



Town of Barnstable Zoning Board of Appeals Board Rules and Regulations

Adopted March 11, 1993
Amended August 22, 2007
Amended March 27, 2024

Introduction:

The Zoning Board of Appeals was established by the MGL Chapter 295, Section 1 as amended, and is governed by MGL Chapter 40A, The Town of Barnstable Administrative Code, and the Zoning Ordinance, Section 240-125.

The following Rules and Regulations are required by MGL Chapter 40A, Section 12.

Section 1. Membership and Duties:

The membership of the Board shall consist of five (5) members and four (4) associate members. The members shall hear and decide on cases presented to the Board in accordance with the powers vested in the Board. In the event of an absent member or a conflict of interest should arise, an associate member, at the call of the Chairman, shall fulfill the needs of constituting the Board.

If necessary, four (4) members may constitute the Board in hearing and deciding an appeal, provided the applicant is in agreement. In such instances, a unanimous vote of all four (4) members shall be required to grant the relief.

Offices:

The Board Members shall elect from its membership a Chairman, a Vice-Chairman and a Clerk yearly.

Duties:

The duties and powers of the officers of the Zoning Board of Appeals shall be as follows:

The Chairman shall preside over all meetings of the Board. The Chairman shall have the power to call all regular and special meetings of the Board in accordance with these rules and regulations, to set the agenda for those meetings, to sign documents of the Board and to see that all actions of the Board are properly taken.

The Vice-Chairman or Clerk, shall act as the Chairman during the absence, disability or disqualification of the Chairman, and shall exercise or perform all the duties and responsibilities of the Chairman.

Section 2. Meetings:

Regular Meetings:

Regular meetings of the Zoning Board of Appeals are on Wednesday¹ in the Town Hall at 7:00 p.m. as called by the Chairman. At such meetings the Zoning Board shall consider all matters properly before the Zoning Board. A regular meeting may be cancelled or rescheduled by the Chairman and the Chairman may also cancel a scheduled meeting within three (3) hours of the time scheduled for that meeting due to circumstances beyond the Chairman's control.

Special Meetings:

Special meetings of the Board may be called by the Chairman. Written notice of all special meetings are posted in Town Hall no less than 48 hours prior to the meeting. The notice must contain the designated time, place and purpose of the meeting. Special meetings shall be held at reasonable hours and in publicly accessible places.

Quorum:

Three (3) members of the Board shall constitute a quorum of the Zoning Board of Appeals. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a subsequent date.

Voting:

At all meetings each member sitting on a particular appeal shall be entitled to cast one vote. Voting shall be by voice. An associate member may be requested by the Chairman to fulfill the voting requirements of the Board when a member is absent, provided the associate member was present during the public hearing and deliberations on that particular appeal. The affirmative vote of at least four members shall be necessary for granting an appeal unless otherwise provided for under Massachusetts General Law.

Section 3. Procedural:

Applications:

No application shall be deemed to have been submitted to the Board until all the required forms, plans and fees have been received by the Board in the manner prescribed below:

Copies of the application and all accompanying documents are to be time and date stamped by the Town Clerk's office. The Clerk shall keep one of the original signature documents and the others are to be given to the Office of the Zoning Board of Appeals, along with the appropriate filing fee(s) and the list of abutters.

Public Hearings:

All hearings and meetings of the Zoning Board of Appeals shall be open to the public except as may be determined by the Board in accordance with the provisions of the Massachusetts Open Meeting Law, authorizing executive session.

Continuations & Withdrawals: (Added March 27, 2024)

- A. Purpose: The purpose of this section is: (1) to minimize inconvenience to our citizens who attend a virtual or in-person meeting only to learn that a withdrawal or continuance is being requested on a particular agenda item of interest; (2) to minimize inconvenience to our citizens

¹ Meeting date administratively changed from Thursday to Wednesday as required by Town Council schedule.

who learn that material pertaining to a particular agenda item has been submitted with insufficient time to be previewed prior to the hearing; (3) to provide a comprehensive source of procedural information pertaining to Withdrawals and Continuances to partitioners, and; (4) to allow the ZBA sufficient time to consider all materials particular to an agenda item prior to the meeting.

