

Before you request a zoning variance –

If you have been denied a building permit because of a zoning issue, a natural reaction is to apply to the Zoning Board of Appeals (ZBA) for a zoning variance. However, you should think carefully before going ahead with this.

First, the process can be expensive. The application to the ZBA requires that you submit a certified plot plan so that the ZBA can know the actual property dimensions that must be considered. A mortgage plan is not sufficient. The certified plot plan must be done by a registered surveyor and can cost several hundreds – sometimes a thousand or more.

In addition, the applicant will be required to pay a filing fee. At the applicant's expense mailing notices to abutters (which involves a radius of 300 ft. or 400 ft.) by certified mail or certificate of mailing and pay for 2 legal ads to be placed in a city's local newspaper.

Second, you should realistically evaluate your chances of success. The ZBA is bound by Section 40, Chapter 10 of the General Laws of the Commonwealth. This guide states that a variance can only be granted if all three of the following conditions are met:

- 1. There must be something “wrong” or “unusual” about that property that creates the need for a variance. This can be something about the shape of the property, or the soil or topography.**
- 2. This “something wrong” with the property must result in a “hardship” unless a variance is granted. This is an area where many people are confused. A personal hardship – even a financial hardship – is not enough to justify a variance. A valid hardship must almost literally prevent the property from being used as it is zoned unless the variance is granted.**
- 3. The variance can be granted without “substantial detriment to the public good” or without detracting from the intent or purpose of the zoning law.**

Please be sure your situation meets all three of these conditions to ensure that your application can be approved.



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

Procedures/Information

Applying for a Hearing before the Zoning Board of Appeals (ZBA)

1. Building Dept. and/or official Board/Administrator – The applicant must fill out a Building Permit Application Form (if applicable). The Building Inspector and/or city official/Administrator will review your proposal and will deny said proposal. Only after a **written** denial/decision can you apply for a hearing before the Zoning Board of Appeals. By law, a ZBA application must be filed within **30 days** of the date of the denial decision. The “decision” refers to the decision made by an administrative office, usually the Building Inspector, with reference to a permit or other zoning enforcement action.

2. **Procedure:**

- Before you begin the on-line application**, make sure you upload all the documents you wish to submit with your application.
- Fill out the on-line application form for a Variance or Appeal hearing.
- Submit appropriate filing fee as stated on the on-line application form.
- Form for an Application for Certified List of Abutters - Go to the Assessor's Office to request a certified abutters list – cost is \$30.00 (but call to verify amount). For a Variance or Appeal it is a 300 ft. radius from the property in question.
 - Abutters Notification - The Applicant (or their agent or representative) is **responsible** for sending (with confirmation of delivery) copies of the notice of the hearing to all the abutters on the certified abutters list at least two weeks (14 days) prior to the hearing date. My office will send the applicant a copy of what the notice to abutters will read once a hearing date is decided upon. Documentation of this mailing and/or delivery receipts for the abutter notices must be submitted to the Zoning Office at least 5 days prior to the hearing date. Types of proof of mailing: Certified Mail or Certificate of Mailing.
- Form to get verification from the Tax Collector's Office that all municipal tax returns and paid all municipal taxes.
- Plan submittal:**

The size of the site plans shall be 11 x 17 or larger drawn to scale: (please make sure the plans are read able) it shall have a north point, names of streets, zoning districts, property lines and location of buildings on surrounding properties. The location and setbacks of all buildings to the lot lines, length of lot lines, and use of the property where a variance(s) is

requested shall be shown accurately. The distance from buildings on adjacent lots shall be shown to approximate scale. The lot coverage (the percentage of the lot covered by the principal and accessory buildings and all driveways and parking spaces) shall be shown. Entrances, exits, driveways and parking spaces shall be shown. The plans shall make clear what now exists and what is proposed. Also provide an interior floor plan (if relevant) showing any proposed changes.

3. The secretary will place two (2) legal ads in the Metro West Daily or a newspaper of general circulation. The applicant is responsible for the payment of the two (2) legal ads which is billed directly by the newspaper to the applicant.

