

# **BOARD OF APPEALS**

## **FOR YOUR INFORMATION**

*Adopted by majority vote at the January 31, 2023 meeting of Millbury Board of Appeals.*

When filing with the Board of Appeals, the Town Clerk's Office receives the original signed packet. This packet includes the Application for Appeal, a written brief to the Board, a letter from the Building Inspector/Zoning Agent and a copy of the plot plan or site plan along with the proper checks made out to the Town of Millbury and Gatehouse Media.

**Please Note: On December 8, 2010 the Board of Appeals voted that all variances and special permit applications must have a letter from the Building Inspector/Zoning Agent before the Town Clerk can accept the application.**

The Town Clerk's Office then forwards the packet to the Board of Appeals which meets on the last Wednesday of each month for their hearings at the Municipal Office Building, 127 Elm Street. Notification of your hearing will be sent to you by mail.

The night of the hearing you will find out whether your application was granted or denied. The letter you receive from the Board of Appeals on the decision is not what you will take to the registry, this is just for your records of what occurred at the meeting. There is a **twenty one (21)** day appeal period from the time that the **Town Clerk's Office receives the decision from the Board of Appeals.** After the **twenty one (21)** day appeal period the applicant has two options they can either pick up the certified copy or it can be mailed. The applicant must notify the Town Clerk's Office of which option they choose. This certified copy is to be taken to the registry of deeds to be recorded. Please be aware that the process may take approximately two months from start to finish.

**Filing Fees for Application/Advertising shall be as follows & one check should be made out to the Town of Millbury, on the second page you will see the breakdown of fees:**

|   |          |
|---|----------|
| For Residential Use:                                | \$375.00 |
| For Business Use or Apartment Use<br>(Over 3 Units) | \$375.00 |
| For Industrial Use                                  | \$490.00 |
| Withdrawal of Petition (before advertising)         | \$ 50.00 |

**BOARD OF APPEALS  
TOWN OF MILLBURY  
MASSACHUSETTS  
INFORMATION FOR PETITIONERS**

1. **Basis for Appeals**

An appeal to the Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit from any administrative office under the provisions of Chapter 40A of the Massachusetts General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Building Inspector or other administrative official in violation of any provisions of Chapter 40A or any ordinance or bylaw adopted thereunder, or by any person seeking a Special Permit.

2. **When Appeal May be Taken**

Any appeal to the Board of Appeals must be taken within thirty (30) days from the date of the order or decision being appealed from, or in the case of a Special Permit, within a reasonable time after written advisement of the need for said Permit.

3. **Form of Appeals**

All appeals must be in writing and signed by the applicant or his attorney. One original Application for Appeal shall be filed with the Town Clerk, Municipal Office Building, Millbury, MA (The Town Clerk's office will not accept a copy it must have the original signatures). The Applicant shall submit three (3) 24 inch by 36 inch copies, thirteen (13) 11 inch by 17 inch copies, and an electronic copy in a PDF or similar format as approved by the Board of the plot plan or site plan drawn at a scale of 1 foot equals 40 feet. A brief to the Board as outlined on the attached explanation sheet shall also accompany the one original.

**Please note: On December 8, 2010 the Board of Appeals voted that all variance and special permit applications must have a letter from the Building Inspector/Zoning Agent before the Town Clerk can accept the application.**

4. **Filing Fees**

Filing Fees for Application shall be as follows:

|  |          |
|--|----------|
| For Residential Use:                             | \$375.00 |
| For Business Use or Apartment Use (Over 3 Units) | \$375.00 |
| For Industrial Use                               | \$490.00 |
| Withdrawal of Petition (before advertising)      | \$ 50.00 |
| Legal Advertisement                              | \$125.00 |

Reconsideration to be whatever the filing fee was for the original application.

5. **Date of Hearing**

Due notice of hearing will be given to the applicant and abutters and to such other persons as the board deems to be interested parties.

The applicant must appear in person and may be represented by an attorney. The applicant will be given an opportunity to present witnesses and evidence. Persons appearing in opposition will be given an opportunity to be heard.

6. **Decision**

The applicant will be notified in writing of the decision of the board.

Any appeal of a Board of Appeals decision must be made to the Superior Court in Worcester within 20 days of the receipt of the decision by the Town Clerk's Office.

7. **Conditions to be Met for Granting of a Variance**

Before making a formal application for a variance from the Town of Millbury Zoning Bylaws, certain conditions must be met before the Zoning Board of Appeals may act favorably upon your request.

- (a) A hardship exists upon your land that requires you to apply for a variance. Example: A ledge or rock condition exists on your property that does not allow you to construct within the conformity of the bylaw. Financial hardship alone is not reason for the granting of a variance.
- (b) The condition affecting your property is incidental to the property and not generally affecting other property within your zoning district.
- (c) A variance may be granted without substantial detriment to the public good. For example, excess traffic would not result by granting the variance, or the rights of your neighbors would not be infringed upon.
- (d) A variance cannot substantially derogate from the intent and purpose of the bylaw. Putting a retail store or other business in a residential district is substantial derogation from the purpose of the bylaw. Varying a front yard setback from 25 to 10 feet, in most cases, would be a substantial derogation from the intent and purpose of the Zoning Bylaw.

Your presentation before the Board of Appeals should specifically relate to all four above conditions. If in doubt, contact an attorney before filing your appeal. If your appeal is denied, then you would have to wait two (2) years before reapplying. It is best to be fully prepared at the time of the hearing.

### **BRIEF TO THE BOARD**

It is recommended that every appeal and every application for a special permit be supported by a brief setting forth in detail all facts relied upon by the parties. Every application for a variance shall be supported by such a brief. No application for a variance shall be considered by the Board unless accompanied by a brief which meets the requirements set forth herein.

In the case of a **VARIANCE** the following points, based on Massachusetts General Laws Chapter 40 A, Section 15, shall be clearly identified and factually supported:

1. The particular use proposed for the land or building.
2. The conditions especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located.
3. Facts which make up the substantial hardship, financial or otherwise, which result from literal enforcement of the applicable zoning restrictions with respect to the land or building for which a variance is sought.
4. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
5. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
6. Facts clearly and unambiguously showing that the substantial hardship (financial or otherwise) or deprivation of potential advantage to the petitioner.
7. Facts relied upon to support a finding that soil conditions, topography or shape of the land or structure should be considered by the Board.