



# TOWN OF LENOX

## **DEVELOPMENT REVIEW GUIDEBOOK**

An Applicant's Guide  
to the  
Permitting & Review Process

This Guidebook was created for the Town of Lenox  
by the Berkshire Regional Planning Commission.  
Funding was provided by the Town of Lenox.

## TABLE OF CONTENTS

I.	INTRODUCTION .....	2
II.	FREQUENTLY ASKED QUESTIONS .....	3
III.	GETTING STARTED.....	5
IV.	CONSERVATION COMMISSION.....	7
V.	LENOX HISTORIC DISTRICT COMMISSION .....	8
VI.	ZONING BOARD OF APPEALS .....	9
	A) Special Permit Process .....	9
	B) Zoning Variance Process .....	12
	C) Site Plan Review Process .....	15
VII.	PLANNING BOARD.....	17
	A) Subdivision Approval Plan.....	17
	B) Site Plan Review Process .....	21
VIII.	BOARD OF HEALTH .....	23
IX.	APPEALS .....	24
X.	MEPA REVIEW PROCESS.....	27
XI.	LIST OF REQUIRED FORMS .....	28

## LIST OF APPENDICES

Appendix A – Zoning Map  
Appendix B – Table of Uses  
Appendix C – Meeting Calendar  
Appendix D – Town Permits at a Glance

## I. INTRODUCTION

The Town of Lenox is a special place in the center of the Berkshires. The Town boasts a rich heritage and high quality environment for its 6,000+ residents as well as its many visitors. Through strong leadership and volunteerism Lenox's qualities as a small New England Town remain vibrant today.

This manual serves as a "How To" guide for those persons seeking to obtain permits or approvals for construction and land development in the Town of Lenox. The Town has endeavored to make this guide as complete as possible. However, it is important to note that guidelines and time periods may change. As such, it is advised that you meet with the proper delegating authority before you submit an application.

Included in this Guidebook are the eligibility and procedural requirements for the following boards and commissions:

- ∅ Building Inspector/Zoning Enforcement Officer
- ∅ Conservation Commission
- ∅ Board of Health
- ∅ Public Works
- ∅ Historic District Commission
- ∅ Planning Board
- ∅ Zoning Board of Appeals

Specifically, this Guidebook provides information about the appropriate forms as well as a guide to the review and approval process required by the Town of Lenox and the Commonwealth of Massachusetts:

- ∅ Building Permit (and related permits)
- ∅ Request for Determination of Applicability & Notice of Intent (DEP) (wetlands)
- ∅ Site Plan Approval
- ∅ Special Permits
- ∅ Variances
- ∅ Subdivision Controls
  - Form A - Approval Not Required
  - Form B - Preliminary Plan
  - Form C - Definitive Plan
- ∅ Septic Permit and Inspection
- ∅ Environmental Impact Report

If you require additional information please contact the Town's Land Use Clerk during regular office hours.

Lenox Town Hall  
6 Walker Street  
Lenox, MA 01240  
(413) 637-5504  
Monday through Friday 8:30 AM to 4:00 PM  
[www.townoflenox.com](http://www.townoflenox.com)

## **II. FREQUENTLY ASKED QUESTIONS**

This section of the manual is designed to answer frequently asked questions about the permitting process in the Town of Lenox. Each question is followed by a short answer and directs the reader to a section that outlines the procedure in more detail.

### ***How do I know if a permit or a review is needed?***

- J Generally, remodeling or improvements to an existing building only require a building permit (See Section III). Town staff will assist applicants in coordinating procedures for all projects that require more than just a building permit. Whatever the requirements of a project, it is useful to consult with Town personnel early in the project planning process.

### ***What if I want to construct a new home or business?***

- J New construction may require one or more permits depending on the size, location, and proposed use. Your first step should be to consult the Building Inspector and review the Town of Lenox's Zoning Bylaw to determine whether your project is allowed in that zone. The By-laws specify minimum lot area, building coverage and setback requirements. Required permits may include a Special Permit, Site Plan Review, Building Permit, and/or Board of Health Review.

### ***What should I do if I wish to use my property in a manner not allowed for in the by-laws?***

- J Exceptions for uses not specified in the Bylaw require a variance from the Zoning Board of Appeals. See Section VI for further information.

### ***What if I want to expand my home or business and the expansion will be close to the property lines?***

- J The Town of Lenox Zoning Bylaw requires specific setbacks for new construction and additions. If your project does not conform to the Zoning Bylaw you may request from the ZBA a variance, or, under certain circumstances, a special permit. See Section VI for more information.

### ***What if I wish to perform work in the Lenox Historic District?***

- J Work in the core village area is regulated by the Lenox Historic District Commission. See Section V for further information.

### ***What if I wish to subdivide my land?***

- J The Planning Board regulates the creation of new lots in the Town of Lenox. See Section VII for further information.

***What approvals are needed if my project requires a new or expanded septic system?***

- J Tri -Town Health Department handles Title 5 septic system approvals. See Section VIII for further information.

***What if I am doing work near a stream or wetland?***

- J The Town of Lenox Conservation Commission regulates construction near wetlands, streams and other waterbodies. See Section IV for further information.

***What happens if I receive an unfavorable zoning related decision from a town board or the Building Inspector?***

- J Any unfavorable zoning related decision from the Board of Selectmen, Planning Board, or Building Inspector or other Town Official may be appealed to the Zoning Board of Appeals. See Section IX for further information

***What types of inspections/certifications are needed to obtain a Certificate of Occupancy?***

- J A list of Required and Final inspections needed for a Certificate of Occupancy is provided in Section III.

***Who should I contact for more info?***

- J Each section of this guide book has a Town Official to contact if more information is needed. The Land Use/Assessor's office staff is also available to help answer questions.

***How do I apply for a permit?***

- J Most application forms are located in the appendix of this document. Forms are also available at the Land Use Clerk's office at Town Hall or on-line at the Town's website [www.townoflenox.com](http://www.townoflenox.com).

***Are any other approvals or permits needed?***

- J Further approval depends on the scope of the project; refer to Section I for more detail.

For answers to any of your questions  
contact the Land Use Clerk at (413) 637-5504

### III. GETTING STARTED

The Building Inspector administers and enforces the Massachusetts Building Code and Town of Lenox Zoning Bylaw. No building or structure shall be erected, altered or moved without a written permit issued by the Building Inspector. The Building Inspector shall not issue any such permit unless the plans for the building and the intended use fulfill the provisions of the Zoning Bylaw in all respects, except as specifically permitted otherwise by action of the Board of Appeals or the Board of Selectmen, provided a written copy of the decision governing any such permission is attached to the application and to the resulting building permit issued.

In some cases, the Zoning Bylaw stipulates that a proposed project or activity is allowed only following Site Plan Review, an issuance of a Special Permit or a Conservation Commission review. A building permit can only be issued after ALL Zoning Bylaw requirements are met.

