

**Rules and Regulations
for
Variance**



**Zoning Board of Appeals
Town Of Acton**

\$15.00

Adopted: July 6, 2015

Acton Planning Department
472 Main Street
Acton, MA 01720
(978) 929-6631
www.acton-ma.gov

VARIANCE

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SECTION 1

GENERAL PROVISIONS

1.1 AUTHORITY

These RULES are adopted by the Zoning BOARD of Appeals as authorized by M.G.L. Chapter 40A and the Acton Zoning BYLAW.

1.2 PURPOSE

The purpose of these RULES is to establish uniform procedures for conducting the business of the Zoning BOARD of Appeals under its jurisdiction as the Permit Granting Authority to hear and decide on petitions for VARIANCES under the Zoning Bylaw.

1.3 APPLICABILITY

Any person applying for a VARIANCE under the BYLAW, whether or not governed by any other federal, state, or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these RULES.

1.4 DEFINITIONS

The following defined terms are capitalized in these RULES.

| | |
|---------------------|--|
| APPLICANT | Any person or such person's authorized representative who files an APPLICATION or petition for a VARIANCE under the BYLAW. |
| APPLICATION | All plans, forms, reports, studies or other documents which are submitted to the BOARD under these RULES by an APPLICANT. |
| BOARD | The Zoning BOARD of Appeals of the TOWN of Acton. |
| BYLAW | The Zoning BYLAW of the TOWN of Acton, as amended. |
| DECISION | Action by the BOARD on an APPLICATION. |
| PARTIES IN INTEREST | The APPLICANT; abutters; owners of land directly opposite on any private or public street or way; and abutters to the abutters within three hundred feet of the property line of the APPLICANT 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 Acton Planning Board; and the Planning Board of every abutting city or town. |
| VARIANCE | A VARIANCE under the BYLAW. |
| RULES | The VARIANCE Rules and Regulations as set forth herein. |
| TOWN | The TOWN of Acton. |

Other Definitions Refer to the "Authority, Purpose, Definitions and Applicability", the "GROUNDWATER Protection District" and the "Flood Plain District" provisions in the BYLAW for additional defined terms which are also capitalized when used in these RULES.

1.5 WAIVER OF RULES

Strict compliance with these RULES may be waived if the BOARD finds that the waiver is in the public interest or is irrelevant to the project, and is consistent with the intent and purpose of the BYLAW and these RULES.

1.5.1 Any request from an APPLICANT for a waiver of these RULES must be submitted, in writing, to the BOARD at the time of submission of the APPLICATION.

1.5.2 Such requests must clearly identify the provision/s of the RULES from which relief is sought and be accompanied by a statement setting forth the reasons why, in the APPLICANT'S opinion, the granting of such a waiver would be in the public interest or the specific information required is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of the BYLAW and these RULES.

1.6 ADVICE FROM TOWN STAFF

Any advice, opinion, or information given to the APPLICANT by a BOARD member, or by any agency, official, or employee of the TOWN shall be considered advisory only and not binding on the BOARD.

1.7 AMENDMENTS TO THE RULES

The RULES may be amended by a majority vote of the BOARD at a public meeting.

SECTION 2

CONTENTS OF AN APPLICATION

An APPLICATION for a VARIANCE which lacks information or is incomplete in any manner may be denied or seriously delayed. It is the responsibility of the APPLICANT to assure the accuracy and completeness of all information submitted to the BOARD as part of an APPLICATION. The APPLICANT shall be responsible for factually supporting all points relied upon in the APPLICATION including references for methodologies used in design calculations.

Except as otherwise noted, a complete APPLICATION for a VARIANCE shall be made in electronic PDF format together with 4 paper copies and shall include the information listed in this Section 3 and all its subsections, and, where applicable, the information listed in Section 4.

Plans shall be legibly drawn to fully detail and explain the intentions of the APPLICANT. A scalable Plan with the forms and contents as set forth below shall be submitted in electronic PDF format, 1 full size plan on paper, plus 4 copies thereof reduced to fit legibly on 11" x 17" or 8.5"x11" sheets.

