

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 (the "Board"). 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.*

*If you have any questions, or wish to discuss any of the instructions and requirements for submission of an Application, please contact Board Staff or the Director of Planning.*

### **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**

- a. Obtain and review a copy of the current Zoning By-Law (available from the Town Clerk's Office or from the Town's website at [www.lincolntown.org](http://www.lincolntown.org)).
- b. Decide what type of request you are making (Special Permit, Variance, Appeal) and what you need to tell the Board to support your request.
- c. Obtain a copy of the Board's **Application** form (from Board Staff or from the Town's website). Complete all portions of the Application relevant to your request.  
See **The Application** - Section B below - for information on completing the Application. All supporting materials relevant to your request should be submitted with the Application.
- d. Ten (10) copies of the Application and all supporting materials must be submitted. It is also strongly encouraged that you submit the Application in PDF format by email to Board Staff. The Application must be accompanied by a check (payable to the Town of Lincoln) in the amount of the current non-refundable filing fee. Your Application should be submitted to Board Staff.
- e. 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, and determined to be complete, 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.
- f. 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.
- g. If an Applicant is considering a major addition or a reconstruction, it is strongly recommended that, prior to submitting an Application, an Applicant request a meeting with Board Staff and/or with the Director of Planning for an informal review and discussion of the proposal. This is an opportunity for Applicants to receive useful and constructive feedback before finalizing their proposals, and can make the approval process, once an Application is submitted, move more quickly and smoothly.
- h. Any questions regarding your Application or the application process should be directed to Board Staff: Peggy Bozak, at 781-259-2615; or [bozakp@lincolntown.org](mailto:bozakp@lincolntown.org).

#### **2. The Hearing**

- a. The Board has five members, along with three associate members. Four affirmative votes of a five-member panel (or four affirmative votes of a four-person panel) are required to approve an Application. The Board typically rotates on an Application by Application basis a Board member to lead the hearing for each matter coming before it.

- b. You should come in person on the evening your Application is scheduled to be heard. You need not bring an attorney, but you may do so if you wish. 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.
- c. Hearings generally begin at 7:30 p.m. and continue until all applications scheduled for that session have been heard.
- d. You can contact Board Staff to find out where on the Board's agenda your Application is scheduled to be heard, although the Board cannot guaranty that your hearing will begin (or end) at any given time. It is your responsibility to be present at the hearing at the time your Application is called.
- e. 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, and to address any missing information, issues or concerns. 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.
- f. 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.
- g. 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 and by PDF) at least 7 days prior to the hearing date, or at least 7 days prior to the date of any continuation of the hearing. This is to assure that the Board, and abutters or other interested parties, have adequate time to review and consider these materials prior to the hearing.

*The Board reserves the right to refuse to accept any materials from the Applicant that are not submitted to the Board at least 7 days prior to the hearing or continuance, or to require a further continuance to a future meeting to provide ample time for the review of late submissions.*

- h. After the Board has heard from you (and anyone you bring with you to testify), abutters and other members of the public, and after all questions have been answered to the satisfaction of the Board, the Board member leading the hearing 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 the Applicant and post public notice of the reopening.
- i. 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.
- j. The most common application the Board receives is for a Special Permit for the alteration of a structure that is nonconforming or is located on a nonconforming lot. To receive an affirmative approval, evidence needs to be provided, and the Board must determine, as required by the By-Law, that such an alteration is *not substantially more detrimental to the neighborhood than the existing structure*. Therefore, (i) information concerning your neighborhood and other structures or lots in the neighborhood, and their relationship to your Proposal, and (ii) information (plans) showing the existing conditions as compared to the proposed conditions, are each relevant to your Application, and you will need to provide such information. In addition, in order to minimize the impact of your proposed changes so that the required finding may be made, the Board may condition its approval on certain matters and requirements, such as landscaping.

### **3. The Decision**

- a. 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 or if you have filed an Appeal from the decision of the building inspector or the planning board, the Board has 100 days from the date on which your Application was filed to render its decision on your request.
- b. Decisions are voted on tentatively by the Board, subject to the drafting and signing of a written Decision, and to the terms and conditions contained in the written Decision.

- c. 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.
- d. Typically (but not always), a Decision is signed at the next regularly scheduled Board meeting following the vote on your Application. The Decision needs to be signed by no fewer than four members of the panel that heard your Application. Upon being signed, the Decision 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.
- e. If you or someone else disagrees with the Decision, there will be a 20 day period 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**

- a. It is your responsibility to promptly record the Decision, with the Town Clerk's certification, 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), and to provide Board Staff or the Building Inspector with a copy of the recorded Decision.
- b. 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.
- c. It is your responsibility to comply with all the terms and conditions of the Decision. Failure to do so will constitute a violation of the By-Law and may result in severe consequences to your Project, including, but not limited to, stop work orders, fines, modifications to the conditions and terms of the Decision, and/or the withdrawal of the approval provided for in the Decision.