Approvals that need to be in place BEFORE issuance of a Building Permit for new buildings or dwellings and additions or a change of use:

1. Where Town water is unavailable, a functioning well must be installed and tested prior to the issuance of a building permit. Contact the Tri-Town Health Department.
2. Where Town sewer is unavailable, a Disposal Works Permit (showing Title V compliance), must be obtained from the Tri-Town Health Department.
3. The Department of Public Works (DPW) must review any plans for new construction, addition of bedrooms to dwellings, and changes of use of any building. Tie-in fees for utilities (sewer and water) must be paid prior to the issuance of a building permit. A copy of payment is to accompany the building permit application (water flow estimates, fee schedule, and application for connection to water/sewer are available at Town Hall or the DPW).
4. A curb cut permit (where applicable) is issued by the DPW. There is a fee for a curb cut permit.
5. The Fire Department must review plans for new construction and any alterations or additions.
6. Affidavit form must be submitted, stating where rubbish or debris will be brought for disposal.

#### CHECK LIST BEFORE OBTAINING A BUILDING PERMIT

Submit a signed Building Permit application with the following attachments:

- Two sets of plans, **drawn to scale**, and specifications, showing the proposed work (See Zoning Bylaws for more detailed information).
- Plot Plan showing the **existing structure, proposed structure or addition** with measurements showing the setbacks to the front, side and rear property lines (see Zoning Bylaws for more detailed information).
- **Municipal Review Forms and fees** completed by appropriate town boards and/or departments.

**NOTE: THERE WILL BE A (2) TWO WEEK WAITING PERIOD AFTER THE BUILDING INSPECTOR'S DECISION BEFORE ISSUING BUILDING PERMITS FOR NEW DWELLINGS AND ADDITIONS.**

The following inspections are required by the Town DURING the construction or land development process in order for the Building Inspector to issue a Certificate of Occupancy.

1. Plumbing and Gas Inspection
2. Wiring Inspection
3. Building Inspection
  - ↓ Footings-Foundations-Piers- PRIOR to backfilling, (NO EXCEPTIONS), Drainage (where applicable) must be installed at time of inspection
  - ↓ Framing Inspection- After rough wiring and plumbing inspections have been completed and approved
  - ↓ Insulation Inspection- When insulation is complete, before covering walls and ceilings
  - ↓ Final Inspection- After the final inspections have been completed and approved by the wiring and plumbing inspectors and the Fire Department

***Can I be denied a building permit?***

The Building Inspector has the authority to deny a Building Permit on the basis of noncompliance with the State Building code. However, the Building Inspector is committed to working with applicants to ensure that work is completed in a manner that is safe and in compliance with the State Building Code.

***How long is a building permit valid?***

A building permit lapses if substantial construction has not occurred within 180 days following the approval of the permit. If an extension is required, the applicant should meet with the Building Inspector in advance of the expiration date to discuss.

***What other items require permits from the Building Inspector's Office?***

A Demolition Permit is required for any partial or complete removal of a dwelling or structure. An application can be obtained in the Land Use Clerk's Office and returned to the Building Inspector for review.

For more information contact the office of the  
Building Inspector at (413) 637-5503.

Office Hours are:

Wednesday 5PM to 7PM

Friday 4 PM to 6 PM

\* Applications are received on a first come first served basis

\*\* See Appendix C for meeting times and schedules

#### IV. CONSERVATION COMMISSION

The Lenox Conservation Commission (ConCom) is responsible for the local implementation of state laws regulating wetlands and the Rivers Protection Act. Any disturbance within 100 feet of a wetland requires a permit; 200 feet for the Rivers Protection Act. The Conservation Commission is also responsible for the acquisition and management of natural resource lands for the Town.

##### *What are the Steps in the Filing Process?*

###### Step One

The intended purpose of the Massachusetts Wetlands Protection Act (WPA) is to protect the public and private water supplies, surface and groundwater, wildlife habitats and flood prone areas. Wetlands buffer and provide natural storage for floodwaters and are recharge areas for groundwater aquifers.

Applicants proposing work on any property containing possible wetlands must file a one-page Request for Determination of Applicability. Two copies need to be filed with the Conservation Commission. There is an advertising fee. Information must be advertised in the newspaper five (5) days prior to the public meeting. The applicant is responsible for submitting a copy of the paperwork to the Department of Environmental Protection (DEP).

Within 21 days of receiving the request, the ConCom will make a site visit and a determination. A negative determination indicates that there are no wetlands present or that there will be no wetland impacts. A positive determination by the ConCom indicates the existence of wetlands or the likelihood that work on the property will impact a wetland.

###### Step Two

In the event that the ConCom delivers a positive determination, they will require the applicant to file a Notice of Intent or an Abbreviated Notice of Intent and wait a second review by the board before any work begins. Two (2) copies need to be filed with the Conservation Commission. There is an advertising fee. Information must be advertised in the newspaper five (5) days prior to the public meeting. The applicant is responsible for notifying abutters (100 feet from the proposed project) and submitting a copy of the paperwork to the Department of Environmental Protection (DEP).

The DEP must review the proposal and issue a project number BEFORE final approval by the ConCom. DEP will review the project and issue a file number. Within 21 days of receiving a Notice of Intent from an applicant, the ConCom will revisit the site and hold a public hearing. By majority vote, the ConCom will issue a decision on the project, known as an Order of Conditions within 21 days of closing the public hearing.

###### Final Steps

The conditions outlined will be forwarded to the appropriate boards and commissions for consideration during any other permitting processes. Once the project is complete, the applicant must file a Request for Certificate of Compliance. One (1) copy needs to be filed with the Conservation Commission. The applicant is responsible for submitting a copy of the paperwork to the Department of Environmental Protection (DEP). No public hearing is required.

Please contact the Chairman of the Conservation Commission or the Land Use Clerk  
at (413) 637-5504 for further information

## **V. LENOX HISTORIC DISTRICT COMMISSION**

All new structures, alterations, or additions to existing structures, changes in outdoor land use or changes in site design that occur in the Lenox Historic District are subject to review by the LHDC. The LHDC requires the applicant to submit a completed form, as well as a rendering to scale, plans, drawings, photographs or any other information helpful in aiding in the design review process. Any person who desires to construct or make alterations to any structure in the village core must first receive a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship by the LHDC. A decision should be made within 14 days, unless a public hearing and/or a site visit is required.

### ***What is the Lenox Historic District Commission's Basis of Review?***

When evaluating the architectural compatibility of new buildings and additions, the intent should be compatibility rather than conformity to adjacent and nearby buildings. A traditional village has been developed over time and houses a mixture of different architectural styles. The village center is intended to promote attractiveness of the Town as a place to live, visit, and shop and encourage the continued use of buildings and groups of buildings that have aesthetic or historic significance.

