

Notes From the Commish Zoning, a Primer for Regulations Governing Your Land

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This article delves into sometimes complex rules of zoning for the Town of Charlton and the Commonwealth of Massachusetts. Here is the disclaimer, depending upon the specific situation or project that is being considered and ownership lineage of the parcel of land and surrounding parcels of land, and or the date and how the parcel of land was created or divided will greatly effect how that parcel or project is handled under zoning rules. If you think the proceeding sentence as convoluted you should read Massachusetts General Law (MGL) [Chapter 40A § 6](#), and the case law relating to the chapter.

Additional information that would be small print in most cases; the Zoning Enforcement Officer may render opinions and rulings based on the knowledge of that office, those opinions, rulings and information contained in this article should not to be considered legal advice. Depending upon your specific situation you may wish to consult legal counsel relating to your situation.

Until 1987 the Town of Charlton had limited requirements for lot size and subdivision of land, there were no land use regulations (zoning), governing where or what type of commercial, business or residential uses could be located.

In 1980 Charlton had a reported population of 6,791; in 1990 the population had grown to 9,576. More telling of the residential growth was the 1,138 residential dwelling units built between 1980 and 1990, this is 65% increase over the previous ten year period, clearly the change from a farming community to a rural housing community had taken hold and thus the need to regulate and separate different types of land uses from each other. Over a period time in the mid 1980s, meetings were held and through a process of Town Meeting votes, the first comprehensive zoning bylaw for Charlton was enacted in April of 1987.

At this time Charlton has seven (7) different zoning districts, divided between residential uses 93.7%, small and community business 2.3% and industrial 4% (data from the [Charlton Master Plan](#), December 2000). Each zoning district has minimum lot area and road frontage requirements along with type of uses and the procedures for developing those uses on each parcel of land. The regulations for lot area, road frontage, and distances structures must be setback for the property lines is found in the Town of Charlton [Zoning Bylaw](#) section 3.2.4. Intensity of Use Schedule; with the allowed uses found in section 3.2.2 Use Regulation Schedule.

How does the Use Regulation Schedule work? First you have to determine the type of use proposed and find it in the list of allowed uses. If the proposed use is not listed or a case can not be made that the proposed use fits in an existing category, that use is not allowed. Next there are four (4) different letter symbols used the table, they are; Y - A permitted use, P - A use whose exercise is subject to regulation by means of a site plan review and approval, N - An excluded or prohibited use. SP - A use permitted under special permit granted by the Planning Board.

Now how does all of this affect you? First we must determine what zoning district the project is located in, what the proposed use is and if there are any special exceptions or requirements to the regulations come in to play. So for example you wish to construct a single family home in the Agricultural zone (A). A detach one family dwelling has "Y" under the A zone, therefore is an allowed use and the parcel of land meets the requirements of the Intensity of Use Table; 175 feet of road frontage, 60,000 square feet of land area (there are exceptions to this), the structure will need to be 30 feet from the front and rear property line and 15 feet from the side property lines, these distance are called setbacks. The structure can be no taller the 36 feet at is average height above average grade and cover up to 25% of the lot area. If the same home was to be constructed in a Low Density Residential zone (R-40), also a "Y" use the lot are would need to be 40,000 square

feet in area, the road frontage 150 feet and the front setback is 30 feet for the property line with the side and rear setbacks being 15 feet for the property lines.

Suppose the proposed project was a retail establishment, after turning to section 3.2.2 Use Regulation Schedule of the Zoning Bylaw, we find that for A & R-40 zones this use is not allowed in those zones, indicated by “N” in the table; in the zones Residential-Small Enterprise (R-SE), Neighborhood Business (NB) and Community Business (CB) there is a “P” in the table. The “P” indicates a use subject to regulation by means of a site plan review and approval. Planning Board conducts site plan reviews, whose purpose is to; “assure proper drainage, screening, safe access, adequate parking and loading spaces, public convenience and safety, adequate consideration of abutting land owners...” (7.1.4 Site Plan Review). The required site plan review paperwork is submitted by the applicant; the Planning Board advertises and conducts a public hearing within the prescribed time frame, sets any applicable conditions and votes to approve or disapproves the project.

Now for the complex properties, as noted earlier 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 through 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.

Note:

To make the process of obtaining building permits more convenient, the Commissioner has revised all the residential permit applications and instructions. The applications and instructions are available either from the office located in the Town Hall, at 37 Main Street, or online at Town of Charlton [Building Commissioners](#) web page, part of the Town of Charlton web site www.townofcharlton.net. In addition past *Notes From the Commish* and a section “[Frequently Asked Questions](#)” have been posted on the Commissioner web page.