

INSTRUCTIONS
FOR FILING
ZONING BOARD OF APPEALS PETITIONS

RESIDENTIAL FILINGS-

The petitioner shall file the following to the Building Commissioner:

One (1) original application and one (1) original set of supporting documents plus ten (10) copies of the supporting documents as listed below, along with the filing fee.

Supporting documents required for filing:

1. Deed showing the recorded owner of the property, a purchase and sales agreement, or other.
2. An accurate plot plan of the subject property showing:
 - a. All lot dimensions, including the front, side, and rear setbacks existing and proposed, and the existing and proposed dimensions of all of the structures on the property.
 - b. Building plans and elevation views of existing and proposed buildings and structures with respective dimensions, including height.
 - c. North arrow;
3. Building Commissioner's decision and any relevant permit application (if an appeal.)

Applications that are incomplete and/or do not include the supporting documents will be rejected. You may wish to consult an attorney.

COMMERCIAL FILINGS-

The petitioner shall file one (1) original application and one (1) original set of supporting documents plus nineteen (19) copies of the supporting documents (**if filing for Site Plan Approval**) or fifteen (15) copies of the supporting documents (**if Site Plan Approval is not required**) along with the filing fee to the Building Commissioner for review:

Ten (10) copies will be given to the ZBA and five (5) copies will be given to the Planning Board and if Site Plan Approval is required, four (4) copies will be given to the ICDRC (**Industrial and Commercial Design Review Committee.**)

Supporting documents required for filing:

1. Deed showing the recorded owner of the property, a purchase and sale agreement, or other.
2. Plans in accordance with Section 9.5 of the Middleton Zoning Bylaws. (See pages 6 & 7 of filing package.)
3. Building Commissioner's decision & any relevant permit application (if an appeal.)

No petition will be deemed to have been properly filed unless all steps have been completed.

**PRIOR TO SUBMITTAL OF THIS APPLICATION,
IT IS RECOMMENDED THAT YOU DO THE FOLLOWING:**

- 1 Meet with a representative of the permit granting authority (e.g. the Building Commissioner, the Conservation Agent, the Health Agent, etc.)
- 2 Meet with the abutters of your property to discuss the project.

Town employees are available to assist you, but if you know or feel you may have legal concerns, please consult an attorney.

Consultation with town officials regarding this application does not express or claim to be a substitute for professional legal assistance.

FILING DEADLINES & FEES

**PUBLIC HEARINGS ARE GENERALLY SCHEDULED FOR THE FOURTH THURSDAY OF THE MONTH
AT 7:00 PM IN THE FULLER MEADOW SCHOOL MEDIA CENTER**

Filing Deadline: Applications must be filed 24 days prior to the scheduled meeting date.

Filing Fees: Please make checks payable to the Town of Middleton.

Residential applications-\$100.00* filed with application to the Building Commissioner.

Commercial applications-\$150.00* per petition, filed with application (s) to the Building Commissioner.

*Separate fees may be required to cover the costs of technical review as deemed necessary by the Board.

Certified Abutters List-a fee of \$15.00 will be charged by Assessor's Office for a certified abutters list. Please request the abutters list directly from the Middleton Assessor's Office, 48 South Main Street, Middleton, MA (978) 774-2099. *The law allows the Assessor 10 days to prepare an abutters list. Please plan ahead as this is a required document.*

The abutters list will be forwarded to the ZBA office and notification will be sent out to the abutters of the property plus the seven abutting towns to Middleton. **You will be invoiced \$1.00 per abutter for the mailing.**

Advertising Fees: You will be required to pay the cost of the legal advertising that will be placed in either the Tri-Town Transcript or Salem Evening News. Payment is made directly to the news publication.

**Attendance of the applicant at the hearing in person or by an authorized representative is required.
Representatives must submit proof of authorization in writing.**

**INCOMPLETE APPLICATIONS WILL NOT BE CONSIDERED AS FILED,
FOR PURPOSES OF DEADLINES, CONSTRUCTIVE APPROVALS OR OTHERWISE**

Town of Middleton
Zoning Board of Appeals

The Town By-Laws and State Statutes printed in this packet have been included as an overview, for informational purposes only, and the Petitioner should only rely upon the Massachusetts General Laws, and Middleton By-Laws, as amended at the time of filing.