### ***What is the Lenox Historic District Commission's Process of Review?***

An applicant files an application, along with plans, elevations and specifications. (If you are seeking approval of a sign application, you first must have the Building Inspector's determination that the sign complies with the zoning regulations.) The HDC determines whether it needs to exert jurisdiction within 14 days of receiving an application. If the HDC approval is needed, you then proceed with the public hearing process. An HDC public hearing is held after a 14-day notice, including mailed notices to abutters. The HDC may decide to waive a public hearing 1) if all abutters agree to waive the hearing requirement or 2) the HDC decides changes are insubstantial and notice has been provided to abutters 10 days prior to action. A decision must be rendered within 60 days of receiving the application. Otherwise, permission is granted by default. The decision is to be filed with the Town Clerk and the Building Inspector.

Decisions are in the form of:

- 1) Certificate of Appropriateness -- approval of application  
-- disapproval of application (HDC may elect to recommend changes to the application that would allow approval; applicant has 14 days to modify application to conform to recommendations for the issuance of a certificate of appropriateness.)
- 2) Certificate of Non-Applicability – HDC determines that proposal is not subject to HDC review.
- 3) Certificate of Hardship – when failure to approve an application will cause a substantial hardship, HDC may approve so long as there is not a substantial detriment to the public welfare.

Appeals: 1) to Regional Planning Commission or 2) to Berkshire Superior Court.

No building permit for construction or alteration of an exterior architectural feature and no demolition or removal of a building or structure within the historic district shall be issued by the Building Inspector or any other department until the certificate required has been issued by the LHDC.

For more information contact the Land Use Clerk's office at 637-5504.

## **VI. ZONING BOARD OF APPEALS**

The ZBA is a 7-member board appointed by the Selectmen to review applications for special permits and variances. Four affirmative votes are needed for all ZBA decisions.

### **A) Special Permits**

The Zoning Bylaw requires that the Zoning Board of Appeals (ZBA) issue Special Permits for certain structures and uses. Table 6.6-1 of the Zoning Bylaw indicates when a special permit is required – Note the “XA” designations in the table.

Special Permit requirements are established to provide detailed review of uses and structures that may have substantial impact upon traffic, utility systems, and the character of the Town, among other concerns. The review process is intended to insure a harmonious relationship between any proposed development and its surroundings, as well as consistency with the purpose and intent of the Bylaw. Special Permit reviews are concerned with both the physical characteristics of a plan and the appropriateness of the proposed use.

#### ***What are the submission requirements?***

An applicant filing for a Special Permit shall submit a duplicate certified copy of the plot plan together with a sketch of the building or structure or use proposed drawn to scale on a topographical map and showing all relevant data, e.g., all existing and proposed buildings, structures, parking areas, driveway openings, driveways, landscape features (walks, planted areas, trees, etc.), and drainage provisions. Applicants of large, complex projects may want to schedule a preliminary meeting with the ZBA and/or the Planning Board.

#### ***What is the application process?***

The Board of Appeals shall transmit one copy to the Lenox Planning Board with a copy of the notice of hearing. The Planning Board shall forward its recommendations to the Board of Appeals no later than the date of the hearing on the applicant's petition. The ZBA will hold a public hearing within 65 days of the date of filing, after which the ZBA has 90 days to make a ruling on the request. The ZBA must send a notice of its decision to interested parties and file a detailed record of the case and its decision with the Town Clerk within 14 days of the hearing date at which the decision was made.

A filing fee is due with the petition. The ZBA will also bill petitioners for hearing expenses in excess of the filing fee when the total exceeds this amount. Expenses for which petitioner may be additionally billed include legal advertising, postage, clerical costs in support of the Board's activities on the petition, and the cost of any professional consultants used in the review of applications. Legal notice of each hearing must be published twice in a newspaper and must be sent by certified mail to abutters and nearby landowners. These administrative tasks are coordinated by the Land Use Clerk.

Certain special permits also require site plan review by the ZBA and Planning Board – See Section VI(C). Once the ZBA has taken action on an application, the detailed decision is given to the Town Clerk for filing.

***What happens after the approval is granted?***

The Special Permit becomes effective when recorded with the Berkshire Registry of Deeds. The applicant must obtain a certificate from the Town Clerk and record the permit with the Registry if no appeal is filed within 20 days of the date on which the ZBA has filed its detailed record and decision with the Town Clerk. In granting the permit, the ZBA may impose conditions, safeguards and limitations or may require a bond or other security to insure compliance.

***How long is the Special Permit valid?***

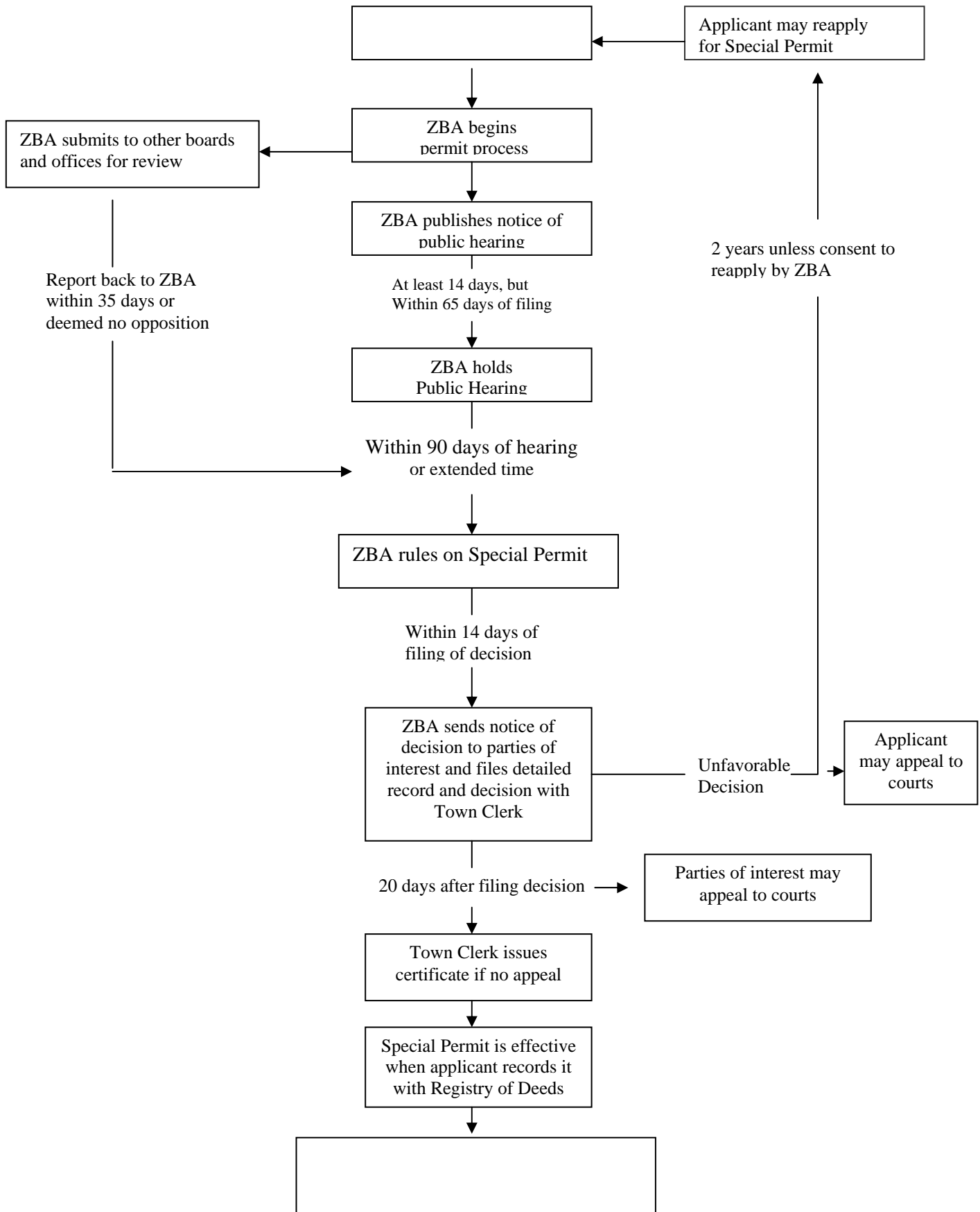
The Special Permit lapses if it is not exercised within two years of the date on which the ZBA's decision is filed with the Town Clerk. Major amendments to the plans submitted in the original review process require an additional review and approval by the ZBA.

