

**Town of Bourne
Zoning Board of Appeals**

Application Packet

Attention Applicant:

Please read this document carefully. It contains specific instructions on how to prepare appeal applications and what supporting documents you need to prepare a complete “Application Packet”.

It is strongly recommended that you contact the Town of Bourne Inspection Department at 508-759-0600 Ext.1345 if you have questions regarding your application or the information you must provide.

Incomplete applications or missing documents could result in either a denial or postponement of your appeal. This action can cost you time and money.

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1. Application Preparation Instructions

Introduction

This application packet explains the workings of the Board of Appeals in relation to its duties to hear and decide applications for Support Findings, , Special Permits, Variances , and appeals from decisions of the Building Inspector under MGL Chapter 40A. Not included in this packet are the Board's duties and regulation with regard to applications for a Comprehensive Permit under MGL Chapter 40B, or its powers under MGL, Section 81Y. In addition, the Board of Appeals hears and decides appeals from the decisions of the Design Review Committee, under section 2890, which is empowered by the bylaws to approve certain signs in the downtown district.

Also it should be noted that the Board of Appeals does not waive any requirements of the Board of Health. If any Board of Health issues are involved in any applications (for example, the Board of Health has special Kennel regulations, and bedroom additions must have adequate septic systems), the applicant must comply with all Board of Health requirements.

What you should know before applying

In order to grant permission to proceed with any project which does not conform to the Zoning Bylaw, the Board of Appeals must be persuaded by the applicant with evidence that the proposal meets the requirements of the particular Supportive Finding, Special Permit or Variance for which the applicant is applying. The applicant should read all relevant sections of the Zoning Bylaws before filling out the application. The burden of meeting the requirements of the particular Supportive Finding, Special Permit or Variance falls upon the applicant.

For the applicant to accomplish this, it is imperative that the visual presentation show clear plans and elevations of the project as well as the type of construction. This will allow the Board to be adequately informed concerning the proposal.

There is no requirement that an attorney represent any appellant. There is also no requirement that the visual presentation material be prepared by an architect or other design professional. However, if you have any doubts as to your abilities to present your arguments and to set forth your proposed design in a clear and precise manner, it may be advisable to seek professional assistance.

