



Town of Brookline Massachusetts

Last Updated: August 2020

Department of Planning and
Community Development

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Guide to the Special Permit/Variance Application Process

A. How to use this Guide

1. **Start with Part B: Overview of Process and read, at minimum, sections 1-3.** This will give you a broad sense of what the process will look like and identifies the best person to contact if you have questions along the way. **Contact information and useful links can be found at the end of this document.**
2. If you have more questions about a specific part of the process, **Parts C to E provide detailed information about the process.** Parts F and G provide information about Special Permit and Variance review criteria, respectively.
3. If after reading the entirety of this guide you have any questions, please don't hesitate to contact the Planning or Building Departments.

B. Overview of Process (with primary contact for each step)

1. Submitting an Application (*also see Part C*)

- (a) **Apply ONLINE to the Building Department for Plan Review/Denial** via the Town's online permitting system known as "Accela (links at the end of this document). Building Department staff will review your application and, if it does not comply with the Zoning By-law, will issue a "denial letter" citing the sections of the Zoning By-law from which relief is required. **The person listed in Accela as the contact for the Plan Review should be the applicant for the Special Permit/Variance.** Make sure to include an email as part of the contact information provided in Accela.

Deputy Building
Commissioner

- (b) You are encouraged to discuss your application with Building Department and/or Planning Department staff and to familiarize yourself with the Zoning By-Law sections pertaining to your project. In addition, you should review the Planning Board and Board of Appeals Rules and Regulations.

Deputy Building
Commissioner &
Zoning
Coordinator/Planner

Copies of these can be found at the Office of the Town Clerk or online (links at the end of this document).

- (c) After receiving the denial letter, submit a Zoning Board of Appeals application for zoning relief to the Planning Department. Your application should be submitted through Accela. The required elements of that application are listed both in Part C of this document and on the last page of the application itself. If any necessary elements are missing, Planning staff will notify you. **The documents you submit to the Planning Department should be the same documents you submitted to the Building Department, along with any additional required information.**
- (d) **Once the application is submitted, the Zoning Coordinator/Planner will review the application for completeness.** Staff acceptance of the application for review should be not tantamount to staff determination of application completeness. You will be notified by email when the application is deemed complete or if further materials need to be provided.
- (e) **Once the application is deemed complete per §9.04.4** by the Zoning Coordinator/Planner, your case will be scheduled for public meetings/hearings before both the Planning Board (PB) and then the Zoning Board of Appeals (ZBA).
- (f) **In addition to zoning relief, your project may also require review by Preservation staff.** Projects within Local Historic Districts or National Register Districts and projects requiring partial or full demolition will need approval from Preservation. Talk to Planning staff including the Preservation Planners to determine the best sequence for scheduling hearings for the zoning and preservation approval processes.

Zoning
Coordinator/Planner

Zoning
Coordinator/Planner

Zoning
Coordinator/Planner

Preservation
Planners

2. **Public Hearing Process** (*also see Part D*)

- (a) **It is recommended that you communicate with your neighbors about your project throughout the process.** Neighbors within 300' of the property will be notified by the Planning Department through USPS mail approximately two weeks before both PB meetings and ZBA hearings, but typically prefer to know about the project before then. Both the PB and ZBA take neighbors' concerns into consideration and like to know that neighbors are aware of what is going on.
- (b) **Planning staff will notify you and abutters to your property once your case has been scheduled for a PB meeting.** You (and your agent, if any) should attend the meeting to present the project and answer any questions the PB might have. Once the PB issues a recommendation, the case may be heard by the ZBA.

n/a

Planner

- (c) **You and abutters to your property will be formally notified through the USPS mail when your proposal is scheduled to be heard by the ZBA.** You (and your agent, if any) should again attend the hearing to present the project and answer any questions the ZBA might have.

Zoning
Coordinator/Planner

3. **Post-ZBA Decision** (*also see Part E*)

- (a) **Once the ZBA approves or denies your proposal, a decision will be written, signed, and then filed with the Town Clerk by Planning staff.** Abutters will be formally notified when the decision has been filed. Filing of the decision initiates a 20-day appeal period in which aggrieved parties may file an appeal challenging the decision to Superior or Land Court. You (or your designated contact) will receive a copy of the decision by email.

Zoning
Coordinator/Planner

- (b) **Once the 20-day appeal period expires, you need to pick up the stamped decision from the Town Clerk's office.** You then need to file the stamped decision with the Norfolk County Registry of Deeds either in-person or online. Provide a digital copy of the recorded decision and the recording fee receipt to Planning staff and on Accela to prove that it has been recorded. Contact the Registry if you have questions about how to file with them.

Norfolk Registry of
Deeds

(781) 461-6101

- (c) **Review the conditions that are part of the decision.** You will need to fulfill all required conditions before the Building Permit will be issued. All required final plans should be emailed to the Assistant Director for Regulatory Planning.