Changes made during the course of the APPLICATION review process shall be submitted in the same manner as above with changes and amendments clearly identified.

A complete APPLICATION for all VARIANCEs shall include the following items.

2.1 APPLICATION FORM

Any APPLICATION for a VARIANCE shall be made in writing and include the completed APPLICATION form entitled "Application for a VARIANCE"– see Appendix B of these RULES.

- 2.1.1 In the case where the APPLICANT is a person other than the record owner of the property, the APPLICANT must obtain the owner's signature on this form indicating that the owner has knowledge of and consents to the APPLICATION.
- 2.1.2 If the APPLICANT is acting in the name of a trust, corporation or company, an authorizing vote shall be attached.

2.2 CERTIFIED ABUTTERS LIST

List of the PARTIES IN INTEREST as defined in these RULES, taken from the most recent tax list of the TOWN and certified by the Town Assessor. The APPLICANT shall pay any charges required by the Town Assessor for the list.

2.3 OTHER PERMITS AND VARIANCES

List and copies of variances, permits, and other special permits previously issued by other TOWN boards or State and Federal agencies, and a list of any variances or permits required to complete the proposed work. This list should include but not be limited to any permits from the Board of Health, the Conservation Commission, the Board of Selectmen, the Planning Board, the State Dept. of Transportation, the Army Corp of

Engineers, and the State Dept. of Environmental Protection; and certificates issued by the Secretary of Environmental Affairs under the Massachusetts Environmental Policy Act.

2.4 RECORDED PLANS AND DEEDS

A copy of the most recently recorded plan(s) and deed(s) for the LOT(s) on which the VARIANCE is being sought, bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

2.5 PLANS AND SUPPORTING DOCUMENTS FOR VARIANCE

VARIANCES require specific application content.¹ It is highly recommended that APPLICANTS consult with the Planning Department prior to filing an APPLICATION to determine if information submitted is adequate.

- Description of the reason why the VARIANCE is being sought.
- Statement of substantial hardship.
- Locus Plan - A Locus Plan showing an area a minimum of one mile diameter at a scale of 1"=1200'. Major STREETS, BUILDINGS, brooks, streams, rivers, wetlands and other landmarks should be shown on the locus plan with sufficient clarity to be easily discernible.
- Photos – Photos of BUILDINGS and STRUCTURES on abutting properties within the immediate area.
- Plot Plan – A Plot Plan with existing and proposed conditions showing property bounds and dimensions, and set-backs of all BUILDINGS and STRUCTURES.
- Contour Plan – A Contour Plan showing existing grade elevations, proposed grade elevations and flood plain grade elevations. All elevations shown to be on the 1988 NAVD vertical datum.
- United States Geological Survey (USGS) Map – A map of the soil types on the site.
- Building and Construction Plans – Location of all existing and proposed above ground and underground structures, including but not limited to, BUILDINGS, foundations, wells, septic systems, and underground storage tanks. Existing and proposed BUILDING floor and elevation plans.
- Landscape Plans – If applicable, proposed landscaping for the site.

¹ M.G.L. Chapter 40A and the BYLAW set forth specific standards and narrow criteria for VARIANCES. The Bylaw states in section 10.5.5:

Before granting any variance from the requirements of this Bylaw, the Board of Appeals must specifically find:

- That owing to circumstances relating to the soil conditions, shape, or topography of the LOT or STRUCTURES in question and especially affecting such LOT or STRUCTURES but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise, to the Petitioner; 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 this Bylaw. In deciding whether the requested variance nullifies or substantially derogates from the intent or purpose of this Bylaw, the Board of Appeals shall consider whether the granting of such variance is consistent with the Master Plan.

2.6 USE AND PREPARATION OF PLANS AND DOCUMENTS

The required information will assist the BOARD and the reviewing TOWN staff to evaluate the appropriateness of the proposed VARIANCE.