BOARD OF APPEALS OVERVIEW

[Excerpt from Middleton Zoning Bylaw, Division 3 Chapter 9, Section 3.2 Within Middleton's General Code]

Applicants are encouraged to read all related sections of the Zoning Bylaw posted on the Town's website at *townofmiddleton.org*

9.3.2. Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this bylaw. The Board's powers are as follows:

1. To hear and decide applications for special permits. Unless otherwise specified herein, the Board of Appeals shall serve as the special permit granting authority.
2. To hear and decide appeals or petitions for variances from the terms of this bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, § 10. The Board of Appeals may grant use variances.
3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, §§8 and 15.
4. To hear and decide comprehensive permits for construction of low- or moderate-income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, §§ 20 - 23.

NO PETITION SHALL BE FILED UNLESS A GRANTING OF SUCH REQUEST COMES WITHIN THE BOARD'S POWER TO GRANT

The Board of Appeals is limited to these powers by law and is subject always to the rule that it shall give due consideration to promoting the public health, safety, convenience and welfare; encouraging the most appropriate use of land, and conserving property values, that it shall permit no building or use injurious, noxious, offensive or detrimental to a neighborhood, and that it shall prescribe appropriate conditions and safeguards in each case.

"VARIANCES"

MGL Chapter 40A, Section 10-Variances

The permit granting authority shall have the power after public hearing for which notice has been given by publication and posting as provided in section eleven and by mailing to all parties in interest to grant upon appeal or upon petition

with respect to particular land or structures a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that:

1. 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,
2. a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant,
3. 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 such ordinance or by-law.

Except where local ordinances or by-laws shall expressly permit variances for use, no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided however, that such variances properly granted prior to January first, nineteen hundred and seventy-six but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.

The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period. If the permit granting authority does not grant such extension within thirty 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 this section.

“SPECIAL PERMITS”

9.4.2. Criteria. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this bylaw, the determination shall include consideration of each of the following:

1. Community needs which are served by the proposal;
2. Traffic and pedestrian flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character;
5. Impacts on the natural environment; and
6. Potential economic and fiscal impact, including impact on Town services, tax base, and employment.

9.4.3. Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the special permit granting authority.

9.4.4. Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this bylaw.

9.4.5. Plans. Unless otherwise provided by the rule or regulation of the special permit granting authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 9.5, herein.

9.4.6. Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.

9.4.7. Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

9.4.8. Lapse. Special permits shall lapse if a substantial use thereof or construction there under has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, § 17, from the grant thereof) with the Town Clerk.

“SITE PLAN REVIEW”

9.5.1. Purpose. For the purpose of administering the provisions of these bylaws relating to parking and loading spaces, to ensure the most advantageous use of all properties within the same district, and for the reasonable protection of the legitimate interests of adjoining property owners, no permit shall be issued until a site plan, prepared by a professional architect, engineer or landscape architect, has been submitted to the Board of Appeals for a public hearing and approved thereafter.

9.5.2. Applicability. The following types of activities and uses require site plan review by the Zoning Board of Appeals:

1. Garden apartments in a residence district;
2. Any new buildings or structures in a Business District, Light Industrial District, Institutional Overlay District, or Interstate Highway Business District; or
3. An addition to or alteration of an existing building for commercial use.

9.5.3. Modification; merger.

1. Any substantial modification of an approved site plan shall require the approval of the Board of Appeals after public hearing.
2. Where a use subject to site plan approval also requires the grant of a special permit by the Board of Appeals, the provisions of this Section 9.5 shall be construed to require the submittal of the information set forth below. The special permit shall govern the decision of the Board. No separate application shall be filed for site plan approval.

9.5.4. Preparation of plans. Site plans shall be submitted in accordance with the rules and regulations of the Board of Appeals. Site plans shall be submitted on twenty-four-inch-by-thirty-six-inch sheets. Plans shall be prepared by a registered professional engineer, registered land surveyor, architect, or landscape architect, as appropriate. Dimensions and scales shall be adequate to determine that all requirements are met and to make a complete analysis and evaluation of the proposal. All plans shall have a minimum scale of 1 inch = 20 feet.

1. Applicants are invited to submit a pre-application sketch of the proposed project to the Board and to schedule a comment period at a regular meeting of the Board.

