

TOWN OF WAKEFIELD

Board of Appeals

One Lafayette Street
Wakefield, MA 01880
781-246-6388



Office use:

APPLICANT: COMPLETE THREE (3) COPIES OF THIS FORM

- 1) Applicant name: _____ Phone: _____
Street address: _____ City: _____ State: _____
Representative(s): _____ Phone: _____
Mailing street address: _____ City: _____ State: _____
- 2) Owner name (if different from applicant): _____ Phone: _____
Street address: _____ City: _____ State: _____
Representative(s): _____ Phone: _____
Mailing street address: _____ City: _____ State: _____

- 3) If the applicant is not the property owner, indicate the interest in the premises:

Prospective purchaser

Lessee

Other, please specify _____

- 4) Application is hereby made pursuant to Chapter 190 "Zoning Bylaws of the Town of Wakefield."

Select one: a separate application is required for each relief

- a. Variance under Article _____ Section _____
- b. Special Permit under Article _____ Section _____
- c. Party aggrieved; for review of a decision made by the Building Inspector or other authority (attach decision)
- d. Determination and/or finding with respect to a continuation and extension of nonconforming uses under
Article _____ Section _____
- e. Application is hereby made for: a modification of
Decision(s) # _____ or for the extension of _____
Decision(s) # _____ [attach decision(s)]
- f. Comprehensive permit pursuant to M.G.L. Chapter 40B

Note: Special permit requirements are not all in one Article or Section. Refer to Chapter 190 "Zoning Bylaws of the Town of Wakefield" for additional information.

5) Characteristics of the premises.

a) Address of premises affected: _____

b) Premises affected is land with frontage on (street): _____

in a _____ zoning district, with area _____ and frontage of _____ feet.

c) Assessors' map number(s) _____ Lot/parcel(s) _____

d) Has there been any previous appeal or decision to the Board involving these premises?

Yes, attach application(s) and decision(s)

No

Unknown

6) Building description

a) Size of existing building, if applicable: _____

Length: _____ Width: _____ Height: _____ Number of stories: _____

Unknown

b) Present use of each floor: 1st: _____ 2nd: _____ 3rd: _____

c) Size of proposed building: _____

Length: _____ Width: _____ Height: _____ Number of stories: _____

Unknown

7) Description of proposed work and/or use:

8) Reason(s) for the relief requested are as follows (please attach additional sheets if needed):

9) I, _____, as the owner, prospective purchaser, lessee, or representative, hereby declare that the statements and information on the foregoing application are true and accurate, to the best of my knowledge and belief. Signed under the pains and penalty of perjury.

Print name: _____

Signature: _____

Date: _____

INSTRUCTIONS

Applications must be typed or printed. If applications are submitted with incomplete information, they will not be accepted. Applications must be reviewed by the Zoning Enforcement Officer prior to filing. Failure to comply will result in the revocation of the application.

Prepare and bring to the hearing a certified plot plan showing the lot, its area and dimensions, and the outline of any structures thereon and of the proposed structure together with distances from lot boundary lines. Bring photos of the project site and characteristics of the neighborhood. Plans of structures must be certified by a registered architect, structural engineer or professional engineer. All plot plans and site plans shall be certified by a registered land surveyor or a civil engineer.

ARTICLE XII - § 190-73: SCHEDULE OF FEES AND COMPLETE SUBMISSIONS

The following schedule of fees is established to cover the costs of legal notices, mailings and other costs related to the review of applications and petitions submitted to the Zoning Board of Appeals, the Planning Board or other special permit granting authority, if any.