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a Board of Appeals or by a Planning Board regarding an action or inaction on an application, may enter an appeal to the Berkshire Superior Court within 20 days after such decision has been filed in the office of the town clerk or after the expiration of the required time in which a decision should have been rendered.

***What happens in the event of an unfavorable decision?***

If an unfavorable decision is issued, an applicant may not reapply until two years have passed, unless consent to reapply earlier is granted by the Planning Board and the ZBA based on specific, material changes in the application and/or conditions upon which the decision was based. The applicant may also appeal the ZBA decision to the Superior Court in Berkshire County.

## Special Permit Process



## VI. ZONING BOARD OF APPEALS

### B) Zoning Variance Process

Under certain circumstances, the Zoning Board of Appeals (ZBA) may grant variances from the local Zoning Bylaw. A variance is used to authorize an otherwise prohibited use or to loosen dimensional requirements otherwise applicable to a structure. It is only under exceptional circumstances that relaxation of the general restrictions established by the Zoning By-law is permitted.

#### *What is the application process?*

Although state law mandates all of the timeframes associated with the variance process, the Zoning Board of Appeals will work with all applicants to ensure their project or activity is reviewed as expeditiously as possible.

The Variance process requires that the Board of Appeals shall transmit one copy of the application to the Lenox Planning Board with a copy of the notice of hearing. The Planning Board shall forward its recommendations to the Board of Appeals no later than the date of the hearing on the applicant's petition. The ZBA will hold a public hearing within 65 days of the date of filing, after which the ZBA has 100 days to make a ruling on the request. The ZBA must send a notice of its decision to interested parties and file a detailed record of the case and its decision with the Town Clerk within the 100-day period and within 14 days of its final hearing and decision on the matter.

#### *What are the submission requirements?*

An applicant filing for a Variance shall submit a duplicate certified copy of the plot plan together with a sketch of the building or structure or use proposed drawn to scale on a topographical map and showing all relevant data regarding the proposed use, e.g., all existing and proposed buildings, structures, parking areas, driveway openings, driveways, landscape features (walks, planted areas, trees, etc.), and drainage provisions.

#### APPLICABLE RULES WHEN DECIDING ON A VARIANCE

In order to grant a variance, the ZBA must make the following findings:

A literal enforcement of the provisions of the Bylaw would involve a **substantial hardship**, financial or otherwise, to the petitioner or appellant;

Hardship is due to circumstances relating to the **soil conditions, shape or topography of land or structures**, but not affecting generally the zoning district in which it is located;

Desirable relief may be granted **without substantial detriment to the public good** and without nullifying or substantially detracting from the intent or purpose of the Bylaw.

A filing fee is due with the petition. The ZBA will also bill petitioners for hearing expenses in excess of the fee when the total exceeds this amount. Expenses for which petitioner may be additionally billed include legal advertising, postage and clerical costs in support of the Board's activities on the petition and the cost of any professional consultants used in review of the variance request. Legal notice of each hearing must be published twice in a newspaper and must be sent certified mail to abutters and nearby landowners.

***What happens after the approval is granted?***

The Variance becomes effective when recorded with the Berkshire Registry of Deeds. The applicant must obtain a certificate from the Town Clerk and record the permit with the Registry if no appeal is filed within 20 days of the date on which the ZBA has filed its detailed record and decision with the Town Clerk. In granting the permit, the ZBA may impose conditions, safeguards and limitations or may require a bond or other security to insure compliance.

***How long is the approval valid?***

Permission for the Variance lapses if it is not exercised within one year of the date upon which the ZBA's decision is filed with the Town Clerk. An extension may be granted by the ZBA for a period not to exceed six months, provided the application for extension is filed prior to the expiration of the Variance.

