



Applying for a Variance

Variations are intended to provide relief from the provisions of the Zoning Bylaw; however, Ware's Bylaw does not allow use variations. To apply for a variance, you must know the specific sections of the Bylaw that you want relief from. The Zoning Bylaw is available online at www.townofware.com.

General Information

- Variations are issued by the Zoning Board of Appeals (ZBA).
- The applicant does not need to be the owner of record of the property involved, but when different, both the applicant and the owner must sign the application form and sign an Authorization Form.
- Parties in Interest are the petitioner (the applicant), all property owners (abutters) within 300 feet of the boundaries of the petitioner's parcel, including those across a street or stream, the Planning Board, of every community that abuts Ware (Belchertown, Hardwick, New Braintree, New Salem, Palmer, Petersham, Warren, and West Brookfield).

Applicant's Responsibilities

- We recommend that the applicant check with all other town, state and federal laws prior to submitting an application to determine if other laws or regulations will apply such as fire safety, building, ADA requirements, the Wetlands Protection Act (Conservation regulations), Board of Health regulations, licensing requirements, etc.
- The applicant must file the application for Variance with the Town Clerk where it will be time and date-stamped to start the process.
- Note that filing an application with the Town Clerk does not certify that the application is complete. Determination of completeness is made by the Director of Planning and Community Development either prior to filing the application or during review of the application. Should you file your application with the Town Clerk and it is then determined to be incomplete, your Public Hearing will be opened within the timeframe required by MA General Law and the ZBA will then determine whether to continue the hearing or deny the application. All applicants are encouraged to meet with the Director prior to filing the application with the Town Clerk.
- Copies of the application with all required plans and documents must be submitted to the P&CD Department, along with an electronic (.pdf format) copy of the application form, plans, and documents. In the event you cannot provide electronic copies, then you must submit 14 paper copies of all plans and documents.

Your application is not legally complete until all required information and materials have been submitted.

Submittal Check List:

- ✓ 7 – Full size set of Plans
- ✓ 10 – Reduced set of Plans (11x17")
- ✓ 14 – Application Packets Including: Application, Authorization Form, Certified Abutters List (300') Project Narrative, Traffic Report, Environmental Reports, Operation and Maintenance Report and any other reports supporting your application
- ✓ 2 – Stormwater Drainage Analysis Report

- ✓ Filing Fee Check – Payable to “Town of Ware”
- ✓ CD with all application information in PDF including full size set of plans
- An application for a Variance application that has been submitted may be withdrawn, without prejudice, by the applicant prior to the publication of the public hearing. After publication of the public hearing notice, an application can only be withdrawn without prejudice with the approval of the ZBA.
- The Planning & Community Development Department will compose the legal notice of the public hearing and the Applicant is to arrange for its publication. This notice must be published in a newspaper of general circulation in the community; the Planning and Community Development use the *Ware River News*, a weekly newspaper published on Thursdays. The notice must be published once in each of the two successive weeks. The first publication in the newspaper must be at least 14 days before the day of the public hearing.
- The public hearing notice will include the following:
 1. Name of the petitioner;
 2. Description of the property or area;
 3. Street address, if any, or other adequate identification of the location of the area or premises which is the subject of the petition;
 4. Subject matter of the public hearing;
 5. Nature of the relief requested; and
 6. Date, time, and location of the public hearing.
- The Applicant will mail (first class with Certificate of Mailing proof) the public hearing notice to the applicant, all abutters, and the abutting towns. Proof of mailing is required to be given to the Planning and Community Development Department no later than 2 days prior to the scheduled Public Hearing.

Responsibilities of the Planning & Community Development Department

- Upon receipt of an application, the P&CD Department will schedule a public hearing. The hearing will be scheduled to be held within 65 days of the date received by the Town Clerk.

