

Blackstone Zoning Board of Appeals

Variance & Special Use Permit Application Guidelines

This outline has been designed to assist you in preparing and presenting your application before the Blackstone Zoning Board of Appeals. This outline contains (4) sections:

1. The role of the Zoning Board of Appeals, the Applicant/Owner, and Town Officials at the hearing.
2. Various types of relief and what you must prove.
3. The record- What must it contain.
4. Helpful tips- Nothing in this outline is legal advice; it is merely informational. If you retain an attorney (which in some cases you may), he/she will assist you in presenting your case.

Zoning Board of Appeals, the Applicant & Zoning Agent Role Breakdown

Zoning Board of Appeals – The Zoning Board of Appeals is a quasi-judicial board that is empowered to do (4) things:

1. Grant Variances
2. Grant Special Use Permits
3. Hear appeals on a decision of the Zoning Agent
4. Hear appeals of any aggrieved person

The Zoning Board acts as a judge. The Board takes evidence in the form of oral testimony, pictures, exhibits, plans, etc., and considers whether the applicant has proven his/her case. The Board, not a Town agency or department, has the duty or authority to assist you at the hearing. The Board will render a decision either granting or denying your request for relief and may impose conditions when it grants relief. For you to prevail, there must be (4) votes in favor of granting a Variance and (3) votes for a Special Use Permit.

To successfully appeal a decision by the Zoning Agent, at least (3) members must vote to overturn the Zoning Agent's decision. It is important to note that you may also have to appear before another board or agency such as the Planning Board in connection with your application depending on the specifics of your application.

Applicant/Owner – If your building permit is denied by the building official due to reasons that require a variance or special use permit. You, the applicant, will have the burden of proof about your application. This means that you must produce relevant and competent evidence and persuade the Board members that you are entitled to the relief requested.

Additionally, you are responsible for providing a completed variance/special use permit application with all correct information pertaining to your request such as abutters list, plot plan, building plans, etc. The original application is submitted to the Town Clerk with payment and (7) copies to the Zoning Board of Appeals.

Zoning Agent – The Zoning Agent is the Town Official responsible for interpreting the Zoning By-laws and making determinations of zoning applications. The Zoning Agent reviews the application and determines what section of the Zoning By-law applies. Likewise, it is the Zoning Agent who determines whether you must show a change in circumstances or if a certain use has been abandoned.

Various Types of Relief / What You Must Prove

As noted above, the Board is empowered to grant relief in (4) forms: Variance, Special Use Permit, appeals on a decision of the Zoning Agent, and appeals of an aggrieved person.

The following are the various legal standards which apply; as well as what you the applicant/owner must prove:

1. MGL c. 40A Section 10 and the Town of Blackstone By-law states that Variances shall be granted in cases where the Zoning Board of Appeals finds all the following:
(Give your answer(s) and/or comments to all the following)

(A) A literal enforcement of the provision of this chapter would involve a substantial hardship for the petitioner or appellant: _____

(B) The hardship is owing to circumstances relating to the soil conditions, shape, or topography of such land or structures but not affecting generally the zoning district in which it is located: _____

(C) Desirable relief may be granted without either:

- Substantial detriment to the public good: _____

- Nullifying or substantially derogating from the intent or purpose of this chapter: _____

There are (2) types of Variances: Use Variance and Dimensional Variance

1. **Use Variance** – You need a Use Variance when you propose a use in a zone where it is not permitted. The most common examples are putting a business in a residential zone or increasing the number of housing units in zones where units are limited. To obtain relief, you must prove a hardship (the loss of all beneficial use of your property). To do this, you must show that the property would be useless or of no value if the restrictions in the Zoning By-law are applied to your property. The fact that you may be losing money on your property is not considered a loss of beneficial use. This is a difficult standard to prove, and professional legal assistance is often required.
2. **Dimensional Variance** – This type of relief is available when the proposed use is permitted, but you cannot conform to the regulations that govern where the permitted use is located on the property, such as the height, front, rear or side lot setbacks. To prevail, you must show that the application of the regulations to your property would be more than a mere inconvenience. Be prepared to show by testimony, plans, charts, etc. what you propose and why you cannot locate your construction where the Zoning By-law requires.

Special Use Permit – This is a form of relief which requires that you provide evidence to the Zoning Board of Appeals to the satisfaction of the following standards:

1. That the Special Use shall be in harmony with the general purpose and intent of the ordinance.
2. That the Special Use is reasonably necessary for the convenience or welfare of the public.
3. That all appropriate conditions and safeguards are included in the special permit form of stipulations.

Zoning Agent Appeal – When the Zoning Agent decision you may disagree with, such as a denial of a building permit, you may appeal that decision to the Zoning Board of Appeals. An appeal to the permit granting authority as the Zoning By-law may provide, may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from any administrative officer under the Zoning By-law.

