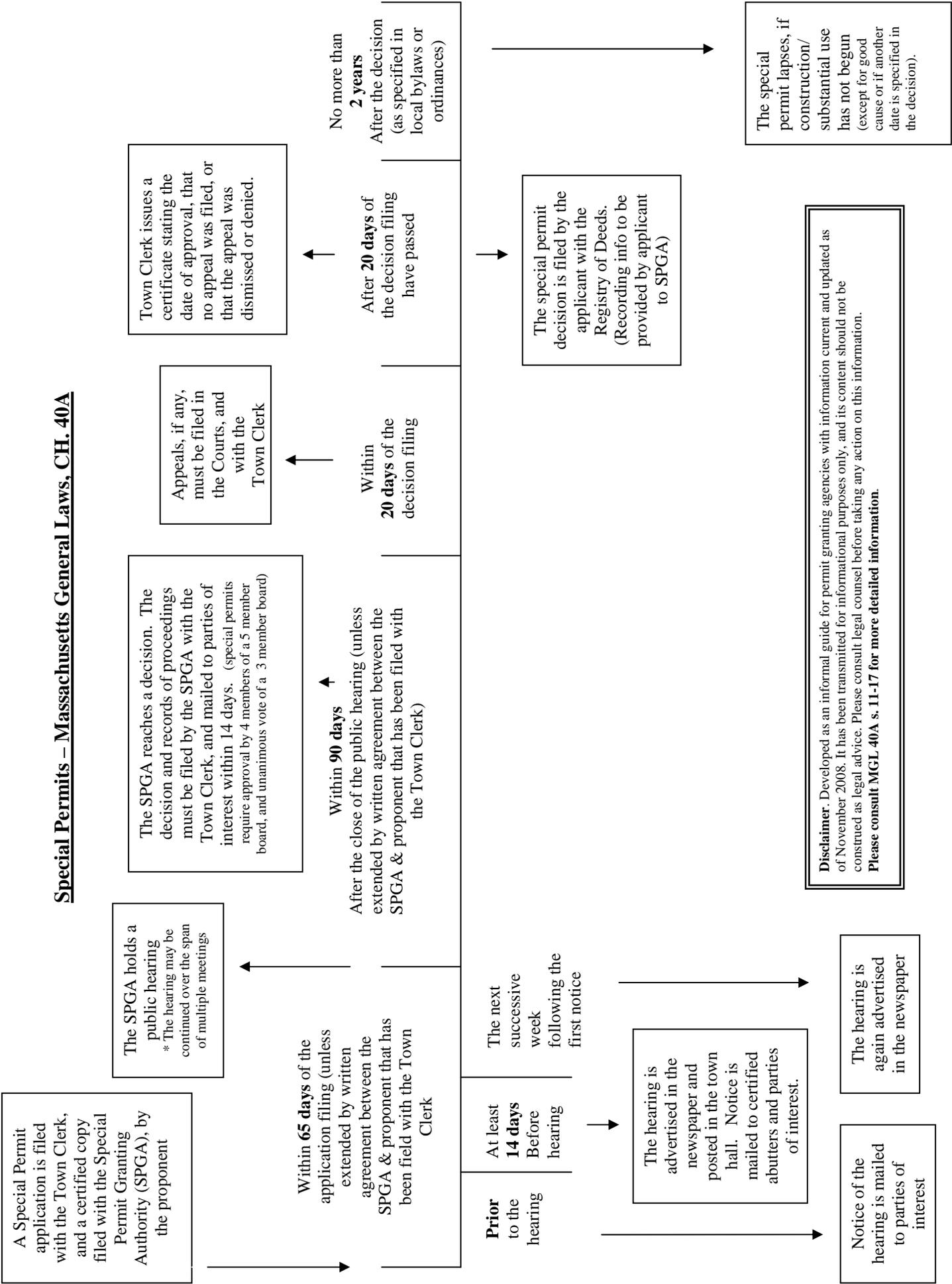


City of Beverly ZONING APPEAL PROCESS

1. The process generally begins with denial of a Building Permit application or Certificate of Occupancy, or with a determination of the need for a Variance or Special Permit, or upon the determination by an official of the Municipal Inspections Department that relief from the Zoning Ordinance or a special permit is required.
2. Next, petition forms, obtainable from the Municipal Inspections or on-line, must be fully and correctly completed and submitted to the Clerk to the Board of Zoning Appeal along with other required submissions and the filing fee. State Law Ch. 40A requires that a public hearing must be held within 65 days of the date of filing. In order to fulfill the requirements of State Law and to allow time for a preliminary review of the completeness of the application, applications must be submitted no later than 11:30 of the Friday that is at least five weeks prior to the scheduled hearing date. Check with the Municipal Inspections Department for the deadline. Hearings are usually held on the fourth Tuesday evening of the month.
3. The petition is then filed with the Office of the City Clerk. The date of filing is the date time-stamped on the petition form by the Office of the City Clerk.
4. The Clerk to the Board of Zoning Appeal sends notices of the scheduled hearing to abutters, abutters to abutters within 300 feet of the subject property, and property owners across the street from the subject property, as described in MGL, Ch. 40A, Sec. 11, at least fourteen days in advance of the scheduled hearing date.
5. A similar notice of the scheduled hearing is published for two consecutive weeks in a paper of local circulation. The first advertisement must appear at least two weeks prior to the date of the hearing. A notice of the scheduled hearing is posted at the City Clerk's Office two weeks prior to the hearing date.
6. At the hearing, the Board reviews the case material, the petitioner presents pertinent information, and the Board takes testimony in favor and testimony in opposition. Usually, cases are decided at the public hearing. The Applicant or applicant's Representative is required to attend all Public Hearings. If the applicant or applicant's representative is not present at a hearing the Board will either continue the hearing or, in order to avoid a constructive grant, deny the application. Please note that it is not appropriate for any members of the Board to review the specific details of your situation outside of the Public Hearing. A deliberation meeting is held on a subsequent date if a decision is not reached at the original hearing. Generally, no additional testimony is taken at the deliberation hearings.
7. The Board's decision, after reasonable time for transcription and typing, is filed in the Office of the City Clerk and a copy is mailed to the petitioner. Decisions on Variances and Appeals must be filed by the Board with the City Clerk's office within 100 days of the filing date of the application. Decisions on Special Permits must be filed by the Board with the City Clerks office within 90 days of the hearing date. These deadlines can be extended upon written waiver of the applicant.