- Where information is required in a general manner, the APPLICANT may use and annotate existing plans on record, as-built plans, or other previously generated documents, rather than generating them anew. However, the APPLICANT should verify that the older information reasonably reflects current conditions.
- Where accurate or exact information is required existing plans on record, as-built plans, and other previously generated documents may also be used. However, such plans and documents must be certified by an appropriate professional as accurately reflecting existing conditions. Where proposed changes or improvements on the LOT are limited in scope and area the extent of the accurate plan and document information can, in appropriate circumstances, be limited to the area of the changes and improvements and their surroundings.
- Plans and documents in the APPLICATION do not necessarily have to follow the itemized order set forth herein. But, the required information must be presented in a manner that is clear, legible, and in a logical order to facilitate the review and understanding of the information that is presented.

2.7 ADDITIONAL INFORMATION

The APPLICATION may contain whatever additional information the APPLICANT feels is necessary to properly inform the BOARD about the request including legal opinions, copies of deeds, historical data, studies, and reports.

The BOARD is empowered by the BYLAW to require information in addition to that specifically required by the BYLAW or by these RULES. The BOARD will require the APPLICANT to supply additional information if it finds that such information is necessary to properly act upon the APPLICATION in question.

SECTION 3

FILING PROCEDURES

3.1 WHO MAY FILE AN APPLICATION?

Anyone may file an APPLICATION for a VARIANCE provided that the property owner of record has signed the APPLICATION form thereby granting his/her consent to the filing of the APPLICATION.

3.2 FILING FEES

Any APPLICATION shall be accompanied by a fee in check form and made payable to the "Town of Acton". The filing fee shall be the amount established by the BOARD in accordance with MGL Ch. 40, S. 22F. The fee schedule is in the Appendix of these RULES. The filing fee is not refundable.

- 3.2.1 Additional Review Fee Deposits - So that the BOARD may make the findings required under the BYLAW and insure that the public safety will be protected, the BOARD may select and hire legal, or planning consultants to review an APPLICATION and advise the BOARD. To cover the cost of these consulting services a review fee deposit may be required of an APPLICANT at the time of submission or at any appropriate time during the review process. As the scope of study and review will vary according to the size of a particular project, the APPLICANT is hereby strongly advised to consult the Planning Department concerning the scope and cost of any such studies during the preliminary review. Failure to do so could result in serious delays in the processing of the APPLICATION. The amount of the fee deposit will reflect the anticipated consultant fee(s) plus 10%. Note that some projects may require additional fees to cover further study if significant impacts or problems are found in the initial review. In accordance with M.G.L. Ch. 44, § 53G, any amount of such deposits remaining after the issuance of building permits for the proposed construction, plus any remaining accrued interest, will be repaid to the APPLICANT or the APPLICANT'S successor in interest.
- 3.2.2 Appeal from the Selection of the Consultants - The APPLICANT may Appeal from the selection of an outside review consultant to the BOARD. The grounds for such an Appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The APPLICANT must specify the specific grounds which the APPLICANT claims constitute a conflict of interest or a failure to meet minimum professional requirements.

3.3 SUBMISSION TO THE TOWN CLERK AND THE BOARD

Two complete copies of the APPLICATION shall be submitted to the office of the Acton Town Clerk. The Clerk will certify the date and time of filing on both copies, keep one of the copies, and return the other to the APPLICANT. The copy returned by the Clerk and all remaining APPLICATION copies with the required filing fee shall then be filed forthwith by the APPLICANT with the Planning Department during normal business hours. The APPLICANT may request and shall be entitled to a written receipt for the materials submitted.

3.4 REVIEW OF VARIANCE APPLICATION

The Planning Department will transmit a copy of an APPLICATION to various other TOWN departments, boards, committees, agencies, or independent consultants in order to ensure full and qualified review of the APPLICATION. Thirty-five (35) days will be provided for such reviews; failure to submit comments on the APPLICATION shall be deemed an approval by the reviewing party. The Planning Department will make available to the APPLICANT upon request a copy of any comments or recommendations received.

If significant information that was not included in the APPLICATION is presented at a later time or at the public hearing, the hearing may be continued to allow for staff review of the new material. Additional materials shall be submitted to the Planning Department in the same manner and form as the original APPLICATION.