- A. For all applications there is a fee of \$100 to cover advertising and notification of the first 20 parties to be notified (\$2 will be charged for each additional party over 20).
- B. In addition, the following fees shall be paid.
 - (1) Applications for petitions before the Zoning Board of Appeals:
 - (a) Appeals from actions of administrative officials or agencies: **\$125.00**
 - (b) Residential variances related to dimensional regulations: **\$50.00**
 - (c) Nonresidential variances related to dimensional regulations: **\$100.00**
 - (2) Applications for petitions before a special permit granting authority:
 - (a) Multifamily or attached dwelling development: **\$70.00** per residential dwelling unit
 - (b) Cluster development: **\$70.00** per residential dwelling unit
 - (c) Any other special permit required by this chapter: **\$100.00**
 - (3) Applicants for a sign permit within the Signage Overlay District shall pay a review fee of \$50. {Added 5-3-2010 ATM by Art. 29}
- C. Combinations of separate applications or petitions listed above shall not be filed on one application. The petitioner shall file separate petitions and pay the appropriate fee for each application or petition filed.
- D. Submissions to Zoning Board of Appeals
 - (1) In cases where an application is filed with the Zoning Board of Appeals, as required by the zoning code, for a site plan approval, variances, and special permits, applicants are required to provide **25 copies** of the application, complete plan sets and any documentation such as traffic and/or drainage studies with any application filed. The Zoning Board shall seek comments from municipal departments by distributing copies of the submission within seven days as follows:
 - nine copies to the Zoning Board of Appeals;
 - six copies to the Planning Board; and
 - one copy each to the Conservation Commission, the Health Department, the Historical Commission, the Director of Public Works, the Town Engineer, the Town Planner, the Building Inspector, the Police Chief, the Fire Chief, and the Town Clerk.
 - (2) In cases where an application is filed with the Zoning Board of Appeals, as required by the zoning code, for a special permit, variance, or appeal of the Building Inspector's ruling regarding a sign, applicants are required to provide 17 copies of the application, complete plan sets and any documentation required under § 190-101. The Zoning Board of Appeals shall seek comments from municipal departments by distributing copies of the submission within seven days as follows:

nine copies to the Zoning Board of Appeals;

three copies to the Design Review Board; and

one copy each to the Planning Board, Historical Commission, the Town Planner, the Building Inspector, and the Town Clerk.

- E. In cases where an application is filed with the Planning Board, as required by the zoning code, for site plan review or a special permit, applicants are required to provide 18 copies of the application, complete plan sets and any documentation such as traffic and/or drainage studies with any application filed. The Zoning Board shall seek comments from municipal departments by distributing copies of the submission within seven days as follows:

two copies to the Zoning Board of Appeals;

six copies to the Planning Board; and

one copy each to the Conservation Commission, the Health Department, the Historical Commission, the Director of Public Works, the Town Engineer, the Town Planner, the Building Inspector, the Police Chief; the Fire Chief, and the Town Clerk.

- F. Town boards or Town agents that receive copies of submissions, as listed above, shall have 30 days to investigate the pending application and submit a written recommendation to the board reviewing the application (either the Planning Board or the Zoning Board of Appeals, as stipulated by the zoning code). Action on a pending application may not be taken until all written reports are submitted to the board reviewing the application, or until 30 days have elapsed after the commenting Town board or Town agent received the application, whichever comes first.
- G. If an applicant revises any plan or report related to the proposal that will change the project's impact on drainage or traffic, the proposed number of dwelling units, the location or design of buildings on the site, or in any other way that the reviewing board deems to be substantive the applicant shall submit copies of the changed plans or report, with a written explanation of the change, for redistribution under §§ 190-73D and 190-73F, above. All time periods for distribution and comment, as required by § 190-73F, will begin anew. Final plans that have been revised to incorporate comments from other boards and conditions of approval are required for attachment to the final decision of the reviewing board; redistribution of these plans may be required for attachment to the notice of decision provided to other boards, but not for additional comment.

ARTICLE X - § 190-68: PUBLIC HEARINGS

- A. In all cases where notice of a public hearing is required, notice shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days (not including the date of the hearing) before the day of the hearing, and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing (not including the date of the hearing). In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid.
- B. "Parties in interest," as used in this chapter, shall mean the petitioner; abutters; owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, all 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; and the Planning Board of the Town and the Planning Board of every abutting city or Town. The Assessors maintaining any applicable tax list shall certify to the Board of Appeals the names and addresses of parties in interest, and such certification shall be conclusive for all purposes. The Board of Appeals may accept a waiver of notice from or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail and may order special notice to any such person, giving no less than five nor more than 10 additional days to reply.
- C. Publications and notices required by this section shall contain the name of the petitioner, a description of the area or premises, street address, if any, or other adequate identification of the location of the area or premises which is the subject of the petition, the date and place of the public hearing, the subject matter of the hearing and the nature of the section or relief requested, if any. No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in Wakefield.

ARTICLE X - § 190-66: VARIANCES

- A. The Board of Appeals shall have the power, after giving appropriate public hearing notice as described in § 190-68 hereof and after holding said hearing within 65 days after the Board of Appeals receives the petition from the Town Clerk, to grant upon appeal or upon petition a variance from the terms of this chapter where the Board of Appeals finds that, owing

to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant 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 chapter.

