



# TOWN OF BERKLEY MASSACHUSETTS ZONING BOARD OF APPEALS

## PETITION TO BERKLEY ZONING BOARD OF APPEALS

### INSTRUCTIONS-40A

The rules applicable to zoning relief are legally complex. The Zoning Board of Appeals encourages applicants to engage counsel or other consultants familiar with these rules to assist them in preparing applications to the Board and representing the applicants at a public hearing.

**This application must be returned to the Town Clerk's office.**

### FEES

The filing fee for any request for action by the Board, including a variance, special permit or administrative appeal from a decision of the building inspector is \$800.00 which should be paid by check payable to the Town of Berkley. In addition, the applicant must pay: First, the actual expense of sending notice by certified mail notice to abutters, as required by Massachusetts General Laws Chapter 40A, Section 11. The Board's clerk will advise the applicant of the cost after determining the necessary notices in consultation with the Assessors office, and will advise the applicant of the expense, which the applicant must pay directly by check payable to the United States Post Office. Second, the applicant must deliver a check in the amount of \$1,000.00 payable to the Town of Berkley, to fund legal advertising and any consultant expenses incurred by the Board as authorized by the Board's regulations. The extent of such expenses varies with the complexity of the application. If the \$1,000.00 balance is not sufficient, the applicant will be required to increase the consultant escrow in an amount to be determined by the Board. All consultant expenses are governed by the procedures set forth in General Laws Chapter 44, Section 53G. All unexpended funds from the escrow account will be released to the applicant after the Board's decision is final, except that the Board may retail escrowed funds for zoning cases where the Board will be required to make inspections and/or have consultant review after the decision is final.

Agreement \_\_\_\_\_  
Applicant's signature

### PLANS

The applicant must submit a plan showing the dimensions of the lot with the location of existing and proposed structures. Any any application for relief from dimensional requirements of the zoning by laws (area, frontage and setback) the plan should be prepared and stamped by a registered professional land surveyor.

Please submit six copies of the application, plan and other attachments.

**TOWN OF BERKLEY  
MASSACHUSETTS  
40A PETITION TO BOARD OF APPEALS**

TO: Town of Berkley Board of Appeals

DATE \_\_\_\_\_

The undersigned petitions the Board of Appeals, in the manner & and for the reasons hereinafter set forth, for a Variance from, or a special permit under, the provisions of the Zoning by-law to the following described premises. (You may use attachments where space is not sufficient).

APPLICANT \_\_\_\_\_ / \_\_\_\_\_  
Name Address

IF NOT THE OWNER, please provide evidence of AUTHORITY to file this petition \_\_\_\_\_

Owner \_\_\_\_\_ / \_\_\_\_\_  
Name Address

TENANT: (if any) \_\_\_\_\_ / \_\_\_\_\_  
Name Address

1. Location of premises: \_\_\_\_\_

2. Dimensions of lot: \_\_\_\_\_  
Frontage Depth Sq.ft.

3. Assessors Map No: \_\_\_\_\_ Lot No: \_\_\_\_\_

4. How long has applicant owned premises: \_\_\_\_\_

5. How many buildings now on lot: \_\_\_\_\_

6. Size of existing Buildings (s.f.): \_\_\_\_\_

7. From whom was land purchased: \_\_\_\_\_

8. Size of proposed buildings: \_\_\_\_\_

9. Present use of premises: \_\_\_\_\_

10. Proposed use of premises: \_\_\_\_\_

11. Extent of proposed alterations: \_\_\_\_\_

12. Number of families for which building being arranged: \_\_\_\_\_

13. Have plans be submitted to Building Inspector? \_\_\_\_\_

14. Has permit been refused? \_\_\_\_\_

15. What section (s) of Zoning by-Law does applicant wish to be varied, or if a special permit, what

section authorizes this permit? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. State specific purpose for which such permit or variance is sought: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

17. Has a variance for this parcel been previously requested? \_\_\_\_if yes, when and for what reason?  
\_\_\_\_\_

18. (FOR VARIANCES ONLY) Please state the basis for your contention that a hardship exists that affects this property. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The applicant will need a certificate showing no outstanding real estate taxes, from the tax collectors office. (form included)

The applicant must obtain and attach, a certified abutters list, from the assessors office.