***What happens in the event of an unfavorable decision?***

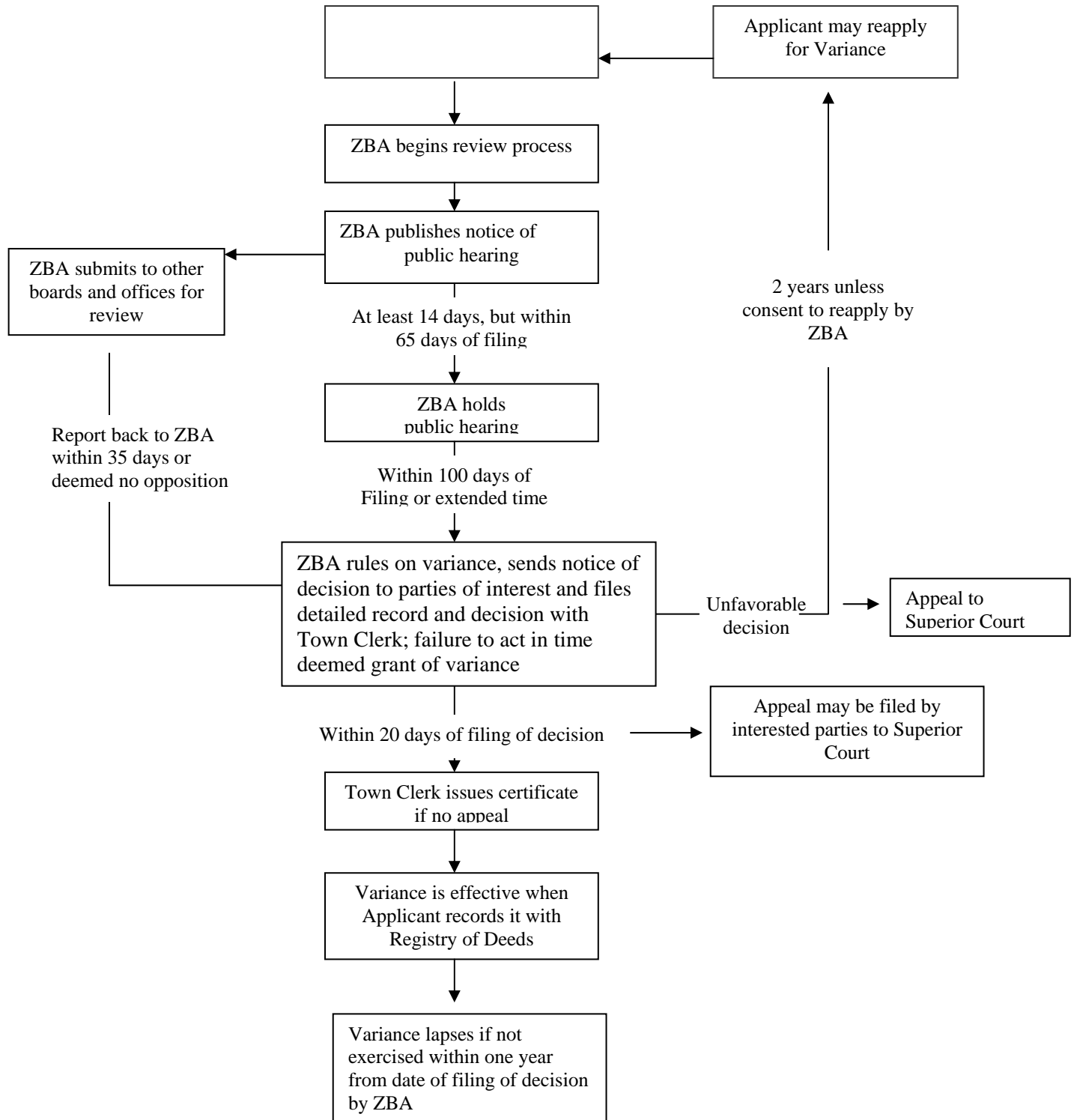
If an unfavorable decision is issued, an applicant may not reapply for a Variance until two years have passed, unless consent to reapply earlier is granted by the Planning Board and the ZBA based on specific, material changes in the application and/or conditions upon which the decision was based. The applicant may also appeal the ZBA decision to the Superior Court in Berkshire County.

***Making an Appeal?***

Any appeal from the ZBA's decision must be made within 20 days of the decision's filing with the Town Clerk. An appeal of a ZBA decision is made before the Superior Court in Berkshire County.

For more information contact the  
Land Use Clerk's office at 637-5504.

## Zoning Variance Process



## VI. ZONING BOARD OF APPEALS

### C) Site Plan Review Process

It is the goal of the Town of Lenox to encourage good development that is compatible with the character of the Town. Site Plan Review establishes criteria for layout, scale, appearance, safety, and environmental impacts. As such, the Town requires that certain uses in the C-1A or C-3A or a use designated in the Table of Use Regulations (see Appendix B) in the Zoning Bylaws designated by “XA” or “XS” as special exceptions may be subject to a Special Permit and Site Plan Approval.

#### *What is the Site Plan Review Process?*

Site Plan Review allows the Zoning Board of Appeals and the Planning Board the ability to consider how the proposed project will impact a variety of matters in the town such as architectural compatibility, vehicular and pedestrian circulation, noise, water pollution, scenic views and open space. It is strongly recommended before submission of the site plan that you meet informally with the ZBA to discuss potential concerns early in the process.

The intent of the Site Plan review process is not to restrict your use of the site but to ensure that it fits into the Town’s setting. The ZBA and Planning Board will work with any person proposing a project to develop a site plan that is acceptable to both parties.

#### *What are the elements that are reviewed during this process?*

As part of the Site Plan review process the ZBA and Planning Board will review the following items for their appropriateness:

- ≠ Preservation of natural resources
- ≠ Relation of buildings to environment
- ≠ Open space
- ≠ Circulation
- ≠ Surface water drainage
- ≠ Utility service
- ≠ Advertising features
- ≠ Special features
- ≠ Safety
- ≠ Heritage
- ≠ Microclimate
- ≠ Drainage and Erosion control

#### **SITE PLAN APPROVAL REVIEW PROCESS**

A registered professional engineer shall submit on a 1” = 40’ scale plan the following items:

- ÿ Location, size and height of ALL proposed & existing structures
- ÿ Location, size and height of all signs
- ÿ Complete proposed landscaping
- ÿ Location and extent of all open space
- ÿ Location, size and type of all utilities and sewage disposal system
- ÿ Location, size of entrances, exits, and aisles, circulation patterns, directional signage, and number of parking spaces of parking lot
- ÿ Location, size, number and type of all lights
- ÿ A detailed parking plan if more than 35 parking spaces

Applications for Special Permits and Site Plan Approval shall be referred by the Board of Appeals to the Planning Board and may be referred to the Conservation Commission, the Board of Health, the Building Inspector and the DPW. Any such reviewing party may make such recommendations as they deem appropriate to the Board of Appeals.

## **VII. PLANNING BOARD**

### **A) Subdivision Approval Plan**

Prior to any plotting, improvement, sale of lots in a subdivision, or the construction of ways, or the installation of Town Services therein, an applicant must submit a Definitive Plan for approval and endorsement by the Planning Board. The Town recommends that applicants meet with the Planning Board prior to any submission to assure that the applicant has a clear understanding of the subdivision process.

Generally, there are two types of reviews governing the creation of new lots in the Town of Lenox: Approval Not Required (ANR) and Subdivision Approval. Approval Not Required plans are for the creation of lots with proposed building fronts on a qualified way that have the required frontage as specified by the Town of Lenox Zoning Bylaw. Subdivision Approval is required for the division of land into two or more lots with frontage on a proposed road or way. Projects in the R1A zone must comply with the provisions of Section 14: Open Space Residential Development Overlay District.

#### ***What is the Approval Not Required (ANR) or Form A Criteria?***

The Planning Board determines ANR eligibility by reviewing the proposed lots to see if they have adequate area and frontage on either:

- 1 A public way or a way that the Planning Board certifies is maintained and used as a public way.
- 1 A way shown on a subdivision plan that has been approved previously and endorsed by the Planning Board.
- 1 A way that the Planning Board has determined has sufficient width, grades and construction to provide for the needs of vehicular traffic in relation to the proposed use of the land.

#### ***What is the ANR Filing Procedure?***

The applicant is encouraged to schedule an appointment with the Planning Board for preliminary review of the proposed project. Formal filing requirements include the submission of two (2) copies of a Mylar survey plan, a completed Form A, "Application for a Determination of Planning Board Jurisdiction and for Endorsement that Planning Board Approval under Subdivision Control Law is not Required" and a filing fee.

#### ***What happens after the Planning Board endorses the ANR plan?***

Endorsement of an ANR plan by the Planning Board does not certify that the lots shown on the plan qualify as building lots under the Zoning Bylaw. The Building Inspector will make this determination. Planning Board endorsement only indicates that the plan shows a subdivision of land that does not require further review and approval under the Rules and Regulations Governing the Subdivision of Land. It should be noted that additional approvals or permits may be required from the Board of Health and/or Conservation Commission depending on the scope of the project.

