



City of Fall River Zoning Board of Appeals

One Government Center • Fall River, MA 02722

Revised: June 20, 2019

APPENDIX A

CITY OF FALL RIVER

ZONING BOARD OF APPEALS RULES AND REGULATIONS and APPLICATION INSTRUCTIONS

Applications intended to be heard before the Fall River Zoning Board of Appeals must be submitted, in full, to the Planning Department in accordance with these instructions:

SUBMISSION: All completed applications must be submitted to the Planning Department whose office is located on the fifth floor of the Government Center. Blank applications may be picked up from the Planning Department. Applications to the Board of Appeals are intended to seek relief from the City's Zoning Ordinance based on a determination rendered by the Zoning Enforcement Officer [Building Official].

PURPOSE OF RELIEF: There are three forms of relief which a potential applicant may seek from the Board of Appeals: *a variance*, *a special permit*, and an *appeal of an action of the Zoning Enforcement Officer*. A variance is generally relief from a specific tenant of the Zoning Ordinance—if compliance with a use or dimensional requirement cannot, in the eyes of the applicant, be met. Variances are requested as means of allowing permission for something that is prohibited by the Zoning Ordinance. Special permits, on the other hand, are typically uses which are permitted under the Zoning Ordinance, but which require Zoning Board review and approval on prior to their allowance. Finally, actions of the Zoning Enforcement Officer may likewise be directed to the Board of Appeals for their consideration.

CONTENTS OF COMPLETE APPLICATIONS: In order to be placed on an agenda, a potential applicant must submit 3 complete and collated application packets along with 4 copies of the site plan which include the following information:

- [a] **Application Form:** This two-page form should be the cover sheet of the packet and should be fully completed.
- [b] **Site Plan:** [need 4 copies] An 11" x 17" or greater scaled drawing of the site which the applicant wishes the Board to address. That information which is required to be part of any site plan is detailed on page 3. No matter what size the plan is, it must be folded into an 8 ½" x 11" format and attached to the application. [The preferred size is 17" x 22"].

- [c] **Letter from Code Enforcement Office:** A copy of the letter submitted to the applicant from the Code Enforcement Office described in what way the request differs from the Zoning Ordinance.
- [d] **Letter from the Applicant:** A copy of the letter prepared by the Code Enforcement Office on the applicant's behalf describing the requested relief.
- [e] **Abutter's List:** A list of those current property owners who, based on the most recent listing in the Assessor's Office, directly abut the subject property. This list shall also include the abutters to the abutters and properties directly across the street. The Abutter's List must be certified by the Assessor's Office. [Please contact the Planning Department at (508) 324-2561 for further information if needed.]
- [f] **Application Fee and Legal Notice Cost: A check or money order** made out to the City of Fall River for the filing fee and late fee if applicable,. (see attached fee schedule) **(Cash will not be accepted)**

The cost of the Legal Notice shall be the responsibility of the Applicant. The Planning Department will prepare the legal notice, get the estimated cost from the newspaper and notify the applicant of the cost. The applicant shall provide the Planning Department with a check or money order to cover the Legal Notice advertisement prior to the public hearing date or the application will not be heard until payment is received. **(Cash will not be accepted)**
- [h] **Tax Certification:** All city taxes and fees shall be paid prior to filing an application. Form Tax-1 shall be filed with the application and signed by the owner and applicant. This form may be obtained from the City Collector's Office – 2nd Floor.
- [i] **Other information:** Any additional information such as photographs, deeds, etc., which the applicant may deem helpful to the Board in rendering a decision on this matter can be submitted to the Board at the Hearing.