Assistant Director
for Regulatory
Planning

- (d) **Once you are ready to apply for a Building Permit, upload all required documents to Accela. Provide evidence of compliance with the conditions of the Special Permit, including approved plans stamped by the Planning Department and proof that you have recorded the ZBA decision with the Registry.** If you have questions about applying for the Building Permit, contact the Building Department.

Building
Department

- (e) **If the plans stamped by the Planning Department need to change, email the Assistant Director for Regulatory Planning** a written description of the changes and a new plan set clearly indicating the revisions. The Planning Department will approve the revised plans administratively, if possible, or will advise you on the steps required to have the changes approved.

Assistant Director
for Regulatory
Planning

C. Submitting an Application (ONLINE VIA ACCELA)

1. Special Permits and Variances are two types of relief that may be granted for your property that allow for exceptions to zoning regulations if certain thresholds or conditions are met. The application process is the same for both types of relief.
 - (a) The Special Permit review criteria are laid out in Part F. A **Special Permit** is required when the Zoning By-law has provisions that allow you to do something, but only with the review and permission of the Zoning Board of Appeals. Special Permits allow for the modification of existing non-conformities.
 - (b) The Variance review criteria are laid out in Part G. A **Variance** is required when the Zoning By-law does not allow for the use or dimension proposed, involving a request that a specific portion of the By-law not apply to your particular property. Variances allow for the creation of new non-conformities (i.e. changes to real property that are not consistent with the Zoning By-law).
2. Unless Planning Department staff explicitly indicates otherwise, the following materials and information must be submitted as part of a complete application package for a Special Permit/Variance. **All plans must be clearly labeled and legible.**

Material / Information	Required Content
Completed online application	<p>All relevant information must be filled in and the last page must be signed by the owner and applicant, including contact information.</p> <p>The contact for the application should match the Plan Review/Denial information on Accela. If the contact person has changed, update the Accela record to reflect those changes.</p>
Denial letter from Building Department	<p>The denial letter will include the address of the property and the nature of the relief sought.</p>
Certified plot plan or site plan	<p>At a minimum, must show <u>existing</u> and <u>proposed</u> conditions, on same or separate plans, including:</p> <ul style="list-style-type: none"> • Property lines with dimensions • Setbacks from property lines and other structures • Topography • Adjacent “streets” (see definition from §2.19 of Zoning By-Law) • Zoning information; existing and proposed: Zoning district, lot size, floor area ratio, setbacks, open space, parking • Height of building (calculated in accordance with §5.30 of the Zoning By-Law, and indicating what calculation method was used) • Paved areas, including location of parking spots • Location of other significant landscape features such as walls, fences, and trees • Utilities and drainage structures • Any other information relevant to the proposal <p>All plans must be stamped by a registered engineer or land surveyor.</p>

Floor plans and elevations	<p>At a minimum, must show <u>existing</u> and <u>proposed</u> conditions on separate plans, including:</p> <ul style="list-style-type: none"> • Architectural drawings of each façade/elevation, with dimensions clearly labeled • Building section indicating the heights of each floor (including attics and basements) • Architectural drawings of each floor plan • Drawing of each floor plan noting what areas have been counted as part of the Gross Floor Area, and table summarizing that information • Any other information relevant to the proposal <p>All plans must be stamped by a registered architect or engineer.</p>
Any supplemental info required by By-law sections cited in the Denial Letter	<p>Review the Zoning By-law sections that were cited in the Denial Letter and include any additional information required by those sections.</p> <p>For example, if §5.09 was cited, include a response to Design Review criteria (§5.09.4(a-m)) as required by that section.</p>
Application fee	<p>\$350 base fee \$21 newspaper fee \$50 per 1,000 net sq. ft., rounded to the nearest thousand</p>
Info on any previous relief granted by the Board of Appeals for the property	<p>Any previous Special Permits or Variances that are attached to the property should be noted. Include the year and case number of any previous cases and the relief requested at that time and, if possible, a copy of the decision.</p>
Mailing list of non-Brookline “parties in interest”	<p>MGL, c. 40A, §11 requires that all “parties in interest” receive notice that a ZBA hearing is scheduled.</p> <p>If your property line is within 300’ of another municipality, the “parties in interest” include any property owners and Planning Boards in neighboring municipalities. Review MGL, c.40A §11 or the ZBA Rules and Regulations to ensure that you are providing all the information you are required to provide. You can acquire abutters’ lists by contacting the Assessor’s Department of that municipality.</p>
Any other information that is necessary for comprehensive review of your application	

D. Public Hearing Process

1. The PB and ZBA each tends to focus on different aspects of the project, although they are not limited to addressing only those aspects.

