

# ZONING BOARD OF APPEALS

## OVERVIEW

### REFERENCE MATERIAL:

The Zoning Board Manual,

Frederick H. Bair, Jr.

American Planning Assoc., Washington, D. C.

Comm. of Mass M G L Ch. 40-a Section 808

Town of Charlton Zoning By-law, as amended April 1987

### INTRODUCTION:

The duties and functions of the Zoning Board of Appeals are partly administrative and partly judicial. And are defined and limited by state enabling legislation as well as by provisions of local zoning by laws as adopted over the years.

### HISTORICAL ORIENTATION:

The early America building and land-use controls grew from disasters. Back in 1692 Boston, they required new buildings to be stone or brick with slate or tile roofs. Across the country big-city housing congestion and squalor led to enactment of various so called tenement laws around 1900, as the predecessors to present housing building codes. As society grew in Massachusetts and the country frictions and disasters proliferated, and with this situation regulations-on land use, type of construction, type of occupancy, and the location of the uses for the building and land forced enactment of **by laws** and then later **zoning laws** were enacted to control growth and attempt some semblance of order to the region.

### **IN THE EARLY TWENTIES, SECRETARY OF COMMERCE HERBERT HOOVER, OF THE UNITED STATES, APPOINTED AN ADVISORY COMMITTEE ON ZONING.**

This prestigious group, conservative in both sponsorship and makeup, depended heavily on New York's experience in preparing the standard state Zoning Enabling Act. Although, it made some modification to facilitate application in a variety of jurisdictions, it pioneered the framework for division of powers and performance of functions, and established the basis's for various charter amendments that were adopted and passed by the various state legislature's through-out the United States.

Most Massachusetts cities and towns followed suit and enacted their local zoning laws and set guidelines in them to plan and control the growth of their communities, later, amended them as needed to compensate for the changes in growth and residential needs and industrial requirements.

### **NOW HOW DID WE GET GOING?**

CHARLTON started in the 50's and 60's with various articles from the town warrant like a trailer by-law, and various minimum frontages and lot sizes articles which continued into the 1980's.

Many attempts were made to establish a uniform zoning package in the 80's, and **finally on April 7, 1987** our present zoning by-law was approved by the voters at town meeting. Just under the time limitation mandate of the state Chapter 40a zoning law.

This by-law has been amended a number of times to bring it up to date and various attempts for further changes are in the works and should be an on-going review by the townspeople.

This brings Charlton zoning history to date.

### **SO WHAT IS, THE ZONING BOARD OF APPEALS ANY WAY?**

First let's review in this short time span a brief overview of the powers of the board and limitation on their use.

A QUOTE FROM HERBERT HOOVER:

"The case load of the board is light if the ordinance is good, heavy if it is bad, and increases rapidly if it becomes apparent that the board is easily manipulated."

### **MASSACHUSETTS STANDARD ACT PROVISIONS AS WE MENTIONED BEFORE GIVE THE BOARD THREE (3) POWERS.**

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by and administrative official in the enforcement of this act or of any ordinance adopted pursuant thereto.

**OR**

An appeal shall be sustained only if the Board finds that the administrative official's action was based on an erroneous finding of a material fact or that he acted in an arbitrary or capricious manner or manifestly abused his discretion.

## 2. Special exceptions or special permit.

Here no appeal is involved in the special exceptions section. This is an area of original jurisdiction for the board, and it is here acting in an administrative rather than quasi-judicial capacity.

In special exception cases, the determination to be made is whether the proposal meets the purposes and requirement of the ordinance (zoning by-law or state statute) concerning the particular use.

In special exceptions or sometimes called **special permits** the board may not originate its own special exceptions. It can act only on those specifically assigned by law for its attention.

### **IN OTHER WORDS,**

Special permitting to fit regulatory needs, a special permit system is now used to handle cases from simple to complex with simple to complex procedures and determinations.

These requirements for particular uses are no longer left to be set on an **ad hoc case-by-case basis**, but are all set **in advance** to the maximum extent possible.

Where technical determinations are involved, they are made by technical personnel, **rather than by a quasi-judicial board.**

## 3. Variances.

And here there is probably no area of zoning law where higher courts point in so many directions as in the field of variances.

(Local application should thus be particularly carefully, tempered by examination of applicable state enabling legislation and the current judicial climate. That the variance was intended as a device for **adjustment** where the ordinance created unnecessary hardship in unusual cases, to give the affected property owners rights as nearly equal a possible to those of others in the same district. No zoning ordinance can be perfect, but few need be as imperfect as they are. A patchwork ordinance constructed by unskilled labor with defective tools requires a great deal of adjustment.)

### **HOW WE CONSIDER A VARIANCE?**

One of the prime questions that must be met in state law and I quote **"To authorize upon appeal such variance from the term of the ordinance as will not be contrary to the public interest when, owing to special conditions, a**

**literal enforcement of the provisions of the ordinance would result in unnecessary and undue hardship." Unquote.**

This also goes on further as.....

In order to authorize any variance from the terms of the ordinance, the board of appeals must find: etc. (it goes on and on and would take the next 5 hours just to make a brief outline on variances)

Question always asked by attorneys or persons first attending our meeting, as to why we do things a certain way that appears different from other boards.

*Remember - this board is considered quasi-judicial.*

Hence, we must follow pre set guidelines that encompass the zoning act and the ability for concerned parties to air the opinions but with the constraints of a judicial board.

## **RULES OF THE BOARD OF APPEALS**

No one model rule can apply universally to boards from across the country.

**The Charlton Zoning Board of Appeals** has over the years adopted its rules of order by using this guide book manual since 1988 as a reference and procedural tool in conducting its business.

## **COMMENTS:**

What qualifications should I have to volunteer on this or any other board?

Well...the role of the zoning board and related qualification of members. Could be as follows:

Zoning Board is frequently defined by a recital of the exercise of the Boards powers. This is not an adequate criterion for judgment as to desirable qualification for its members. However, **the various local and state enabling legislation that have been enacted over the years, ask a fundamental question.**

“Is the function of the board to defend the public interest, as defined in the terms of the zoning ordinance by the legislative body or to defend private interest, as expressed by applicants or appellants appearing before them?”

A million dollar question.....

Hidden in all of the various acts and amendments **we here** at the Charlton Zoning Board of Appeal as well as other town zoning board **find and follow this basic key phrase "Maintenance of a system of zoning as will best serve the interest of the community as a whole"**.

And

**"The elected governing body should not become directly involved in either the appellate or the permitting process."**

Generally, zoning appeals procedures are set by the state law.

So, an appeal from the board's decision is directly to the courts, and not through the governing body. Even where special acts or home rule powers allow some detours, routing appeals from the Board through the governing body tends to mix political expediency with merit in decisions on particular appeals. On regular and special zoning permits (including special exceptions), the same considerations apply.

**Remember the body which makes law may amend it, but should not intervene to alter its application in individual cases.**

You can call the office and leave a message at 508-248-2414.

Write to us at

Zoning Board of Appeals

37 Main Street

Charlton, MA 01507

With any questions or comments you may want us to review at our next meeting, or come in.