

# TOWN OF LINCOLN ZONING BOARD OF APPEALS

## Information and Instructions for Applicants

*Please note that this document contains summary information that may be helpful to Applicants seeking zoning relief from the Lincoln Zoning Board of Appeals. Please keep in mind that the applicable provisions of Massachusetts General Laws and of the Town of Lincoln Zoning By-Law will control in the event of any conflict with this summary.*

*Please also note that the Board may modify or change the information, instructions, policies and procedures outlined in this document at any time.*

### A. Summary of Steps

The following is a general outline of the procedures and steps involved in seeking zoning relief from the Board.

#### 1. The Application

- Obtain a copy of the current By-Law (available from the Town Clerk's Office or from the Town's website at <http://www.lincolntown.org/bylaw.htm>).
- Decide what type of request you are making (Special Permit, Variance, Appeal from action or failure to act by building inspector) and what you need to tell the Board to support your request.
- Obtain a copy of the Board's **Application** form. Complete all portions of the Application relevant to your request. See **Instructions for Application**, in Section B below, for information on completing the Application. All supporting materials relevant to your request should be submitted with the Application.
- Ten (10) copies of the Application and all supporting materials must be submitted, along with a check (payable to the Town of Lincoln) in the amount of the current filing fee. Your Application should be submitted to Board Staff.
- If your Application is incomplete, or there are questions, or there is additional information or submittals that are needed, you will be contacted. After your Application is reviewed by Board Staff, it will be forwarded to the Town Clerk for filing. The Board will then set a date for a hearing, a notice of the hearing will be published, and you will be notified, along with all abutters (neighbors located within 300 feet of your Property) and interested parties, of the date and time of the hearing.
- Applicants are encouraged to contact their neighbors and abutters, and any neighborhood groups, to show them what they are planning to do. This may provide a way to demonstrate support for your Application, as well as resolve any concerns about your Application prior to the hearing.
- Any questions regarding your Application or the application process should be directed to Board Staff: Dorothy Blakeley, at 781-259-2610; or at [blakeleyd@lincolntown.org](mailto:blakeleyd@lincolntown.org).

#### 2. The Hearing

- You should come in person on the evening your Application is scheduled to be heard. You need not bring an attorney, but you may if you wish to. You may bring your architect or building contractor, if any, if you wish that person to supplement your answers to any questions the Board members may have.
- The Board has five members, along with three associate members. Four affirmative votes are required to approve an Application.
- Hearings generally begin at 7:30 p.m. and continue until all applications scheduled for that session have been heard.
- When your Application is heard, you will be given an opportunity to explain your request to the Board and review with the Board any materials accompanying your Application. After you speak, Board members may ask questions to make sure they understand your request. After the Board members have asked questions, interested members of the public who may wish to speak about your Application are invited to offer any data, views and arguments relevant to your request.
- If the Board has questions or requests that cannot be answered or satisfied at the hearing, including arranging for a site visit by the Board, the hearing may be continued by the Board to a future scheduled meeting.
- If you have additional, supplementary or new materials, plans, etc. to provide to the Board that were not included with your original Application, these should be submitted (10 copies) at least 7 days prior to the hearing date, or prior to the date of any continuation of the hearing. This is to assure that the Board, and abutters or other interested parties, has adequate time to review and consider these materials prior to the hearing.

- After the Board has heard from you (and anyone you bring with you to testify), abutters and other parties, and after all questions have been answered to the satisfaction of the Board, the Chairman will call for a motion to close the record of the hearing. When the record is closed, the Board will no longer receive or consider oral or written testimony concerning your Application. In the rare case where additional information is offered that was not available at the time of the hearing, the Board can vote to re-open the record to receive that information, and it will then notify all parties in interest and will make that information available to all interested parties.
- Often, other Town permits and approvals are required in connection with an Application, such as Planning Board (site plan approval), Board of Health (septic), Conservation Commission (wetlands) and the Historical Commission (historic structure). You may wish to apply concurrently to other boards, and the Board may condition its Decision, or continue the hearing, to coordinate its review and decision with those of other boards.
- The most common application the Board receives is for a Special Permit for the alteration of a structure that is nonconforming or is on a nonconforming lot. The Board must determine that such an alteration is not substantially more detrimental to the neighborhood than the existing structure. Therefore, information concerning your neighborhood and other structures or lots in the neighborhood, and their relationship to your Proposal, is relevant to your Application, and you will need to provide such information.

