



TOWN OF GREAT BARRINGTON MASSACHUSETTS

ZONING BOARD OF APPEALS

IMPORTANT GUIDANCE AND INFORMATION FOR APPLICANTS

When applying to the Zoning Board of Appeals (ZBA) for a Special Permit or a Variance per Section 5 of the Great Barrington Zoning Bylaw, the Applicant is asking for “zoning relief,” to use land or to build a structure in a way that is not usually allowed or is prohibited in a particular zoning district. The ZBA takes these requests very seriously and asks the Applicant to do the same. The Applicant also needs to be aware that not all requests are granted and there is never an automatic approval. The ZBA will follow a careful decision making process in keeping with the regulations of MGL Chapter 40A (the Zoning Act) and the local Zoning Bylaw. The ZBA offers this guidance to help Applicants prepare for this important process.

Please be aware that you are not eligible to be granted a ZBA Special Permit or Variance if your preexisting use was illegally begun or your preexisting structure was illegally built. The provisions of Section 5 of the Zoning Bylaw—the ability to change a nonconforming use or a nonconforming structure—do not extend to uses or structures that are not lawful. The ZBA cannot grant your application unless you can prove your use or structure is legal to begin with. For example, if a building in a residential zone is used for an industrial purpose, and if the Zoning Bylaw prohibited this at the time the use began, you may not be entitled to zoning relief.

This concept is similar to being “grandfathered,” but it is not the same. Being grandfathered means zoning enforcement action cannot be taken against your use or structure, but it does not make your use or structure legal. Your use or structure is legal if it was used or built in that manner before zoning regulations, or a particular zoning regulation, came into effect. Establishing the date your use began or your structure was built, and establishing the date of the relevant zoning regulations, is therefore critically important to your case. The ZBA expects that you will, as part of your presentation, provide evidence establishing your argument that your use or structure is legal. If you cannot provide this evidence, the ZBA may deny the Application.

There are ways to establish dates for when uses commenced or buildings were built. Property deeds may refer to when a building was built or how it was used; presenting such a chain of title back to the date of the appropriate zoning bylaw is frequently used to furnish proof of dates. Historic maps of town, including insurance maps for example, and photographs, if they can be dated, may be a valuable resource in showing when your structure was built. Documents and records, particularly old building permits, from the Assessor or Building Department or a licensing bureau (state or town) might also be useful. Other sources might include business address directories or advertisements. Sometimes personal knowledge is all that can be found, and you might gather sworn affidavits from knowledgeable persons.

Please note that you are not required to have an Attorney represent you or prepare your application, but you may wish to do so because of the complexities of land use and zoning law.

Other Information and Procedures

Timeline/ Procedures: The ZBA conducts its business in accordance with Massachusetts General Laws, Chapter 40A. Accordingly, the ZBA will hold its Public Hearing not later than 65 days after the filing of the application. The ZBA will make its decision for a special permit not later than 90 days after the close of the Public Hearing. The ZBA will make its decision for a variance or appeal not later than 100 days from the filing date. Decisions will be filed with the Town Clerk within 20 days of the date of the decision.

Once the decision is filed with the Town Clerk, the applicant and abutters are notified of the decision, and a 20-day appeals period begins. If no appeals are filed, then on the 21st day, the Applicant shall have the decision certified by the Town Clerk. (If an appeal is filed, then the decision is certified once the appeal resolved.)

It is the Applicant's responsibility to then file the decision with the Registry of Deeds, ensuring the decision (and the rights and responsibilities conferred by the decision) becomes part of the chain of title of the property.

Site Visit: A site visit is generally held the same day as the Public Hearing and will be coordinated with the Applicant. The site visit is for the ZBA to see first-hand how the requested use or action will affect the site and the area. The Applicant and/or the Applicant's representative is expected to be present at the site visit.

Recommending Boards: Prior to the Public Hearing, your application will be referred to the Planning Board, Conservation Commission, Board of Health, and Selectboard for comments and recommendations. Applicants should be prepared to attend those meetings in order to brief those boards of their project and answer any questions.