- (a) The PB consists primarily of architects and landscape architects and their focus tends to be design considerations. Their meetings are typically on Thursdays at 7:30 pm in Room 111 in Town Hall. The PB is advisory to the ZBA
 - (b) The ZBA consists primarily of attorneys and their focus tends to be legal considerations. Their meetings are typically on Thursdays at 7:00 pm in the 6th Select Board's Hearing Room in Town Hall.
2. All meetings and hearings held by the PB and ZBA will be advertised. The details of how meetings/hearings will be advertised are laid out in each Board's Rules and Regulations, which can be found on the Town's website (and are also linked to elsewhere in this guide).
3. It is not uncommon for the PB or ZBA to suggest revisions to projects. If you need to make any revisions (requested by the Boards or otherwise), make sure to submit those to Planning staff and upload them to your online application as soon as possible, ideally by the Tuesday of the week prior to the meeting/hearing, but certainly no later than 72 hours prior to the meeting/hearing.
 - (a) If revised plans are submitted later than the Tuesday of the week prior to the meeting/hearing, the staff report is unlikely to reflect those changes. Staff sends out packets of relevant materials for each case on the Wednesday or Thursday prior to the hearing, and if plans are not received by Tuesday, staff may not have time to review them before sending out the packets.
 - (b) If plans are submitted less than 72 hours prior to the meeting/hearing, the PB and ZBA reserve the right to continue the case to a future date if they feel that they or the abutters were not given sufficient time to review the changes before the hearing.
4. Each Board sometimes takes more than one meeting to vote on a project. Because the PB is an advisory body for the ZBA, the case will not be heard by the ZBA until the PB has issued its recommendation. Once the PB has made its recommendation, your case will be sent to the ZBA for its approval or denial.
 - (a) Staff generally tries to schedule the ZBA hearing to be 2-3 weeks after the PB hearing, but if the PB continues a case to a future date then the ZBA hearing for that case will also be postponed until after a recommendation has been made. Except in unusual instances, the ZBA hearing will be held a minimum of two weeks after the PB has issued its recommendation to allow turnaround time for staff.
 - (b) Once a case has been opened by the ZBA, the three Board members who serve on the assigned panel are the Board members who are required to issue a decision. If a case is continued once it has been opened, it must be continued to a date when all three Board members are available to sit.
5. The ZBA issues a final decision of approval or denial. An approval must be unanimous. As part of the decision, conditions are also placed on the project, which must be met before you can receive a Building Permit and proceed with construction.

E. Post-ZBA Decision

1. Once the ZBA votes on a case, a decision is prepared, signed by the ZBA Chair, and filed with the Town Clerk.
 - (a) Abutters will be formally notified through USPS mail when the decision has been filed. You (or your designated contact) will receive a copy of the decision by email; this copy

may not be filed with the Registry of Deeds and does not substitute for picking up the official decision from the Town Clerk.

2. Within 20 calendar days of the decision being filed with the Town Clerk, any aggrieved party may file an appeal with the Superior or Land Court challenging the Board's decision.
 - (a) If you are considering doing this, speak to an attorney. Municipal staff may not provide legal advice.
 - (b) If no appeals were filed during the 20-day appeal period, the Town Clerk will stamp the decision and finalize it. This is the copy of the decision that must be registered with the Registry of Deeds.
3. Invariably, every ZBA decision has conditions attached to it. The timeframe for compliance with each condition will be noted in the condition itself. Most conditions must be fulfilled before the Building Department will issue a Building Permit for the property, but occasionally another timeframe for compliance will be noted (e.g., prior to the issuance of a Certificate of Occupancy). It is the responsibility of the applicant to ensure that the conditions are fulfilled.
 - (a) Sometimes the Special Permit conditions can be worked on while waiting for the 20-day appeal period to expire, so make sure to read the decision once you receive it.
 - (b) One common condition requires that prior to the issuance of a Building Permit you submit final site plans, floor plans, landscaping plans, and/or elevations to the Planning Department for review and approval. Once the Planning Department stamps the plans as approved, you need to upload those plans to your Building Permit application in Accela.
 - o If the final plans have a minor change from the plans approved by the ZBA (e.g., relocation of a window), the Assistant Director for Regulatory Planning, in some cases, may approve the change administratively and avoid your returning to the ZBA for approval. The final plans must show exactly what will be constructed.
 - o Sometimes conditions require that you receive final approval from the Planning Board. In those cases, contact Planning staff to schedule a final design review meeting with the PB once your plans are finalized.
4. Even after you've received your Building Permit and have started construction, any changes to the plans previously stamped by the Assistant Director for Regulatory Planning need to be approved. This method of approval depends on whether the changes are *de minimis* (minor) or not.
 - (a) If the Assistant Director for Regulatory Planning determines that the changes are *de minimis*, the changes may be approved administratively by Planning staff.
 - (b) If the Assistant Director for Regulatory Planning determines that the changes are not *de minimis*, the changes will need to be reviewed and approved by the PB and/or the ZBA.