### ***What is the process for Subdivision Approval?***

The division of land into two or more lots with frontage on a way that is proposed to be constructed requires Planning Board approval. A subdivision plan must be submitted that meets the standards described in Lenox's Rules and Regulations Governing the Subdivision of Land as well as the standards contained in the Lenox Zoning Bylaw.

### ***What is a Preliminary Plan?***

Although required for non-residential subdivisions, submission of a Preliminary Plan (also known as "Form B" plans) is strongly recommended for residential subdivisions as well, since it will avoid costly delays in the project. Prospective developers are encouraged to discuss projects with the Planning Board informally before filing their "Form B" plan. The applicant should also discuss the plan with the Conservation Commission and the Board of Health early in the process to incorporate their concerns. Although the Planning Board is required to act on the Preliminary Plan within 45 days, as per state law, reviews are typically completed much sooner.

### ***What is a Definitive Plan?***

The Definitive Subdivision Plan (also known as "Form C" plans) must be submitted within seven months of submission of the Preliminary Plan in order to be governed by the zoning in effect at the time the Preliminary Subdivision Plan was submitted. The approval process requires Planning Board consultation with the Fire Chief, Conservation Commission, and Board of Health as well as a public hearing.

Both a Preliminary and a Definitive Plan require a public hearing, which must be advertised two (2) times, a minimum of 14 days and 7 days prior to the hearing date. All abutters within 300 feet of the proposed subdivision must be notified by certified mail. Generally, the Planning Board does this. Fees are based on the number of lots in the proposed subdivision (see fee schedule).

State law requires that the Planning Board rule on a Definitive Plan within 90 days of submission, following review of a Preliminary Plan or 135 days where there was no Preliminary Plan.

### **Definitive Plan Contents:**

Subdivision name, boundaries, north point, date and scale.

Owner name & address, subdivider and engineer/surveyor.

Names of all abutters as they appear on the most recent tax list.

Lines and widths of existing and proposed streets, ways, lots, easements, and public or common areas within the subdivision. The proposed names of proposed streets shall be shown in pencil until they have been approved by the Planning Board.

Boundary lines, areas & dimension of all proposed lots.

Sufficient data to determine the location, direction and length of every street and way line, lot line, and boundary line, and to establish these lines on the ground.

Location of all permanent existing or proposed monuments.

Location, names and present widths of streets bounding, approaching, or within reasonable proximity of the subdivision.

Indication of purpose of easements or restrictions.

Suitable space to record the action of the Planning Board, the Board of Health and the Town Clerk.

Existing and proposed topography at a suitable contour interval.

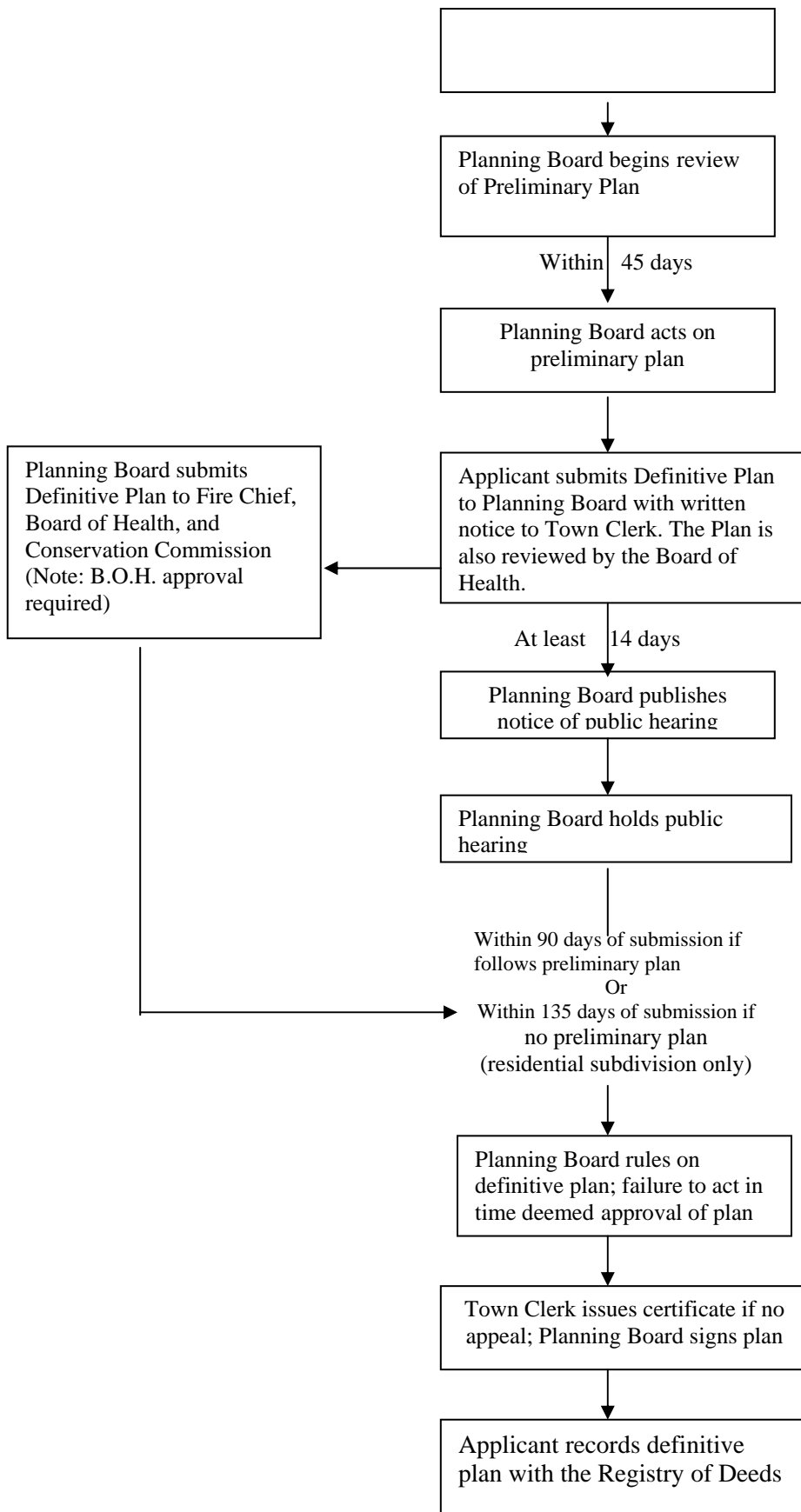
The Planning Board must approve a Definitive Plan by a majority vote.

***What happens after the Definitive Subdivision Plan is approved?***

Following approval of a Definitive Plan, the applicant is subject to a mandatory 20-day appeal period. If no appeals are filed within the 20-day period, the Town Clerk will certify that no appeal has been filed, and the Planning Board will sign the plan. The Definitive Plan must be recorded with the Berkshire County Middle District Registry of Deeds. This is the applicant's responsibility.

