

ZONING BOARD OF APPEALS
ANDOVER, MASSACHUSETTS

RULES AND REGULATIONS

The Andover Zoning Board of Appeals, pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12, hereby adopts the following Rules and Regulations governing the organization, procedures and conduct of the Board, and governing review and action on special permits, variances, appeals and comprehensive permits.

SECTION 1 – ORGANIZATION

1.1 Members and Officers

The Zoning Board of Appeals shall consist of five regular and four associate members, all residents of the Town of Andover and appointed by the Select Board. The officers of the Board shall consist of a Chair and a Clerk, who shall be elected annually by vote of the regular members of the Board at the Board's meeting in September. The regular members shall also adopt and/or amend these Rules and Regulations. For all other business or administrative matters requiring a vote at a business meeting, including the approval of the Board's minutes, all members, regular and associate, may vote, each having one vote. A majority vote shall be required to adopt or approve business matters covered by this section.

1.1.1 Chair

In addition to the powers granted by the Massachusetts General Laws and the Andover Zoning Bylaw and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, advise the Zoning Board Administrative Secretary, appoint such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. They shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing or meeting.

The Chair shall be responsible for the orderly conduct of the Board's business, whether conducted during a public hearing or a public meeting. The Chair may use their discretion to rule out of order unsolicited or irrelevant comments made by members of the public. All points of order subject to these rules shall be decided by the Chair unless overruled by a majority of the Board in session at the time. The Chair shall rule on any possible conflicts of interest in matters pertaining to the Board, or when they deem it necessary, shall call on Town Counsel for such a ruling. No member or associate member shall participate in cases in which they are deemed to have a conflict of interest. The Chair shall name associate members of the Board to sit in place of members, in cases of absence, inability to act or possible conflict of interest on the part of any member.

In case of absence, inability to act or conflict of interest on the part of the Chair, they shall designate an Acting Chair to sit in their place. If the Chair is unable to designate an Acting Chair, the Clerk shall sit as Acting Chair.

1.1.2 Clerk

The Clerk shall be a regular member of the Board and shall, in the absence of the Zoning Board Administrative Secretary and subject to review by the Chair, supervise all of the clerical work of the Board including: reviewing all correspondence of the Board, sending all notices required by law, preparing rules and orders of the Board, reviewing all applications for compliance with the rules of the Board, keeping agendas and minutes of the Board's proceedings, compiling all required records, and maintaining necessary files and indices. If the Clerk is absent from a meeting, the Chair shall appoint an Acting Clerk.

1.1.3 Associate Members

Associate members shall sit on the Board, as designated by the Chair, in the case of absence, inability to act or apparent conflict of interest on the part of any Board member, or in the event of a vacancy of the regular membership.

1.2 Zoning Board Support Staff

The Zoning Board Administrative Secretary shall attend all public meetings and hearings, and subject to review by the Chair, conduct the administrative work of the Board. Specifically, the Administrative Secretary shall: receive all applications and related plans, written testimony and communications; prepare and review Board correspondences; send all notices required by law; review applications for compliance with the Zoning Bylaw and Rules and Regulations of the Board; prepare related analyses, studies and reports; keep all required records of the Board's proceedings; and maintain necessary files and indices. The Administrative Secretary shall provide for each member, and each associate member, copies of General Laws of the Commonwealth relating to Zoning and to Subdivision of Land, and copies of the Andover Zoning Bylaw, Rules and Procedures of the Board, copies of all decisions of the Board and other such material as the Chair may direct. The Clerk shall assume these duties in the absence of staff support.

1.3 Quorum

The sitting Board for all meetings and public hearings shall consist of the five regular members of the Board. In case of the absence, inability to act, or recusal due to conflict of interest of a regular member of the Board, the Chair shall designate an Associate Member to sit in their place. The Chair may also designate other Associate Members to sit as alternates for an application; alternates may be later designated by the Chair to sit in place of a sitting member in case of absence, recusal or inability to act.

1.3.1 Quorum

Four (4) sitting members shall constitute a quorum for all meetings and public hearings. Three (3) sitting members shall constitute a quorum for the transaction of routine administrative business, such as convening or adjourning a meeting or approval of minutes.

1.3.2 Mullen Rule

Pursuant to MGL Ch. 39, Section 23D, a member shall not be disqualified from voting on the matter at a public hearing solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing.

1.4 Resignations

1.4.1 Resignation from the Board

If a regular Member or an Associate Member resigns from the Board, the resignation shall be submitted in writing to the Chair of the Select Board, and a copy shall be provided to the Town Clerk and to the Zoning Board Administrative Secretary. Subject to any applicable restrictions relating to the terms of the appointment of the individual, the resignation may specify a future effective date, so as to allow completion of any pending applications in which the member has participated. Unless otherwise stated, the resignation shall become effective upon the filing of same with the Town Clerk.