### **3. The Decision**

- If you have asked for a Special Permit, the Board has 90 days from the date on which the hearing is closed to render a decision on your request. If you have asked for a Variance, the Board has 75 days from the date on which your Application was filed to render its decision on your request.
- Decisions are voted on tentatively by the Board, subject to the drafting and signing of a written Decision.
- The Board may condition its approval of your Application by imposing various requirements to ensure compliance with decision criteria and to memorialize certain agreements or commitments made at the hearing or in your Application, which will be stated in the Decision.
- When the Decision has been signed by no fewer than four members of the panel that heard your Application, it is filed in the office of the Town Clerk. The Town Clerk will stamp the Decision, a copy of the Decision will be mailed to you, and a notice that the Decision has been rendered will be mailed to abutters and interested parties.
- If you or someone else disagrees with the Decision, you have 20 days from the date the Decision is filed with the Town Clerk to appeal the Decision to an appropriate court. If no appeal is filed within the 20-day appeal period, the Town Clerk will attach to the Decision a certification that no appeals were filed within the appeal period, and will mail to you the original signed Decision, with the appeal certification attached.

### **4. Post-Decision**

- You must promptly record the Decision with the appropriate Registry of Deeds - the Middlesex County South District Registry of Deeds or the Middlesex County South Registry District of the Land Court (Section 11 of Chapter 40A of Massachusetts General Laws provides that no special permit or variance takes effect until the Decision is recorded with the registry of deeds).
- Your special permit or variance will lapse if construction is not begun (or if for a use, if the permitted use has not begun) within a period of 18 months after the filing of the Decision with the Town Clerk (or if appealed, within a period of 18 months after the date that the Decision is upheld), except for good cause. If you believe that there is good cause why you have not begun your permitted construction or use within that period, you must notify the Board that you do not wish your permit to lapse and you must ask for a hearing where you can explain why you need an extension.

## **B. The Application**

The following are general instructions for completing the Board's **Application**.

### **1. Location**

- *Address.* Fill in the Street Number and Street Name of your Property.
- *Assessor's Records.* Fill in the Map, Block and Lot Number that identifies your Property. This information can be obtained from the Board of Assessors, located at Town Hall; you should also obtain a copy of the Assessors Card for your Property from the Board of Assessors, which will need to be submitted with your Application.

Your Application will be identified and indexed based on this information.

## 2. Applicant

- *Name(s)*. Fill in your name, and indicate whether you are the owner of the Property.  
If you are not the owner, identify your relationship to the Property and the owner, and provide the name of the owner (for example, whether you are a tenant, or a purchaser of the Property, or whether you are a third party appealing a decision of the building inspector regarding the actions of the owner of the Property).  
Note that, except in the case of an appeal, the Board requires Applicants to be either the formal, designated representative of the owner, or to have a direct, enforceable interest in the Property (such as a tenant under a written lease or a purchaser under a written purchase and sale agreement), and for the owner to join in and sign the Application.
- *Contact Information*. Fill in your contact information.  
It is important that the Board and staff know how to contact you. If an attorney or architect or other agent will be representing you at the hearing, please provide the name and contact information for such person(s).

## 3. Application

- *General Description of Proposal*. Provide a short narrative description of what you are proposing to do on your Property (are you adding a porch, expanding a family room, renovating an accessory building?). You can write this in the lines provided on the Application, or attach a separate sheet.
- *Application is for*. Indicate what kind of zoning relief you are applying for, by checking the appropriate entry.
- *Applicable Section of Zoning By-Law*. Indicate the section of the By-Law are you seeking relief from or under. Note that most special permits for non-conforming structures or lots will be seeking relief under Section 4.4 of the By-Law.
- *Specific Nature of Relief Requested*. Provide a brief statement of what in particular about your Proposal requires zoning relief (is this an extension of a non-conforming structure, an addition to a house on a non-conforming lot, an addition extending into a required side lot?).

## 4. Zoning Information

- *Zoning District*. Fill in the Zoning District in which your Property is located. This information can be obtained from the Board Staff, from looking at the Zoning Map located in the Planning Office in Town Hall, or from the Assessors Card.  
Note that most residential property in Lincoln is located in an R-1 District.
- *Other Required Permits/Approvals*. Indicate whether there are other permits and approvals that you think that your Proposal will require, in addition to the zoning relief applied for in the Application.  
For example, if your Project requires review by the Planning Board, or approval of the Historic District Commission, or an order of conditions from the Conservation Commission, or if your Property is within any other regulated districts or overlays. If you have received any other permits or approvals, please provide copies of them with your Application.