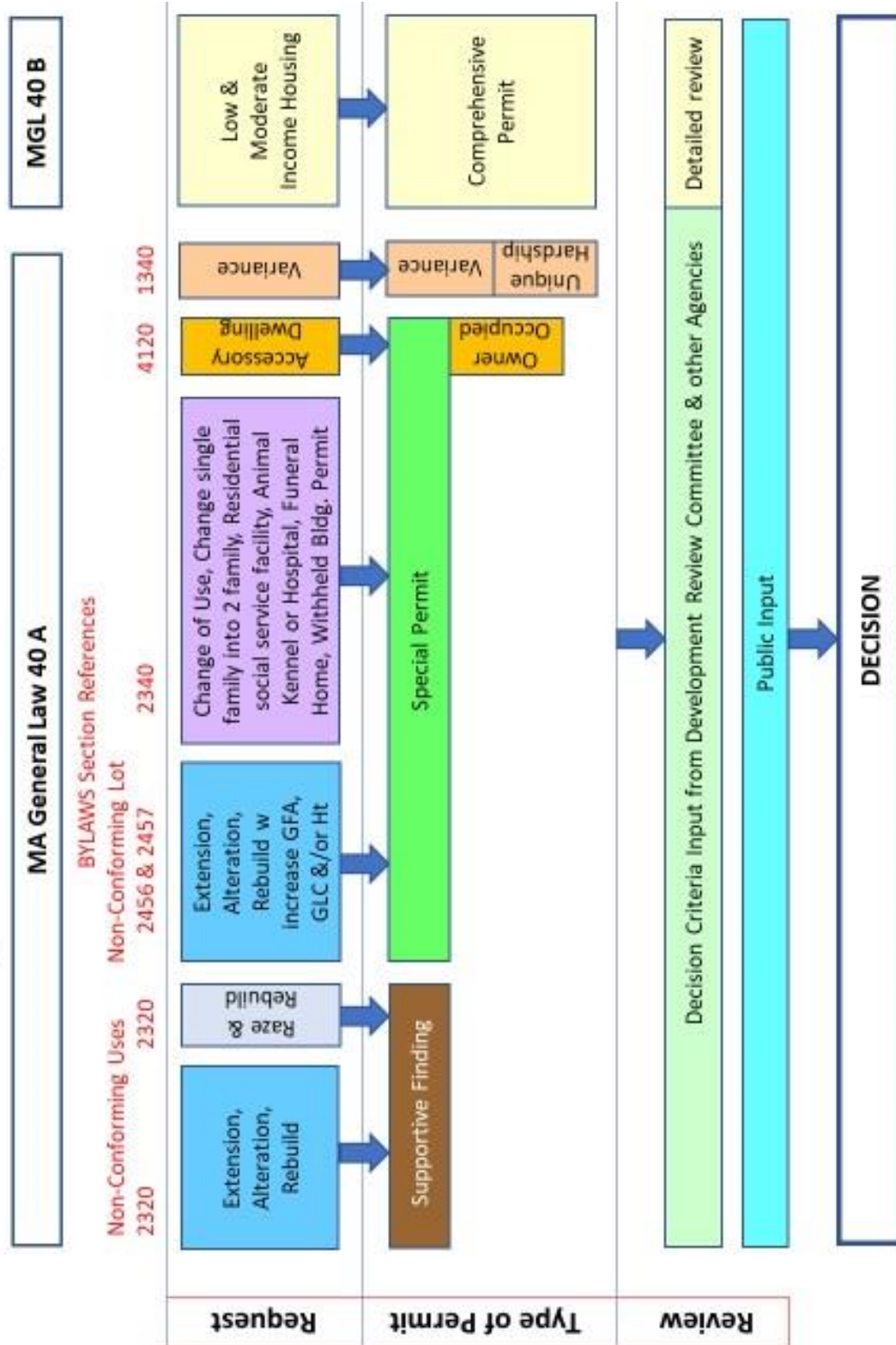
The Board will not approve any proposals which it deems are inadequately presented

In such instances, the hearing may be continued to allow the applicant more time to prepare, or the application may be dismissed with or without prejudice. Dismissal with prejudice will prevent the applicant from reapplying for a period of 2 years. Dismissal without prejudice allows the applicant to reapply at his/her convenience but does not extend any applicable statute of limitations.

Diagram of Types of Permits and Decision Flow for the Board of Appeals

The following diagram provides an illustration of the sections of the code and the types of approvals that may be granted by the Board of Appeals. It is provided to help the applicant understand the Bylaws.

Bourne Zoning Board of Appeals Types of Permits & Decision Flow Diagram



2. Approval Requirements

Application for a Variance

The Massachusetts law regarding variances is strict and unyielding. When an individual applies for a Variance, he/she requests authorization from the Zoning Board of Appeals to do something that is in violation of the Zoning Bylaw. The criteria for granting a Variance are very restrictive and the applicant must meet all three of the following conditions specified in The Zoning Act, MA General Laws Chapter 40A.

1. Special conditions must exist that affect the subject parcel of land. There must be “something wrong” or “something unusual” about the parcel for which the Variance is sought. These conditions pertain only to the shape, soil conditions, or topography of the parcel. Shape should not be confused with size.
2. Literal enforcement of the Zoning Bylaw would involve substantial hardship, financial or otherwise.
3. Desirable relief (approving the Variance, with or without conditions) may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Also note: , If the applicant seeks to create a new nonconformity in a preexisting nonconforming structure, a variance is required. (See *Deadrick v. Zoning Board of Appeals of Chatham*, June 25, 2014.)

The Variance cannot be granted unless the Zoning Board of Appeals specifically finds that all three conditions have been met. The granting of a Variance requires a super-majority vote of at least 4 Board members voting YES.

Application for a Supportive Finding

There are two types of cases that may be granted with a Supportive Finding. Section 2320 allows the Board of Appeals to grant permission for the extension or alteration of a pre-existing nonconforming structure or use. In order to approve the request, the Board of Appeals must specifically find that the requested extension or alteration will not be substantially more detrimental to the neighborhood than is the existing nonconforming use.

