



**TOWN OF HARWICH**  
732 Main Street, Harwich, Massachusetts 02645

**ZONING BOARD OF APPEALS**  
**Notice of Appeal and Petition for Public Hearing**

This original completed and signed notice of appeal and twelve (12) copies of all plans, sketches, statements, site plans or other supporting documents per the attached checklist must be filed with the Planning Department. The required documentation, **ALL** of which must be submitted on the date of filing, is listed on page two (2) of this application.

To the Harwich Zoning Board of Appeals, Harwich, MA:

(We, I) hereby petition your Board for a public hearing on the request for action checked below:

- Review decision of or refusal of permit application by Building Inspector, Selectmen or Planning Board or other administrative officer or officers.
- Variance from requirements of Harwich Zoning By-Law.
- Special permit for a specific use that is subject to Board of Appeals approval.
- Continuation, change, or extension of nonconforming structures or uses.

I am the owner[s] of the property involved in this petition, which is located in Harwich, MA at the following address: \_\_\_\_\_

\_\_\_\_\_. Said property is further described on Assessor's Map \_\_\_\_\_

as Parcel # \_\_\_\_\_ located in the \_\_\_\_\_ Zoning District as shown on the attached plan.

Proposal description: \_\_\_\_\_

Signature of Applicant (or Agent) \_\_\_\_\_ Date \_\_\_\_\_  
(Written authorization must accompany application if signed by agent.)

Applicant Name \_\_\_\_\_ Phone No. \_\_\_\_\_

Address: \_\_\_\_\_

Professional Advisors: \_\_\_\_\_ Phone No. \_\_\_\_\_

Address: \_\_\_\_\_

Has a petition been submitted for this property within the last two (2) years? (Y/N) \_\_\_\_\_

Date of original hearing \_\_\_\_\_ Petition No. \_\_\_\_\_ Decision \_\_\_\_\_

**For Office Use Only:**

Denied by \_\_\_\_\_ Dated \_\_\_\_\_  
(Before 11:00 a.m. of deadline date)

Reason \_\_\_\_\_

Within 14 days following the decision on an appeal, the Board will file its decision with the Town Clerk. A building permit will not be issued until 21 days after the Board of Appeals decision has been filed with the Town Clerk or if an appeal to that decision has been filed during that time. It is the **applicant's responsibility** to have the decision recorded at the Barnstable County Registry of Deeds or Land Court, whichever may be applicable, and to present copies of that recording to the Building Department with all Building Permit application requirements and to the Town Clerk.

## HARWICH ZONING BOARD OF APPEALS

### *Application Checklist*

Please be advised that incomplete applications will result in a delay in processing your application and **may result in a denial by the Board** without consideration of the merits of the application. Please review the criteria that must be met for your particular application. The burden of proof is on the petitioner, not on the Town. If you do not understand the criteria, legal counsel should be sought. Either the petitioner or representative is required to appear at the hearing to present the application.

All applicants for hearing before the Zoning Board of Appeals must complete the Notice of Appeal and Petition for Public Hearing application and submit the completed application, with the supporting documentation listed herein, to the Building Department for review and subsequent filing with the Town Clerk. The Building Department accepts Zoning Board of Appeals applications Monday through Friday from 8:30 a.m. to 4:00 p.m. (except holidays). You are strongly encouraged to submit your application to the Building Department well in advance of the filing deadline to allow adequate time for staff review. **All information, including the applicable fee made payable to the Town of Harwich, must be submitted at the time of application.**

Please submit the following, sorted and grouped into **twelve (12) packets**:

\_\_\_\_\_ **The original of the Board of Appeals application (no additional copies necessary)**

- Signed by the owner or agent.
- If signed by an agent, a letter of authorization signed by the owner must also be included.

\_\_\_\_\_ **A separate, typewritten narrative to explain the project and the purpose for this application (12 copies).** In cases of a Variance or Special Permit, this narrative must cite the grounds (i.e., the specific section of the Harwich Zoning By-Law) for which you are seeking relief or approval.

\_\_\_\_\_ **The original and eleven (11) copies of a certified plot plan (total of 12 copies)**

- 8½" x 11" or larger.
- Scale no greater than 1" = 50'
- Original stamped and signed by a registered surveyor or engineer.

**Plot plan must indicate:**

- Dimensions of the property boundaries and lot area.
- Location of existing buildings and proposed buildings and/or additions.
- Dimensions of existing and proposed structures.
- Front, rear, and sideline setbacks of existing and proposed buildings and/or additions.
- Location of septic system.
- Location of wetland edge, if applicable.

\_\_\_\_\_ **Twelve (12) copies of the building plans drawn to scale by the applicant or the applicant's assign**

- Floor layout (for existing structure and proposed additions and/or alterations)
- Proposed front, side, and rear elevations

\_\_\_\_\_ **Two separate checks each payable to "Town of Harwich" for \$200.00 and \$50.00.**

The Board of Appeals may waive the requirement for a certified plot plan (architectural plans or topographic plans) if the application is such that this standard is not necessary for the Board to make its findings. The Board Chair or designee will review all such requests for waiver.

