the record and the Board has determined that its questions have been answered.<sup>2</sup> The length of time that the public hearing remains open is therefore also directly related to the extent of the filing, and the number and complexity of the issues to be considered by the Board.

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<sup>1</sup> which may result in a denial of the requested relief.

<sup>2</sup> Handbook of Massachusetts Land Use and Planning Law, Bobrowski (1993), p. 396

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It is therefore strongly recommended that before you file your application, you carefully review the zoning by-laws and the Questions and Answers section on the Board of Appeals page on the Town's Web Site<sup>3</sup>. You may obtain a copy of these by-laws directly from the Town Clerk, or download a copy from the Board's web site.

### **Help & Assistance**

The members of the Board of Appeals and its administrative staff working at Town Hall will **not** in advance of filing provide you with advice on the best way to obtain the relief you are seeking. The Board of Appeals is impartial, neutral, and disinterested, and must remain so. The public hearing process is generally adversarial. Often there are abutters and other parties in interest present at the public hearing that seek to either deny or curtail your requests for relief. These individuals represent competing interests that the Board must consider when rendering an impartial judgment. Therefore, members of the Board will not discuss your case with you in advance of your filing with the Town Clerk. To do so may give rise to the appearance of bias.

However, there are others in Town Hall that may assist you. You should give serious consideration to discussing your situation with the Director of Municipal Inspections and/or the Town Planner. However, note that these individuals will **not** provide you with legal advice or assist you with completion of the required forms. You should retain the services of an attorney who specializes in land use and zoning to represent you before the Board if you require legal assistance. It is very common for attorneys to represent parties in interest in proceedings before the Board of Appeals. If you do not understand the process, retain counsel to represent you. Proceedings before the Board of Appeals have an effect on the property rights of the Owners of Record, regardless of the outcome of the matter.

### **Effect of Denial of Request for Relief**

No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Board of Appeals finds, by a vote of four of its five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and unless all but one of the members of the Planning Board consents thereto.<sup>4</sup> Once relief is denied by the Board of Appeals, it is therefore very difficult to have the matter reconsidered within two years. The best advice is therefore, come prepared, and do it right the first time.

### **Forms of the Board of Appeals**

The Board of Appeals currently has the following three forms that may need to be filed in order to start the process before the Board: 1) Uniform Application for Special Permit / Petition for Variance; 2) Appeal of Administrative Decision, and 3) Supplemental Information for Pre-Existing Non-Conforming Uses and Structures.

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<sup>3</sup> [www.Hopkinton.org/government/zba](http://www.Hopkinton.org/government/zba)

<sup>4</sup> MGL c. 40A s. 16

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**Completion of Forms**

Carefully complete the appropriate forms and answer all questions. Be sure to include all relevant facts. Do not assume that the Board of Appeals will accept alleged facts without supporting documentation. You should be sure to refer to the appropriate provisions of the by-laws when making your oral and written arguments. Be sure to include the signatures of all of the 1) Applicant(s) / Petitioner(s) / Appellants(s) and 2) Owner(s) of Record. If you have a pre-existing non-conforming use or structure (a/k/a "grandfathered"), you should also complete the "Supplemental Information for Pre-existing Non-Conforming Uses and Structures" form. If you are submitting plans in support of your filing, you need to provide extra 8" x 11" reduced copies of all plans. You may wish to request that your engineer reduce the plans in an Adobe Acrobat format and attach the plans to an e-mail to ZBAClerk@Hopkinton.org. This may be more convenient than using a photocopy machine.

**File with Town Clerk**

File the original forms with attachments (with the appropriate number of copies) with the Office of Town Clerk, along with your check for the correct filing fee. Checks should be payable to the "Town of Hopkinton." The Clerk of the Board of Appeals, or his or her designee, may contact you if you have omitted to include the proper information or have failed to include the proper filing fee.

**Notice of Public Hearing**

Generally within 45 days of your filing with the Town Clerk, the Clerk of the Board of Appeals will publish a Notice of Public Hearing. You will receive a billing statement<sup>5</sup> directly from the MetroWest Daily News for advertising of this notice. You must pay this bill to the newspaper before the public hearing date. The public hearing will be scheduled within 65 days after the date you file with the Town Clerk.

**The Public Hearing**

You should come to the public hearing fully prepared to present testimony and evidence to support your application. You are strongly urged to summarize extensive or complex facts or arguments in a written statement and file these statements at least seven days in advance of the scheduled public hearing. If a statement or additional information is not provided in advance as recommended, please bring sufficient copies (10) of all written materials for board members to review at the public hearing.

Since the abutters have also been provided with Notice of the Public Hearing, you may expect both support and opposition to your filing. It is strongly recommended that prior to the Public Hearing that you discuss your plans with your neighbors and solicit their support. You should know in advance the opposition that you face and be prepared to advise and discuss with the Board of Appeals just how you intend to deal with and mitigate any obstacles.

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<sup>5</sup> Costs of publication in the newspaper generally run from \$250.00 to \$350.00.

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The Applicant/Petitioner/Appellant generally must appear at the Public Hearing. Failure to appear may result in denial of your request for relief. If you are represented by an Attorney who is licensed to practice law in the Commonwealth of Massachusetts, he or she may "represent" you as an advocate. However, even if you are represented by counsel, you should also be available to answer questions posed by the Board. Persons other than licensed Attorneys may not "represent" an Appellant, Applicant, or Petitioner. Note that this does not prevent others from speaking as "witnesses" on your behalf. For example, if you want a licensed engineer to be an "expert witness" and make a presentation to the Board of Appeals, he or she may do so. But, you must also appear at the Public Hearing. You can not just send another person to be an advocate and act on your behalf in a "representative" capacity and then not show up yourself. You must also appear at the public hearing.

#### **Electronic Communications**

The preferred method of communication with the Board of Appeals after commencement of a case is by e-mail, with 1 original paper copy mailed to the Board of Appeals at Town Hall and an electronic copy in Microsoft Word format attached to an e-mail to [ZBAClerk@Hopkinton.org](mailto:ZBAClerk@Hopkinton.org). If possible, conversion to an Adobe Acrobat pdf file is requested. This will facilitate distribution of communications to the various members of the Board and other appropriate town officials.

#### **Decisions**

The Board of Appeals will attempt to render and file a decision as soon as possible. Your patience is appreciated and sufficient time, including allowance for the 20 day appeal period, should be budgeted within your construction schedule. The deadline for filing a decision for an Appeal or Variance is one hundred (100) days after the initial filing with the Office of the Town Clerk. For a Special Permit, the decision of Board of Appeals is made within ninety (90) days following the date of the close of the public hearing. However, note that these time limits are generally extended during the continuances of any public hearing.

#### **Appeal Period**

Special Permits and Variances granted by the Board of Appeals become valid only after they are recorded at the Middlesex South District Registry of Deeds after expiration of the twenty (20) day appeal period. Generally, no building permit will be issued by the Director of Municipal Inspections until after the appeal period has lapsed, and proof of recording is presented.