



TOWN OF AGAWAM
36 MAIN STREET
AGAWAM, MA 01001

BOARD OF APPEALS
VARIANCE INSTRUCTIONS

IT IS SUGGESTED THAT THE APPLICANT CAREFULLY READ THIS INFORMATION PRIOR TO FILLING OUT AN APPLICATION.

Item #1 - The applicant must first present his/her plans to the Building Inspector who also serves as the Zoning Officer. The Building Inspector will review the plans and advise the applicant if his plans violate any provision of the Zoning By-law and explain the Zoning violation (s) and suggest a feasible remedy if possible. The Building Inspector may or may not recommend that the applicant file for a Variance but shall advise the applicant of his/her right to do so.

Item #2 - The applicant must completely fill out all information required on the application form. A certified copy of the deed of ownership of the property concerned must be submitted with the application. The application form and certified copy of deed, along with any other pertinent information, must be submitted in triplicate.

Item #3 - Applications involving residential purposes, shall be accompanied by **nine (9)** sets of plans. Applications involving business/industrial purposes, shall be accompanied by **seventeen (17)** sets of plans. Such plans shall be drawn to scale, shall show the north arrow as well as the actual dimensions, radii, and angles of the lot to be built upon, the exact size and location of the main building and accessory buildings on the lot or to be erected on the lot, the distance of same to the nearest existing building located on abutting property, and such other information and plans as may be necessary to determine the merit of the application. If the applicant is seeking a Variance in the flood plain, the plans must be prepared and certified by a professional engineer or land surveyor, registered in the Commonwealth of Massachusetts. This plan will show all proposed and existing buildings, structures, roads, ways, drainage facilities and landscape features, including wetlands, trees and the like, and other engineering and hydrological data the Board finds necessary. The plan will show all existing and proposed finished ground contours at one-foot intervals.

Item #4 Copies of all data furnished will be retained as a permanent record in the Board's files.

Item #5 A deposit of two hundred fifty (250) dollars for each application shall be left with the Board of Appeals to pay for legal advertising and recording when required, and to pay for any necessary expense that may be incurred on behalf of the applicant. Unusual circumstances may require the Board of Appeals to request additional money from the applicant.

All the above conditions must be satisfied before the board will set a hearing date.

Item #6 - The applicant will be notified of the date of the assignment of a case number to this application and the date, time, and place of the public hearing to be held on his application. The applicant or duly authorized agent must be present at the public hearing.

Item #7 - In the event the application is favorably acted upon by the Board of Appeals, the applicant must wait twenty (20) days from the date the decision of the Board of Appeals is filed with the Town Clerk.

In the event the application is denied by the Board of Appeals, the applicant may file a suit in equity against the Board of Appeals. Notice of such action must be filed with the Town Clerk no later than twenty (20) days from the date the decision of the Board of Appeals was filed with the Town Clerk.

Item #8 - The applicant must be aware that certain statutory time limits must be complied with as follows:

- a. A public hearing shall be held within 65 days from the filing date of such application.
- b. The first publication of the legal advertisement shall not be less than fourteen (14) days prior to the date of the public hearing.
- c. The decision of the board shall be made within 100 days after the date of the filing of a variance.
- d. A statutory waiting period of twenty (20) days is provided for anyone wishing to appeal the decision of the Board of Appeals. The twenty (20) days are counted from the date the decision was filed with the Town Clerk.

Item #9 – The applicant must be aware that variances from the zoning by-laws are granted very sparingly, and only if the applicant can show that the zoning by-law has created a “substantial hardship” upon the applicant due to imposing requirements that will prohibit the applicant from all uses of his/her property. In addition, to establishing the hardship, the applicant must prove to the Board that the variance, if granted, would not injure his/her neighbor’s property or the neighborhood; and also that granting of the variance would not derogate from the intent and purpose of the zoning by-law. Failure to substantiate these three (3) conditions will be fatal to the granting of the variance of the zoning by-law.

Item #10 Applications withdrawn prior to the close of the public hearing held of the pertinent application will be allowed without prejudice or time period penalty. Applications withdrawn after the close of the public hearing held on the pertinent application shall not be considered on its merits by the Board of Appeals within two (2) years after the date of such withdrawal except with the consent of all but one member of the Planning Board. Notice of withdrawal will be of a form provided by the Board of Appeals and will require the signature of the applicant or duly authorized agent.

Item #11 - The Board of Appeals is a quasi-judicial body and as such must examine and judge each application according to the requirements of state statutes and local by-laws pertinent to the application. The applicant directly or indirectly must not discuss the merits of his/her application with any member of the Board of Appeals prior to the public hearing or after the public hearing pertinent to the application.

It is the burden of the applicant to present proof of the merits of his/her case to the Board of Appeals at the public hearing. The submission of Supreme Court decisions are helpful, but not mandatory.

Item #12 - It is hoped that these items will be helpful to you. If further discussion of these items is necessary, the Zoning Officer (Building Inspector) is available for consultation, by appointment.