Please be advised that by signing and submitting this application, the Board of Appeals or its agents may conduct a site visit of the exterior of your property for an inspection of the subject location.

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Signature of Owner or Agent (*please indicate*)

## **Zoning By-law Section X (Regarding Special Permits)**

### **J. NON CONFORMING STRUCTURES AND USES**

#### **1. Non-Conforming Structures**

- A. A pre-existing non-conforming single or two family residential structure may be altered or extended by right if the Building Official determines that it meets the following criteria:
- i. The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located, and
  - ii. The non-conformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure

In addition, a pre-existing, non-conforming single or two family structure may be altered by right through the addition of a dormer or dormers if the Building Official determines that it meets the following criteria:

- ~~iii. The proposed dormer or dormers do not increase the pre-existing non-conformance of the existing structure, and (Note: language delete per the Attorney General's review – August 23, 2004)~~
- iv. The proposed dormer or dormers do not allow for any increase in the square footage of the single or two family dwelling, and
- v. The non-conformance concerns the size of the lot in question, and/or the frontage of said lot and/or an encroachment of the existing structure.

In making such determination, the Building Official, after identifying the particular respect or respects in which the structure or lot does not presently conform to the Zoning By-law, shall consider whether the proposed addition/extension meets the criteria stated above. If the Building Official determines that the addition/extension meets the criteria stated above, the Building Official may allow the addition/extension or rebuild by right.

- B. If the Building Official determines that a proposed addition/extension to a non-conforming single or two family residential structure increases the non-conforming nature of the structure, the applicant may seek a new determination from the Board of Appeals. If the Board of Appeals determines that the alteration or extension will increase the non-conforming nature of the structure, no such alteration or extension may occur unless the Board of Appeals issues a special permit for alteration or extension after finding that the alterations or extension will not be substantially more detrimental to the neighborhood than the existing non-conformity. An addition/extension that increases the non-conforming nature of the structure would include:
- i. A structure built in the same footprint to an increased building height.
  - ii. A structure built in the same footprint that does increase the habitable floor area.
  - iii. A structure that continues along the same line as an existing encroachment without increasing that encroachment
- C. A single or two-family residential structure is determined to be demolished and replaced if the area of the existing structure to be removed meets the definition of Demolition in this by-law.
- D. A lawfully pre-existing non-conforming single or two-family residential structure may, by right, be demolished and replaced with a new structure on the same site, provided that:
- i. The proposed new construction will conform to current setbacks and coverage for the zoning district in which the lot is located, and
  - ii. The non-conformance concerns the size of the lot in question and/or the frontage of said lot
- E. A lawfully pre-existing non-conforming single or two-family residential structure, may, by Special Permit, be demolished and replaced with a new structure on the same site, provided that it is determined by the Board of Appeals that:
- i. The replacement of the structure will not be substantially more detrimental to the neighborhood than the existing structure,
  - ii. The replacement of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town, and
  - iii. The replacement structure will not increase the non-conforming nature of the structure as defined in B. above.

- F. A proposal to demolish and replace a single or two-family residential structure which will increase the non-conforming nature of the structure will require a variance from the Board of Appeals pursuant to Chapter 40A Section 10 of the Massachusetts General laws.
- G. A pre-existing non-conforming structure other than a single or two family residential structure may be altered or extended by right if the Building Official determines that it meets the following criteria:
  - i. The proposed addition/extension will conform to current setbacks and coverage for the zoning district in which the existing structure and addition/extension are located, and
  - ii. The non-conformance concerns the size of the lot in question and/or the frontage of said lot and/or an encroachment of the existing structure

All other non-conforming structures shall require a variance from the Board of Appeals pursuant to Chapter 40A Section 10 of the Massachusetts General laws for any alteration/extension, or reconstruction.

## **2. Non-Conforming Uses**

- A. A lawfully pre-existing structure, whether conforming or not, used for a lawfully non-conforming use, may, by Special Permit, be altered/extended, or razed and replaced with a new structure on the same site, provided that it is determined by the Board of Appeals that:
  - i. The replacement, alteration or extension of the structure will not be substantially more detrimental to the neighborhood as is the existing structure,
  - ii. The replacement, alteration or extension of the structure will not cause or contribute to any undue nuisance, hazard or congestion in the neighborhood, zoning district or Town, and
  - iii. The replacement, alteration or extension structure will be used for the same use or for a conforming use.
- B. In no case shall a non-conforming use be changed to another non-conforming use.
- C. Notwithstanding the provisions hereof, non-conforming uses, actual use of which have been discontinued for a period of two (2) consecutive years shall be conclusively presumed to be abandoned and thereafter shall not be re-established, changed (except to a conforming use), or extended without a variance from the Board of Appeals.

### **Mass. General Law Chapter 40A, Section 10 (Regarding 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 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 the ordinance or by-law 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 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 therefor, 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.