

Instructions for
Seeking a Variance

1. The Zoning Board of Appeals has the power to grant a variance from the zoning bylaws under certain, ryespecific circumstances. These circumstances include soil conditions and/or shape and/or topography of your land. These conditions must be unique toyour property and not the conditions found generally in the zomig district in which your land is located.
2. The Zoning Board must be able to determine that owing to these unique conditions on your property, a literal enforcement of the zoning bylaw would involve substantial hardship, financial or otherwise, to you, the petitioner.
3. The Board must further determine that if they grant you the relief you are seeking, that the relief will not cause substantial detriment to the public good and that it will not nullifyfor substantially derogate from the intent or purpose of the zoning bylaw.
4. You may apply for a variance from the Zoning Board of Appeals by submitting a completed, tax certified* 'Petition for Hearing Variance' form to the Town Clerk. You will need to submit two (2) separate checks with your petition: one made out to the Town of Winchendon in the amount of \$100 and the second made out to the Winchendon Courier in the amount of \$84.00.

* Tax certification is obtained by submitting your petition to the Town Treasurer and asking her for tax certification. Be aware that the Town Treasurer has up to ten (10) days to complete certification. You need to do this BEFORE going to the Town Clerk.

5. Since the Board is very restricted in the circumstances under which it is legally authorized to grant a variance, your job will be to provide sufficient evidence to prove your claim that development of your property

in strict conformity with the zoning bylaws will involve substantial hardship to yourself. Such evidence should include soil information, topographic contours and/or surveys or sketches of the configuration of your lot. You must be able to demonstrate that these conditions are unique to your lot, and not those of the majority of the properties in your zoning district. Remember - the burden of proof is upon you. The Zoning Board is under no obligation to grant a variance to anyone. Be certain to include all of your evidence with your petition.

6. The Zoning Board must hold a public hearing on your petition within 65 days from the receipt of its notice. You will be notified of the date of the public hearing by receiving a copy of the Notice of Public Hearing in the mail. So too will all of the property owners who abut you.

7. The public hearing will be your chance to convince the Board that you require and qualify for a variance for your proposed project. It is also a chance for your neighbors to comment, positively or negatively, on your plans.

8. When the Board feels that it has sufficient information to make its findings, it will close the public hearing and come to a decision upon your petition. The Board cannot grant the variance unless they specifically find that all of the conditions (described above) have been met. The concurring vote of four Board members is required to grant a variance under MGL Chapter 40A.

9. The Zoning Board may impose conditions, safeguards and limitations on your variance (if granted) both of time and use, including the continued existence of any particular structure(s), but they may not place any conditions, safeguards or limitations which are based upon the continued ownership of the land or structures to which the variance pertains by the petitioner or any owner.

10. The Board must make a decision on your petition within 100 days after the date of the filing of it. You will receive the Notice of Decision from the Board forthwith in the mail.

11. The Board must then make a detailed record of its proceedings indicating the vote of each member upon each question, setting forth clearly the reason(s) for its decision and of its official actions. This documentation must be filed in the Town Clerk's office within fourteen days of the date of their decision, where it will become public record. You will receive a copy of this documentation in the mail (called Detailed Record/Decisions).

12. Should you or any other interested party be dissatisfied with the decision of the Zoning Board, you (or they) will have twenty (20) days from the date the Board's decision was filed with the Town Clerk to appeal the Board's decision to the superior court department for the county in which the land concerned is situated or to the division of the district court department within whose jurisdiction the land is situated. Check MGL Chapter 40A section 17 for more complete guidance on this appeal process.

13. If no appeal of the Zoning Board's decision is taken within the twenty day appeal period, you will receive a certified Notice For Recording from the Town Clerk. This notice is a summary of your petition and is to be recorded at your expense in the Worcester County Registry of Deeds. This notice must be recorded in order for the variance to be effective.

14. If your variance is granted, you will have one (1) year in which to exercise the rights authorized by it. The Zoning Board may (in its discretion) extend the time limit by up to six (6) months. However, you must apply for this extension in writing to the Zoning Board prior to the expiration date of your variance. If the Zoning Board does not grant your extension within thirty (30) days of the date that they receive it, and upon expiration of the original one-year period, your variance may be reestablished only after notice and a new hearing pursuant to the provisions of MGL Chapter 40A section 10.