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INTEROFFICE CORRESPONDENCE

OFFICE OF THE CITY MANAGER

June 16, 1998

To: Robert W. Healy, City Manager
From: Bob Bersani, Inspectional Services

Subject: Council Order #16 of 6/1/98; RE: REPORT ON METHODS TO INFORM THE PUBLIC OF ITS OPPORTUNITIES TO EFFECT THE VARIANCE PROCESS

The attached summarizes the current procedures for advertising and conducting variance or special permit hearings before the Board of Zoning Appeal (BZA). In essence, the general public is notified of specific hearings in two ways; advertisement in the local press (currently the TAB), and by a notice posted at the effected property. In addition, abutters and abutters to abutters w/i 300 ft. of the effected property are mailed notices by the Inspectional Services Department. Also, citizens may become aware of a hearing through one of the neighborhood committees as they are also mailed copies of the hearing schedules by ISD. Citizens attending a BZA hearing are always given an opportunity to speak, for or against a proposal by the Board Chairperson.

Concerning the general Public's understanding of the process and their ability to impact on the process, there is currently little available in the way of readily available pamphlets or other information that they can access other than the variance application form and procedures or discussion with knowledgeable persons in ISD, CDD, or elsewhere.

Following are several initiatives that will be explored in the near term to improve upon this situation:

- Propose to the Permit Streamling Committee the publication of a pamphlet, similar to the ones recently distributed for building permits, curb cuts, and Fire Department permits. Such a pamphlet could be distributed to key locations across the City and various interest groups.
- Include a statement in the general notices and abutter notices describing the actions that interested citizens can take to express their views ; i.e., attend and comment at hearings and/or submit written comments to the Board.
- Work with the BZA Chairperson in the development of information that could be made available at the hearing location concerning the citizens role in the process; comments, appeal rights, variance conditions, etc.

Very truly yours,

R. R. Bersani

cc N. Glowa, Susan Schlesinger

Procedure for Variance Petition

The petitioner first becomes involved with zoning when they attempt to obtain a building permit or certificate of occupancy from the Inspectional Services Department. This department is responsible for reviewing all plans for building construction, alteration or conversion to ensure that the proposal complies with the local zoning and State Building Code. The Superintendent of Buildings is empowered by state statute to enforce the Zoning Ordinance. The department has a Zoning Specialist who is responsible for explaining zoning requirements to specific parcels, for reviewing permit applications for zoning compliance and for investigating potential zoning violations.

Variance forms must be fully and correctly completed and filed with the Secretary of the Board of Zoning Appeal along with other required submissions and the filing fee. A public hearing must be held within 65 days of the date of filing. The date of filing is the date time-stamped on the petition form by the Office of the City Clerk.

The variance petition usually is then referred to the Planning Board for a review and report. The planning board reviews board of Zoning Appeal cases at its regularly scheduled meetings. Dates of Planning Board meetings may be obtained by calling the Community Development Department at 349-4600. Its advisable to check prior to the Board of Zoning Appeal Hearing with Community Development or Inspectional Services Department to determine if Planning Board submitted any comments on the variance petition.

The Secretary to the Board of Zoning Appeal sends notices of the scheduled hearing with particulars of the variance case to abutters as described in Massachusetts General Laws, Chapter 40A, Section 11, at least fourteen (14) days in advance of the scheduled hearing date. Notice of the variance case 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. Notice of the scheduled hearing is posted at the City Clerk's Office two weeks prior to the hearing date.

The Board of Zoning Appeals (BZA) consists of twelve (12) members; five (5) full term members and seven (7) alternate members. At the hearing, only five Board members review case material, the petitioner presents pertinent information, and the Board takes testimony in favor and testimony in opposition.

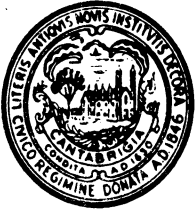
A variance is based on the following criteria:

1. A literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise to the petitioner or appellant.
2. The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located.
3. Desirable relief may be granted without either;
 - a. substantial detriment to the public good; or
 - b. nullifying or substantially derogating from the intent or purpose of this Ordinance.

In granting a variance the Board may attach such conditions, safeguards, and limitations of time, use and other development features, such as those listed Article 10.00, Section 10.44, as are determined necessary to protect the surrounding neighborhood including the continued existence of any particular structure, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

Usually, BZA makes decisions at the 1st public hearing. Sometimes cases are continued for a future date. Petitioners are required to sign a letter of waiver if case is continued. Decisions on Variances must be made within 100 days of the filing date if the case was not continued.

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. If no appeal to Superior court of Land Court is undertaken within twenty (20) days of the date of filing with the City Clerk, the Petitioner brings his or her copy of the decision to the City Clerk, who signs the decision indicating that no appeal has been undertaken. The petitioner must file this signed copy 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 Division of Inspectional Services before permits or certificates can be issued. A variance petition is valid for one year.



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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 22, 1998

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 16, regarding a report on methods to inform the public of its opportunities to effect the variance process, received from Inspectional Services Commissioner Robert Bersani.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
Attachment

Consent Agenda #9 455S

Relative to a report on methods
to inform the public of its
opportunities to effect the
variance process.

In City Council June 22, 1998

PLACED ON FILE