



Special Permits & Variances

A Presentation by the

Citizen Planner Training Collaborative



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Variations

Types of Variances

- Variances from the terms of the local ordinance or by-law
- Use Variances

Use Variances Are Allowed Only
If Zoning Ordinance or By-law
Specifically Authorizes Them

The Three Required Findings For Granting A Variance

Finding #1: Soil, Shape, Topography

Owing to circumstances relating to soil conditions, shape or topography of the land or structure and especially affecting such land or structure but not generally affecting the zoning district in which it is located.

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.

Conditional Variances

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

Special Permits

Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or bylaw.

Statutorily Authorized Special Permits

- Increase in density
- Multi-family in non-residentially zoned areas
- Cluster and open space developments
- Planned unit and mixed use developments
- Shared elderly housing
- Accessory Uses in connection with scientific research
- Adult entertainment
- TDR

Adequate Standards

Local ordinances or by-laws must provide adequate standards for guidance of the board to grant or withhold special permits.

Special Permit Decision

- Limited to criteria detailed in by-law.
- Board may not refuse to issue permit for reasons unrelated to the standards of by-law.
- Board may not base decision on reputation or character of applicant.

Special Permit Decision

When granting a special permit, the SPGA must make an affirmative finding as to the existence of each condition of the statute or by-law required for granting the special permit.

Special Permit Decision

If the board finds any permissible reason to deny the application, its decision will be sustained.

Special Permit Conditions

The Zoning Act specifically authorizes imposing conditions, safeguards and limitations on time or use in the issuance of a special permit.

Types of Conditions

- Private disposal of waste
- Deadline to commence construction
- Limits on vehicles, noise, landscaping etc.
- Dust control
- Hours of operation and police details
- Performance bond
- Time limitations and renewals

Condition of Ownership

A special permit, unlike a variance, may be conditioned by limiting its duration to the term of ownership or use by the applicant.

Plan Conditions

When a special permit application is accompanied by plans or specifications detailing the work to be undertaken, the plans and specifications become conditions of the issuance of the permit.

Delegation of Authority

Conditions that attempt to delegate or defer decisions have been rejected.

Procedural Requirements for Special Permits and Variances

Filing the Application

- All applications must be filed with municipal clerk
- Clerk must certify date and time of filing
- Copy of application, including certification, filed with the reviewing board
- Application that has been transmitted to reviewing board may be withdrawn without prejudice prior to publication of notice of public hearing. After notice, can be withdrawn without prejudice with approval by board

Public Hearing

- Reviewing board must hold a public hearing within 65 days from the date the application is filed.
- Required time limit may be extended by written mutual agreement between the petitioner and the reviewing board. A copy of the agreement must be filed with the municipal clerk.

Public Notice Requirements

Notice of a Public Hearing

- Name 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, and
- Nature of the relief requested

Notice in Newspaper

Notice must be advertised in “a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing...”

Posting Notice in Town Hall

The notice must be posted “ in a conspicuous place in the city or town hall for a period of not less than fourteen days before the hearing.”

Notice to Parties in Interest

- Notice must be mailed 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 three hundred feet of the property line of the petitioner.

Voting Requirements

- 3 of a 3-Member Board
- 4 of a 5-Member Board
- 2/3 of a Board of more than 5

- Upon municipal acceptance of G. L. Chapter 39, Section 23D, a member may miss one session of a hearing and still vote on the petition provided that member certifies in writing that all evidence from the missed session was examined.

Decision Time Limits

- **Special Permits**

90 days after close of hearing

- **Variations**

100 days from application filing

Notice of Decision to Parties in Interest

The board is required to send by mail a notice of the decision to:

- the applicant
- parties in interest
- every person present at the hearing who requested that notice be sent

Decision Recording

- Approved variance or special permit must be recorded at the registry of deeds.
- No variance or special permit can take effect until it is recorded at the registry of deeds.

Special Permit Lapse

Special Permit will lapse:

- After two years, unless a shorter time period is specified locally;
- if substantial use has not commenced except for good cause or
- in the case of a permit for construction, construction has not begun except for good cause

Variance Lapse

- A Variance will lapse:
 - After one year if the rights are not exercised (unless the board extends this period for not more than six months)



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