FILING REQUIREMENTS: All applications must be submitted in a collated, 8 ½" x 11" [folded if necessary] manner. Again, rolled site plans or applications deemed incomplete will not be accepted for hearing before the Board. Once the applicant or his/her representative believes they have satisfied the application requirements, it is asked that they present the information to the Planning Director for a determination as to completeness. If complete, the applicant will be asked to go down to the City Clerk's Office on the second floor and have the application[s] time stamped. The application may then be turned in to the Planning Department and scheduled for the next hearing. *Again, incomplete applications—as determined by the Planning Director based on these instructions—will not be accepted for hearing before the Board of Appeals or may not be heard or may be unfavorably acted upon.*

NOTICE REQUIREMENTS: Under Massachusetts State Law, the City of Fall River is required to send notification of all requests before the Board of Appeals to abutting property owners and neighboring communities. Likewise, notification of the agenda item must appear in the newspaper. Once a completed application has been logged in, the Planning Department handles these notification requirements on the applicant's behalf. Improper notification could

result in possible legal challenges; therefore, to save the applicant this burden, the Planning Department will enforce the submission requirements outlined here.

ASSISTANCE: Questions regarding the application packet, deadlines, and upcoming meetings may be directed to the Planning Department at (508) 324-2561. [Questions relating to abutters list may be directed to the Assessor's Office. at (508) 324-2300]

DEADLINE: All completed applications must be submitted to the Planning Director by the fourteenth of the month—preceding the month in which the application will be heard, i.e. submission would be required by March 14th for the April meeting. Petitions filed after the fourteenth but no later than the twentieth may at the request of the applicant be placed on the agenda for the following month's meeting provided the applicant pays in addition to the applicant's fee a late fee of \$125.00. Where the fourteenth or the twentieth falls on a day when the City Offices are closed, the next business day will serve as the deadline.

AGENDA: Unless waived by the Chairperson of the Board agendas shall be limited to 15 petitions.

SITE PLAN REQUIREMENT

As indicated on page 1 of these instructions, a site plan must be submitted as part of a complete application packet.

All plans submitted to the Board shall be prepared, stamped and signed by a registered land surveyor. For all petitions requesting a division of property the plans shall be based upon a field survey completed by a registered land surveyor.

Applications containing plans that fail to meet all site plan requirements may, at the discretion of the Planning Director, be rejected. The Planning Department will make applications and plan requirements available to applicants but due to staffing constraints, Planning personnel cannot assist in the preparation of the application or plans.

All site plans must be **computer generated**, clear, coherent, complete and drawn to a scale which clearly demonstrates what is happening on the subject parcel of land. The Zoning Board of Appeals will not act favorably upon any request for which the plans are not clearly or accurately drawn. Questions regarding scale may be directed to the Planning Director.

The following information is additionally required on each site plan:

- ◆ Street Lines and Street Names
- ◆ Lot Boundaries, Dimensions, Area [in square feet] and Setbacks from all property lines to existing and proposed structures.
- ◆ Footprint **and address** of all existing [and proposed] structures on site and on abutting sites (*including abutter to abutter sites*) including an indication of use and

any modifications to existing structures that may be made on the subject site.

Structures on the site shall be measured and drawn to scale. Structures on abutting properties shall be drawn in a manner that fairly represents their size and location.

- ◆ Dimensions of proposed structures shall be shown.
- ◆ Existing and/or proposed off-street parking and any paved driveways or areas on the site.
- ◆ A notation as to the height/visual appearance of the existing/proposed structure[s]
- ◆ The subject property, abutters, abutters to the abutters, and the properties directly across the street shall be shown. Indicating the use, plot and lot number of each property
- ◆ A title block with the following information:
 - Applicant's name and address
 - The address of the subject property
 - The Book and Page Number of the subject property as recorded in the Registry of deeds
 - The Assessor's lot number
 - Name of individual who prepared the plan
 - Scale, both graphic and written, of the plan
 - North Arrow
 - Zoning District
 - Requested Relief

A. ORGANIZATION

1. COMPOSITION OF THE BOARD

The Fall River Zoning Board of Appeals (hereinafter referred to as the Board) shall consist of five members and two alternates. Appointments to the Board shall be made by the Mayor subject to confirmation by the City Council.

2. OFFICERS OF THE BOARD

At the first meeting in a calendar year, the Board shall elect by a majority vote a chair, a vice-chair and clerk to form its membership. Alternates shall not hold office.