- B. A request for a variance from the provisions of this code shall be filed with the Zoning Board of Appeals in accordance with § 190-73D. An appeal of a decision of the Zoning Board of Appeals regarding a variance shall be filed in the same manner as described under § 190-65D hereof. {Amended 4-8-2002 ATM by Art. 39}
- C. The decision of the Board of Appeals shall be made within one hundred days of the filing of the petition. The time period for holding of the public hearing is inclusive of the one-hundred-day period. {Amended 4-4-2002 ATM by Art. 20}
- D. No variance shall be granted unless there is a concurring vote of at least four members of the Board of Appeals. {Amended 4-4-2002 ATM by Art. 21}
- E. If the Board of Appeals fails to act within the specified time period, the petition shall be deemed to be granted for the relief sought.
- F. The Board of Appeals may impose conditions, safeguards and limitations, both of time and of use, including the continued existence of any particular structures but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.
- G. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance they shall lapse and may be reestablished only after notice and a new hearing pursuant to this section.
- H. The decision regarding the variance shall contain:
 - (1) The name and address of the owner
 - (2) An identification of the land and/or structure affected
 - (3) Description of how the variance complies with the statutory requirements for issuing a variance
 - (4) Certification that copies of the decision have been filed with the Planning Board and Town Clerk
 - (5) Specification that appeals, if any, shall be made pursuant to MGL c. 40A, § 17 and shall be filed within 20 days after the date the notice of decision was filed with the Town Clerk

ARTICLE VIII - § 190-44: SPECIAL PERMITS AND SITE PLAN REVIEW - GENERAL REGULATIONS

Certain uses, structures or conditions are designated in Article IV, Use Regulations, as requiring a special permit. Upon submission of a written application duly made to the special permit granting authority, the special permit granting authority may, in appropriate cases, subject to the requirements of state law, applicable conditions contained herein and to all other reasonable conditions and safeguards, grant a special permit for such uses, structures or conditions.

- A. Before granting a special permit, the special permit granting authority, with due regard to the nature and condition of all adjacent structures and uses and the district within which the same is located, shall find all of the following general conditions to be fulfilled:
 - (1) The use requested is listed in the Table of Use Regulations¹ requiring a special permit in the district for which application is made.
 - (2) The requested use is essential and/or desirable to the public convenience or welfare.
 - (3) The requested use will not create or add to undue traffic congestion or unduly impair pedestrian safety.
 - (4) The requested use will not overload any public water, drainage or sewer system or any other municipal system for such an extent that the requested use or any developed use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety or the general welfare.
 - (5) The requested use will not impair the integrity or character of the district or adjoining districts nor be determined to the public health, convenience or welfare.

¹ Editor's Note: See §190-23.

- (6) The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.
- B. The special permit granting authority shall also impose, in addition to any applicable conditions specified in this chapter, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purpose of this chapter, including but not limited to the following:
 - (1) Front, side or rear yards greater than the minimum required by this chapter.
 - (2) Screening buffers or planting strips, fences or walls.
 - (3) Modification of the exterior appearance of the structures.
 - (4) Limitation upon the size, number of occupants, method and time of operating for the duration of the permit or extent of facilities.
 - (5) Regulation of the number and location of driveways or other traffic features.
 - (6) Off-street parking or loading or other special features beyond the minimum required by this chapter.
- C. Such conditions shall be imposed in writing, and the applicant may be required to post bond or other security for compliance with said conditions in an amount satisfactory to the special permit granting authority. Any special permit granted under this article shall lapse within 12 months if a substantial use thereof has not sooner commenced, except for good cause, or, in the case of a permit for construction, if construction has not begun by such date, except for good cause. Additionally, if construction or operations have not begun within 12 months or if construction is not continuing toward completion in as continuous or expeditious manner as is reasonable during the initial 12 months, then the construction or operations shall conform to any amendment to this chapter. See MGL c. 40A, §9.)
- D. Incomplete applications. [Added 5-3-2010 ATM by Art. 29]
 - (1) An application shall not be deemed complete until all copies of the required information and documentation have been filed with the special permit granting authority.
 - (2) The special permit granting authority shall notify applicants by registered mail or in person at a public hearing that an application is incomplete, and the applicant shall have 14 days from the mailing of such notice or the giving of such notice at a public hearing to complete the application. Failure to complete an application within such time or to file plans with the agencies or officials set forth in the Zoning Bylaw and any applicable rules and regulations shall be deemed a nonsubmittal of the application, and the application shall be denied without prejudice.
 - (3) Failure of the special permit granting authority to issue notice of an incomplete application shall not give rise to a presumption that the application is complete.