The Zoning Board of Appeals will be responsible for all certified mailings and newspaper ads to be run. (Funds for advertising will be taken from the escrow account).

DEED to premises above described is recorded in the Bristol County Northern District Registry of Deeds.

BOOK: \_\_\_\_\_ Page: \_\_\_\_\_ Please attach a copy.

It is understood & agreed that the Notice of Variance is issued in reliance on this application, the site plans & the Building permit application. Any relief granted shall be conditioned on the accuracy of this information.

Once approved and appeal period is over, we need an "asbuilt" plan (11 by 17) with respect to the location of the structure.

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

\_\_\_\_\_  
Signature of Applicant.

\_\_\_\_\_  
Telephone of Owner.

\_\_\_\_\_  
Telephone of Applicant.

\_\_\_\_\_  
Full mailing address for all correspondence.

TOWN OF BERKLEY  
ZONING BOARD OF APPEALS  
ONE NORTH MAIN STREET  
BERKLEY, MA 02779

DATE:\_\_\_\_\_

TO:       BERKLEY ZONING BOARD OF APPEALS

FROM:    BERKLEY TAX COLLECTOR'S OFFICE.

I certify that (Applicant)\_\_\_\_\_

Of (address)\_\_\_\_\_

Has NO outstanding real estate tax due to the Town of Berkley, for ANY property owned OR jointly owned by the Applicant.

I also certify that the Owner (indicate if NOT the same)

Name:\_\_\_\_\_

Address:\_\_\_\_\_

Of the property being considered for \_\_\_\_\_ by the  
(Variance, Appeal, etc...)

Zoning Board of Appeals, has NO outstanding tax due to the Town of Berkley.

This property being:           Town of Berkley Assessors

MAP NO. \_\_\_\_\_ LOT NO.(s) \_\_\_\_\_

Located at (address)\_\_\_\_\_

\_\_\_\_\_  
\*\*Tax Collector  
Town of Berkley

I certify the Applicant, Owner and property listed above, has NO Tax Title liens held by the Town Of Berkley.

\_\_\_\_\_  
\*\*Treasurer  
Town of Berkley

\*\*\*THIS FORM MUST BE COMPLETED AND FILED WITH THE APPLICATION AT THE TOWN CLERK'S OFFICE\*\*

The following information must be submitted with your application.  
Any incomplete application can be deemed denied by the Board of Appeals.

1. A copy of your Letter of Denial from the Berkley Planning Board and/or Berkley Building Inspector.
2. A RECENT, CERTIFIED ,PLOT PLAN, SIZE B (11" BY 17") or larger, drawn to scale. The plot plan must include the following:
  - a. North Arrow
  - b. Name of Streets
  - c. Property Lines
  - d. Location of existing buildings & proposed structures on the property where a variance is requested. Also show all existing or proposed improvements, such as, driveways, wells, septic systems, utility poles, catch basins, drains, easements, etc..
  - e. Location of existing buildings/improvements to abutting properties, such as, wells, septic, drains, retention areas, etc...
  - f. Abutters list certified by the Board of Assessors within 300 FEET in all directions of the subject property.
  - g. All lot dimensions of the subject property.
  - h. Distances of existing and/or proposed improvements from the subject property lines. ALL sides.
  - i. Show all rights of way and easements.
  - j.
3. A brief setting forth in detail all facts pertinent to your petition, including the exact address and lot Number of the subject property.
4. A history of the lots, when subdivided and date registered, and the Planning Board date of approval of lots.
5. A list/copy of all covenants, easements, right of way, or restrictions-including those of the Planning Board, if any, when subdivided. If none, state none.
6. Board of Assessor's certified list, signed by their office, of all abutting property owners within 300 feet, all directions, of the subject property. This list is to also be dated by the Assessor's Office.
7. A certified copy of the Board of Assessor's plot plan with the subject and abutting parcels shown. (11" by 17" or size B)

The above information must be submitted with your application to the Town Clerk. Failure to submit this information in full, may result in your application being returned and/or your petition being denied.

The Board of Appeals will notify you of the time, date and place of the public hearing they will hold for your petition. The Board of Appeals will be responsible for all certified mailings and newspaper ads to be run.