1.4.2 Resignation of Chair or Clerk

If the Chair or Clerk resigns from office, an Acting Chair or Acting Clerk may be appointed by the Chair if not more than sixty (60) days remain in their term of office. When more than sixty days remain in the term of office, the Chair or Acting Chair shall call an executive meeting of the Board at the next regular public meeting after the certification of appointment of five (5) regular members by the Select Board, for the purpose of electing a Chair or Clerk to fill the remainder of the unexpired term.

1.5 Annual Meeting

An annual meeting of the Andover Zoning Board of Appeals shall be held during the Board's regular meeting on the first Thursday of September. This date may be changed at the discretion of the Chair, with the concurrence of a majority of the Board. The annual meeting shall be attended by all regular members and whenever possible by all associate members. Election of officers shall be by vote of the members with the advice of the associate members. The business of the annual meeting shall be: to elect a Chair for a term of one year or until their successor is elected; to elect a Clerk for a term of one year or until their successor is elected; to reaffirm the Rules and Procedures of the Board for the ensuing year, or to amend them by a majority vote.

SECTION 2 – PUBLIC MEETINGS

2.1 Schedule

Meetings and public hearings of the Board of Appeals shall be held on the first Thursday of each month, commencing at 6:30 p.m., at the Andover Town Offices, or such other time or location as shall be determined by the Board. The date, time and/or location may be changed at the direction of the Chair, with the advice and consent of the Board, but any change shall be subject to the provision of public notice as set forth below. Special meetings may be called by the Chair or a majority of the Board as deemed necessary to conduct the Board's business in an orderly and timely manner.

2.2 Notice

All meetings of the Board of Appeals shall be public meetings and shall be conducted in accordance with MGL Chapter 39, Section 23A through 23C. Notice for each meeting shall be filed with the Town Clerk and publicly posted in accordance with the Town of Andover's meeting posting procedures, at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Agendas for Board meetings and hearings shall be posted in like manner and sent to any interested parties, as determined by the Chair, the Clerk or the Zoning Board Administrative Secretary.

Public meetings, while open to the public, are not public hearings. Applications for special permits, variances, appeals or comprehensive permits shall require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside of a public hearing.

2.3 Business at Public Meetings

Business conducted at public meetings shall include:

- Review and approval of final plans required as conditions of a Special Permit or Comprehensive Permit or other decisions of the Board, such as but not limited to improvements to sites, landscaping, signs, lighting, and related matters
- Review of other documents and/or information required by or related to conditions attached to existing Special Permits, Comprehensive Permit, or other decisions of the Board, such as but not limited to compliance with conditions, enforcement orders, and related matters
- Review and/or approval of *De minimus* changes in previously approved site plans, floor plans, elevations, Management Plans, or other aspects of an approval. In all cases, the purpose of the review shall be for the Board to determine whether the changes are significant enough to require formal Modification of the permit and/or conditions.
- Other matters for which the Board is not required to hold a public hearing, such as Annual or Administrative Meetings.

The Board may seek clarifying information or testimony from the public as it deems necessary during a meeting, but unsolicited comments from the public may be ruled out of order.

2.4 Votes Required

The affirmative vote of four (4) sitting members of the Board shall be necessary for approval of all plans, signs, and all other items required by conditions attached to existing permits.

SECTION 3 – PUBLIC HEARINGS

3.1 Public Hearing Required

All applications for special permits, variances, appeals or comprehensive permits shall be considered only at a properly-noticed public hearing as required by MGL Chapter 40A.

3.2 Public Participation

All public hearings shall be open to the public without limitation. No person shall be excluded from attending or speaking at a public hearing unless they are determined by the Chair, with good cause, to be a “serious hindrance” to the workings of the Board.

3.3 Public Notice

Notice of public hearings shall be published twice, in each of two successive weeks, in a newspaper of general circulation in the Town of Andover. The first publication of such notice shall be no less than fourteen days before the day of such hearing. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, no less than forty-eight (48) days prior to the hearing. In all cases where notice to individuals, parties in interest, or specific boards or other agencies is required, notice

shall be sent by mail, postage prepaid. All Notices for public hearings shall be in accordance with MGL Chapter 40A, Section 11.

3.4 Opening of Public Hearing, Extensions

In accordance with MGL Ch. 40A, Sections 9 & 15, the public hearing shall be held within 65 days of the filing of the application or appeal with the Town Clerk. The required time limits for opening a public hearing may be extended by written agreement between the applicant and the Board. A majority vote of the sitting Board shall be required to grant an extension. A copy of such extension shall be filed with the Town Clerk.