The second type of case that falls under Section 2320 is a request to raze a residential structure and rebuild a home on an existing nonconforming lot.

The granting of a Supportive Finding requires only a simple majority vote of 3 Board members voting YES.

Application for a Special Permit

There are five sections of the Bylaws that require a Special Permit or permissions that the Board of Appeals can grant (with or without conditions) or deny (with or without prejudice) upon application after a hearing, namely:

- a) A Special Permit for a change of use from one non-conforming use to another non-conforming use (Section 2340),
- b) A Special Permit for an accessory dwelling (Section 4120),
- c) A Special Permit for a Residential Social Service Facility, Kennel or Animal Hospital, Funeral Home (Section 2200),
- d) A Special Permit for a free-standing sign that exceeds fifteen feet in height (Section 3210 h),
- e) A Special Permit to allow an increase in the gross floor area and/or the maximum lot coverage on a nonconforming lot. The Board may grant up to 10% more gross floor area or up to 10% more lot coverage that the table in section 2456 allows (Section 2457) provided that the applicant demonstrates good and sufficient cause and that failure to grant the approval would result in exceptional hardship

The granting of a Special Permits under state law requires a vote of at least a super-majority, or 4 Board members voting YES.

All Special Permits require that the Board of Appeals must find that the proposed use will not have adverse effects which over-balance its beneficial effects for either the neighborhood or the Town, in view of the particular characteristics of the site and of the proposal in relation to that site. In making this determination, the Board must consider the following factors, among others: pedestrian and vehicular flow and safety; adequacy of utilities and other public services; the impact on the natural environment; impact on nearby developed premises; visual compatibility with the surroundings; in Water Districts, the contribution to cumulative impact upon public water supplies; and the impact upon the Town's needs for year-round housing available for persons of all income levels. (Section 1331)

To grant a Special Permit for a Change of Use from one non-conforming use to another non-conforming use, or for a Special Permit for a Kennel, the Board of Appeals must find that the change of use will not:

- a. Result in externally observable attributes that are more damaging to or inharmonious with the environs than those of the use being replaced,
- b. Result in traffic generated by the new use which will excessively exceed that normally expected in the neighborhood,
- c. Create a nuisance or hazard, and,
- d. Be more objectionable to the neighborhood than the current use. (Section 2340)

To grant a Special Permit for an Accessory Dwelling, the Board of Appeals must find that:

- a. The principal dwelling will be owner occupied,
- b. The occupancy of the accessory dwelling will serve a significant community purpose, such as facilitating the care of a family member,
- c. The Board of Health has documented that sewage disposal will be satisfactorily provided for, including provision for an appropriate reserve area on the site, and
- d. Parking (as required by Section 3320) is be provided either in a garage or on paved surfaces not located within any required setback.

The Board of Appeals must also consider whether the lot area or other site characteristics assure mitigation of any impacts on the neighborhood, and whether site and building design will effectively avoid any departure from the character of the neighborhood. (Section 4120)

To grant a Special Permit to Increase the Height of any free-standing Sign to more than 15 feet, the Board of Appeals must find that:

- a. The increase in height is necessitated by unusual site circumstances,
- b. The resulting sign will not intrude into any scenic views,
- c. The design and illumination avoid creation of hazardous distraction for motorists,
- d. The proposed sign height is preceded by the height of signs on nearby properties or by the height of building on the same premises, and
- e. Compensatory scenic enhancements are to be made, such as landscaping beyond that otherwise required.

In no event shall a free-standing sign exceed 35 feet. (Section 3210 h)

To grant a Special Permit for up to 10% more gross floor area or up to 10% more lot coverage than the table in section 2456 allows, the Board of Appeals must find good and sufficient cause, meaning that failure to grant the departure would result in exceptional hardship to the applicant, or conflict with existing laws. (Section 2457)

In summary, a Special Permit cannot be granted unless the Zoning Board of Appeals specifically finds that all conditions have been met.