3. CHAIR OF BOARD: POWERS AND DUTIES

- a. The Chair shall be empowered to call for and preside at all meetings and hearings of the Board.
- b. The Chair shall decide all points of order unless overruled by the majority of the Board in session at the time.
- c. In addition to the powers granted by the general laws or otherwise, and subject to these rules and further instructions of the board, the Chair shall transact the official business of the Board, exercise general supervisory responsibilities and request necessary help.
- d. The chair shall be empowered by the Board to review all decisions rendered by this Board and sign such decisions on the Board's behalf.

4. VICE-CHAIR: POWERS AND DUTIES

The Vice-Chair shall act as the Chair in case the Chair is absent.

5. PLANNING DIRECTOR RESPONSIBILITIES

The Planning Director or his/her designee shall serve the Board. This shall include the supervision of all applications, submission, notices, correspondence, agendas, minutes, records and decisions related to the Board as required by these Rules and Regulations and as mandated under Massachusetts General Laws c.40A.

6. ALTERNATES

The Chair shall designate an alternate member to sit on the Board in the case of a regular member's absence, inability to act, or conflict of interest in a matter. In the event of a vacancy on the Board, the Chair may designate an alternate to act as a member of the Board until someone is appointed by the mayor to fill the unexpired portion of the vacated term. If an alternate is designated to sit on the Board for a public hearing, the alternate shall sit on the Board until the matter is decided.

7. QUORUM

A quorum for a meeting of the Board shall consist of four regular members or their alternates.

8. ORDER OF SUCCESSION

If the Chair is unable to chair a meeting for any reason, the Vice-Chair shall replace him or her. If the Vice-Chair is unable to chair a meeting, the clerk shall replace him or her. If the clerk is unable to chair a meeting, the remaining members shall elect a temporary chair from their number.

9. MEETINGS OF THE BOARD

Regular meetings of the Board shall be held as necessary in order to properly act upon submitted applications within the proper legal time frame. Typically such meetings are held once a month. Notices of all meetings shall be properly posted in accordance with the Open Meetings Law.

10. PUBLIC COMMENT

The Board shall provide a Public Comment section on meeting agendas for every regular and special meetings. Public Comment shall not be limited to items on the agenda, provided the issues or concerns raised are within the jurisdiction of the Board. Public Comment for any special meeting shall be limited to items on the meeting agenda.

B. APPLICATIONS TO THE BOARD

APPLICATION FORM

Every application for action by the Board shall be made in accordance with the instruction sheet in Appendix A of these rules and regulations. These instructions shall be available to potential applicants through the Planning Department. The Board shall only consider a completed application packet per Appendix A.

2. FEES AND LEGAL ADVERTISEMENT COST

Legal Advertisement Cost

The cost of the Legal Notice shall be the responsibility of the Applicant. The Planning Department will prepare the legal notice, get the estimated cost from the newspaper and notify the applicant of the cost. The applicant shall provide the Planning Department with a check or money order to cover the Legal Notice advertisement prior to the public hearing date or the application will not be heard until payment is received. **(Cash will not be accepted)**

Zoning Variance - Residential

- All Residential Variances \$400
- Division of Property \$400
 - Plus \$100/ each new lot being created, excluding the first lot
- Additional Residential Units \$400
 - Plus \$50/ additional unit
- Other \$400

Zoning Variance - Commercial

- All Commercial Variances \$500

- Division of Property \$500
 Plus \$100/ each new lot being created, excluding the first lot
- Other \$500

Special Permits - Residential & Commercial

- All Special Permits \$450
- Residential Developments \$450
 Plus \$50/Unit
- Division of Property (Section 86-423) \$450

Request for six month extension \$350

Appeal of an action of the Zoning Enforcement Officer \$350

Request by applicant to table or continue the hearing \$350*

*This fee shall not apply when a matter is tabled at the request of the board or when a full board is not present. At the discretion of the Board this fee may be waived.