SECTION 4

PUBLIC HEARING & DECISION

4.1 PUBLIC HEARING NOTICE

The BOARD will hold a public hearing within 65 days of the APPLICATION filing date. Pursuant to M.G.L. ch. 40A, s. 11, the BOARD will give notice of the time and place of the public hearing and its subject matter, sufficient for identification, as follows:

- 4.1.1 By publication of the notice in a newspaper of general circulation in the Town of Acton once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the public hearing. The newspaper will send the bill for the advertisement directly to the Applicant and the Applicant shall pay the bill directly to the newspaper.
- 4.1.2 By posting the notice in a conspicuous place in the Acton Town Hall or on the official Town of Acton website for a period of not less than fourteen days before the day of the public hearing.
- 4.1.3 By mailing the notice with Accountable Mail (United States Post Office PS Form 3887-Firm Mailing Book for Accountable Mail) or other proof of mailing to all PARTIES IN INTEREST.
 - 4.1.3.1 At least 21 days before the day of the public hearing, the APPLICANT shall submit to the Planning Department the Accountable Mail letters containing the notice, addressed to each PARTY IN INTEREST, sender shown as the Town of Acton Zoning BOARD of Appeals, 472 Main Street, Acton, MA 01720. The envelopes are to be sealed, ready to be mailed, accompanied by one copy of the notice for the BOARD record, and payment to the Town of Acton for the cost of the Accountable Mailings. In addition, submit a duplicate set of empty, open envelopes, standard postage prepaid, addressed to each PARTY IN INTEREST, sender as above, for the mailing of the DECISION notice.
- 4.1.4 Failure to properly notify PARTIES IN INTEREST and to publish a notice of the hearing could render the public hearing invalid and could cause serious delays in the processing of the APPLICATION.

4.2 Public Hearing Presentation

An APPLICANT may appear on his/her/its own behalf or be represented by an agent or attorney. It is the responsibility of the APPLICANT or his/her/its agent to present the APPLICATION to the BOARD and to the public. In the absence of an appearance, the BOARD may decide the matter using the information it has received. Failure to appear at a public hearing could seriously jeopardize the success of an APPLICATION.

- 4.2.1 Presentation of the APPLICATION by the APPLICANT should not exceed 10 minutes in duration except for good reason. The APPLICANT may be requested to answer questions raised by the BOARD or the public. The BOARD will retain any evidence which has been introduced at the hearing for reference in its deliberations on the case.

- 4.2.2 In no case will the BOARD allow new evidence to be admitted after the close of the public hearing unless this evidence was specifically requested by the BOARD prior to the close of the public hearing.

4.3 Withdrawal of APPLICATION

Any APPLICATION for a VARIANCE submitted hereunder may be withdrawn without prejudice by notice in writing to the BOARD prior to the notice of a public hearing being posted or mailed pursuant to Section 4.1 above. Withdrawal of any APPLICATION thereafter requires BOARD approval. No refund of fees will be provided if an APPLICATION is withdrawn.

4.4 Time Period for Deliberation

The BOARD will act on each APPLICATION for a VARIANCE within one-hundred (100) days from the filing date, unless such APPLICATION has been withdrawn from consideration as set forth in Section 4.3 above.

- 4.4.1 Continuation & Extension - The period within which final action shall be taken may be extended for a defined period by written agreement between the BOARD and the APPLICANT. In the event that the BOARD determines that the APPLICATION is inadequate for the BOARD to make a finding, the BOARD may, at its discretion, continue the hearing to a later date to permit the APPLICANT to submit a revised APPLICATION. Such a continuation may not automatically extend the 100-day period within which final action shall be taken by the BOARD unless the extension is agreed upon by both the BOARD and the APPLICANT.

4.5 DECISION

The unanimous vote of all three (3) BOARD members shall be necessary to decide in favor of granting a VARIANCE. Only those members of the BOARD who were in attendance at the public hearing may vote on the APPLICATION in question.