9.5.5. Contents of plan. The contents of the site plan are as follows:

1. Five separate plans prepared at a scale of one inch equals 20 feet or such other scale as may be approved by the Board. The plans are as follows:
 - a. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one inch equals 100 feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of 1,000 feet from the project boundaries or such other distance as may be approved or required by the Board.
 - b. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling stormwater drainage.
 - c. Utility and landscaping plan, which shall include all facilities for refuse and sewage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
 - d. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
 - e. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.
2. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof. There shall be submitted a written estimate, showing in detail the costs of all site improvements planned.
3. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this bylaw.
4. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town's subdivision regulations.
5. The Board may require narrative assessments of the on-site and off-site impacts of the proposed development.
6. Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.

9.5.6. Waiver of technical compliance. The Board may, upon written request of the applicant, waive any of the technical requirements of this section where the project involves relatively simple development plans or constitutes a minor site plan.

9.5.7. Procedures; constructive approval. The Board of Appeals shall hold a public hearing in conjunction with the application for site plan approval, in accordance with the procedures of M.G.L. c. 40A, §§ 9 and 11. The failure of the

Board of Appeals to file its decision with the Town Clerk within 90 days after the close of the public hearing shall constitute approval of such use or construction.

1. Extension of time. The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.
2. The Board shall prepare and file a written decision regarding site plan approval with the Town Clerk.

9.5.8. Review by other boards. The Board of Appeals shall refer all site plans to the Planning Board and to the Industrial and Commercial Design Review Committee for their advisory review and recommendations. The Planning Board and the Design Review Committee shall have 45 days to render such recommendations. Failure to respond within such period shall be deemed a lack of opposition thereto.

1. The Planning Board shall make recommendations with regard to the provision of water, wastewater disposal, stormwater management, roadway and access design and construction, and the provision of other utilities.
2. The Design Review Committee shall make recommendations in accordance with Section 9.6, herein.

9.6 Industrial and Commercial Design Review Committee

9.6.1. Establishment.

In order to promote harmony in architectural, landscape and sign treatment and design; avoid incongruous or inappropriate architectural and landscape treatment and design; and to avoid arrangement of buildings detrimental to the property values of adjoining owners and the community an Industrial and Commercial Design Review Committee is established.

9.6.2. Duties; powers.

1. The duties of the Industrial and Commercial Design Review Committee are to review all plans for new commercial and industrial development prior to consideration by the Board of Appeals and to review all plans for exterior and site changes of existing commercial and industrial buildings that require action by the Board of Appeals.
2. The Board of Appeals shall have the discretion to accept and/or reject, in part or in whole, the recommendations of the Industrial and Commercial Design Review Committee. The powers of the Committee are advisory only.

9.6.3. Subject matter jurisdiction.

The following subjects shall be considered by the Industrial and Commercial Design Review Committee in its review of plans and preparation of recommendations for change, acceptance or rejection:

1. General appearance of the proposed buildings.
2. General appearance of the proposed site landscaping.
3. Walkways and pedestrian and bicycle circulation.
4. Building massing; the relation between the building size and siting, and the lot size.

9.5.9. Regulations. The Board of Appeals may from time to time adopt rules prescribing reasonable regulations under this section.

9.5.10. Fee. An application for site plan approval shall be accompanied by a fee, as set forth in the Board's Rules and Regulations.

9.5.11. Approval. Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives.

1. Compliance with the requirements for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of these bylaws;
2. Convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
3. Adequacy as to the arrangement and, where not herein specified, the number of parking and loading spaces in relation to the proposed uses of the premises;
4. Arrangement and appearance of proposed buildings, structures, freestanding and attached signs, screening and landscaping;
5. Adequacy of the methods on the site for waste disposal, surface and subsurface drainage, and lighting.

9.5.12. Lapse. Site plan approval shall lapse after two years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

9.5.13. Appeal. Any decision of the Board pursuant to this section shall be appealed in accordance with M.G.L. c. 40A, § 17 to a court of competent jurisdiction.

“APPEAL OF BUILDING COMMISSIONER’S DECISION”

9.1.6. Appeals. Any person aggrieved by his inability to obtain a permit, by the refusal of the Building Commissioner to issue a permit, or by any order, decision or failure to act of the Building Commissioner, or any officer or board of the Town, may appeal to the Board of Appeals in the manner provided by M.G.L. c. 40A, §§ 7, 8 and 15.

