



**TOWN OF MEDWAY
ZONING BOARD OF APPEALS
RULES & REGULATIONS**

The Medway Zoning Board of Appeals (hereinafter referred to as the “Board”), pursuant to the provisions of MGL c. 40A, Section 12, c. 40B, Sections 21-23, and the Medway Zoning Bylaw, 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.

ARTICLE I. ORGANIZATION

Section 1. Members and Officers

The Zoning Board of Appeals shall consist of five regular members and two associate members, all of whom are appointed by the Board of Selectmen for three year terms. The regular members shall elect all officers of the Board annually, which shall include Chair, Vice-Chair, and Clerk. The election shall occur at the first regular meeting following the annual appointment of new members by the Selectmen. The regular members shall also adopt and/or amend these Rules and Regulations.

Section 2. Chair – Powers and Duties

In addition to powers granted by Massachusetts General Laws and the Zoning Bylaw, and subject to these Rules and Regulations, the Chair shall preside over all hearings and meetings of the Board; appoint such committees as necessary or desirable; and exercise general supervision over the Board’s activities. The Chair shall be responsible for the orderly conduct of the Board’s business, whether conducted at a public hearing or a public meeting. 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.

Section 3. Vice-Chair - Duties

The Vice-Chair shall act as Chair when the Chair is absent or otherwise unable to perform the duties of the Chair.

Section 4. Clerk - Duties

The Clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board. If the Clerk is absent, the Chair shall appoint an acting Clerk.

Section 5. Associate Members

Associate members as designated by the Chair shall sit on the Board 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.

Section 6. Quorum

Three members shall constitute a quorum.

Section 7. Regular Meetings

Regular meetings of the Board shall be held as necessary at 7:30 p.m. on the first and third Wednesday of each month, or at other times as determined by the Board at a place specified in the meeting notice.

Section 8. Special Meetings

Special meetings may be called by the Chair or at the request of two regular members. Written notice by electronic mail thereof shall be given to each member at least forty-eight hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law.

Section 9. Absences

Pursuant to Town Meeting's adoption of MGL c. 39, Section 23D, no member of the Board shall be disqualified from voting on any matter solely due to said member's absence from no more than a single session of the hearing at which testimony or other evidence is received; provided, however, that before any such vote, said member shall certify in writing that he/she has reviewed all material presented and discussed including the official audio, video or transcript of the missed hearing. Such certification will become part of the record of the hearing.

ARTICLE II. SUBMISSION OF AN APPLICATION

Section 1. Petitioner or Applicant

An appeal may be taken by any person aggrieved by any decision of the Building Inspector. A petition or application for other than a Comprehensive Permit under MGL c. 40B Sections 21-23 may be brought by a property owner, a tenant, a licensee, a prospective purchaser or other applicant provided that documentation from the owner certifying the applicant's legal interest and right to file accompanies the petition or application. An application for a Comprehensive Permit may be made only by a public agency or by a limited dividend or nonprofit organization. In the case of an appeal, a

petition for a variance or an application for a special permit or comprehensive permit, the applicant shall file with the Community and Economic Development Office who shall transmit it forthwith to the Board. It is strongly recommended that all new appeals, petitions, and applications be first reviewed by the Building Commissioner.

Section 2. Application Form

Every application for action by the Board shall be made on an official application form, which shall be furnished by the Community and Economic Development Office or Town Clerk upon request. Any communication purporting to be an application shall be treated as mere notice of intention to seek Board action, until such time as it is made on the official application form and the applicable filing fee has been paid. All information called for by said form shall be furnished by the applicant, at the time of application, and in the manner therein prescribed and in precise language identifying the applicable provisions of the Zoning Bylaw and the specific nature of the appeal, petition, or application. Such form shall require, at minimum, a description of the proposed project, a list of all requirements of the Zoning Bylaw that the proposed project must meet, a narrative and supporting data that show how the proposed project meets those requirements, and an analysis of why the Board should grant the relief sought by the applicant. The application form to be used is hereby made a part of these Rules.

Section 3. Names and Addresses of Abutters

Every application to be filed shall include a list of the names and addresses of all parties in interest including the applicant, abutters, owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line of the applicant, as they appear on the most recent applicable tax list, as defined by MGL c. 40A, Section 11, and the Zoning Bylaw. The assessors shall certify to the Board the list of names and addresses of all parties in interest.

Section 4. Filing Period

Every application shall be filed and every appeal taken within thirty days from the date of refusal of a permit by, or the date of the order, ruling decision or determination of, the Building Commissioner or other administrative official.

Section 5. Submissions

Ten copies of the application form shall be submitted and each application shall be accompanied by a plot plan prepared by and under the seal of a registered engineer or registered land surveyor showing current conditions and such other plans, sketches or diagrams as are needed to show clearly the nature of the specific request being made by the applicant. The size of the document(s) shall be 11" x 17", drawn to a scale of 1" = 20' or such other size and scale as determined by the Board or its agent. The plans shall have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, locations of buildings on the lot, parking areas, driveways and all other information

pertinent to the petition or application as required by the Zoning Bylaw, other Bylaws or Rules and these Rules and Regulations. All changes requested by the applicant shall be clearly identified. An application for a Comprehensive Permit shall include all plans and information required pursuant to MGL c. 40B, Section 21 and 760 CMR 56.05(2). The applicant shall provide an electronic copy of the entire submission, including the application form, plans, sketches, diagrams, and other application materials.

