TOWN OF SALISBURY, MA

ZONING BOARD OF APPEALS

PETITION FOR RELIEF by VARIANCE

as per M.G.L. Ch. 40A, Section 10

To the Salisbury Board of Appeals;

The undersigned petitions the Board of Appeals to vary, in the manner and for the reasons hereinafter set forth, application on the provisions of the zoning ordinance to the following described premises;

APPLICANT's CONTACT INFORMATION

Name of Applicant: _____
Full Name

Business (DBA) Name: _____

Address of Applicant: _____
(personal/home) #/Street Town/City State

_____ _____
Phone Email

Is the Applicant the Owner of this Property? _____ **Lessee or Renter?** _____

If the Applicant is an Agent for the Legal owner of the Property, please provide Legal Owner's Information below;

Name/Signature: _____
printed name signature

Address: _____
#/Street Town/City State Zip

_____ _____
Phone # Email

ADDRESS for APPEAL INFORMATION

Location of Petitioned Premises _____

Assessors Map and Lot/Parcel	_____ / _____	_____
	Map Lot	Assessing Dept. Sign-off

Zoning District _____
type & number

Dimensions of Lot _____ (feet) _____ (feet) Area _____ (sq. feet)
frontage depth

What is Existing Use _____

What is Proposed Use _____

Has a Variance/Special Permit/Finding been requested before for this Premise? Or This Applicant? _____ yes/no

(If yes, please attach a copy of that petition and decision)

Has the Applicant appeared before any other Town Board/Commission related to this Request? _____ yes/no

What Zoning Bylaw Section is Relief being requested from? _____

Section # & Title

REQUEST FOR RELIEF INFORMATION

Please State the reasons for the Request for Relief - Variance

_____

_____

_____

*** In order to grant the Variance, the Zoning Board of Appeals must determine that *each* of the following seven (7) statutory findings, related to the land or the structure, are met.**

*** If the requested Variance is to be granted, the Board may impose conditions, safeguards and limitations on the time and use of the variance, but may not impose consitions based upon the Ownership lineage.**

1 **The land or structure must be specifically and uniquely impacted by one of the following. Explainthow one of these may adversely affect your ability to use your land?**

a. Soil Conditions; _____

or

b. Topography; _____

or

c. Shape of the Lot; _____

2 **Do your circumstances generally affect other land or structures in the area where the property is located?**

_____ no _____ yes _____ if yes, please explain

3 **What Substantial hardship will you suffer if the Variance is not granted? Please explain.**

_____

4 **Will a Financial hardship, as related only to the land and <u>not a personal circumstances</u> hardship, be caused by the above conditions. If so, please explain.**

_____

5 **Can this Variance can be granted without substantial detriment to the public good?** _____ yes/no

6 **Can this variance can be granted without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaw?** _____ yes/no

7 **Can you make reasonable use of the Property under the current zoning? If no, please explain.**

_____

Please be prepared to discuss these questions when appearing before the Board at your Hearing.

AFFIDAVIT & SIGNATURES

By entering and signing my name below, I hereby attest under the pains and penalties of perjury that all of the information contained in this Petition for Relief is true and accurate to the best of my knowledge and understanding.

Applicant's Signature: _____

LEGAL NOTICE

M.G.L. Ch. 40A sets the legal requirement for a Variance:

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 11 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 bylaw where such permit granting authority finds that owing to circumstances relating to soil conditions, shape or topography of such land or structures by not affecting generally the zoning district in which it is located , a literal enforcement of the provisions of the ordinance of bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to he public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw.

ZONING ENFORCEMENT OFFICER (BUILDING INSPECTOR) REVIEW AND APPROVAL

In order to prepare and forward the most complete and accurate Petition as possible, it is required that you review this Application with the Building inspector prior to submission to the Town Clerk.

Building Inspector/Zoning Enforcement Officer Approval: _____ Date: _____

DOCUMENTATION TO BE ATTACHED

Please see CHECKLIST FOR RELIEF PETITIONS as provided by the Town of Salisbury.