3.5 Site Visits

The Board of Appeals may take a view of any properties that come before it under applications for special permits, variances, appeals and comprehensive permits when it is determined by the Chair, or by a majority of the sitting Board, that a site visit is needed for proper consideration of the matter before the Board. Applicants will be notified of the site visit and should be prepared to meet with the Board at the site. The purpose of the site visit shall be for Board members to view and familiarize themselves with the site and its relation to the surrounding area. No evidence or testimony shall be given or accepted at a site view, outside the public hearing. The Open Meeting Law does not apply to site visits, and the applicant or property owner may deny access to members of the public, although the Board strongly discourages such denial of access.

3.6 Representation and Absence

An applicant may present the application in person or be represented by an agent or attorney. Should no one appear at the public hearing on behalf of the applicant, the Board may act on the matter using the information it has otherwise received, or the Board may decide by affirmative vote of four (4) sitting members that the application be denied, or to continue the matter to a future date certain.

3.7 Public Hearing Procedure

The Chair will open the meeting, explain the procedures of the Board and call on the Clerk or Acting Clerk to read the Notice for the public hearing. All hearings will generally proceed in the following order, at the Chair's discretion:

- a. Presentation of evidence by the applicant or their representative.
- b. The Board may pose questions to the applicant either before or during their presentation
- c. Following the applicant's presentation, comments and questions from the public will be solicited. The applicant will be given the opportunity to respond to public questions or comments.
- d. The Chair may rule out of order any question or comment from the public deemed to be irrelevant or deemed to be a personal attack on the applicant or the Board.
- e. Following all questions and comments from the public and the Board, the applicant will be given the opportunity to make a final statement
- f. The Board will determine whether it wishes to conduct a view of the premises, if it has not already done so.
- g. The Board will determine whether to continue the public hearing to a future date certain, or to close the public hearing.
 - If the Board closes the public hearing, it may then either proceed directly to deliberate the matter or schedule a deliberation to be held at a future date and time.

3.8 Expert Testimony

The Board may at its discretion seek information or testimony from any Town official, board, committee, agency, or other person whom the Board believes may have appropriate expertise in any matter before the Board.

3.9 Employment of Outside Consultants

The Board may at its discretion engage technical review consultants as provided under G.L. c. 44, §53G.

3.10 Supplemental Information

Any supplemental information (including without limitation, plans, studies, reports, photographs, and written presentations, arguments and summaries) must be submitted to the Board at least seventy-two (72) hours in advance of a scheduled public hearing date to allow for review by the Board. Delay in submitting any supporting or required documentation or information adversely impacts the ability of the Board to act in a timely manner. The Board will not consider supplemental information submitted less than seventy-two (72) hours in advance of the public hearing, unless deemed appropriate at the discretion of the Chair. A public hearing may be continued at the option of the Board, to review and consider any supplemental information received less than seventy-two hours in advance of the public hearing.

3.11 Deliberations

All deliberations shall be held only during a public hearing of the Board. Consideration of an application shall be based on the Board's findings of fact after evaluating information presented by the applicant and others to the Board, and relevant publicly available information, as well as the Board's specific findings concerning whether the application meets all of the necessary provisions of the Zoning Bylaw. Deliberations may include, but need not be limited to: identification, review, and making findings of fact and/or law; identification, review, and making findings that may required under any applicable section of the Zoning Bylaw; identification, review and establishment of conditions to be attached to the Board's decision; action on a motion to approve or deny the application or appeal, Approval of any application may be subject to conditions, modifications and reasonable restrictions as required by the Zoning Bylaw or as deemed necessary to ensure compliance with appropriate sections of the Zoning Bylaw. Denial of an application may be based on a finding that either: (1) insufficient information was submitted for the Board to adequately review the proposal or to make the findings required under the Zoning Bylaw; or (2) a determination, based on specific findings, that the application does not meet the requirements of the Zoning Bylaw for approval.

3.12 Voting

The record shall show the vote of each sitting Board member upon each question or, if failing to vote, indicating such fact. A concurring vote of four (4) sitting Board members shall be required to grant special permits, variances, and appeals of a decision by the Building Commissioner. Sitting members shall be regular members of the Board or Associate Members designated to sit by the Chair, as set forth in Section 1.1.1.

3.13 Written Decision

During the Board's deliberation, a sitting member will generally be assigned to prepare a draft of the written decision of the Board. The Board's written decision shall state the specific findings of fact and reasons for its decision, based on the applicable sections of the Zoning Bylaw and other

applicable laws. The text of the decision of the Board shall be considered, discussed and voted upon only during a public meeting of the Board.

3.14 Filing and Recording

Decisions of the Board shall be considered final only when signed by the Chair on behalf of the Board and filed with the Andover Town Clerk. Time limitations for filing are specific to the type of application, as specified in MGL Chapter 40A, Sections 9 & 15. The decision of the Board on a special permit must be filed with the Town Clerk within *90 days* following the close of the public hearing as established by MGL Chapter 40A, Section 9. The decision of the Board on a variance or an appeal of an order or decision by the Building Commissioner shall be made within *100 days* from the date of filing the application with the Town Clerk as established by MGL Chapter 40A, Section 15. The time limits provided in this Section 3.14 may be extended by written agreement between the applicant and the Board as provided in said Sections 9 and 15.