- 4.5.1 The BOARD will file its DECISION with the Town Clerk and send a copy to the APPLICANT by certified mail. The BOARD shall also send a notice of its DECISION to the property owner, to other TOWN boards and departments, to PARTIES IN INTEREST, and to those who have requested such notice at the public hearing.

4.6 Recording of DECISION

The recording of a DECISION is required by THE ZONING ACT and the BYLAW.

The APPLICANT shall be responsible for recording a full copy of the DECISION in the Middlesex South District Registry of Deeds in Cambridge or the Land Court and for paying any required recording fees. Verification of the recording including the document number or book/page number, must be submitted to the Zoning Enforcement Officer prior to issuance of a Building Permit, the start of any work, or any other action to implement the VARIANCE. The VARIANCE approval is not effective unless recorded with the deed to the property.

4.7 Submission of Final Approved Plans

Where physical changes or improvements on the LOT are approved, the approved plan as amended by the BOARD in its DECISION of approval shall be submitted, prior to the issuance of a BUILDING permit, to the Planning Department for endorsement by the Zoning Enforcement Officer, in electronic PDF and scalable CAD formats and registered to the Massachusetts State Plane Coordinate System, plus 1 full size plan printed on 24" x 36" sheets. No BUILDING Permit will be issued until the plan is found to be in compliance with the BOARD'S DECISION and such endorsement has occurred.

4.8 Appeal of DECISION

Any person aggrieved by a DECISION of the BOARD, whether or not previously a party to the proceeding, may Appeal such DECISION in accordance with M.G.L., Chapter 40A, Section 17 within 20 days after the filing of the DECISION with the Office of the Town Clerk.

4.9 Time Limit

Any VARIANCE granted by the BOARD shall lapse within one year from the date of filing of the BOARD'S DECISION with the Office of the Town Clerk unless rights authorized by the VARIANCE are exercised.

- 4.9.1 The BOARD may extend the time for exercise of such rights for a period not to exceed six months where good cause is shown. Any request to the BOARD for an extension of the specified time limitation set forth in the DECISION shall be made in writing to the BOARD at least thirty days prior to the expiration date. The BOARD reserves its rights to grant or to deny such extension if good cause for such extension is not shown. Failure to submit such a request as prescribed above shall be due cause for the BOARD to deny the requested time extension.

4.10 As Built Plan

Upon project completion, where applicable, the APPLICANT shall provide two copies of the As Built Plan of the approved physical changes or improvements on the LOT, plus electronic copies in PDF and scalable CADD formats, registered to the Massachusetts State Plan Coordinate System. The As Built Plan shall show:

- 4.10.1 The entire site in outline, and in detail the area where changes or improvements were made including but not limited to the drainage, irrigation, and wastewater disposal systems; final grading and limits of clearing; all driveways and sidewalks; parking LOTS; public and private utilities (above and below grade) including all outdoor lighting; landscaping and BUILDINGS and STRUCTURES as they exist.
- 4.10.2 All elevations shall refer to the 1988 NAVD vertical datum.

4.11 Limitation of the DECISION

The granting of a VARIANCE constitutes approval only under the pertinent sections of the BYLAW. Other permits or approvals required by other governmental boards, agencies, or bodies having jurisdiction such as the Board of Selectmen, Planning Board, Board of Health, Acton Water District, and Conservation Commission shall not be assumed or implied. The BOARD may condition any VARIANCE hereunder on satisfactory demonstration of compliance with the requirements of other governmental bodies having jurisdiction prior to the start of any work on the site, the issuance of a Building Permit, or any other appropriate step in the development process. The APPLICANT is hereby encouraged to seek approvals and certificates of compliance from such other governmental bodies prior to or concurrently with the APPLICATION to the BOARD.

4.12 Repetitive Petition

Pursuant to M.G.L., Chapter 40, Sect. 16, no APPLICATION which has been unfavorably and finally acted upon by the BOARD shall be acted favorably upon within two years after the date of final unfavorable action unless four members of the BOARD vote to find that specific and material changes in the conditions upon which the previous unfavorable action was based have occurred and describe such changes in the records of the BOARD'S proceedings, and all but one member of the BOARD consents to the consideration of the matter. Notice to PARTIES IN INTEREST shall be given of the time and place of the proceedings at which the question of consent will be considered.

