

HOLYOKE BOARD OF APPEALS
INSTRUCTIONS FOR FILING VARIANCE APPLICATION

1. **Application:**

- a. Applications will not be accepted unless they are complete and all supporting documentation is attached to the application at the time of filing.
- b. The **Two-Hundred Dollar (\$200.00)** filing fee must be paid at the time the application is filed and is non-refundable.
- c. Pursuant to the Holyoke City Ordinances Sec. 82-3, an application may be denied for any person, corporation or business who has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for more than a 12-month period.

2. **Notice and advertising requirements:**

- a. The applicant shall obtain an abutters list from the City of Holyoke Assessors Office and shall include the list with the application. Notice of the variance application shall be sent by mail, postage prepaid, to abutters, owners of land directly opposite on any public or private way, and abutters to abutters within three hundred (300) feet of the properly line of the applicant.
- b. Notice of the public hearing shall be published in the Republican for two (2) consecutive weeks prior to the public hearing. The notice will be submitted to the Republican by Board staff. The applicant will then be contacted by the Republican to arrange for payment. Payment shall be made by the applicant directly to the Republican.

3. **Public Hearing:**

- a. The Board of Appeals meets the last Wednesday of every month.
- b. Applicant and owner of property must attend the public hearing. Failure to attend the hearing may result in a denial of an application.
- c. The Applicant shall give a presentation in support of his/her application. Following the Applicant's presentation, members of the public who wish to speak in favor or in opposition of the application may do so. The Applicant will then be given an opportunity for rebuttal. Board members may ask questions at any time, and may receive advice and recommendations from other city departments, boards and officials.
- d. A hearing may be continued by the Board or at the request of the Applicant.

4. **Decision:**

- a. All three members of the Board of Appeals shall concur in a decision to grant a variance. The three members must be present for the entire public hearing in order to vote on an application.
- b. The Board has one hundred (100) days to act on an application from the date of filing.
- c. The Board must make all three of the following findings in order to grant a variance. Failure to make all three required findings will result in the denial of a variance application (Mass. General Laws Ch. 40A, Section 10). Please refer to the Applicant's Guide included with the application for additional information:
 - i. Owing to the 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;
 - ii. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise, to the applicant; and
 - iii. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance.
- d. If a variance is granted, it is effective after the twenty (20) day appeal period (from the date of filing the decision with the City Clerk) has passed with no appeal and once the decision is recorded in the Hampden County Registry of Deeds (at the applicant or owner's expense). The applicant must provide the Board with a copy of the recorded variance, indicating the book and page.
- e. In accordance with Massachusetts General Laws, Ch. 40A, Sec. 17, any person aggrieved by a decision of the Board of Appeals may file an appeal with the Superior Court, Land Court or Western Division of the Housing Court by bringing an action within twenty days after the decision has been filed in the office of the city or town clerk.

5. **Nonconforming Structures**

- a. If the property is a pre-existing nonconforming structure that does not meet the current zoning requirements, a special permit may need to be obtained from the City Council after a variance is granted and before a building permit is issued. (City of Holyoke Zoning Ordinance Sec. 4.7)
- b. An application for a special permit from the City Council can be obtained from the City Clerk's office.

PLANNING DEPARTMENT AND BOARD STAFF, AS WELL AS BOARD MEMBERS CANNOT GIVE LEGAL OR STRATEGIC ADVICE. CONSULT AN ATTORNEY IF YOU HAVE ANY QUESTIONS REGARDING THE LEGAL REQUIREMENTS FOR GRANTING A VARIANCE

CITY OF HOLYOKE BOARD OF APPEALS
APPLICANT'S GUIDE FOR COMPLYING WITH VARIANCE CRITERIA

PLEASE READ CAREFULLY PRIOR TO COMPLETING A VARIANCE APPLICATION:

This Guide is meant to assist applicants in completing the City of Holyoke Board of Appeals Application for a Variance. It is for informational purposes only and shall not be construed as legal advice. Planning Department and Board Staff, as well as Board members cannot give legal or strategic advice. Consult an attorney if you have any questions regarding the legal standard for granting a variance.

Questions A – D of the application require the applicant to identify specific facts, which in their opinion demonstrate that they meet the statutory criteria for a variance. **Please be specific as possible when completing the application. You may attach additional pages as necessary, as well as any other supporting documentation such as photographs.**

The Board must make the following three findings in order to grant a variance. **Failure of the Board to find any one of the three will result in the denial of the variance:**

1. Owing to the 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. (See question A on the variance application)
 - a. Some aspect of the property (relating to soil conditions, shape or topography) must be unique. This aspect exists only on the subject property and is not shared by neighbors or similar properties in the zoning district.
2. A literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise, to the applicant. (See question B on the variance application)
 - a. As a result of the soil conditions, shape or topography identified in your answer to question A, complying with the requirements of the zoning ordinance as currently written would involve substantial hardship, financial or otherwise, to the applicant.
 - b. The hardship can not be a personal hardship i.e. related to particular family circumstances, but must be related to soil conditions, shape or topography.
 - c. The hardship cannot have been created by the applicant.
3. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance. (See questions C and D on the variance application)
 - a. The variance would generally comply with the statement of purpose in the Zoning Ordinance.

- b. The variance will not harm nearby properties and will not harm people associated with the nearby properties.
- c. The variance will not change the character of the nearby area.
- d. The variance is the minimum necessary to permit reasonable use of the property.

PLEASE NOTE: No person has a legal right to a variance. Variances are rarely an easy matter to decide and the Zoning Board of Appeals must adhere to the criteria listed above.