No Board decision that grants a special permit, variance or comprehensive permit shall take effect until a copy of the decision is recorded at the Essex North Registry of Deeds, bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has been filed, or, if an appeal has been filed, certification that the appeal has been dismissed or denied in court. Upon certification by the Town Clerk, the decision shall be promptly recorded at the Registry of Deeds by the Clerk of the Zoning Board or the Zoning Board Administrative Secretary. The applicant shall be responsible for the payment of all fees for recording of documents at the Registry of Deeds. Denials, withdrawals of applications and appeals of a decision of the Building Commissioner will generally not be recorded at the Registry of Deeds.

3.15 Appeals

Any person aggrieved by the Board's decision for a special permit or variance may appeal to the court within *20 days* as provided in Section 17 of Chapter 40A.

3.16 Exercise of Rights Granted by Special Permit

Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within three (3) years following the filing of the Special Permit approval (plus such time required to pursue or await the determination of an appeal referred to in MGL Chapter 40A, Section 17, from the grant thereof) with the Town Clerk. If the rights are not so exercised within the specified period, the Special Permit shall lapse, and may be reestablished only after notice and a new public hearing pursuant to these Rules and Regulations.

3.17 Exercise of Rights Granted by Variance

Rights granted by a Variance must be exercised within one year of the date the decision granting such Variance is filed with the Town Clerk. If the rights are not so exercised within one year, the Variance shall lapse, unless an extension is granted, and may be reestablished only after notice and a new public hearing pursuant to these Rules and Regulations. A one-time extension of such rights granted by Variance, not to exceed six months, may be granted by the Board, provided that a written application for such extension is filed with the Board prior to the expiration of such one-year period (MGL Ch. 40A, Section 10).

3.18 Reopening of Public Hearing

Once a public hearing has been closed, whether or not a vote has been taken and a decision has been made, the taking of further evidence shall require reopening the public hearing, which shall be approved by majority vote of the sitting Board. If the public hearing is to be reopened at a time other than the meeting at which it was closed, the reopened public hearing shall be advertised and abutters notified in accordance with MGL Chapter 40A, Section 11.

3.19 Reconsideration

Prior to the filing of the Board's written decision with the Town Clerk, any sitting member may request that the Chair call a vote to reconsider the Board's decision, for the purpose of reopening the Board's deliberation and to further deliberate the findings, language or conditions of the decision. The affirmative vote of a majority of the members sitting on an application shall be required to reopen a deliberation. Any further deliberation shall be done only in a duly-noticed public meeting.

3.20 Withdrawal

Any application may be withdrawn, without prejudice, by notice from the applicant in writing to the Town Clerk with a copy to the Zoning Board Administrative Secretary at any time prior to publication of legal notice of the hearing in the newspaper and notification of abutters. Requests to withdraw after publication of legal notice may be in writing as provided above or may be made by the applicant orally at the public hearing. After such publication of notice, withdrawal shall require approval by majority vote of the Board of Appeals at a public meeting. If the public hearing on the application has been opened, a majority vote of the sitting Board for the application shall be required to allow a withdrawal, with or without prejudice.

3.21 Modifications

Requests for modifications or changes to the language, terms or conditions of previously-granted permits or site plans attached thereto shall be heard at a public hearing, unless the Chair, with the approval of a majority of the Board, determines that such changes are *de minimus* and that a formal public hearing is not required. Such modifications or changes shall constitute an amendment to the original permit or decision.

3.22 Retention of Evidence

All materials and physical evidence submitted to the Board at a public hearing shall become part of the public record and shall be marked for identification and retained by the Board in accordance with applicable Public Records laws.

SECTION 4 - APPLICATIONS TO THE BOARD

4.1 Variance and Special Permit Applications

All applications to the Board of Appeals must be submitted on the official application form as approved by the Board and in accordance with the General Filing Requirements – Andover Zoning Board of Appeals, incorporated herein by reference. Applicants should retain their own copies of the application and all supporting plans and documents. Applications, plans and supporting documents should be collated before submission to the Board.

Incomplete applications not accompanied by all documents as required within the General Filing Requirements may be denied by the Board.

4.2 Comprehensive Permit Applications

Pursuant to MGL Ch. 40B, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a single application to the Board of Appeals in lieu of separate applications to other applicable Boards such as the Board of Selectmen, Conservation Commission or the Planning Board. The procedures for Comprehensive Permit applications are detailed in the Town of Andover Comprehensive Permit Rules of the Zoning Board of Appeals, incorporated herein by reference.

Adopted by vote of the Zoning Board of Appeals on March 7, 2024