M.G.L. c. 40A, Section 7. The inspector of buildings, building commissioner or local inspector, or if there are none, in a town, the board of selectmen, or person or board designated by local ordinance or by-law, shall be charged with the enforcement of the zoning ordinance or by-law and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any zoning ordinance or by-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law. If the officer or board charged with enforcement of zoning ordinances or by-laws is requested in writing to enforce such ordinances or by-laws against any person allegedly in violation of the same and such officer or board declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.

No local zoning law shall provide penalty of more than three hundred dollars per violation; provided, however, that nothing herein shall be construed to prohibit such laws from providing that each day such violation continues shall constitute a separate offense. No action, suit or proceeding shall be maintained in any court, nor any administrative or other action taken to recover a fine or damages or to compel the removal, alteration, or relocation of any structure or part of a structure or alteration of a structure by reason of any violation of any zoning by-law or ordinance except in accordance with the provisions of this section, section eight and section seventeen; provided, further, that if real property has been improved and used in accordance with the terms of the original building permit issued by a person duly

authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use allowed by said permit or the removal, alteration or relocation of any structure erected in reliance upon said permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted thereunder, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county or district in which the land lies within six years next after the commencement of the alleged violation of law; and provided, further that no action, criminal or civil, the effect or purpose of which is to compel the removal, alteration, or relocation of any structure by reason of any alleged violation of the provisions of this chapter, or any ordinance or by-law adopted thereunder, or the conditions of any variance or special permit, shall be maintained, unless such action, suit or proceeding is commenced and notice thereof recorded in the registry of deeds for each county or district in which the land lies within ten years next after the commencement of the alleged violation. Such notice shall include names of one or more of the owners of record, the name of the person initiating the action, and adequate identification of the structure and the alleged violation.

The superior court and the land court shall have the jurisdiction to enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may restrain by injunction violations thereof.

M.G.L. c40A, Section 8. An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder.

M.G.L. c40A, Section 15. Any appeal under section eight to a permit granting authority shall be taken within thirty days from the date of the order or decision which is being appealed. The petitioner shall file a notice of appeal specifying the grounds thereof, with the city or town clerk, and a copy of said notice, including the date and time of filing certified by the town clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the permit granting authority, specifying in the notice grounds for such appeal. Such officer or board shall forthwith transmit to the board of appeals or zoning administrator all documents and papers constituting the record of the case in which the appeal is taken.

Any appeal to a board of appeals from the order or decision of a zoning administrator, if any, appointed in accordance with section thirteen shall be taken within thirty days of the date of such order or decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied in accordance with said section thirteen, as the case may be, by having the petitioner file a notice of appeal, specifying the grounds thereof with the city or town clerk and a copy of said notice including the date and time of filing certified by the city or town clerk shall be filed forthwith in the office of the zoning administrator and in the case of an appeal under section eight with the officer whose decision was the subject of the initial appeal to said zoning administrator. The zoning administrator shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken. An application for a special permit or petition for variance over which the board of appeals or the zoning administrator as the case may be, exercise original jurisdiction shall be filed by the petitioner with the city or town clerk, and a copy of said appeal, application or petition, including the date and time of filing, certified by the city or town clerk, shall be transmitted forthwith by the petitioner to the board of appeals or to said zoning administrator.

Meetings of the board shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules. The board of appeals shall hold a hearing on any appeal, application or petition within sixty-five days from the receipt of notice by the board of such appeal, application or petition. The board shall cause notice of such hearing to be published and sent to parties in interest as provided in section eleven. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

The concurring vote of all members of the board of appeals consisting of three members, and a concurring vote of four members of a board consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law.

All hearings of the board of appeals shall be open to the public. The decision of the board shall be made within one hundred days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided for in section nine. The required time limits for a public hearing and said action, may be extended by written agreement between the applicant and the board of appeals. A copy of such agreement shall be filed in the office of the city or town clerk. Failure by the board to act within said one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application or petition. The petitioner who seeks such approval by reason of the failure of the board to act within the time prescribed shall notify the city or town clerk, in writing, within fourteen days from the expiration of said one hundred days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the board failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The board 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 for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or 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 section eleven, 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 section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.