APPEALS PROCESS

APPEALS

* Within **(14) days** of acting on a Petition for Relief, the Board will file the **decision** with the Salisbury Town Clerk.
* Notice shall be mailed to the Petitioner/Appellant and parties of interest once a **decision** is filed.
* The **decision** may be appealed within **(20) days** *after* filing with the Salisbury Town Clerk.

All Appeals shall be conducted in accordance with Mass. General Law, Ch.40A, Section 17

DECISION FILING W/REGISTRY

* After the **(20) days** appeal period, a Certified Copy of the decision will be available from the Town Clerk.
* The variance will take effect once the **Petitioner/Appellant** has picked up the Certified Copy from the Town Clerk and recorded it with the Salem Registry of Deeds. The Town of Salisbury does ***not*** record the decision for you.
* A copy of that recorded decision will need to filed with a Building Permit Application before a permit is issued.
* The decision will lapse if substantial use is not made within 2 years of the Clerk's filing.

CAVEAT FOR INCOMPLETE SUBMISSION

Please be advised, if the application is submitted without complete information, not fully filled out or lacks signatures the Zoning Board of Appeals has the right to dismiss without prejudice.

THIS FORM IS NOW COMPLETE AND READY FOR SUBMISSION TO THE SALISBURY TOWN CLERK

TOWN OF SALISBURY, MA

ZONING BOARD OF APPEALS

CHECKLIST for PETITIONS of RELIEF

including Variances, Special Permits & Findings

STEP ONE - PREPARING THE DOCUMENTS

The Applicant shall prepare Ten (10) 'packages', each containing the following;

A A **Letter of Clarification** from the Inspector of Buildings

B A **Certified Plot Plan** - It must adhere to the following criteria;

1. Plot shall be drawn to a scale of 1" = 40 ft., show all lot dimensions incl. elevations
2. Plot shall be certified & stamped by a licensed surveyor or engineer
3. Show all existing & proposed structures, at the proper angles, with their setbacks
4. Show all other pertinent features, such as the septic system, in full
5. Show any easements and/or right-of-ways, public or private, that abut or cross the lot
6. The address of the Petition for Relief shall be on the drawing
7. Show any applicable flood elevations and flood zone designations

C A **Drawing** - Provide side views (elevations), with heights, of the proposed project

D **Tax Collector** statement - Provide a statement indicating that taxes and fees are currently paid

E **Deed** - Provide a copy of the **Property Deed**, showing the Applicant's Ownership interest

OR

If Applicant is not the Property Owner, the **actual Property Owner** shall sign the Application

F **Application** - include a copy of the **Petition for Relief Application**

STEP TWO - ASSEMBLING THE PETITION PACKAGES

G Assemble all of the items into **(10)** paper clipped packages for submission.

H **Assessor**'s Office - Acquire Two (2) copies of the Certified Abutters List ($15 fee)

I Write a **check/cash** to pay for the appropriate fees (see the 2009 fee schedule)

STEP THREE - SUBMISSION OF THE PACKAGES

J **Town Clerk** - Bring all (10) packages, (2) Abutter's lists and Payment to the Salisbury Town Clerk.

K The Salisbury **Zoning Secretary** will contact you within a few days to schedule your hearing.

STEP FOUR - ADDITIONAL ITEMS

L **Legal Ad** - The legal ad will be created and submitted to the Newspaper by the Zoning Secretary. The Newburyport Daily News will contact you, the Applicant, directly for payment.

M **Abutter's Notices** - These will be mailed by the Salisbury Zoning Secretary, using the labels that the Applicant purchased from the Assessor's office and provided in the package.

CAUTION : If the Application or Submission Package is submitted without the proper information, is incomplete or not signed, the Board has the right to dismiss your Petition for Relief without prejudice.