## 5. Zoning Worksheet

The **Zoning Worksheet** should be completed by the Applicant and attached to the Application.

Fill in the Zoning Worksheet table with basic dimensional information on your Property. This information is usually central to the Board's analysis and consideration of your Proposal, and needs to be provided to the Board in an accurate, consistent manner.

The Board will want to see dimensional information both as to your Property and improvements as they now exist, and as they will be altered or improved by your Proposal.

Often, the best source of this information is your surveyor or architect, who can make these calculations for you. In some instances where only minor changes are being proposed that do not impact setbacks and other dimensional requirements, the figures provided on the Assessors Card and on existing survey plans can be used as the basis of calculations for the existing structures and lot. Please indicate on the Zoning Worksheet what or who was the source of your dimensional figures.

Following is some further information on some of the dimensional requirements to be listed on the **Zoning Worksheet**:

- *Use*: The use made or to be made of the structures on the Lot.
- *Lot Area*: The square foot area of the Lot. See the definition of "lot" in Section 22 of the By-Law.
- *Frontage*: The length of frontage of the Lot on the street. See Section 13.2 of the By-Law.

- *Front Yard, Side Yard and Rear Yard Setbacks:* The minimum setbacks from the lot lines of all structures on the Lot (note that setbacks are measured from lot lines, not the street pavement). See Section 13.2 of the By-Law.
- *Height:* The maximum height of the structures on the Lot. See Section 13.1 of the By-Law.
- *Calculated Gross Floor Area:* The total square foot floor area contained in the structures on your Property. The Board uses the “Calculated Gross Floor Area,” as defined in Section 22 of the By-Law, to establish consistent square footage figures for the existing conditions and the proposed changes. In making these calculations, please also review the definitions for “gross floor area”, “attic space”, “basement space”, and “implied gross floor area” in Section 22.
- *Ratio – Calculated Gross Floor Area to Lot Area:* The ratio of the calculated gross floor area of the structures on your Property to the Lot area, expressed as a percentage. This calculation is the same as that used as part of the determination of whether site plan review by the Planning Board is required under Section 17 of the By-Law.
- *Other:* Include any other dimensional requirements that you believe are relevant to your Property.

## 6. Statement

The **Statement** should be completed by the Applicant and attached to the Application.

The Statement should identify the requirements of the By-Law for the zoning relief being sought, and provide specific information as to how the Applicant believes the Proposal satisfies those requirements.

An outline of the requirements for the commonly applied-for zoning relief is included in this document:

**Standards for Special Permits**, in Section C below, contains the basic statutory requirements for Special Permits.

**Standards for Variances**, in Section D below, contains the basic statutory requirements for Variances.

It is the Applicant’s responsibility to provide evidence and justification to the Board supporting the Applicant’s request for zoning relief. The statutory criteria contained in the By-Law for the zoning relief being sought should be identified and factually supported in the Statement and/or verbally at the hearing.

## 7. Hearing Request

- The Application should be signed and dated by the Applicant.
- The Applicant should also be signed and dated by the owner of the Property, if the Applicant is not the owner (unless the Application is an appeal of an action relating to a property other than the Applicant’s).

## Application Checklist

The Application should be accompanied by appropriate documents, site plans, plans and other submittals, to explain fully and accurately the nature of your Proposal.

- *Application Fee.* Please contact Board Staff regarding the fee that will be due with your Application.
- *Copy of Assessors Card for Property.* Obtain a copy of the Assessors record card for your Property from the Board of Assessors at Town Hall. The Assessors Card will contain information from the Board of Assessors’ database, including the size, dimensions, a photograph and other aspects of your Property and the existing improvements.
- *Zoning Worksheet.* Attach the completed Zoning Worksheet.
- *Statement.* Attached the completed Statement.

*Note on Plans, Generally:* The Applicant will need to have plans prepared to fully and accurately describe and depict both existing conditions on your Property and the proposed changes and modifications. All plans should contain a graphic scale (so the drawing’s dimensions can be determined if the plans are reduced), and should contain appropriate dimensions (setback distances, floor areas, height, lot area, etc.) and labeling of spaces, structures and areas. It is preferred that all submitted plans be no larger than 11”x17”; if you wish to submit larger plans, please also include reductions to this size.

*Of particular assistance to the Board are plans that depict a direct comparison of the existing conditions on your Property to the proposed improvements, in site plans, in floor plans and in elevations.*

- *Plot Plan or Survey.* This should be prepared by a registered surveyor or architect, and show the location and configuration of your lot, along with: (i) the existing improvements (the structures currently on your Property) and (ii) the proposed improvements, additions and changes.