3. Appeal of a Decision of the Building Inspector

An **Appeal of the Decision of the Building Inspector** shall be made pursuant to MGL Chapter 40A Sections 8, 13, 14 and/or 15, by filing with the Town Clerk “Notice of Appeal” within twenty (20) days from the date of the decision or order being appealed. The reasons and grounds for the appeal should be specified in the notice of appeal. The applicant will submit the completed **Notice of Appeal, Application Packet Checklist**, supporting documents and fee to the Town Clerk. Any decision to affirm, modify, or reverse a decision of the Building Inspector requires a super majority vote of 4 members.

4. Board Procedures For Written Decisions

If the criteria are met, the Board of Appeals, may grant a Variance or a Special Permit or make a Supportive Finding, with or without reasonable conditions, safeguards, and limitations. Whether or not the Variance or Special Permit or Supportive Finding is granted, granted with conditions, or denied, or the Board votes to affirm or reverse a Decision of the Building Inspector, one of two options will be used to prepare the written decision..

Option 1: A member of the Board will be authorized to draft a decision, which will be reviewed for accuracy of form and content by the Chairman or his/her designee before the decision is filed with the Town Clerk.

Option 2: A member of the Board will make a motion and the Board will vote to authorize a designated decision writer to draft a preliminary decision. The applicant’s hearing will be continued to the next regularly scheduled meeting (usually in two weeks) where the Board will review and approve the draft decision for form and content before the decision is filed with the Town Clerk.

5. Timetable for Hearings, Decisions, and Appeals

1. The Board of Appeals must schedule a public hearing within 65 days from the date the application is filed with the Town Clerk. All memorandum of law, if any, shall be submitted to the Board of Appeals at least ten (10) days before the public hearing, unless the Board by majority vote extends this time limit.
2. The decision of the Board shall be made within 100 days after the date of filing of an appeal, application, or petition. Time requirements may be extended by written agreement between the applicant and board.
3. After the public hearing and the Board's decision, the Board of Appeals has 14 days to file its decision with the town clerk.
4. There is a 20 day appeal period for all decisions that starts on the next full calendar day after the decision has been filed with the Town Clerk.

6. Filing Fees

1. See current Fee schedule at www.townofbourne.com/zoning-board-of-appeals

7. Document Submission Requirements and Filing Requirements

Required Documents

In order to assure timely and proper distribution, copies of all documents should be submitted in collated packets. Twelve (12) copies (packets) of the following documents are required:

1. The formal application.
2. The Bourne assessor's map. Copies can be obtained from the town-engineering department.
3. Certified plot plan showing the effect of the proposed change on the property and footprint of the building.
4. All building plans.
5. Detailed driving directions to the property location.
6. Gross Floor Area and Lot Coverage worksheet signed by the Town Planner or his/her designee.
7. Submit two (2) copies of the "List of Parties of Interest." This is a list of the names and addresses of the petitioner, abutters, owners of land directly opposite on any public or private street and abutters to the abutters within three hundred feet (300 ft) of the property line of the petitioner. This information is provided by the Assessing Department. There will be a separate fee generated by the Assessing Department for this service.

Filing Instructions

- 1) Only official Zoning Board of Appeals forms are to be used when preparing an application for a Special Permit or Variance.
- 2) All applications to Town Clerk's office for processing **must** be accompanied by the following required items, unless waived for good cause by a majority vote of the Board of Appeals:
 - a) An **Application Packet Checklist** denoting:
 - i) the type of application (Variance, Special Permit or Notice of Appeal);
 - ii) the petitioner's name, name of the property owner if different, property address, Registry of Deeds Title Reference (Book and Page number or Certificate of Title Number, and telephone number; and
 - iii) the supporting documents that are included as part of this submission.
 - iv) a precise set of written directions to the subject property.
 - b) An **Original Completed Application** signed by the applicant or his/her agent together with:
 - i) One (1) certified list of names and addresses of Parties of Interest defined as:
 - (1) Petitioner
 - (2) Abutters
 - (3) Owners of land directly opposite on any public or private street.
 - (4) Abutters to abutters within three hundred feet (300 ft.) of the property line of the petitioner as they appear on the most recent tax list.
 - ii) Eleven (11) copies of the completed application.
 - iii) Eleven (11) copies of the Bourne Assessor's Map clearly defining the subject parcel(s).
 - c) **If the application is for a subdivision**, Twelve (12) copies of prints showing the proposed subdivision endorsed by a registered land surveyor.
 - d) If the application is for a Special Permit for an increase in gross floor area or lot coverage beyond that allowed in table 2456, one original and Twelve (12) copies of a gross floor area/lot coverage worksheet signed by the Town Planner or his/her designee.
 - e) For **new construction or addition(s) to an existing structure(s)**, Twelve (12) copies of a Certified Plot Plan must be presented showing setbacks of the existing structure(s) and new addition(s).
 - f) **Condominiums.** The following must be supplied if the structure is a condominium:
 - i) One original and Eleven (11) copies of a signed document from the condominium association attesting to the fact that the applicant's proposal does not conflict with their rules/regulations and/or master deed if such are applicable, or that the condominium association has approved the project.