B. Administrative:

1. Representative: An Applicant may appear on his own behalf or may be represented by an authorized agent or attorney. If an attorney, agent, or other authorized party represents a petitioner, a signed letter of authorization from the petitioner designating the representative to act on his/her behalf must be provided for the public record.
2. Electronic & Video Communications: e-mail communications may be accepted as written communications; video communications may be considered "in-person" when official meetings are conducted virtually or hybrid.
3. Waive Compliance: The Board may in a particular case waive strict compliance with the requirements of these Rules and Regulations pertaining to Withdrawals and Continuances when in the judgement of the Board such action is in the public interest and not inconsistent with other ordinance or law.
4. Adoption and Amendment: These Rules and Regulations may be adopted and from time to time amended by majority vote of the Board. Prior to the initial adoption of these Rules and Regulations and any subsequent revisions or amendments, they shall be presented in writing at a regular meeting and action taken at a subsequent regular meeting.
5. Effective Date: These Rules and Regulations become effective when voted on affirmatively by a majority of the Board and filed with the Town Clerk.

C. Withdrawal of an Appeal:

Please note: "hearing" means that the hearing on the actual appeal is opened by the Board (as compared to the "meeting").

1. Prior To Notice: An Applicant may withdraw an application, without prejudice, by written notice to the Board at any time prior to the first publication of the notice of the public hearing.
2. Board Action: After publication of the notice of a public hearing an application may be withdrawn only with the approval of the Board, in its discretion, which may determine if it is with or without prejudice. A dismissal without prejudice may allow the petitioner to initiate the appeal process again at their convenience without waiting two full years.
3. 48 Hour Rule: If a request for a withdrawal, without prejudice, is received either in-person or in writing from the petitioner or representative – before 4:30 PM of the day that will leave two full working days (excluding Saturdays, Sundays, and official town holidays) before the date of the hearing, the Board shall rule on the request without an appearance by the petitioner or representative at the hearing.
4. Less Than 48 Hours: If a request for a withdrawal, without prejudice, is received either in-person or in writing from the petitioner or representative – after 4:30 PM of the day that will leave two full working days (excluding Saturdays, Sundays, and official town holidays) before the date of the hearing the petitioner or representative must make the request in person at the hearing.
5. When a full 5-member Board is not available for a hearing, a written request may be substituted for an "in person" requirement.

6. During the Hearing: A request for a withdrawal, without prejudice, may be made during the hearing by an in-person request by the petitioner or representative - the Board shall rule on the request.
7. No Show: If a petitioner or its representative are not present at the hearing to request a withdrawal, and they have not so requested a withdrawal prior to the hearing, the Board shall decide the matter using the information before it, continue the hearing to a future date certain or dismiss without prejudice, at its discretion.

D. Continuance of an Appeal:

Please note: "hearing" means that the hearing on the actual appeal is opened by the Board (as compared to the "meeting").

1. Prior to Notice: An Applicant may withdraw an application, without prejudice, by written notice to the Board at any time prior to the first publication of the notice of the public hearing.
2. Board Action: After publication of the notice of a public hearing an application may be continued only with the approval of the Board, in its discretion, which may allow or deny any request for continuance and may determine if it is with or without prejudice. A dismissal without prejudice may allow the petitioner to initiate the appeal process again at their convenience without waiting two full years.
3. Supporting Information: Information provided less than one (1) week prior to a public hearing by any party may result in a continuation; should the Board determine that additional information is required, the public hearing would be continued.
4. Time Requirements for Public Comments: Written public comments must be submitted before 4:30 PM of the day that will leave two full working days (excluding Saturdays, Sundays, and official town holidays) before the date of the hearing.
5. First Request Appearance: An appearance by the petitioner or its representative at the hearing is not required at the first request for a continuance, without prejudice, but a written request must be submitted which includes the reason for the request for the Board's consideration.
6. 48 Hour Rule for First Request: If a request for a continuance, without prejudice, is received either in-person or in writing by the petitioner or representative – before 4:30 PM at least two business days before the date of the hearing of the first request, the Board should rule on the request without an appearance by the petitioner or representative at the hearing.
7. Less Than 48 Hours for First Request: If a request for a continuance, without prejudice, is received either in-person or in writing by the petitioner or representative – after 4:30 PM at least two business days before the date of the hearing of the first request, the petitioner or representative must make the request in person at the hearing; absent the appearance of the petitioner or their representative the Board shall rule on the request.
8. When a full 5-member Board is not available for a hearing, a written request may be substituted for an "in-person" requirement.
9. Second and Subsequent Requests: After the first request for a continuance, any subsequent requests for a continuance, without prejudice, requires an appearance by the petitioner or their representative to formally submit and state the reason for the Board's consideration.
10. During the Hearing: A request for a continuation, without prejudice, may be made during the hearing by an in-person request by the petitioner or representative - the Board shall rule on the request.
11. No Show: If a petitioner or its representative are not present at the hearing to request a