8. If no appeal to Superior Court or Land Court is undertaken within twenty (20) days of the date of filing of the decisions with the City Clerk, the Petitioner goes to the City Clerk's office and obtains a copy of the decision from the City Clerk, who certifies that no appeal has been undertaken. For variances and special permits the petitioner must file this signed certified with the deed for the subject property at the Registry of Deeds. A copy of the decision stamped as filed by the Registry of Deeds must be filed with the Municipal Inspections Department before a building permit or certificate of occupancy can be issued.
9. Note that a variance/special permit lapses if construction/substantial use has not begun within one year for a variance or two years for a special permit.

Special Permits – Massachusetts General Laws, CH. 40A



A Special Permit application is filed with the Town Clerk, and a certified copy filed with the Special Permit Granting Authority (SPGA), by the proponent

Within 65 days of the application filing (unless extended by written agreement between the SPGA & proponent that has been filed with the Town Clerk)

The SPGA holds a public hearing
* The hearing may be continued over the span of multiple meetings

The next successive week following the first notice

The hearing is advertised in the newspaper and posted in the town hall. Notice is mailed to certified abutters and parties of interest.

The hearing is again advertised in the newspaper

Notice of the hearing is mailed to parties of interest

The special permit decision is filed by the applicant with the Registry of Deeds. (Recording info to be provided by applicant to SPGA)

No more than 2 years After the decision (as specified in local bylaws or ordinances)

Town Clerk issues a certificate stating the date of approval, that no appeal was filed, or that the appeal was dismissed or denied.

Appeals, if any, must be filed in the Courts, and with the Town Clerk

After 20 days of the decision filing have passed

Within 20 days of the decision filing

The SPGA reaches a decision. The decision and records of proceedings must be filed by the SPGA with the Town Clerk, and mailed to parties of interest within 14 days. (special permits require approval by 4 members of a 5 member board, and unanimous vote of a 3 member board)

Within 90 days After the close of the public hearing (unless extended by written agreement between the SPGA & proponent that has been filed with the Town Clerk)

The special permit lapses, if construction/ substantial use has not begun (except for good cause or if another date is specified in the decision).

Disclaimer: Developed as an informal guide for permit granting agencies with information current and updated as of November 2008. It has been transmitted for informational purposes only, and its content should not be construed as legal advice. Please consult legal counsel before taking any action on this information. Please consult MGL 40A s. 11-17 for more detailed information.

