

Question Report				
Report Generated:	#####			
Topic	Webinar ID	Actual Start Time	# Question	
ZBA Basics	975 4775 3581	##### #	32	
Question Details				
#	Question	Asker Name	Answer(s)	
1	What if the select board won't enforce the ZBA decision?	Gail P. Cromwell	Enforcement of the zoning ordinance is a discretionary decision by the select board, not all zoning violations require municipal enforcement action. Generally, speaking the select board has prosecutorial discretion. However, abject failure to enforce a particular provision could result in finding that the particular regulation is not enforceable in the future.	Let me revise and extend my remark. A decision of the ZBA is entitled to the same degree of enforcement as a provision of the zoning ordinance. Failure to enforce a condition of approval on variance does not relieve the applicant from complying with that condition. However, the select board still has prosecutorial discretion whether to enforce conditions of approval.
2	If Planning Board fails to tell a developer that a special exception is needed, can the ZBA reach out to ensure the exception is filed or do we have to sit and wait or do nothing?	Deni Dickler	A subdivision or site plan that does not conform to the zoning ordinance cannot be approved by the planning board. Thus, if an application requires a special exception, the planning board could not grant final approval until the special exception were granted. Referring the applicant to the ZBA in that instance is mandatory	I believe Steve is answering this, if not, please follow-up
3	3 members must concur. Does that include alternates, or must they be	Bonnie Wright	Only the sitting members of the ZBA vote. Alternates do not vote unless they are appointed to sit for an absent or disqualified regular member	

	elected members? (Or appointed, but my town is elected.)		
4	Can you discuss the pros and cons of various voting methods for the ZBA?	Susan Slack	live answered
5	Would the minutes of a decision be suffice as a written decision?	John	live answered
6	CAN YOU PARTLY GRANT AND PARTLY DENY IN A DECISION ? IE WHEN ASKING FOR VARIANCE FROM 2 SETBACKS CAN MEET ONE BUT NOT OTHER	sharon monahan	live answered
7	Does the ZBA need a specific reason to deny a special exception, or can it be denied simply because multiple abutting property owners don't want it?	David Dubey	The ZBA must state in its decision that when denying a special exception the board must articulate that the applicant did not satisfy one or more of the special exception requirements
8	If I have a question about an abutting neighbor's small business in a residential zone would I direct the question to the ZBA or the building inspector?	Anthony Steinmetz	The question should be referred to the code enforcement officer or building inspector not the ZBA. The ZBA does not handle code enforcement questions

9	If the ZBA feels they made the wrong decision, can they change their decision. What is process??	Jack Kozec	Yes, they can within the appeal period. I believe Steve will cover this with his discussion on rehearings.	
10	Regarding the Shoreline Protection Act...can you explain the rational for allowing communitiues	Roger Racette	live answered	
11	Regarding the Shoreline Protection Act...can you explain the rational for allowing communities to increase setbacks from the water line considering that the Shoreline Protection Act is comprehensive and based in science? Can an Ordinance be arbitrary?	Roger Racette	This is Mike. I think the rational is that a community is in the best position to regulate land uses. The Shoreland Act serves as a floor that communities can add to. There's a presumption that local ordinances are valid. I'm happy to discuss further off-line.	
12	Can you please say more about the jurisdiction of the ZBA to look at use? There seems to be conflicting law about the ZBAs authority to look at use.	Rebecca Goldberg	The ZBA only looks at a proposed use of land in the context of an application, it does not generally operate as an evaluator of uses of land, that is the job of the code enforcement officer	
13	Can the Planning Board give a special exception or only ZBA?	Deni Dickler	Only the ZBA.	
14	Does something reach the level of	Erica de Vries	live answered	If the proposed purpose isn't permitted in that zone, then

	contrary to the public interest if the proposed purpose isn't permitted in that zone? Is the ZBA permitted to look at other considerations, even if those considerations aren't in the specific purview of the Zoning Board?			the applicant must appear before the ZBA to get permission for that purpose. Therefore, that alone wouldn't reach the level of contrary to the public interest. There must be more in the record to find that the propose use is contrary to the public interest. For example, there are serious concerns about the distance between the proposed in-ground fuel tanks for the gas station and the pond that serves as the town's water supply if something results in the rupture or leaking of one of those tanks.
15	'Reasonable' feels so subjective. Are there specific criteria we can use to define 'reasonable'?	Elizabeth Harper	Unfortunately, there is no further breakdown of the term "reasonable." Generally, the courts state that "reasonable" must be what a prudent person in similar circumstances would do/decide.	
16	It is hard to prove hardship regarding ADUs wanting a larger ADU then what is allowed so seek a variance. The reasons why a larger House would be reasonable have nothing to do with the property itself. Help? Guidance on this	sharon monahan	Seeking a larger ADU than permitted by your zoning ordinance should mainly be judged in the context of the other single family homes in the neighborhood of the applicant's proposed ADU. Perhaps I could elaborate on this answer by having you call me on my direct telephone number after the webinar at 603-230-3376	
17	Natch, thank you.	Erica de Vries	live answered	
18	Can variance hardships be manmade- such as a corner lot that has two "front" setbacks?	Anonymo us Attendee	Yes, the hardships are not necessarily naturally created. They could be due to existing regulations.	

19	Can you go directly to supreme court from a planning board decision (not zba)?	Alison Brisson	No, the appeals must go through the prescribed appeal process. They cannot skip directly to Supreme Court, and the Supreme Court is not obligated to take an appeal. It is permissive.	
20	What's the procedure for the ZBA to act on it's own decision? Without applicants motion. Am I understanding correctly that this is an option?	Rebecca Goldberg	live answered	
21	How do you do this? Procedurally. Can a member do this?	Rebecca Goldberg	live answered	
22	Thank you.	Rebecca Goldberg	live answered	
23	What if the Board already granted and notice of decisions went out and then they decided to rehear?	Kyia Southwick	If the board discovers a mistake or error after the notice of decision has been issued, but before the 30 day appeal deadline, the board could vote at a public hearing to schedule a rehearing to reconsider their decision	Public meeting not public hearing
24	We have a difficult case right now and the select board has	Gail P. Cromwell	live answered	
25	Thank you!	Anonymous Attendee	You are welcome!	
26	We have a difficult case now and the select board has indicated its desired outcome. they are threatening to	Anonymous Attendee	Yes, if the select board used an improper argument a land use board member should be removed not due to malfeasance or neglect of duty, but simply because the ZBA member made a decision the Select Board disagrees with, that could be a basis to challenge that a town was acting in bad faith	

	remove our ZBA chair when his term expires in June. If this goes to the superior court will this affect the court decision?				
27	I am alternate on Conservation Commission and member of ZBA. Do I have to recuse myself from wetlands variance decisions because Concom would have given a recommendation?	Deni Dickler	If as a member of the Conservation Commission you ruled on an wetland application that later has to be approved or denied by the ZBA, the safer approach is to assume you have prejudged that application and you should recuse yourself from the ZBA action on that application	However, if you did not sit on the application when it was before the Conservation Commission, it may be the case you did not prejudice that application and you could sit on the ZBA action on that application. However, when in doubt, you should recuse	sit
28	How does a ZBA make a decision on permitting impacts when FEMA flood data is inaccurate for our town?	Kris Pastoriza	live answered		
29	Thank you, Natch, Steve, and Mike. This was very good training!	ross moldoff	Thanks!		
30	After attending today, is this May Saturday meeting enough of new material to warrant attending	Dennis Howland	live answered		
31	How can we get a copy of the Q&A?	James Van Valkenburgh	live answered		
32	Great job!! Very helpful!!	Scott Weden			