continuance, and they have not so requested a continuance prior to the hearing, the Board shall decide the matter using the information before it, continue the hearing to a future date certain or dismiss without prejudice, at its discretion.

12. If Granted: A continuance granted by the Board must include the date and time of the continued hearing on the application by the Board.
13. Written Agreement to Extend: Any request for a continuance that would extend the hearing beyond the required time to act shall be in writing, regardless of the petitioner's attendance at the hearing. (If agreed to by the Board, this continuance and extension request shall be filed with the Town Clerk.)

Procedure:

The Chairman shall call the meeting to order when a quorum is present.

Appeal hearings are held at the date and time advertised or as soon thereafter as practical.

The legal notice is read by the Chairman, and the petitioner or agent shall first have the right to present their case.

The Board may ask questions it deems necessary to the petitioner.

Any person who favors, objects or questions any petition shall have the right to speak, at the discretion of the Chairman. The names of all persons shall be recorded.

The Board may take action it deems necessary for clarification or understanding of the appeal before them, inclusive of; site inspection, review by another town agency, site plan review, enforcement action or any other action as they see fit.

Findings and Decision:

The Board shall make findings as necessary to support its decision. The findings and decision shall be recorded and voted upon by the members in an open public meeting, except those of an executive session.

All decisions of the Board shall be processed within 14 days of the date of the decision and signed by the Chairman.

Section 4. Annual Report:

During July² of each year, the Chairman shall complete and submit to the Zoning Board of Appeals Members, the Town Council and the Town Manager, an annual report for the activities of the proceeding fiscal year. The annual report shall highlight the activities of the Board in a general manner and cite general trends. It shall give a summary in statistical format of the Board's activities and decisions.

Section 4. Hiring of Outside Consultants (Added August 22, 2007)

- A. As provided by Section 53G of Chapter 44 of the Massachusetts General Laws, the Zoning Board of Appeals is hereby authorized to impose on applicants reasonable fees for the employment of

² Administrative change from January to July and word "fiscal" added. Change necessitated by change in Town's Annual Report from calendar year to fiscal year 2005.

outside consultants for the purposes of reaching a final decision on an application submitted for comprehensive permits, special permits and variances pursuant to the requirements of section 9 or 12 of chapter 40A of the Massachusetts General Laws and section 21 of chapter 40B of the Massachusetts General Laws, or any other state or municipal statute, bylaw, or regulation as they may be amended from time to time.

- B. Said fees shall be deposited in a separate account, established by the Town of Barnstable Treasurer or his/her designee, and designed specifically for the Zoning Board of Appeals. Funds deposited in this account shall only be used as allowed by this section and for the review of a specific project for which the fee has been collected from the applicant. Any excess amounts, if any, shall be refunded to the applicant, or the applicant's successor in interest.
- C. The consultant shall be chosen by, and report only to, the Zoning Board of Appeals. The Zoning Board of Appeals shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.
- D. The fee must be received in its entirety prior to the initiation of consulting services. The Board may request additional consultant fees if necessary for a review which requires a larger expenditure than originally anticipated or new information which requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to determine the application is administratively incomplete. The Board shall state such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to deny the permit application.
- E. The applicant may appeal the selection of the outside consultant to the Barnstable Town Council, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or related field. Such an appeal must be in writing and received by the Town Council and a copy received by the Zoning Board of Appeals so as to be received within 10 days of the date consultant fees were requested by the Zoning Board of Appeals. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.