Zoning Board Fees

Effective November 2, 2009

REQUEST	**Fee Schedule**
Special Meeting	To hold a Special Meeting $230*
Appeal	$110 (1&2 Family) $200 + 25/unit (multi- family residential and commercial) * *includes postage, applicant pays for legal ad
Variance	**$110 (1&2 Family)** **$200 + 25/unit (multi- family residential and commercial) Maximum of $2500 per variance request**includes postage, applicant pays for legal ad 6- month variance extension= $100**
Findings	**$110 (1&2 Family)** **$200 + 25/unit (multi- family residential and commercial)* Maximum of $2500 per application includes postage, applicant pays for legal ad**
Special Permit	**$250* includes postage, applicant is responsible for the legal ad** **Renewal $200**
Comprehensive Permit	**$225 per unit** **if project is 100% Affordable Housing - $100 per unit includes postage, applicant is responsible for the legal ad**

FAQ'S

about the Zoning Board of Appeals process

* ***A complete package of a Petition for Relief must submitted (4) weeks prior to the intended meeting date in order to comply with Legal Notification requirements.***

* ***An approved Petiton for Relief, by the Zoning Board, will require (4) weeks to complete the Appeals period and be processed by this office.***

* ***Do not call prior to (4) weeks to inquire about the status - we will call you.***

* ***An approval is not a building permit! You cannot file a building permit application until the process is fully completed.***

* ***When we call you to pick up your successful appeals application, you need to take it to the the Salem Registry of Dees and get it stamped and submitted.***
  A copy of that stamped approval is required to submitted with you building permit.

* ***At the Zoning Board of Appeals meeting, you need a minimum of (4) affirmative votes to get the relief you have petitioned for. This is required even if only (4) Board members are sitting.***

* ***By Law, Ch. 40A, applications must be heard within 65 days of submission.***

* ***If you receive a negative vote, or only 3 affirmative votes, you cannot re-apply for 2 years, unless you new application is substantially different.***

* ***If you need to re-apply, you will have to pay all the fees anew.***

* ***If you do not get the vote for relief you wanted, you will not get a refund of any of your fees paid.***

* ***Before you complete your Petiton for Relief, talk to the Building Inspector to ensure that it is accurate, complete and on point.***

* ***No one is entitled to a Variance- see attached page of failed requests.***

* ***The Applicant must attend the Appeals Hearing.You may bring a representive for legal assistance if you wish, but it is not a requirement.***

* ***Hearings are held on (2) Tuesdays every month @ 7:00 pm in Town Hall, 2nd Floor.***

PRINT **RESET**

☛ A properly exercised variance runs with the land and is good indefinitely, unless limited in time.
☛ A special permit may not be used to alter, extend, or change a structure or use permitted by variance. Another variance is required.
☛ A variance is exercised when an application for a building or occupancy permit is made and when the property is subdivided, even though construction is delayed.

NO ONE IS ENTITLED TO A VARIANCE

Although each case should be analyzed on its own merits, the Courts rarely uphold the grant of a variance. The Courts have found that the following arguments related to hardship did not support the grant of a variance:

- *Frontage on two streets*
- *Split-zoned lot*
- *Undersized lot*
- *Only way to make profitable use of property*
- *Shortage of housing for large families*
- *Mistake in construction and too costly to raze structure that violates zoning*
- *Spent substantial money in building without a permit*
- *Pre-existing zoning violation*
- *Creation of nonconforming lot by division of land and conveyance of one lot to another person*
- *Other nonconforming uses or structures in neighborhood*
- *Property is located next to another district or use*
- *Neighborhood is changing*
- *Want to expand pre-existing, nonconforming use onto adjacent lot just purchased*
- *Was told could use property for a particular use*
- *Need access to business across residential property*
- *Rezoning*
- *Eminent domain taking to support use variance*
- *Lot is triangular shaped and has no frontage and thus a residential use should be permitted in an industrial zone*
- *Lot is undersized because it is located on a cul-de-sac*
- *The proposed use is desirable*
- *The proposal will increase property taxes in the municipality*
- *Health of property owner*
- *Poor financial condition of property owner*