

When a Variance or Special Permit is needed

By: Curtis Meskus, Building Commissioner/Zoning Enforcement Officer
building.zeo@townofcharlton.net

The Town of Charlton enacted comprehensive zoning in 1987, before that time there were a number of related but separate local bylaws and or general laws that governed subdivisions and lot creation. The late date in Charlton's history for adoption of comprehensive zoning, legally allowed the development of what we now consider small lots with nonconforming area, or insufficient road frontage and the construction of structures with insufficient setbacks to the property lines. The further development of these nonconforming properties is handled by; Special Permits and Variances, probably some of the most misunderstood procedures and cause of frustration for customers this office has to deal with.

If the property **was not** created under one of the special circumstances allowed by zoning, such as first construction on a protected lot ([MGL c 40a § 6 par 4](#)), Reduced Frontage Lots or Flexible Development and the property does not meet the current lot area, or has a non-allowed use on it, that the owner wishes to expand, remove and replace a structure, add a deck or porch, a pre-existing non-conforming **Special Permit**, may be sought from the [Zoning Board of Appeals](#) (ZBA). If the proposed structure or existing structures encroach into the required setbacks, or the lot has other dimensional shortcomings a **Variance** may be sought from the ZBA.

The purpose of a pre-existing non-conforming **Special Permit** is to allow an applicant of non-conforming structures or uses to apply to the ZBA for a determination "that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." ([MGL c 40A § 6 par 1](#)) During the application process property owners within three hundred (300) feet of the subject property are

notified by mail and a legal notice is published in the local paper that there will be a public hearing. Those persons wishing to speak on the issue are afforded the opportunity at the public hearing.

A **Variance** is sought by the property owner if the proposed project does not meet the setback requirements and may be granted by the ZBA after a public hearing, like the hearing held for a special permit when “...owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship,... and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.” ([MGL c 40A § 10](#))

For both the Special Permits and Variances, the ZBA deliberates at the close of the public hearing phase, votes to issue or deny the Special Permit or Variance. After the ZBA makes its decision, there is then is a twenty (20) day appeal period for judicial review. ([MGL c 40A § 17 par 1](#)) After the twenty (20) day appeal period has elapsed and the finding is favorable, a copy of the decision is recorded at the Worcester Registry of Deeds ([MGL 40A § 11 par 4](#)) and a recorded copy is submitted with the building permit application.

As people seek to remodel, add to, change or extend the buildings on older smaller lots, especially around the lakes and older areas of town, you need to consider the time it will take to go thorough the special permit or variance processes. The application process can take two or more months from the time you become aware that hearing is needed with the ZBA. The application and associated preparation on the part of the petitioner may take

several weeks, there is the requirement for certified mailing to the abutters within three hundred (300) feet of the property and the legal notice must be published in the news paper for two (2) successive weeks the first publication at least fourteen (14) days prior to the hearing. ([MGL 40A § 11](#)) the ZBA has sixty five (65) days for the date of the petitioners filing with the ZBA to hold a hearing. ([MGL 40A § 15 par 3](#))

Your best course of action is to ask the Zoning Enforcement Officer for a determination on what your project will need early, so before you submit the building permit application, any addition approvals have sought and granted. Additional information on permitting procedures can be found in the document entitled [*Information and Permitting Procedures*](#) found on the Building Commissioners web page.