## **ARTICLE 3    HEARINGS**

### **SECTION 1 NOTICE**

Notice of hearing shall be advised as required by the provisions of Chapter 40A, MGL.

The Board of Appeals shall be responsible for:

Advertising in the newspaper, that services this community.

Notifying all abutters via certified mail within 300 feet of the property lines as they appear in the most recent tax bill listing.

The abutters list must be certified by the assessors.

Copies of the notice shall be mailed certified mail to the following:

Town Clerk, with letter of request for her to obtain in house signatures from each Town Board.

**BOARDS -** Planning Boards , abutting Municipalities.

The responsibility of notifying the abutters is solely on the Board of Appeals.

### **SECTION 2. PUBLIC HEARINGS**

All hearings shall be open to the public.

The Board of Appeals must hold a public hearing within 65 days from the date the application was filed.

### **SECTION 3. REPRESENTATION AND ABSENCE**

An applicant (current owner of record of said parcel) may appear on his/hers own behalf, or be represented by an agent or attorney “without prejudice”. The applicant must designate and identify that representative in letter to the board.

### **SECTION 4. ORDER OF BUSINESS**

A. Reading of petition.

B. Boards presentation and list of abutters signed certified mail receipts or proof of Mailing- stamped by a US Postal service.

C Report from Zoning Board.

D Opponent’s presentations, and/or questions by those seeking information.

E Applicant’s rebuttal, restricted to matters only raised by opponent’s presentation.

Members of the Board who are present, throughout the hearing may direct appropriate questions during the hearing process only.

### **SECTION 5. BRIEF TO THE BOARD**

It is recommended that every application for a variance be supported by a brief setting forth in detail all facts pertinent to the application. Briefs should be filed with the application or presented at the time of the hearing.

## **ARTICLE 4    DISPOSITION**

### **SECTION 1. VOTING REQUIREMENT**

Granting of a special permit shall require a majority of the vote of the entire Board (3) by roll call vote.

Roll call vote shall be recorded into the minutes.

## SECTION 2. FILING PERIOD

A request for a variance, along with appropriate fees may be submitted to the Board of Appeals at any time through the Town Clerk. The Town Clerk must certify the date and time of filing. The Town Clerk will forthwith submit the petition to the Zoning Board of Appeals.

A hearing must be held within 65 days after the filing of an completed application with the Board of Appeals. The Board of Appeals has 45 days from the closing of the hearing to render a written decision. Any petition for a variance may be withdrawn "without prejudice" by a petitioner prior to the publication of the notice of the public hearing. After publication of the public hearing notice, a petition can only be withdrawn without prejudice with the approval of the Zoning Board of Appeals.

## SECTION 3. PETITION REQUIREMENTS

Each application must be accompanied by:

- 3 copies of a certified plot plan dated, showing the property for which the variance is requested.

The date on the plan shall not exceed 12 months from the date of application.

That plan shall show names of streets, property lines, entrances, driveways, locations of existing buildings, and proposed buildings or additions. Abutting property shall also show existing buildings.

All proposed data shall be shown in RED only.

It shall have top elevations and wetland delineations by a registered Botanical Engineer.

- Copy of the abutters list for 300 feet or as Town By-Law requires from all points of boundary line, certified by the Assessor's office and dated within the past 3 months.

- Give any pertinent data which should be considered to have a bearing on the case.

## SECTION 4. ADVERTISING AND NOTICE FEES

All applications shall be accompanied by a check, made payable to the Town of Berkley in an amount designated by the Board annually at the first meeting of the new fiscal year.

The Board of Appeals shall be responsible for advertising in the local newspaper.

The first notice in the local newspaper has to be at least 14 calendar days prior to the hearing and the second notice at least 7 calendar days prior. These days are not to include the hearing date.

The Board of Appeals shall be responsible for notifying the abutters via certified mail in a timely fashion (not less than 7 days prior to hearing) as prescribed by the Zoning Act in place by the Commonwealth of Massachusetts (M.G.L.c40A)

The Board of Appeals shall bring the proof to the hearing. The Board of Appeals shall post notice in the Town Clerk's office & notify all Town Boards via written notice.