## **B. The Application**

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

### **1. Location**

- a. *Address.* Fill in the Street Number and Street Name of your Property.
- b. *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, or from the Town's GIS Map (available at the Town's website).

### **2. Applicant**

- a. *Name(s).* Fill in your name, and indicate whether you are the owner of record of the Property. If you are not the owner, identify your relationship to the Property and the owner of record, 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). The name of the owner of record of the Property should be filled in just as it appears on the Deed 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.
- b. *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

- a. *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?).
- b. *Application is for.* Indicate what kind of zoning relief you are applying for, by checking the appropriate entry.
- c. *Applicable Sections of Zoning By-Law.* Indicate the section(s) of the By-Law are you seeking relief from or under. Note that most special permit applications are for alterations to non-conforming structures or to structures on nonconforming lots, and will be seeking relief under Section 4.4 of the By-Law.
- d. *Specific Nature of Relief Requested.* Provide a brief statement of what in particular about your Proposal requires zoning relief (is this the alteration 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

- a. *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, available in the Planning Office in Town Hall or online at the Town's website, or on your Assessor's Card. Note that most residential property in Lincoln is located in an *R-1 District*.
- b. *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. You should consult with Board Staff or the Director of Planning if you are uncertain as to what other approvals may be required. If you have received any other permits or approvals, please provide copies of them with your Application.

### 5. Attachments/Submissions

Each of the following items/documents/plans should be submitted with and attached to your Application:

#### PROPERTY INFORMATION

**Assessor's Card:** Obtain a copy of the Assessors Record Card for your Property, from the Board of Assessors at Town Hall, or from the Town's GIS Map at the Town website. 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.

**Lincoln GIS Map:** Obtain a printout of a portion of the Lincoln's GIS Map, showing the Property and its general vicinity, including adjoining properties. This provides some context for where your Property is located and what is in the area in which your Property is located. The GIS Map may be found at the Town's website.

#### STATEMENT

**Statement:** A Statement should be drafted by the Applicant. 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.

In the case of an Appeal, the Statement should describe the decision being appealed and the specific reasons why that decision should be overruled.

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.

## ZONING WORKSHEET

**Zoning Worksheet:** A blank Zoning Worksheet may be obtained from Board Staff or from the Town’s website.

The Zoning Worksheet table should be fully filled in 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 are being proposed to 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 at the bottom of the Zoning Worksheet what or who was the source of your dimensional figures.

The Zoning Worksheet should be labeled and dated (and any supplemental or modified submission should bear a revised, current date), at the top-left of the page.

The column labeled “Existing” is for the dimensional information on your Property as it currently exists.

The column labeled “Proposed” is for the dimensional information on your Property as it will be following the construction of your Project.

The column labeled “Notes/Additional” is for any clarifications or for further information to help make explain and supplement your figures.

For some applications, the Zoning Worksheet form will need to be modified or added to, to provide the relevant dimensional information on your Proposal. Applicants should feel free to make appropriate modifications, or to submit multiple Zoning Worksheets, to fully explain the dimensional aspects of your Proposal.

Following is some further information and sources for 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. In most cases, this is *Single-Family Residential*.
- 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.
- Lot Width: The minimum width of the Lot, from one side lot line to the other, measured at any point through the principal building. 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. Note that setbacks are measured from the closest portion of a structure – for example, the setback is measured from the roof overhang to the lot line, rather than from the exterior wall to the lot line.
- Height: The maximum height of the structures on the Lot. See Section 13.1 of the By-Law.
- Floor Area: The total square foot floor area of all the structures on your Property. There are 2 floor area calculations requested – floor area, and Calculated Gross Floor Area.

The floor area and the Calculated Gross Floor Area should each be provided, for existing conditions and for the proposed conditions, on a floor-by-floor basis for the principal structure, for all accessory buildings, and with a total square foot floor area figure provided at the bottom of each column.

### floor area

“floor area” is intended to provide ordinary square footage information, including for areas that may not be included in the following Calculated Gross Floor Area, such as basements and barns older than 10 years. This calculation should include the square footage of all areas on all floors of all structures on your property.

