

HELPFUL HINTS IN APPLYING FOR A ZONING VARIANCE

The Building Inspector's Denial of your permit application was based on a violation of the Town of Stoneham's Zoning Bylaw. As a matter of right under both the Town Zoning Bylaw and State Zoning Act you may seek relief from the Stoneham Board of Appeals in the form of a Variance of the Town's Zoning Bylaw.

You should keep these issues in mind should you pursue a variance:

- A variance is a form of relief that is based on an appointed board's determination of the facts that you present to them. You must receive a vote of 4 out of the 5 members.
- You have a right to seek a variance, but "no person has a legal right to a variance and they are to be granted sparingly."¹
- Variance law in Massachusetts is based on the concept that something is wrong or unusual with the land and not on the desires of the property owner.
- State law and court case decisions are very specific as to what criteria you must meet and present in order to be granted a variance.

Granting a Variance

In order for the Board of Appeals to grant a variance, all three of the following "required findings" must be reached in the affirmative.

1. Soil conditions, shape or topography – This condition is unique to the zoning district where the parcel is located.
2. Hardship – The Board of Appeals must connect the hardship to the soil conditions, shape or topography. Personal hardships do not meet the State Legislature or Courts' perspective of hardship under the State Zoning Act. **The hardship must be based on the land and not personal issues.**
3. Public Good – The Board of Appeals must determine that the action sought by the variance can be granted "without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such bylaw."²

If you cannot make the case that you meet all three of these conditions, it will be extremely difficult for the Board of Appeals to grant a variance.

Conditions of a Variance

The Board of Appeals has the authority to impose conditions and limitations on any variance it grants. These include the following:

1. Conditions and limitations on the use of the property.
2. Conditions that extract a public benefit necessitated by the grant of the variance.
3. Limitations on the time period(s) within which the variance will be valid.

Filing for a variance

An application for a variance is available at the Planning Board/Board of Appeals Office daily from 8 a.m. – 1 p.m. or at the Inspectional Services counter during normal business hours. Should you have any questions regarding the application or variances in general, you may contact the Planning Board/Board of Appeals office at 781-279-2695.

¹ Dion v. Board of Appeals of Waltham, 344 Mass 547 (1962)

² Mass. General Law Chapter 40A, Section 10