

Town of Shelburne, MA

Zoning Board of Appeals

Procedural Rules and Regulations

As authorized by and in accord with applicable sections of Chapter 30A and 40A of the General Laws of Massachusetts [MGL]. The text of all laws referred to herein are available online at <http://www.mass.gov/legis/laws/mgl>. The text of the Shelburne Zoning Bylaw is available online at <http://www.townofshelburne.com/zoning>.

Article 1: Organization and Meeting Procedures

Section 1: Members and Officers

The Shelburne Zoning Board of Appeals [hereinafter referred to as “the Board”] comprises five regular and three associate members appointed by the Select Board. The regular members of the Board shall elect its officers from among themselves to include a Chairperson and Clerk, and they shall also adopt and/or amend these procedural rules and regulations.

Section 2: Powers and Duties of the Chairperson

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules the Chairperson shall rule on all points of order, unless overruled by a majority of the Board in session at the time, and shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning By-law of the Town of Shelburne, and subject to these rules and further instructions of the Board, the Chairperson shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, exercise general supervisory power, and at each meeting report any official transactions that have not otherwise come to the attention of the Board.

Section 3: Powers and duties of the Clerk

If the Chairperson is absent, disabled, or otherwise unable to perform his/her duties, the Clerk will act as Chairperson. At such time, the Clerk shall appoint an Acting Clerk. The Clerk shall, subject to review by the Board and its Chairperson, supervise all the clerical work of the Board (and that of any administrative assistant) including all its correspondence, send all notices required by law, prepare all rules and orders of the Board, receive and scrutinize all applications for compliance with its rules, keep dockets and minutes of the Board’s proceedings, compile all required records, maintain necessary files and indices, and call roll at all Board meetings. If the Clerk is absent, the Chairperson shall appoint an Acting Clerk.

Section 4 Associate members

Associate members shall sit on the Board in case of the absence, inability to act, apparent conflict of interest, or vacancy on the part of any Board member.

Section 5: Quorum

Three members shall constitute a quorum.

Section 6: Regular Meetings

Regular meetings of the Board are normally held on the first Thursday of each month at the Town Hall. If a regular meeting falls on a holiday or any day of a national, state, or municipal election or caucus or primary, or is in conflict with a session of Town Meeting, that meeting may be rescheduled by the Chairperson. Regular meetings shall be open to the public in accordance with MGL Chapter 30A, Sections 18-25 (the "Open Meeting Law"). Barring an emergency, a notice of each Board meeting shall be filed with the Town Clerk and posted on the official bulletin board at the Town Hall at least 48 hours (excluding Saturdays, Sundays and legal holidays) prior to such meetings.

Business at such meetings may include site and plan examinations and all other matters in the province of the Board, *but not* testimony that should normally be taken at a public hearing. Properly posted hearings on petitions and appeals before the Board may be held prior to, during a recess of, or following a regular meeting, as designated by the Chairperson. Regular meetings, while open to the public, are not public hearings: the Board may seek comments as it deems necessary, but unsolicited comments from the public may, at the Chairperson's discretion, be ruled out of order (Ch.30A §20).

Section 7: Special Meetings

Special meetings may be called by the Chairperson or at the written or otherwise recorded request of two members. Written or otherwise recorded notice thereof shall be given to each member and alternate member at least 48 hours before the time set, except that an announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Meeting notices shall be posted publicly as provided in Section 6 (above).

Article II Application Procedures

Section 1: Application forms

Every application for action by the Board relating to appeals from decisions of the Zoning Enforcement Officer and petitions for Variances and Special Permits shall be made on the official application form of the Board available at the Town Office. Any communication relating to a future application shall be treated as merely advisory, and no application shall be deemed to have been received until such time as it is made on the official application form and filed with the Town Clerk. Information called for by the form shall be furnished by the applicant as prescribed therein. *Failure to provide required information may prejudice the applicant's chances for approval.*

The attached official application and instruction sheets are an integral part of this document:

- Attachment 1: Application form for Special Permit and/or Variance.
- Attachment 2: Instructions for Special Permit.
- Attachment 3: Instructions for Variance.
- Attachment 4: Statutory Time Line Extension

Petitions concerning any other official matters to be brought before the Board must be sent in writing to the Board and filed with the Town Clerk.

Section 2: Filing

Every application shall be filed with the Town Clerk. The Town Clerk will indicate the date received and forthwith transmit a copy of the dated application to the Board. The date of receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed with the Board.

It shall be the responsibility of the applicant to supply all supporting documents with the application. The Board may require additional documentation it deems necessary. No communications from the Zoning Enforcement Officer absolve the applicant from this responsibility.

Article III: Hearings

Section 1: Notification

Notice of hearings shall be advertised as required by the provisions of Chapter 40A, Section 11 of the Massachusetts General Laws.