After-the-Fact Filing (Work Commenced without Building Permit)

Additional \$100 added to total cost of fees

If an applicant is seeking more than one type of relief, then the higher of the two fees shall be submitted by the applicant. **A late fee of \$125.00 will be required in addition to the \$250.00 for matters filed after the 14th of the month.**

3. FILING PERIOD OF APPLICATIONS

Every application shall be properly filed and every appeal taken in accordance with the applicable provisions of MGL c. 40A as amended and these rules and regulations. Completed applications received by the 14th of the month will be scheduled before the Board at its following month's hearing. Petitions filed after the 14th but no later than the 20th may at the request of the applicant be placed on the agenda for the following month's meeting provided the applicant pays in addition to the application fee a late fee. In those instances where the 14th or 20th of the month does not fall on a business day, the due date shall fall on the next business day.

4. MINIMUM APPLICATION REQUIREMENTS

Those requirements listed and discussed in Appendix A shall constitute the minimum application requirements of the Board. In addition, if a variance is sought and the petition is based on a soil condition or other physical condition of the land, the location and character of this condition must be clearly shown on the submitted site plan. If the petition is based on the use of the surrounding property or abutting properties, these uses and structure must likewise be shown on the submitted plan. If the petition involves new construction for commercial use (including dwellings constructed for sale or rent) or the conversion of an existing structure or more than 600 sq. ft. of floor area or for more than three families, additional plans are required as follows: Preliminary floor plans and elevations must be submitted. If the proposed petition is for an apartment building it must show, in addition, the number of

dwelling units, number of rooms per unit, play areas, proposed method of water supply and sewage disposal. If the petition is for a commercial use the plan must show additionally the square footage of land used for parking (as defined in the zoning ordinance), the square feet of floor sales area, the location and type of any proposed or existing signage, and the method of water and sewage supply.

5. WAIVER OF REQUIREMENTS

The Board may, in its sole discretion and by a concurring vote of 4 members, waive any of the provisions of this Section if it deems that the absence of such information would not impair their collective ability to properly review and decide upon a particular application.

C. HEARINGS OF THE BOARD

1. PUBLIC NOTICE

Notice of all public hearings shall be properly advertised as required by the provisions of MGL c. 40A as amended. This shall include the publication of a legal advertisement to appear twice in the Fall River Herald where the first add appears not less than fourteen days before the day of the hearing and the mailing of the notice at least fourteen days prior to the hearing date to all parties in interest including those abutters identified by the respective applicants, petitioner, property owners, Planning Boards of surrounding communities, and applicable department heads.

2. OPEN PUBLIC HEARINGS

All hearings shall be open to the general public. No person shall be excluded unless he or she is considered to be a serious hindrance to the workings of the Board.

3. REPRESENTATION AND ABSENCE

An applicant may appear in his or her own behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant made known to the Board at the time of the hearing, the Board may decide on the matter using the information it has otherwise received and shall have the right to withdraw without prejudice, deny or grant for failure of appearance.

4. ORDER OF BUSINESS

The following shall constitute the order of business to be undertaken by the Board:

- a. Call to order and introduction of the Board
- b. Opening remarks whereby the Chair notes that all petitions to be considered had been properly advertised and interested parties notified in accordance with these rules and regulations and MGL c. 40A as amended.
- c. Reading of an agenda item, to be followed by a brief discussion of what the requested relief is which the petitioner seeks.
- d. Presentation by applicant or his/her representative.
- e. Public comments in support of the request.
- f. Public comments in opposition to the request.
- g. Board discussion, motion, findings and vote.

- h. Board members hearing the case may direct relevant questions during the course of the hearing at the allowance of the Chair. Questions and responses must be directed through the Chair.

5. TESTIMONY AND DOCUMENTS

- a. The Board may listen to any testimony and inspect any data or any sites as it may deem necessary that would enable it to render a fair and informed decision.
- b. The Board must listen to any testimony of any person whom it is required to give notice to but the Board may exclude unnecessary, irrelevant, or repetitive testimony at the Chair's discretion.
- c. All testimony shall be given by a person identifying himself, their interest, if any, in the proceedings, and any special credentials that he or she may have pertaining to the subject matter of their testimony.
- d. Any documents introduced at the hearing shall be clearly identified as an exhibit, and the persons introducing such evidence shall likewise identify himself or herself to the Board.
- e. Any documents accepted by the Board shall be kept with the application in the appropriate file in the Planning Department.