The Public Hearing

- The purpose of the public hearing is to provide all interested parties an opportunity to hear what the application is for and to ask questions or comment on the application. Information that is known to the owners of the area that may not be known by the ZBA is particularly useful.
- The applicant will be asked to make a presentation at the beginning of the hearing, which should describe the proposal, why the variance is being sought, and how the request meets the following hardship criteria of why the Variance is needed. The ZBA will not grant a Variance if the applicant cannot prove all of these points.
 - There are circumstances relating to the soil conditions, shape, or topography of the land or structures which affect the parcel in question but do not affect the zoning district in which it is located; and
 - A literal enforcement of the provisions of the Bylaw would involve substantial hardship, financial or otherwise, to the petitioner; and

- The relief sought through the variance application can be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw.
- The ZBA will often close the hearing and make a decision on the date of the hearing. However, the Board has the authority to continue the hearing to a specific date to provide public notice is given pursuant to the Open Meeting Law (MGL, c39, §.23B) without having to send a new notice by mail to parties in interest. A hearing is continued when additional information is required by the ZBA in order for them to make a decision on the application, which could include a site visit.
- A public hearing ends when the rights of interested parties to present information and ask questions has ended, after all such parties have been heard and no additional comments are offered. Any information presented after the close of the public hearing cannot be taken into consideration during the deliberations by the ZBA.
- Once the hearing has been closed, the ZBA will deliberate on the application. During this process, a determination will be made as to whether the application meets the requirements of the Zoning Bylaw, which includes making a finding that the criteria listed in §7.3.2 have been met. The ZBA may also set specific conditions on the approval (see §7.3.3).
- A Variance must be approved by a two-thirds vote of the ZBA, which means that four members must vote to approve the application (the ZBA is a five-member board). Fewer than that means the application is not approved.
- The ZBA must take action on a Variance application within 90 days of the date the application was filed with the Town Clerk. The applicant and the ZBA may agree in writing to an extension of this timeframe if necessary.
- If the ZBA fails to take action within the 90-day timeframe, the application is considered to have been “constructively approved”.

Decision on a Variance:

- The ZBA may impose conditions, safeguards and limitations on time or use when granting a Variance Permit.
- The ZBA cannot impose any conditions which delegate to another Board a determination on an issue of substance, or which will require a future Decision on an issue of substance by the ZBA.
- The ZBA cannot impose a condition on the performance of which lies entirely beyond the applicant’s power.
- The ZBA has the power without holding a further public hearing to correct an inadvertent or clerical error in a Decision so that the record will reflect the true intention of the ZBA.
- The ZBA may not make a substantive amendment which will change the result of the original Decision or which will grant relief different than the originally granted, without having a new application before it.

After the Decision has been made:

- The P&CD Department will prepare the decision and will file it with the Town Clerk within 14 days of the ZBA's vote. This date is known as the "date of grant" of the Variance (in the event of approval).
- Notice fo the Decision will be mailed (first class) by the Planning & Community Development Department to the petitioner, parties in interest and to every person at the public hearing who requested a notice. The notice will specify that any appeal of the Decision must be made pursuant to MGL, Chapter 40A, § 17, and filed within 20 days after the date the Decision was filed with the Town Clerk.
- After the 20-day appeal period has expired, the Town Clerk will certify that there has been no appeal filed (if that is the case), and will mail the original Decision to the applicant and provide a copy of the certified Decision to the ZBA.
- The applicant is responsible for filing the Decision with the Hampshire District Registry of Deeds. The Variance does not take effect until it is filed at the Registry.
- A Variance shall lapse one year from the "date of grant" if a substantial use thereof has not commenced except for good cause (in cases when a Variance is to allow construction, said construction must have begun; just obtaining a building permit is not sufficient). Excluded from the lapse period is the time required to pursue or await the determination of any appeal taken pursuant to MGL, Chapter 40A, § 17.

QUESTIONS?

Call the Planning & Community Development Office at 413-967-9648 x120

Visit the Planning & Community Development Office Monday–Friday 8:00 am – 4:00 pm