4. **Paper copies submittal:** Please provide 8 paper copies of the entire packet to the Zoning Board of Appeals office. Please provide paper copies at least 2 days after filing the on-line application. Included in the packet will be following:

- On-line application form
- Certified abutters list
- Form - All municipal tax returns and paid all municipal taxes, signed by the Tax Collector's office.
- Certified plot plans (if applicable)
- Proof of filing fee payment

5. After the hearing has taken place, it will be approximately fourteen (14) days before the Board's decision is filed with the City Clerk. The date of this filing is the official date of the decision. A **copy** of the filed decision will be mailed to the Applicant and to the abutters by the Zoning Board Secretary. (Note: This is not the recordable copy that you take to the Registry of Deeds)

6. There is a twenty (20) day appeal period that starts on the day after the decision is filed with the City Clerk. The appeal period must elapse before the City Clerk can certify the decision. During this appeal period, the Board's decision may be appealed to the appropriate appellate body. If an appeal is made, the City Clerk cannot certify the decision until the appeal has been fully adjudicated.

7. After the Board's approval of an Appeal has been certified by the City Clerk that the 20-day appeals period has ended, the City Clerk's office will mail to the applicant a stamped original and this is what **the Applicant must take to the Registry of Deeds to have recorded on their deed.** Until this recording has occurred, your Appeal will not take effect. **Documentation of recording must be provided to the Building Dept. before a building permit will be issued and to the Zoning Board of Appeals.**

Note: The Zoning Board of Appeals normally meet on Tuesday evenings. There are no set dates as to when the Board meets, only when there are cases to be heard. When the Board's secretary is provided with all the appropriate material for a hearing, it usually takes at least 25 plus days to schedule a hearing date.

Guidelines

Massachusetts General Laws Chapter 40A Section 10

1. In order for the Zoning Board of Appeals to legally grant a variance, all three findings must be made. i.e. The Board must find:
 - a. a substantial hardship "financial or otherwise"
 - b. no substantial detriment to the public good
 - c. no substantial derogation from the intent and purpose of the zoning ordinance.

And that owing to the soil conditions, shape or topography of the land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the ordinance would bring about item (1) above.

2. Regarding the definition of "Hardship" once the above factors are considered, "financial" hardship can be used for a ground of relief. However, the "financial hardship" to the applicants or owners of the land in question, must be as a result of its unique conditions, not just the applicant's or owner's financial status.
3. Rights authorized by a variance (if one is granted) must be exercised within 1 year of the date the vote is submitted to the City Clerk's Office of such variance, or such rights shall lapse. However, the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercised of such rights for a period not to exceed six (6) months; and provided further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one (1) year period.

City of Marlborough

Check list

Variance Request

- Fill out the on-line application form.
 - Submit appropriate filing fee.
 - Form – Application for Certified List of Abutters - Go to the Assessor's Office to request list – cost is \$30.00 (but call to verify amount). For Zoning relief (Variance or Appeal) – 300 ft. radius
 - Form – All municipal tax returns and paid all municipal taxes signed by the Tax Collector's Office.
 - Plan submittal
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Paper submittal to the ZBA Office – paper copies will be submitted at least 2 days after filing the on-line application.

- Please provide 8 paper copies of the entire packet to the Zoning Board of Appeals office at least 2 days after your on-line application filing. Included in the packet will be the following:
 - On-line application form
 - Certified abutters list
 - Form-All municipal tax returns and paid all municipal taxes signed by the Tax Collector's Office
 - Certified plot plans (if applicable)
 - Proof of filing fee payment



City of Marlborough
Office of the Assessors
140 Main Street
Marlborough, Massachusetts 01752
TDD (508) 460-3610
Phone: (508) 460-3779

APPLICATION FOR CERTIFIED LIST OF ABUTTERS

Date: _____

Property Address: _____

Assessor Map and Parcel: _____

Property Owner Name: _____

Applicant Name: _____

Applicant Phone: _____

Purpose of Request: _____

Radius: _____

Originating Board or Department: _____

Applicant Signature: _____

PLEASE ALLOW TEN WORKING DAYS FROM THE DATE OF RECEIPT OF THIS
APPLICATION BY THE OFFICE OF THE ASSESSORS FOR COMPLETION



City of Marlborough
140 Main Street
Marlborough, MA 01752

Zoning Board of Appeals
Variance/Special Permit

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all Municipal **tax** returns and paid all Municipal taxes required under law.

Company Name:

Owner Name/Officer Name of LLC or Corporation

Signature of Applicant:

Date

Attorney on behalf of Applicant, if applicable:

Date

The Variance/Special Permit package will not be accepted unless this certification clause is signed by the applicant and the Tax Collector.

Tax Collector

Date
