



# *Town of Warren*

## **Zoning Board of Appeals**

### **Petitioning for Zoning Variance**

The Petitioner carries the legal burden to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Any false statement to the Board and any failure to state a material fact gives the Board legal grounds to revoke any favorable action it has taken on the petition, whether or not the Board explicitly reserves the right to modify or amend its action. Opponents are under a similar legal duty to present their cases truthfully and completely. Under MGL Ch. 40A, Section 15, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.

- All petitions must be filed by the petitioner with the Town Clerk along with a check for (\$100) one hundred dollars payable to the “Town of Warren” for administrative costs.
- The Petitioner is solely responsible for submitting (15) fifteen copies of the required documents which must include the following:
  - ✓ Completed/signed Variance Petition
  - ✓ Certified list from the Assessor’s office of abutters within (300’) three hundred feet of the property at issue. Notification to these abutters will be prepared and mailed by the ZBA Clerk. The cost of this mailing is included in the administrative fee.
  - ✓ Stamped certified plot plan, prepared by a registered land surveyor within (6) six months of submitting the petition.

The survey plan shall be no smaller than 11” X 17” and drawn at a scale appropriate for review, and shall include the following:

- North indicator
  - Zoning district
  - Names of streets
  - Structures thereon and the proposed non-conforming structure highlighted
  - Dimensions from all structures to the lot lines
  - Dimensions of all property lines
  - Location and dimensions of all driveways, sidewalks, parking, wells, leach fields, fences, hedges, trees
  - Flowing bodies of water, ponds, lakes, or wet lands
- ✓ Photographs and letters of support from abutting property owners may be submitted.

#### **Filing Date Certification**

- The Town Clerk will certify the date of filing.

### **Site Visit**

- By signing and submitting this petition, the petitioner is consenting to a site visit or visits by the Board, for an inspection of the subject property.

### **Departmental Review**

- The Town Clerk shall distribute copies of complete applications to the following municipal boards and officials: Board of Health, Board of Selectmen, Building Inspector, Conservation Commission, Department of Public Works, Historical Commission, Planning Board, Sewer Commission, and Police and Fire departments. Each board or official may provide comments or recommendations to the ZBA concerning the petition within (30) thirty days after receipt of the petition, and may provide copies of such comments or recommendations to the applicant. The Town Clerk shall maintain a signature sheet of receipt to verify delivery of the petition.

### **Petition Withdrawal**

- Any petition for a variance which has been submitted to the Board may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter may be withdrawn without prejudice only with the approval of the Board.

### **Public Hearing**

- The Board will make every effort to hold a public hearing within (65) sixty five days from the date the petition is certified by the Town Clerk.
- In the absence of any appearance without due cause on behalf of the petitioner, the Board shall declare the petition withdrawn without prejudice.

### **Public Notice**

- Public Notice of this hearing will include:
  - ✓ Name and address of petitioner
  - ✓ Description of area or premises
  - ✓ Street address or other means of identifying the location
  - ✓ Date, time and place of the public hearing
  - ✓ Subject matter of the hearing
  - ✓ Nature of the relief requested

### **Notice in Newspaper**

- Notice will be advertised in the Worcester Telegram & Gazette by the ZBA Clerk once in each of (2) two successive weeks, the first publication to be not less than (14) fourteen days before the day of the hearing, stating the date, time, and location of the public hearing, as well as the relief requested by the petitioner. The cost of advertising is included in the administrative fee.

### **Posting of Notice**

- The Town Clerk will post notice “in a conspicuous place in the city or town hall for a period of not less than (14) fourteen days before the hearing.”

### **Notification of Parties of Interest**

- The ZBA Clerk will mail notice of the hearing to all parties in interest:
  - ✓ Petitioner
  - ✓ Abutters
  - ✓ Owners of land directly opposite on any public or private street or way, and
  - ✓ Abutters to the abutters within (300’) three hundred feet of the property line of the petitioner

## **Order of Business**

- The public hearing shall be held at the call of the chair, who shall describe the rules of procedure for the hearing and then read or direct the reading of the public hearing notice to open the public hearing. After the opening of the public hearing the order of business shall generally proceed as set forth below:
  - Clerk will swear in all who wish to address the Board at the hearing
  - Petitioner or agent presents the petition
  - Board members ask questions
  - Those in favor speak after first providing their names and addresses for the record
  - Those opposed speak after first providing their names and addresses for the record
  - All reports of boards, municipal officials, or others are read into the record
  - Municipal board representatives and officials ask questions
  - Board members ask for additional information from any or all parties
  - The applicant or agent provides a rebuttal restricted to the matters raised by other presentations or questions
  - The chair, upon majority vote of the Board, continues the public hearing to a date, time, and place certain that is announced at the public hearing or closes the public hearing if all testimony, documentation, and evidence has been gathered
- The members of the Board may direct appropriate questions at the end of any party's or person's presentation. All questions shall be directed through the chair.

## **Decision Time Limit**

- (100) One hundred days from the certified petition filing date

## **Voting Requirements**

- (4) Four of a (5) five member Board vote in favor is required for approval

## **Decision Conditions**

- The Board may impose conditions, safeguards, and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards, or limitations based upon continued ownership of the land or structures to which the variance pertains by the petitioner or by any owner.

## **Notice of Decision to Parties in Interest**

- The Board shall send by mail a notice of the decision to:
  - ✓ The petitioner
  - ✓ Parties in interest, as set forth in M.G.L. 40A, Section 11
  - ✓ Every person present at the hearing who requested that notice be sent

## **Decision Recording**

- Approved variance must be recorded by petitioner at the Worcester County Registry of Deeds.
- No variance can take effect until it is thus recorded.

## **Appeal of Decision**

- Appeals, if any, shall be filed within (20) twenty days after the date of filing of such notice in the office of the Town Clerk.

## **Variance Lapse**

- A variance will lapse after (1) one year if the rights are not exercised

## **Final Appeal Decision**

- No petition that has been unfavorably and finally acted upon by the Board shall be considered within (2) two years.

**The Three Required Findings for Granting a Variance:**

**Finding #1: Soil, Shape, Topography**

Circumstances relating to soil conditions, shape or topography of the land or structure must especially affect such land or structure but not generally affect the zoning district in which it is located.

- The board must find that the peculiarity is unique to the parcel.
- The peculiarity must not be found in the district as a whole.

**Finding # 2: Hardship**

A literal enforcement of the provisions of the ordinance or bylaw would involve substantial hardship, financial or otherwise.

**Finding # 3: Public Good**

Desirable 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 or bylaw.

**The Board recommends that the Petitioner reference Massachusetts General Laws Ch 40A, Town of Warren Zoning Bylaws, and Zoning Board of Appeals Rules & Regulations for further clarification.**