In most instances, a plot plan (which does not involve a full on-the-ground survey of your Property) will be sufficient; however, for major changes and new construction, a survey will be more appropriate, and in some instances, the survey should contain topographic information. If only minor changes are being proposed that do not impact setbacks and other dimensional requirements, an existing plan, marked-up, may be sufficient.

- *Floor Plans.* Plans should be provided for each floor or level of the existing improvements and the proposed improvements, additions or changes, either on separate plans or, preferably, on the same plans by shading, overlay or other graphic means. If the proposed improvements are minor and affect only a limited portion of the existing structure, plans showing the proposed improvements and the adjoining or affected areas of the existing structure may be sufficient.
- *Elevations.* Elevations should be provided showing each side of the structure. Existing conditions and the proposed improvements, additions or changes should be shown, either in separate elevations or, preferably, on the same elevations by shading, overlay or other graphic means. If the proposed improvements are minor and affect only a limited portion of the existing structure, elevations relevant to showing the proposed improvements and adjoining or affected areas may be sufficient.
- *Other Materials Submitted.* List any other submittals or materials included with your Application. Often, it is helpful in explaining your Proposal to include pictures of your Property and existing improvements, or renderings or a vicinity map, but these submittals are not required.

## C. Standards for Special Permits

### 1. Statutory Requirements

- Section 20.2(c) of the By-Law:

“(c) The Board of Appeals shall hear and decide requests for special permits as provided in the previous sections of this By-Law. Before granting any requests for a special permit in accordance with the previous sentence, the Board of Appeals shall determine that the use for which such permit is requested is in harmony with the general purposes and intent of this By-law, and that the proposed use is not detrimental or injurious to persons or property.”

- Section 4.4 of the By-Law (applicable to alterations of non-conforming uses or structures):

“4.4. The change or alteration of any non-conforming use or structure which is not otherwise permitted ... may be extended, altered, reconstructed or repaired, provided that in each case the Board of Appeals, in accordance with the procedures and provisions of Section 20 hereof, shall grant a special permit finding that such extension, alteration, reconstruction or repair is not substantially more detrimental to the neighborhood than the prior existing non-conforming structure or use.”

### 2. Findings for the Granting of a Special Permit:

In order to grant a Special Permit, the Applicant must establish, and the Board must find, that each of the following conditions have been satisfied:

- The structure is in harmony with the general purpose and intent of the By-Law;
- The structure is not detrimental or injurious to persons or property;
- For a *non-conforming structure, use or lot* (under Section 4.4 of the By-Law): the structure is not substantially more detrimental to the neighborhood than the prior existing non-conforming structure. The Applicant should provide:
  - A description of the neighborhood in which your Property is located, its architectural, site and other characteristics;
  - A description of relationship of the proposed improvements to the neighborhood, surrounding structures and landscape, and its impact on same; and
  - Any elements of mitigation that the Applicant is proposing in connection with the proposed improvements in order to lessen the detrimental impact of the proposed structure on the neighborhood.
- Such other particular requirements, standards and criteria as are provided in the By-Law for the specific Special Permit applied for.

*For example:* for a Special Permit for an accessory apartment in an R-1 District, the standards listed in Section 14.3 of the By-Law will also be applicable; and for a Special Permit for specific commercial uses in a B-2 District, the standards listed in Section 10.5 of the By-Law will also be applicable.

## D. Standards for Variances

### 1. Statutory requirements

- Section 20.2(d) of the By-Law:

“(d) The Board of Appeals shall hear and decide requests for variances from the terms of this By-law in accordance with the provisions of Section 10 of Chapter 40A of the General Laws, as may be from time to time amended. The variance may be granted only if the Board finds that owing to circumstances relating to the soil conditions, shape, or topography of land or structures and especially affecting such land or structures

but not generally affecting the zoning district in which they are located, a literal enforcement of the provisions of the by-law 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 the by-law.”

**2. Findings for the Granting of a Variance:**

In order to grant a Variance, the Applicant must establish, and the Board must find, that each of the following conditions have been satisfied:

- There are circumstances relating to soil conditions, shape or topography of land or structures that are the source of the need for a Variance; and
- These conditions especially affect the land or structures at issue, but do not generally affect the zoning district in which your Property is located; and
- A literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, to the Applicant; and
- The desired relief may be granted without substantial detriment to the public good; and
- The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the By-Law.