6. STANDARDS OF THE BOARD

- a. The Board shall weigh each petition on an individual basis and shall not create precedence by virtue of their decisions.
- b. The Board shall adhere to these standards specified in MGL c. 40A as amended regarding hardships, etc. in reviewing petitions. It shall specifically look for information which supports the petitioner's claim. As such the petitioner should clearly identify and factually support the following items at a minimum:
 - i. The particular use proposed for the subject parcel or building.
 - ii. The condition especially affecting the property for which the variance is sought, specifically soil, shape or topography affecting the land or structure.
 - iii. The facts which make up the hardship.
 - iv. The facts relied upon to support a finding that the relief sought will be desirable and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
 - v. The Board must have this testimony in either written or oral form at the time of the hearing unless the matter is tabled until a later date.

D. DECISIONS OF THE BOARD

1. VOTING REQUIREMENT

The concurring vote of at least four (4) members of the Board shall be necessary to reverse any order or decision of any administrative official or to affect any variance in the application of any ordinance. The concurring vote of three (3) members of the Board shall be necessary for the denial, withdrawal, or tabling of any petition.

2. RECONSIDERATION

No appeal, application or petition which has been unfavorably and finally acted upon by the Zoning Board of Appeals shall not be acted favorably upon within two (2) years after the date of final unfavorable action unless the Board finds by a minimum vote of four members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the records of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of consent will be considered.

3. TIME LIMITS FOR GRANTED RELIEF

The rights authorized by the granting of a variance shall be exercised within one year of the date of grant of such variance. All permits necessary for the prosecution of the work should be obtained and any construction should be commenced within twelve (12) months of the date of filing the board's decision with the City Clerk.

If the rights authorized by a variance or other relief are not exercised within one year of the date of grant of such relief, such rights shall lapse. However, the Board shall have the right to extend the time for the exercise of such rights to a maximum of six (6) months in its discretion and upon the written application by the grantee of such rights prior to the expiration of the original one year period. If the Board does not grant such extension within the thirty (30) days of the date of application therefore, and upon the expiration of the original one year period, such rights may be reestablished only after notice and a new hearing pursuant to the provisions of these Rules and Regulations and MGL c 40A as amended.

4. NOTICE OF DECISION

A written notice of the decision (decision summary) rendered by the Board shall be mailed or delivered to interested parties including, but not limited to, the petitioner, applicant or appellant, abutters, Building Official and City Clerk said "decision summary" shall also be available for public inspection in the Planning Department. The written decision shall be filed with the City Clerk within fourteen (14) days of the rendering of such decision.

All decisions of the Board shall be in writing and shall be filed with the City Clerk. After the expiration of twenty days without notice of appeal to superior court, or if appeal has been taken, after receipt of certified records of the superior court indicating that such approval has become final, the city shall issue a certificate stating the date of approval, and such certificate shall be forwarded to the petitioner.

This Certificate must be recorded at the Registry of Deeds. This recording will be the responsibility of the petitioner or applicant and shall be done prior to the commencement of any work. The variance is not effective unless it is recorded with the Registry of Deeds.

5. AMENDMENTS TO THESE REGULATIONS

These rules and regulations may be amended, revised or repealed from time to time by a concurring vote of four (4) Board members. Any such amendment, revision or repeal shall only become effective upon its filing with the City Clerk.

6. INTERPRETATION BY THE BOARD

Anything which an applicant/petitioner agrees at the hearing to do in relation to his/her petition will be made part of the decision and will be binding on the applicant or his successors in title.

7. POLICY STATEMENT

Any advice, opinion or information given by the Board member, official or employee of the City of Fall River shall not be binding on the Board. As this Board is intended to function as a quasi-judicial body in rendering fair and impartial decisions based upon testimony and evidence, it is hereby declared to be the Board's policy to discourage any such personal appeals.

8. PLAN PREPARATION

All plans submitted to the Board shall be prepared, stamped and signed by a registered land surveyor. For all petitions requesting a division of property the plans shall be based upon a field survey completed by a registered land surveyor.