For further information please contact the Planning Board Chairman  
or the Land Use Clerk at (413) 637-5504

## Subdivision Approval Process



## VII. PLANNING BOARD

### B) Site Plan Review Process (same process as noted under ZBA)

It is the goal of the Town of Lenox to encourage good development that is compatible with the character of the Town. Site Plan Review establishes criteria for layout, scale, appearance, safety, and environmental impacts. As such, the Town requires that certain uses in the C-1A or C-3A or a use designated in the Table of Use Regulations (see Appendix B) in the Zoning Bylaws designated by “XA” or “XS” as special exceptions may be subject to a Special Permit and Site Plan Approval.

#### *What is the Site Plan Review Process?*

Site Plan Review allows the Zoning Board of Appeals and the Planning Board the ability to consider how the proposed project will impact a variety of matters in the town such as architectural compatibility, vehicular and pedestrian circulation, noise, water pollution, scenic views and open space. It is strongly recommended before submission of the site plan that you meet informally with the Planning Board and ZBA to discuss potential concerns early in the process.

The intent of the Site Plan review process is not to restrict your use of the site but to ensure that it fits into the Town’s setting. The ZBA and Planning Board will work with any person proposing a project to develop a site plan that is acceptable to both parties.

#### *What are the elements that are reviewed during this process?*

As part of the Site Plan review process the ZBA and Planning Board will review the following items for their appropriateness:

- ≠ Preservation of natural resources
- ≠ Relation of buildings to environment
- ≠ Open space
- ≠ Circulation
- ≠ Surface water drainage
- ≠ Utility service
- ≠ Advertising features
- ≠ Special features
- ≠ Safety
- ≠ Heritage
- ≠ Microclimate
- ≠ Drainage and Erosion control

#### SITE PLAN APPROVAL REVIEW PROCESS

A registered professional engineer shall submit on a 1” = 40’ scale plan the following items:

- ÿ Location, size and height of ALL proposed & existing structures
- ÿ Location, size and height of all signs
- ÿ Complete proposed landscaping
- ÿ Location and extent of all open space
- ÿ Location, size and type of all utilities and sewage disposal system
- ÿ Location, size of entrances, exits, of aisles, circulation patterns, directional signage, and number of parking spaces of parking lot
- ÿ Location, size, number and type of all lights
- ÿ A detailed parking plan if more than 35 parking spaces

Applications for Special Permits and Site Plan Approval shall be referred by the Board of Appeals to the Planning Board and may be referred to the Conservation Commission, the Board of Health, the Building Inspector and the DPW. Any such reviewing party may make such recommendations, as they deem appropriate to the Board of Appeals.

## **VIII. BOARD OF HEALTH**

### ***How is the Board of Health involved in the Subdivision Approval Process?***

The Tri-Town Board of Health works with the Planning Board in reviewing Definitive Subdivision Plans. Review of Definitive Subdivision Plans begins with the submission of the plan to the Planning Board and the Tri-Town Board of Health.

The Tri-Town Board of Health has 45 days after the Definitive Plan is filed to report to the Planning Board in writing either:

- A. Approval of the plan; or
- B. Disapproval of the plan including specific findings as to which, if any, areas shown on the plan cannot be used for building sites without injury to the public health.

The report should also include the reasons for such a decision and, where possible, should include recommendations for adjustment to the plan. Approval of the plan by the Tri-Town Health Department shall not be deemed to be an approval of a permit for construction.

### ***What are the other activities of the Tri-Town Health Department?***

Tri-Town Health Department, with the Town of Lenox Board of Health, administers Title 5 of the State Environmental Code. Title 5 regulates the construction, maintenance, inspection and upgrade of septic systems. It also regulates the placement of private water supply wells and issuing drilling permits.

### ***What if I want to build or upgrade a septic system?***

New Septic Systems: New septic systems must meet title 5 requirements and require a permit from the Tri- Town Board of Health. Consultation with a professional engineer is advised.

Modification or upgrade: Title 5 sets specific requirements for the modification or upgrade of an existing septic system, consultation with a professional engineer is advised. Contact the Tri-Town Board of Health for permit and inspection requirements.

### ***Are there standards other than Title 5 that I should be aware of?***

Yes. All septic tanks and soil absorption systems have minimum setback distances from property lines, watercourses, water supply wells, and other natural and manmade features.

For further information please contact the Tri-Town Board of Health at 243-5540  
or the Lenox Board of Health at 637-5504.

## **IX. APPEALS**

### **Scenario 1: Making an Appeal to the Zoning Board of Appeals**

Decisions made by the Building Inspector/Zoning Enforcement Officer or board of the Town in accordance with the Zoning Bylaw may be appealed either to the Zoning Board of Appeals (ZBA) or to the Berkshire County Superior Court, depending upon the type of permit or decision being appealed.

#### ***Who may make an appeal?***

The following have the right to appeal to the ZBA:

- € Any person aggrieved by reason of their inability to obtain a building permit or enforcement action;
- € Any person, including a staff member or board of the Town or of an abutting Town, aggrieved by an order or a decision of the Building Inspector or other administrative official.

#### ***What is the appeal process?***

The ZBA must receive an appeal within 20 days of the date of the decision being appealed or, in the event of a failure of the relevant staff member or board to act, within 35 days of the date a decision is requested. A public hearing must be held within 65 days of the date of filing the appeal, after which the ZBA has 100 days to make a ruling. The Board must vote unanimously on appeals. Within the 100-day period, the ZBA must send a notice of its decision to interested parties and file a detailed record of the case and its decision with the Town Clerk (see detailed time line attached).

#### ***What happens if the appeal is successful?***

A favorable decision on a permit or other action becomes effective upon recording with the Berkshire County Registry of Deeds. The appellant may obtain a certificate from the Town Clerk and record the permit or other action if no further appeal is filed within 20 days of the date on which the ZBA has filed its detailed record and decision with the Town Clerk.