ARTICLE VIII - § 190-45: SITE PLAN REVIEW IN CONJUNCTION WITH SPECIAL PERMIT APPLICATION

- A. In order that the special permit granting authority may determine that the aforementioned requirements are to be met, applications shall be submitted in accordance with § 190-73. {Amended 4-8-2002 ATM by Art. 39}
- B. Such site plan shall show, among other things, all existing and proposed buildings, structures, parking spaces, driveway openings, driveways, service areas and other open uses; all facilities for sewage, refuse and other waste disposal and for surface water drainage; and all landscape features, such as fences, walls, planting areas and walks on the lot and tract.
- C. In addition to the above, the following information shall be provided:
 - (1) A chart showing all required dimensional requirements in the district where the development is proposed and comparing them to the dimensions being proposed.
 - (2) Drainage calculations for all runoff within the site.
 - (3) Map showing existing and proposed two-foot contours. For sites which are relatively flat, one-foot contours may be required. Cross section(s) through the site may also be required.
 - (4) Map showing all outdoor lighting, including the direction and intensity of such lighting.
- D. The above features may all be shown on one site plan, if legibility allows.
- E. An applicant may, prior to submitting his application for a special permit to the granting authority, meet with the special permit granting authority and orally describe the project. The special permit granting authority may waive or modify the requirements for a detailed site plan, as described above, after such a meeting.

- F. Notwithstanding anything contained in this chapter to the contrary, the submission or distribution of site plans as herein set forth shall not be required in the following instances: {Amended 6-7-1990 ATM by Art. 40; 4-8-2002 ATM by Art. 39}
- (1) In special permit applications pursuant to § 190-22A (I)(f), Accessory apartments.
 - (2) In special permit applications pursuant to § 190-18, Home occupations
- G. In reviewing a site plan, the special permit granting authority and the other applicable agencies shall consider, among other things, the following:
- (1) Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties or improvements.
 - (2) Adequacy of the methods of disposal for sewage, refuse and other wastes and the methods for surface and storm water drainage
 - (3) Provision for off-street loading and unloading of vehicles incidental to the servicing of the buildings and related uses on the lot or tract.²

ARTICLE X - § 190-65: APPEALS

- A. Any person, as defined by MGL c. 40A, § 8, aggrieved by reason of his inability to obtain a permit from the Building Inspector under the provisions of this chapter or by order or decision of the Building Inspector may take an appeal to the Board of Appeals.
- B. Appeals pursuant to MGL c. 40A, § 8 shall be taken within 30 days from the date of the order or decision which is being appealed by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, who shall forthwith transmit copies thereof to such officer whose order or decision is being appealed and to the Board of Appeals. The Building Inspector shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the area in which the appeal is taken.
- C. All hearings of the Board of Appeals shall be open to the public. The decision of the Board shall be made within 75 days after the date of the filing of an appeal, application or petition, except in regard to special permits, when the decision shall be made within 90 days after the public hearing. Failure by the Board to act within said 75 days shall be deemed to be grant of the relief, application or petition sought, subject to an applicable judicial appeal. The Board of Appeals shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decision and of its official actions, copies of all of which shall be filed within 14 days in the office of the Town Clerk and shall be a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in MGL c. 40A, § 11 and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to MGL c. 40A, § 17 and shall be filed within 20 days after the date of filing of such notice in the office of the Town Clerk.
- D. Further appeals. Any person aggrieved by a decision of the Board of Appeals, whether or not previously a party to the proceeding, or any municipal officer or board may appeal to the Superior Court or to the Land Court under MGL c. 240, § 14A for the county in which the land concerned is situated by bringing an action within 20 days after the decision has been filed in the office of the Town Clerk. Notice of the action with a copy of the complaint shall be given to the Town Clerk so as to be received within such 20 days. The complaint shall allege that the decision exceeds the authority of the Board of Appeals, and any facts pertinent to the issue, and shall contain a prayer that the decision be annulled. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of filing thereof, certified by the Town Clerk with whom the decision was filed.

² Editor's Note: Former Subsection H, I and J, as amended, which immediately followed this subsection, were repealed 4-8-2002. ATM by Art. 39.

ARTICLE X - § 190-67: REPETITIVE PETITIONS; WITHDRAWAL

- A. No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals or by another Town agency or board shall be acted favorably upon within two years after the date of final unfavorable action unless the acting board or agency finds, by a unanimous vote, specific and material changes in the conditions upon which previous unfavorable action was based and describes such changes in the record of its proceedings and unless all but one of the members of the Planning Board consent thereto and after notice is given to parties in interest (as defined in § 190-68B hereof) of the time and place of the proceedings when the question of such consent will be considered.
- B. Any petition for a variance or application for a special permit which has been transmitted to the Board of Appeals may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon but thereafter may be withdrawn without prejudice only with the approval of the Board of Appeals.