SECTION 5

APPENDIX

Appendix A

| <u>FEE SCHEDULE</u> | |
|--------------------------------|----------|
| Application Filing Fees | |
| Variance Application | \$250.00 |

Date Received
TOWN CLERK

By: _____

Appendix B

Date Received
BOARD OF APPEALS

By: _____

**TOWN OF ACTON
APPLICATION FOR VARIANCE
(ZONING BYLAW)**

Relief being sought from the requirements of Zoning Bylaw Section: _____

Refer to the "Rules and Regulations for VARIANCE" available from the Planning Department for details on the information and fees required for this application. Contact the Planning Department at 978-929-6631 with any questions concerning the Rules. Incomplete applications may be denied.

Please type or print your application.

1. Location and Street Address of requested VARIANCE _____
2. Applicant's Name _____
Address _____
Telephone _____ Email _____
3. Record Owner's Name _____
Address _____
Telephone _____ Email _____
4. Town Atlas Map(s)/Parcel Number(s) _____
5. Zoning District (s) of Parcel(s) _____
6. Detailed description of the proposed VARIANCE (Please use additional pages if needed): _____
7. If any VARIANCES have been filed previously for this site give file numbers:

The undersigned hereby apply to the Zoning BOARD of Appeals for a public hearing and a variance under Section 10.5 of the Zoning Bylaw.

The undersigned hereby certify that the information on this application and plans submitted herewith are correct, and that all applicable provisions of Statutes, Regulations, and Bylaws will be complied with. The above is subscribed to and executed by the undersigned under the penalties of perjury in accordance with Section 1-A of Chapter 268, General Laws of the Commonwealth of Massachusetts.

Date Signature of Petitioner(s) Signature of Petitioner(s)

RECORD OWNER'S KNOWLEDGE AND CONSENT

I hereby assert that I have knowledge of and give my consent to the application presented above.

Date Signature of Record Owner(s) Signature of Record Owner(s)

Appendix C

ACTON ZONING BOARD OF APPEALS

NOTICE OF PUBLIC HEARING for VARIANCE

In accordance with the provisions of Massachusetts General Laws, Chapter 40 A, Section 10, the Acton Zoning BOARD of Appeals will hold a public hearing on the petition of:

for a VARIANCE for _____, on a parcel located at:

on _____ at _____ P.M.,

at the Town Hall, 472 Main Street, Acton, Massachusetts.

Such variance may be granted by the Zoning BOARD of Appeals under Massachusetts General Law, Chapter 40A and the Acton Zoning Bylaw in accordance with the "Rules and Regulations for VARIANCE" all of which are available for review or purchase at the offices of the Zoning BOARD of Appeals, the Planning Department, Building Department and the Town Clerk. A copy of the application is also available for review at these offices in Town Hall between 8:00 a.m. and 5:00 p.m., Monday through Friday.

The applicant or his/her representative will be at the hearing to present the reason(s) why the permit should be granted.

When the applicant or his/her representative has concluded their presentation, the Chairman of the Board will allow the Board members to speak to the matter under consideration or to raise questions and concerns. Subsequently, the Chairman will give the public the same opportunity to speak to the matter under consideration or to raise questions and concerns.

The Chairman will not allow any member of the public to interrupt anyone else while they are speaking. Each person wishing to speak at the hearing should be as brief as possible and should wait his/her turn. Each person speaking should avoid repeating the comments of those who preceded them. Each person speaking should state their name and address before they make their statement or ask questions.

Any party may appear in person, by agent, or by attorney at any hearing.

When all of the facts have been presented and all persons wishing to speak on the petition have been heard, the Chairman will close the hearing. In no case will the Board allow new evidence to be admitted after the close of the public hearing unless this evidence was requested by the Board prior to the close of the public hearing.