F. Review Criteria/Conditions of Approval for a Special Permit (§9.05)

Below are the criteria that the PB and ZBA use when evaluating whether to approve or deny Special Permits and when deciding what conditions to attach if they choose to approve the application. Note that these criteria and possible conditions are the minimum applied to all

Special Permits. Some Special Permits are subject to additional criteria. Review the sections of the Zoning By-law cited in your denial letter to identify any additional criteria.

1. **The Board of Appeals shall not approve any application for a Special Permit unless it finds that in its judgment all the following conditions are met:**
 - a. The specific site is an appropriate location for such a use, structure, or condition.
 - b. The use as developed will not adversely affect the neighborhood.
 - c. There will be no nuisance or serious hazard to vehicles or pedestrians.
 - d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
 - e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

2. **In approving a Special Permit, the Board of Appeals may attach such conditions and safeguards as are deemed necessary to protect the neighborhood, such as but not limited to the following:**
 - a. Requirement of front, side or rear yards greater than the minimum required by this By-law.
 - b. Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices, as specified by the Board of Appeals.
 - c. Modification of the exterior features or appearances of the structure.
 - d. Retention, replacement or planting of trees, including public shade trees as defined by Massachusetts General Law Chapter 87, and other landscape and natural features.
 - e. Limitation of size, number of occupants, method or time of operation, or extent of facilities.
 - f. Regulation of number, design, and location of access drives or other traffic features.
 - g. Requirement of off-street parking or other special features beyond the minimum required by this or other applicable By-laws.

G. Review Criteria / Conditions of Approval for a Variance (MGL ch 40A, §10)

Below are the criteria that the ZBA uses when evaluating whether to approve or deny Variances and when deciding what conditions to attach if they choose to approve the application.

Requesting a Variance is a request to deviate from the requirements of the Zoning By-law in a way that is not allowed by right or by Special Permit. In other words, it's asking for specific sections of the Zoning By-law to not apply to your property.

Variations from Dimensional Requirements:

The criteria for Variations from dimensional requirements (setbacks, height, floor area ratio, etc....) are listed in Massachusetts General Law, Chapter 40A, §10. They are summarized here:

The Zoning Board of Appeals must find that:

1. 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,
2. a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that
3. desired 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.

Variances from Use Requirements:

In addition to the criteria listed above for dimensional Variances, Variances from use requirements (what use is allowed on a given property) must satisfy the criteria listed in §9.09 of the Town's Zoning By-law. The criterion most often used to qualify for a use Variance is the preservation or restoration of historically or architecturally significant structures.

Useful Links

<p><u>Online Permitting System (Accela)</u> The Town's online permitting system is called "Accela" and is the system through which all applications for Building Permits, Special Permits, and Variances are handled. Plans, documents, and payments should all be submitted through this system.</p>	<p>https://aca-prod.accela.com/Brookline/Default.aspx</p>
<p><u>Brookline's Zoning By-Law</u> The Town's Zoning By-Law contains all the zoning requirements related to land-use in the Town. Applications for Special Permits and Variances are requests for a deviation from the requirements of the By-Law so it is an important document for any applicant seeking zoning relief.</p>	<p>https://www.brooklinema.gov/DocumentCenter/View/19843/ZoningBylaw_08052019</p>
<p><u>Massachusetts General Law, Chapter 40A</u> Also known as the "Zoning Act", this state statute lays the ground rules for how Massachusetts municipalities may implement and enforce zoning regulations. This statute is referenced several times in this guide and in the Town's Zoning By-Law.</p>	<p>https://malegislature.gov/laws/generallaws/parti/titlevii/chapter40a</p>
<p><u>Planning Board Rules and Regulations</u> This document establishes the procedures relating to how the Planning Board conducts its business and may be relevant in certain cases for zoning relief.</p>	<p>https://www.brooklinema.gov/DocumentCenter/View/19675/Planning-Board-Rules-and-Regulations-January-2020?bidId=</p>
<p><u>Zoning Board of Appeals Rules and Regulations</u> This document establishes the procedures relating to how the Zoning Board of Appeals conducts its business and may be relevant in certain cases for zoning relief.</p>	<p>https://www.brooklinema.gov/DocumentCenter/View/19674/Board-of-Appeals-Rules-and-Regulations-October-2019?bidId=</p>
<p><u>Planning Department Webpage</u> This is the Planning Department's homepage, where a variety of useful information and links can be found.</p>	<p>https://www.brooklinema.gov/203/Planning-and-Community-Development-Depar</p>
<p><u>Building Department Webpage</u> This is the Building Department's homepage, where a variety of useful information and links can be found.</p>	<p>https://www.brooklinema.gov/172/Building-Department</p>