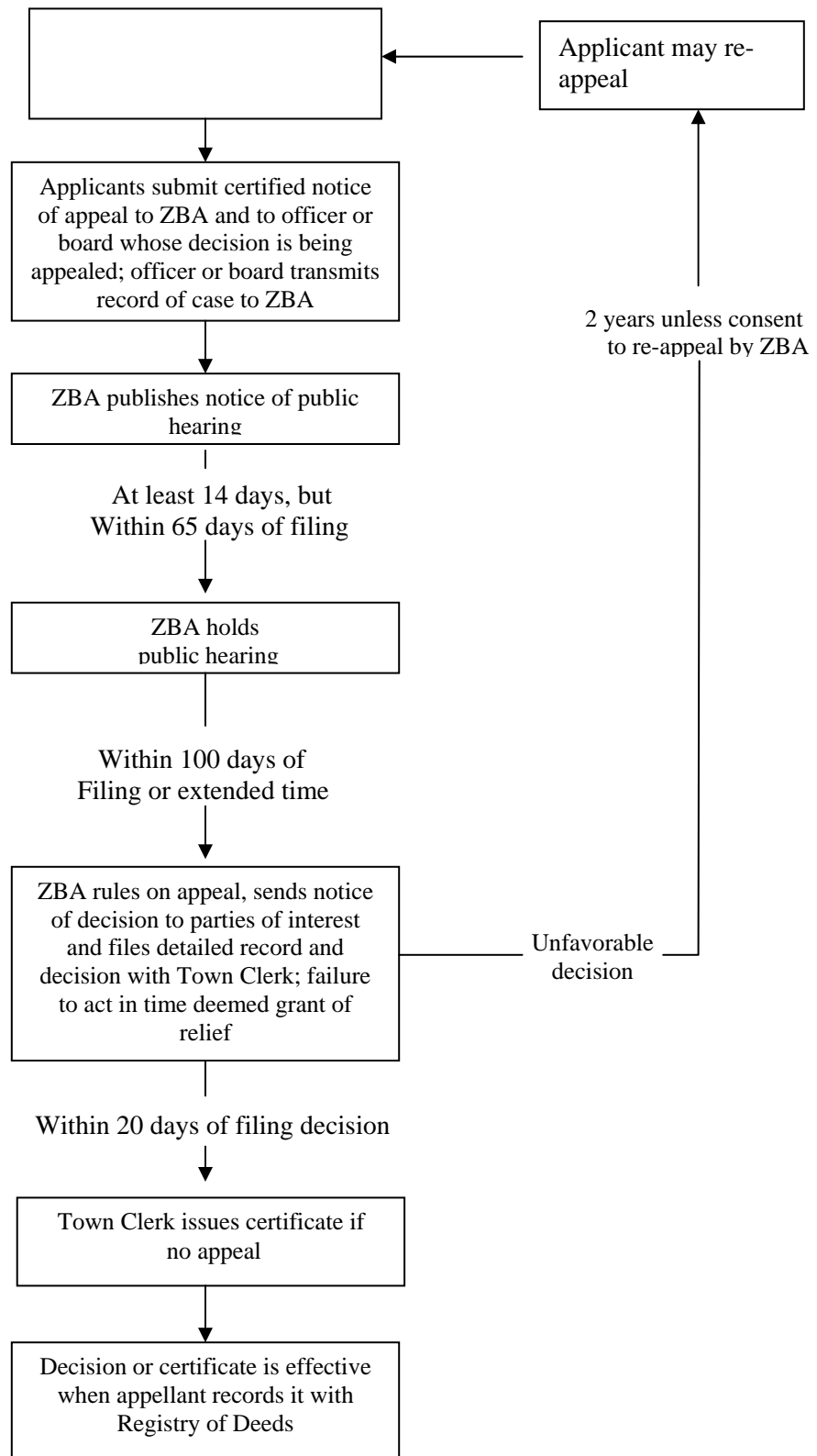
#### ***What if the ZBA fails to act on the appeal?***

In the event the ZBA fails to act within the required time period, the permit or other action is granted automatically. Within 14 days of the expiration of the time to act it is the responsibility of the appellant to notify interested parties that the permit or other action is deemed approved due to the failure of the ZBA to act and that they have a 20-day period to appeal. Additionally, the appellant must notify the Town Clerk in writing that such action has been taken. If, within the 20 days no further appeal has been filed, the appellant may obtain a certificate from the Town Clerk and record the permit or other action with the Registry.

**Scenario 2: Making an Appeal against a decision of the Zoning Board of Appeals**

Any person, whether or not previously a party to the proceedings, or any municipal officer or board, aggrieved by a decision of a Board of Appeals or by a Planning Board regarding an action or inaction on a plan of a subdivision of land, may enter an appeal to the Berkshire Superior Court within 20 days after such decision has been recorded in the office of the town clerk or after the expiration of the required time.

### Scenario 1: Making an Appeal to the ZBA



## **X. MEPA REVIEW PROCESS**

MEPA is the Massachusetts Environmental Policy Act. The Act requires that all state agencies determine the impact on the natural environment of all works, projects, or activities conducted by them and use all practicable means and measures to avoid or minimize the environmental harm that has been identified. MEPA applies to projects directly undertaken by state agencies and to private projects for which state permits are sought or in which state funding or land transfer is involved. MEPA does not apply to projects needing just local approvals.

### ***What are the procedures of the MEPA review?***

MEPA review is not a permitting process, but it is intended to help permitting agencies ensure that a project meets regulatory requirements and that its impacts will be minimized and mitigated as much as is reasonably possible. The MEPA process requires that the applicant file an Environmental Impact Report, which is reviewed and evaluated by the Secretary of Environmental Affairs. The details of the review process are set forth in the MEPA regulations, which establish thresholds, a procedure and a timetable for a two-step review process.

### ***What projects are subject to MEPA review?***

A project is subject to MEPA if it requires any agency action, financial assistance, or an agency permit and meets any of the thresholds listed in the MEPA regulations, or is located in an Area of Critical Environmental Concern (ACEC). Some state involvement is a prerequisite. Certain projects are considered to be “categorically included” for preparation of an EIR. These are either large projects (e.g. projects consisting of 350 or more residential units or 500,000 square feet or more of non-residential space) or projects with large impacts (e.g. alteration of 1 or more acres of bordering vegetated wetlands or use of more than 100,000 gallons per day of water from a public water supply).

For further information  
contact the MEPA Unit at (617) 727-5830.

## **XI. LIST OF REQUIRED FORMS**

The following is a list of forms and related fee schedules as described in each of the aforementioned sections of this Guidebook. These forms can be obtained at Town Hall in the Land Use and/or the Town Clerk offices; many are also available on-line at [www.townoflenox.com](http://www.townoflenox.com).

### **Section III – Building Inspector**

- € Demolition Permit
- € Building Permit & Building Inspector Fee Schedule
- € Water & Sewer Connection Application & Fee Schedule
- € Highway Access (curb cut) Permit Application
- € Gas & Plumbing Inspection Fee Schedule
- € Electrical Work Permit Application & Inspection Fee Schedule
- € Workers' Compensation Insurance Affidavit
- € Home Improvement Contractor Affidavit Permit

### **Section IV – Conservation Commission**

- € DEP's Form 1: Request for Determination of Applicability
- € DEP's Form 2: Notice of Intent
- € DEP's Form 4: Abbreviated Notice of Intent
- € DEP's Form 8A: Request for Certificate of Compliance
- € DEP's Form 4A: Abbreviated Notice of Resource Area Delineation
- € DEP's Form 7: Extension Permit for Orders of Conditions

### **Section V – Historic District Commission *Application***

### **Section VI – Zoning Board of Appeals *Special Permit Application & Procedures* *Petition for Variance***

### **Section VII – Planning Board**

- € Form A: Determination of Subdivision Approval Not Required
- € Form B: Approval of Preliminary Plan
- € Form C: Approval of Definitive Plan

### **Section VIII – Tri-Town Health**

*Tri-Town Health Permit, Inspection Fee Schedule and Forms*