- ii) One original and Eleven (11) copies of a letter of approval from the Bourne Fire Department attesting that there are no safety, traffic or other problems related to the proposed alterations.
 - iii) One original and Eleven (11) copies of a Certified Plot Plan.
 - iv) For all applications concerning Hideaway Village or any property therein:
- 3) The following items may be included for clarification, and may be required by the Board if a majority of the Board deems it necessary in order to make an informed decision:
 - a) Detail structure plans, which would further clarify the applicant's intent and provide the Board with additional information to assist them in their determination.
 - b) Any other pertinent documents that are part of the justification.
- 4) The application, filing fee and all plans/documentation are delivered to the Town Clerk who:
 - a) Verifies that all required documents are present.
 - b) Signs the **Application Packet Checklist**.
 - c) Date stamps and records the submittal.
 - d) Collects and deposits the application fee.
- 5) After submittal of the above documents to the Town Clerk, and paying the filing fee, the Town Clerk forwards all documents to the Zoning Board of Appeals Administrative Assistant who must schedule a hearing within sixty-five (65) days from the date the application is received.

8. Staking Instructions

After an applicant files an application, and before the hearing, the applicant should expect one or more members of the Board of Appeals to visit the site of the proposed project. The applicant need not be present for such a visit. However, whenever an extension or alteration or new construction is proposed, the Board requires the applicant to stake out the location of the proposal so that each Board member will know prior to the hearing exactly where the proposal is located.

9. Hearing Instructions

Overview

Regular meetings for the Board of Appeals shall be held at 7:00 PM on the first and third Wednesday in the lower-level conference room in the Bourne Town Hall or Via Zoom Remote Access, or at such other times and locations as the Board deems convenient, after notification to all appropriate persons. Meetings will not be held on holidays or Election Day. Special meetings may be scheduled at the discretion of the Chairman of the Board or at the request of two members. Notice of a Special meeting shall be given to each member at least (48) hours before the time of said meeting. The Chairman will call the meeting to order and open the session. Meetings will follow a published agenda (See section 4.0). Parliamentary Procedures using *Robert's Rules of Order* will regulate the meeting and hearings. Minutes of each meeting

will be recorded, taken and transcribed into hardcopy for review, final approval and filing with the Town Clerk.

Hearing Sequence

- 1) The Chairman will read the notice of hearing as advertised in the newspaper.
- 2) The Chairman announces the names of members of the Board who will hear the appeal. If there are not enough regular members present. The Chairman will select one or more alternates to complete the board. If an alternate is needed, the Chairman will rotate alternate assignments for each hearing.
- 3) The applicant or his/her representative shall present their case to the Board.
- 4) The Building Inspector may be asked to explain to the Board the reason for the appeal.
- 5) The abutters to the property present at the hearing or any other interested party may be heard, and their comments duly recorded.
- 6) The Board members vote to close the hearing.
- 7) The Board members discuss and vote on the application.
- 8) The Chairman informs those present of the requirement for appealing a decision of the board within 20 days pursuant to Massachusetts General Law 40A.

10. Appendix A1 – Applicant Forms

- Application Packet Checklist
- Request for Certified Abutters List
- Hideaway Village Notification Forms
- Application for a Special Permit
- Application for a Supportive Finding
- Application for a Special Permit for a Change of Use
- Application for a Special Permit for a Kennel
- Petition for a Variance
- Notice of Appeal of the Decision of the Building Inspector