### Calculated Gross Floor Area

“Calculated Gross Floor Area” is a particular calculation of the floor area for zoning purposes. See the definition

of “*Gross Floor Area, Calculated*” contained in Section 22 of the By-Law. In determining Calculated Gross Floor Area, you may also need to review other definitions in Section 22 of the By-Law, including “Gross Floor Area”, “Attic Space”, “Basement Space”, and “Implied Gross Floor Area”.

In general (subject to a careful reading of Section 22’s definitions, above), true underground basements, barns over 10 years old and open decks are not included in the Calculated Gross Floor Area, and covered porches and attic spaces with a height of more than 5’-6” are included in the Calculated Gross Floor Area.

The Board, and other Town land use boards, use “Calculated Gross Floor Area” to establish consistent square foot area figures under the By-Law, both for existing conditions (ie., the structures on your Property currently), and for the as proposed (ie., the structures on your Property after construction of the improvements requested in the Application).

- *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 (ie., the total Calculated Gross Floor Area divided by the total 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 Relevant Dimensional Requirements/Issues/Matters:* Include any other dimensional requirements that you believe are relevant to your Property and Proposal.

## PLANS

### General Notes on Plans:

The Applicant will need to have sufficient plans prepared to fully and accurately describe and depict both existing conditions on the Property and the proposed changes and modifications.

All plans should contain a graphic scale (so the drawings’ scale can be determined when the plans are reproduced), and should contain appropriate dimensions (setback distances, floor areas, height, lot area, etc.) and labeling of spaces, structures and areas.

All plans should (i) have a title, (ii) indicate clearly who prepared the plan, and (iii) be dated (and any revised plans submitted should contain a revision date or a new date, to distinguish them from any previously submitted plan).

If prepared by an Architect, Engineer or Surveyor, the plans should be stamped.

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.

It is strongly encouraged that all plans also be submitted in PDF format, by email.

### Comparison/Overlay Plans:

It is of particular assistance to the Board, for the Applicant to submit plans that show a direct comparison of the existing conditions on your Property to the proposed improvements --- in site plans, in floor plans and in elevations --- using overlays, outlines, colors or other graphic techniques to show, by direct comparison on the plans, the proposed changes being made, from the existing conditions.

Although such comparison/overlay plans are strongly encouraged for all applications, depending on the nature of the Proposal, the Board may require the submission of such comparison/overlay plans for Proposals where such graphic display of information is useful and clarifying.

## **Survey or Plot Plan**

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), (ii) the proposed improvements, additions and changes, and (iii) graphic dimensional information on the lot and structure (existing and proposed), including all setbacks.

Usually, a full Survey plan will be necessary (note that in most cases a Survey plan will be required in order to obtain a building permit for your Proposal). In some instances, the Board may agree to the use of a Plot Plan (which does not involve a full on-the-ground survey of your Property) or a marked-up existing Survey or Plot Plan, but generally only

in cases where minor changes are being proposed that are clearly not impacting setbacks and other dimensional requirements.

### **Floor Plans**

Plans should be provided for each floor or level of the existing improvements and of the proposed improvements, additions or changes, either on separate plans, or, preferably, on the same plans by shading, overlay or other graphic means.

### **Elevations**

Plans 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.

## **EXISTING APPROVALS/FILINGS**

Understanding the zoning status and the history of the Property, including any conditions or constraints that were imposed in prior zoning approvals, and any historical information, background and context for the Property, can be important for the Board's review of your Project.

**Special Permits, Variances, Site Plan Reviews, etc.:** Obtain copies of any zoning approvals or permits, if there are any, that have been granted in the past for the Property and its improvements. Board staff should be able to help you locate any permits and approvals.

**MHC Inventory Forms:** Obtain copies of any Massachusetts Historical Commission Inventory Form that may have been completed and filed for your Property. If your home is of historic interest, or is located in an Historic District, a MHC Inventory Form describing the Property and its significance may have been filed for it. The Lincoln Historical Commission or Board staff can help you determine if such a filing has been made, and if so locate a copy of the form.

## **OTHER MATERIALS**

### **Other Materials**

Often, there are other plans, materials, documents, etc. that are helpful to submit in order to better explain your Proposal. In many instances, pictures of your Property and existing improvements, or computer simulations or 3-dimensional renderings are quite helpful, but these submittals are not generally required.

In addition, in some cases providing other documents, such as Deeds, older plans and title documents are appropriate, or necessary, in order to properly explain your Proposal or issues related to it.

In the case of Appeals, the Applicant should submit copies of the decision being appealed, as well as all relevant communications and notices relating to the decision and the matter that is the subject of the appeal.

## **6. Hearing Request**

- a. The Application should be signed and dated by the Applicant.
- b. 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).

## **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 as landscaping and screening).
    - 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.