Variances – Massachusetts General Laws, Ch. 40A

A petition for a variance is filed with the Town clerk, and a certified copy filed with the Zoning Board, by the petitioner.

The Zoning Board holds a public hearing
* The hearing may be continued over the span of multiple meetings

The Zoning Board reaches a decision. Variance requires a vote of 4 members of a 5-member board, and unanimous vote of a 3-member board

Appeals must be filed with the Courts, and with the Town clerk.

Town clerk issues a certificate stating the date of decision, that no appeal was filed, or that the appeal was dismissed or denied.

Within 65 days of the petition filing (unless extended by written agreement between Zoning Board & petitioner that has been filed with the Town Clerk)

Within 100 days of the petition filing (unless extended by written agreement between the Zoning Board & petitioner that has been filed with the Town Clerk)

Within 14 days of the decision

Within 20 days of the decision filing

After 20 days of the decision

1 year After the decision recording

Prior to the hearing

At least **14 days** before hearing

The next successive week following the first notice

The hearing is advertised in the newspaper and posted in the town hall. Notice is mailed to certified abutters and parties of interest.

Notice of the hearing is mailed to parties of interest

The hearing is again advertised in the newspaper

The decision and records of proceedings must be filed by the Zoning Board with the Town Clerk, and mailed to parties of interest

The permit decision is filed by the applicant with the Registry of Deeds (recording info provided to Zoning Bd)

Rights granted by the variance expire if not exercised. (Can be extended for up to an additional 6 months by written agreement between the Zoning Bd & petitioner if petitioner applies for an extension before the end of 1 year period of validity.)

If a petition results in an unfavorable decision, a favorable decision on the same petition cannot be reached within 2 years.

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City of Beverly

VARIANCE APPLICATION GUIDELINES

Dear Applicant:

When you apply for a variance, you are asking the Zoning Board of Appeals to make an exception for you from the city zoning ordinance. While the board's role is to enable government to be flexible in applying zoning laws, state law and the city ordinance permit the board to grant you a variance only if certain rules conditions are met. In addition, state law says that no one has a right to a variance, even when all the statutory conditions are met. The board must first find all the necessary conditions are met and then exercise its discretion in granting a variance. State law says it is the board's job to say "No", and to grant variances sparingly.

You have the burden to show that the statutory conditions are met. The board's application requirements, such as a plot plan, photographs, and this handout, are designed to assist you in making your case so that the board can make a fair and informed decision.

Variances cannot be granted solely because you have a reasonable and attractive idea about how to improve your property. Variances have to be based on peculiar circumstances related to your land. Variances are not personal to the land owner. They become part of the title to your house and land and stay with your property even after you no longer own it. In short, the conditions for a variance arise out of your land, not your personal circumstances.

At the board's hearing, you must show how all five of the following conditions are met:

- (1) there is some special circumstance about your building(s) or land relating to soil conditions, shape, or topography of your land (such as an exceptionally narrow, shallow or unusually shaped lot or structure); soil conditions such as ledge rock, or a steep hill on your lot, or a unique combination of some or all of above-listed factors;
- (2) that the special circumstance is peculiar to your land in a way not peculiar to your zoning district generally;
- (3) that the special circumstance would cause a "practical difficulty and substantial hardship, financial or otherwise" so that if the zoning ordinance were applied to you without a variance, you would lose the reasonable use of your property;
- (4) that granting a variance will not be a detriment to the public good (i.e., your neighborhood) or be contrary to the overall intent of the zoning ordinance;
- (5) that the variance requested is the minimum one that will still give you reasonable use of your land or building(s).

State courts have said that the following things do not alone constitute a substantial hardship: a simple increase in the cost of building - additional costs must be very substantial or unreasonable; the lost of a potential economic advantage or higher profit; the health, family, or financial situations of an applicant, if they are unrelated to considerations of the land.

To prepare for your hearing, the zoning board strongly encourages you to talk with your neighbors and discuss with them any concerns they may have, before you appear in front of the board. The board will consider all letters that show what your neighbors think of your request.

The zoning board is comprised of unpaid Beverly residents who dedicate their time to the city and its residents. You and your application are entitled to the board's respect, and the members are entitled to your respect as well. The board seeks to consider all applications before it in a fair, reasonable, and thoughtful manner.