

# Board Of Appeals Guide

## **Variances, Special Permits, Appeals:**

▪ **Variances** are authorizations to use land or structures in a manner that is otherwise prohibited by the Zoning By-Law.

**Dimensional** variances relate to such zoning requirements as area, frontage, width or depth.

**Use** variances relate to regulation of categories of uses in particular zoning districts.

▪ **Special permits** are authorization to use land or structures for a specific use which is expressly permitted by the special permit, provided general guidelines as detailed in the By-Law and specific conditions arising from the review process itself are met. Special permits are designed as a flexible tool to assure that the use is in harmony with the intent and purposes of the By-Law.

▪ **Appeals** are reviews of the decisions or orders of Zoning Code Enforcement officers by the Board of Appeals. The Board may uphold, reverse or modify the official's decision. Appeals must be filed within 30 days of the date of the decision or order.

## **To determine if you need zoning relief:**

- Refer to the Zoning By-Law at the Town Clerk's office at Town Hall ; or
- Inquire of the Building Inspector at the Building Inspector's Office; or
- Consult an engineer or attorney familiar with Ashby's regulations.

## **To file a zoning application:**

- Study the section of the Zoning By-Law, which gives the review standards for special permits, section 11.3, and variances, section 11.4. Be sure to address these points in the materials you file with the Board.
- Fill out the application forms available at the Building Inspector or Town Clerk's Office. Completely and collect the supporting documentation (abutters list, deed/owner's authorization, plans etc.). Certified abutter's list is available from the Assessors Office. Fee \$10.00. If your property abuts another town you will need a certified abutters list from that town. This includes towns in New Hampshire. The abutters list must include direct abutters and abutters to abutters within 300 feet of the subject property.
- File one copy of the entire package with the Town Clerk and pay the filing fee at that time. A check made payable to the "Town of Ashby" is required. Application Fee \$125.00
- Leave four duplicate copies of the application package with the Town Clerk.

## **Hearing Schedule:**

- By law the Board of Appeals must open its hearing on your application not later than 65 days after the filing date.
- Hearings are held on Tuesday evenings, unless otherwise noticed, in Land Use Room, on the first floor, at the Town Hall, 895 Main Street. All meetings are open to the public.
- Notice of the hearing will be advertised in the Fitchburg Sentinel for two consecutive weeks, with the first publication not less than 14 days prior to the hearing date. Notices to direct abutters, abutters to abutters if within 300 feet of the subject property, are mailed at least two weeks before the hearing.

## **The Hearing**

▪ At the hearing you will be asked to present your case to the Board. This can be as simple as stating the request and the reasons you believe it should be granted or as involved as presenting expert testimony with maps, plans and documents. The Board then may ask questions to clarify any portion of your request or presentation. The public then may ask questions or make statements in support or opposition to your request. You should be prepared to answer questions regarding the nature and extent of your request.

## **Decision Deadlines:**

- The Board of Appeals must vote its decision on a variance not later than 100 days from the Application filing

date and on a special permit no later than 90 days following the close of the public hearing. The Ashby Board of Appeals must file its written decision within 14 days of the vote.

- Any of the statutory hearing and decision deadlines may be extended by mutual agreement of the Board and the applicant. Notice of such agreement is filed with the Town Clerk by means of letter submitted from the Applicant to the Zoning Board.
- At the same time the Board's written decision is filed with the Town Clerk, copies of it will be mailed to the applicant, and property owner if other than the applicant. Notice of the decision is mailed to, applicant, property owner, and abutters.

**Court Appeals:**

- Zoning decisions may be appealed to Massachusetts Superior Court during the twenty-day period after the date the written decision is filed with the Town Clerk. During that time, no construction permits will be issued; no work may commence.

**Decision Recording:**

- When the 20-day appeal period has expired without appeal, a certified copy of the Board's decision must be filed with the Registry of Deeds or Land Court. The Building Inspector will ask to see evidence of that recording when you apply for a Building Permit.
- The Ashby Town Clerk's office will prepare a certified copy of the decision for you at no cost.

**Lapse of Zoning Relief:**

- If the rights granted by a variance are not exercised within one year of the decision filing date, the variance lapses. The Board of Appeals may grant an extension of up to 6 months, provided the extension is requested prior to expiration of the variance.
- The rights granted by a special permit lapse after two years, if not exercised. Special permits may be extended for good cause, at the Board's discretion, after new notice and hearing.