Section 6. Filing Fees

- (a) Each application shall be accompanied by a non-refundable filing fee made payable to the Town of Medway. The fees are set by the Board and may change from time to time. A current fee schedule shall be available at the Community and Economic Development Office or Town Clerk.
- (b) An application for a Comprehensive Permit under MGL c. 40B Sections 21-23 shall be accompanied by an administrative fee in the amount specified in the Board's Comprehensive Permit Rules and Standards, as may be amended.

Section 7. Outside Consultants and Fees

In connection with those applications involving technical, legal or other issues as to which the Board considers it necessary or desirable to engage an outside consultant or consultants, such as engineers, lawyers, planners or other appropriate professionals, to advise the Board on those issues, the Board may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice, said fee to be deposited into a special separate account established pursuant to MGL c. 44, Section 53G. The funds from said account and any accrued interest thereon may be expended at the direction of the Board without further appropriation, with any excess amount remaining in the account upon completion of the Board's review to be repaid to the applicant or to the applicant's successor in interest. Minimum qualifications for outside consultants shall consist of either an educational degree in or related to the field at issue or three or more years of practice in the field at issue or in a related field. The Board's selection of an outside consultant may be appealed by an applicant to the Board of Selectmen, which Board may disqualify such consultant only on the grounds that the he/she has a conflict of interest and/or does not possess the minimum qualifications noted above.

Section 8. Dismissal of Incomplete Filings

The Board may dismiss an appeal, petition or application if the application form is not complete or the submissions required by this section are not made. Such dismissal may be made without a hearing on the merits and shall be deemed a withdrawal without prejudice to refiling when the application and submissions are complete.

ARTICLE III. HEARINGS

Section 1. Notice

Notice of hearings shall be advertised as required by the provisions of MGL c. 40A, and the Zoning Bylaw. In addition, a copy of the advertised notice shall be sent by mail, at least seven (7) days prior to the date of the hearing, postage prepaid, or delivered, to all parties in interest and to the boards, commissions, and departments identified in the Zoning Bylaw, and where determined appropriate by the Board, other Town boards and officials.

Section 2. Hearings to be Public

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, MGL c. 30A, Sections 18 through 25.

Section 3. Representation and Absence

An applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

Section 4. Continuances

A continuance may be requested by an applicant submitted in writing to the Community and Economic Development Office in advance of a hearing or orally to the Board at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Any continuance granted upon request of an applicant shall constitute an agreement by the applicant to extend the time limits for actions by the Board by the duration of the continuance and such agreement shall be set forth in writing and filed with the Town Clerk.

Section 5. Hearing Procedure

The Chair shall open the meeting, explain the rules of procedure for the hearing, and then read the public hearing notice to open the public hearing. All hearings proceed in the following order, with the Chair in charge of all portions of the hearing. The Chair may vary the following order based upon the circumstances of the hearing:

- (a) Applicant's presentation
- (b) Questions and/or comments by the Board members
- (c) Questions and/or comments from town officials

- (c) Comments and/or questions from the public
- (d) Final comments and/or questions from the public, applicant and the Board, in that order
- (e) Board vote to close the hearing if the Board members feel they have received sufficient information to render a decision or, if necessary, continue the hearing to a date, time and place certain that is announced at the public hearing. Upon the close of a hearing, no additional information received by the Board may be used in the making of its decision.

ARTICLE IV. ACTIONS BY THE BOARD

Section 1. Voting Requirements

The concurring vote of four members of the Board shall be necessary to reverse any order or decision of the Building Inspector, to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board, to effect any variance in the application of the Zoning Bylaw or to grant a special permit where so authorized by the Zoning Bylaw, except that any three members may approve a Comprehensive Permit under MGL c. 40B, Sections 21 through 23. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be filed in the office of the Town Clerk and shall be a public record.

Section 2. Withdrawal

An application may be withdrawn by notice in writing to the Community and Economic Development Office at any time prior to the opening of the public hearing by the Board. After commencement of a public hearing, a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refile at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.

Section 3. Reconsideration

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Section 4. Repetitive Petition

In order to have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two years, the applicant must follow the procedure outlined in MGL c. 40A.

Section 5. Notices of Decisions

A copy of the Board's decision or notice of said decision shall be mailed to the applicant, owner of the subject property, parties in interest, and those requesting notice. Notice shall be completed in accordance with the requirements of MGL c. 40A, Sections 9, 10 and 11.

Section 6. Recording of Decision

No decision shall take effect until the decision has been filed with the Norfolk County Registry of Deeds at the applicant's expense, and copies of the recording are necessary before a building permit can be issued by the Building Commissioner.

ARTICLE V. POLICIES AND ADVICE

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is declared to be the policy of the Board to discourage any personal appeals or comments to members of the Board and that all communications outside a convened meeting of the Board concerning proposed or pending matters shall be submitted to the Community and Economic Development Office.

ARTICLE VI. AMENDMENTS

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

ARTICLE VII. EFFECTIVE DATE

These Rules were adopted at a regular meeting of the Board on June 17, 2015 and became effective immediately. These Rules were amended November 4, 2015. The Rules previously adopted and subsequently amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.