Grandfather Laws – It is the Applicant/Owner’s responsibility to prove if the “Grandfather Law” applies to your case.

The Record – What It Must Contain

You must consider your hearing before the Board like a trial. This is why it is important that you prepare adequately. The Zoning Board of Appeals acts as a finder of fact. There is no other hearing, even if you appeal the Board’s decision to the Superior Court. The Superior Court does not take additional evidence. For that reason, you must present your case competently. If you feel that you are unable to do so, you should consult an attorney. In many cases, it may be important to present expert testimony from an architect, engineer, traffic expert, real estate expert, etc. It is crucial for you to present competent and relevant evidence to prove the legal standard that applies to your application. If you fail to do so, you risk losing your case and making a successful appeal to the Superior Court unlikely.

Helpful Hints

1. Always present a complete and accurate application.
2. Always provide at least (8) copies of the plans with your application.
3. Always prepare your presentation prior to the hearing. This includes your testimony, expert testimony, lay witness testimony, and preparation of charts, plans and documentary evidence. A properly prepared application stands a better chance of success.
4. Always stick to relevant, competent evidence during your hearing. This means evidence that directly relates to your application, given by a person with full and first-hand knowledge of the applications, the property in question, and the neighborhood in question. This will protect you should you wish to appeal to Superior Court or be appealed to Superior Court.
5. At your hearing, you or your representative should be ready to answer all questions from the Board regarding your application. If the Board has concerns, they will impose conditions on the approval known as stipulations.
6. Should I hire a lawyer? Ask yourself: “How important is this project to me?” If there is a substantial amount of money involved with your application, you should consider protecting your interest to the best of your ability.

Zoning Board of Appeals

Outline of Rules of Procedure

1. Consult with the Zoning Agent regarding whether the application should be for a Variance, Special Use Permit, or other appeal.
2. Application forms are available from the Town Clerk's Office or from the Town website here: www.townofblackstone.org under the Government tab, page labeled Zoning Board of Appeals.
3. Once the appropriate form has been issued:
 - a. Fill out the application form completely. (Owner must sign form)
 - b. Return the completed application form to the Town Clerk's Office with the fee of \$300, accompanied by a copy of your deed and a plot plan of the property which shows all building(s) with all relevant dimensions.
4. From that point the Town Clerk will stamp the application form.
 - a. The Town Clerk will forward a copy to the Zoning Board of Appeals Secretary.
 - b. If it is a Special Use Permit application, the Zoning Board of Appeals has 65 days to act.
 - c. If it is a Variance application, the Zoning Board of Appeals has 100 days to act.
5. Adequate notice of such a hearing shall be given by the appropriate publication, as defined in the Zoning Act, once in each of (2) successful weeks preceding the hearing, the first of which is to occur not less than (14) days before the day of the hearing at the applicant's expense. Advertising expenses must be paid prior to the public hearing being opened. Proof of payment for the advertisement should be provided prior to the hearing. Also, notice of the hearing will appear in a conspicuous place in the Town Hall for a period of not less than (14) days before the day of such hearing.
6. Adequate notice of such hearing shall be sent by first class mail to all parties of interest. The parties of interest consist of the petitioner, owners of land directly opposite of any public or private street or way, and abutters within 300 feet of the property line of the petitioner as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town,

the Planning Board of the city or town, and the Planning Board of every abutting city or town. The Assessor's Office shall certify the name and addresses of parties of interest (abutter's list) for a separate \$10 fee.

7. A decision shall be made within (90) days following the public hearing for a Special Use Permit application and within (100) days following the filing of all other types of appeals, applications, or petitions.
8. All decisions of the Zoning Board of Appeals will include the vote of each member, including fact as well as the reason(s) for their decision and official actions.
9. The Zoning Board of Appeals will provide a copy of the decision to all parties of interest and to any person present at the hearing who requests such a copy and submits an address for the receipt of such a copy.
10. A copy of the decision for a Variance shall be filed (14) days with the Town Clerk or a copy of the decision for a Special Use Permit shall be filed within (90) days with the Town Clerk. The Town Clerk will then make it available for public records. The (20) day appeal period begins upon the date of receipt of the decision by the Town Clerk.
11. The Town Clerk will verify that (20) days have elapsed since receiving the decision. No Variance or Special Use Permit shall take effect until the (20) day appeal period has passed, and the decision has been recorded by the owner/applicant with the Registry of Deeds. If an appeal has been filed, the Town Clerk will make you aware of such.

Reminders:

- **Application must be complete.**
- **At minimum, a plan of the property showing the following:**
 - **Dimensions of the lot with square footage and topography**
 - **All building(s) located on the lot with dimensions from property lines**
 - **Abutting lots and Frontages**