Section 2: Site Visits

The Board, at its discretion, may view all properties that are the subjects of applications brought before it. Applicants should be prepared to meet with the Board at the site, usually on the Tuesday preceding the public hearing. The Open Meeting Law (MGL Ch.30A, Sec. 18-25) does not apply to site visits, and the applicant may deny members of the public admission to the site.

Section 3: Hearings to be public.

All hearings shall be properly posted and open to the public. No person shall be excluded unless he/she is considered by the Chairperson to be a serious hindrance to the work of the Board (Ch 30A §20). Where requests for modifications or changes in any conditions of previous permits or site plans constitute an amendment to the original permit or decision, such a request shall be heard at a duly posted public hearing. Requests for approval of final site plans or other similar materials required in fulfillment of conditions for permits or decisions may be heard and acted on at regular or special meetings of the Board.

Section 4: Representation and absence.

An applicant may appear in his/her behalf, or be represented by an agent or attorney. In the absence, without due cause, of any such appearance by, or representation on behalf of, the applicant, the Board may decide on the matter using the information it has otherwise received, or it may declare the petition to be withdrawn without prejudice.

Section 5: Written Memoranda.

The Board *strongly* recommends that every appeal from a ruling of the Zoning Enforcement Officer, and every application for a variance or special permit, be supported by a legibly-written memorandum setting forth in detail all facts relied upon. This is particularly desirable in the case of a variance when the following points, based on MGL Chapter 40A Section 10, should be clearly identified and factually supported:

- A. The particular use proposed for the land or building.
- B. The circumstances (related to soil conditions, shape, or topography of the land or structure) that specifically affect the property for which a variance is sought, but which do not affect generally the zoning district in which it is located.
- C. Facts which support a claim of substantial hardship – financial or otherwise – which would result from the literal enforcement of the applicable zoning regulations with respect to the land or building for which a variance is sought.

Facts relied upon to support a finding that the relief sought will be desirable and may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance or by-law.

Section 6: Hearing Procedure

The Clerk will circulate a sign-up sheet to record the names of those attending the hearing. The Chairperson shall open the hearing, review the Board's procedures, and open the evidentiary part of the hearing. The Chairperson will announce that anyone (including Board members) is required to notify the meeting that the meeting content is being recorded prior to initiating such recording. Members of the Board hearing the case may direct appropriate questions at any time during the hearings. All parties, when they initially speak at a hearing, shall introduce themselves with their full name and their relationship to the hearing (e.g.: abutter, resident, etc.). All hearings proceed in the following order, with the Chairperson moderating all portions of the hearing:

- A. The Chair will introduce the members of the Board; then the Applicant will introduce members of his/her presentation team.
- B. Applicant's presentation.
- C. Clerk's report, for the record, of all submitted materials and site visit observations, if applicable.
- D. Comments from abutters, then the public, then questions by those seeking information.
- E. Applicant's response(s).
- F. Final comments and questions from the public, applicant, and Board, in that order.
- G. Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain. Such a continuation may require a written agreement between the applicant and the Board. See Attachment 4: "Statutory Time Line Extension."

Article IV: Disposition by the Board

Section 1: Decision time limit

A decision on any application shall be filed with the Town Clerk within the time limits established by MGL Chapter 40A.

Section 2: Voting requirements.

The concurring vote of four (4) members of the sitting Board is necessary to grant a special permit or variance or to overturn a decision of the Building Inspector/Zoning Enforcement Officer (C.40A §9). Other issues, such as items required by conditions attached to permits, may be decided by majority vote. The record shall show the vote of each member upon each question, or, if absent or failing to vote, indicating such fact. The Board shall set forth clearly the reasons for its decision(s) in writing.

Section 3: Withdrawals.

An application may be withdrawn at anytime, but can be withdrawn without prejudice only by notice in writing to the Town Clerk at any time prior to the publication of the notice of the public hearing or, for good reason, by approval of the Board. Also see Article III section 4 above.

Section 4: Final decisions and reconsideration.

Decisions of the Board are final only when submitted to, and filed with, the Town Clerk. Once a decision has been voted upon and the meeting adjourned, reconsideration may only occur during a duly posted public meeting.

Section 5 Time Limits and extensions on grants

For a Variance, construction work shall commence within one year of the date of grant. A 6-month extension for a variance may be approved only if the request for an extension is filed with the Board before the expiration of the year (C.40A §9&10).

For a Special Permit, construction or use shall commence within two years of the date of grant.

Article V: Policies and Advice

Binding decisions are made only by a duly constituted Board acting at a duly posted meeting. Any advice, opinion, or information given by any Board member or any other official or employee of the Town of Shelburne at any other time shall not be binding on the Board.

Article VI: Adoption

The foregoing rules, regulations, and attached forms and instructions are hereby adopted on July 1, 2010 by the Town of Shelburne Zoning Board of Appeals. All former Rules of this board are hereby repealed.