



TOWN OF MEDWAY
ZONING BOARD OF APPEALS
RULES & REGULATIONS

As Amended March 16, 2022

TABLE OF CONTENTS

SECTION 1. GENERAL	Page
1.1 AUTHORITY	6
1.2 PURPOSE	6
1.3 APPLICABILITY	6
1.4 ORGANIZATION	6
1.4.1 Members and Officers	6
1.4.2 Chair – Powers and Duties	7
1.4.3 Vice-Chair – Duties	7
1.4.4 Clerk – Duties	7
1.4.5 Associate Members	7
1.4.6 Quorum	7
1.4.7 Regular Meetings	7
1.4.8 Special Meetings	8
1.4.9 Absences	8
1.4.10 Reorganization	8
1.5 DEFINITIONS	8
1.6 WAIVER OF RULES	8
1.6.1 Compliance with Rules and Regulations	8
1.6.2 Applicant Request for Waivers	8
1.6.3 Unacceptable Waivers	9
1.7 AMENDMENTS TO THE RULES & REGULATIONS	9
1.7.1 Amendments	9
1.8 EFFECTIVE DATE	9
1.8.1 Effective Date	9
1.8.2 Reference Effectivity	10
1.8.3 Severability	10

2.1 PETITIONER OR APPLICATION	11
2.1.1 Appeals	11
2.1.2 Special Permits & Variances	11
2.1.3 Comprehensive Permit	11
2.1.4 Responsibilities	11
2.2 PRELIMINARY REVIEW	11
2.2.1 Pre-Application Review	11
2.2.2 Advice & Interpretation	12
2.2.3 Burden of Proof	12
2.3 CONTENTS OF APPLICATION & TIME REQUIREMENTS	12
2.3.1 General Application Form	12
2.3.2 Plot Plans, Elevations, and Floor Plans	14
2.3.3 Names and Addresses of Abutters	15
2.3.4 Treasurer's Certification	15
2.3.5 Filing Fee	15
2.3.6 Legal Notice Payment	16
2.3.7 Recording Decisions	16
2.3.8 Outside Consultants and Fees	16
2.3.9 Appeal	17
2.3.10 Special Permit	17
2.3.11 Variance	18
2.3.12 Finding/Special Permit for nonconforming uses and structures	18
2.3.13 Extension	19
2.3.14 Modification	19
2.3.15 Withdrawal	20
2.3.16 Comprehensive Permits	20
2.3.17 Supplemental Information	20
2.4 FILING PROCEDURE, DEADLINES, & REVIEW	21
2.4.1 Submission of Applications	21
2.4.2 Filing Period	22
2.4.3 Review of Application, Dismissal of Incomplete Filings	22
2.4.4 Site Visits	23
2.4.5 Hearing Opening	23

SECTION 3. MEETING & HEARING PROCEDURE	Page
3.1 PUBLIC MEETINGS	24
3.1.1 Open Meeting Law	24
3.1.2 Public Meeting & Hearing Guidelines	24
3.1.3 Communication with the Board	24
3.2 HEARING NOTICE & PROCEEDINGS	24
3.2.1 Notice	24
3.2.2 Representation and Absence	24
3.2.3 Continuances	25
3.2.4 Hearing Procedure	25
3.2.5 Additional Information	26
3.3 ACTIONS BY THE BOARD	26
3.3.1 Voting Requirements	26
3.3.2 Reconsiderations	26
3.3.3 Decision	26
3.3.4 Filing Decision with Town Clerk	27
3.3.5 Notice of Decision	27
3.4 SUBSEQUENT TO THE DECISION	27
3.4.1 Submission of Final Plans & Additional Information	27
3.3.2 Recording of Decision	27
3.4.3 Extension & Modification of Decision	28
3.5 SPECIAL ACCOUNTS	28
3.5.1 Replenishment	28
3.5.2 Refund	28
3.5.3 Obligations of Subsequent Owners	29

Application Checklist
Representative Authorization Form

Submitted with All Applications

General Application Form
Abutters Request Form
Legal Notice Billing Agreement
Treasurer's Certification
Filing Fees

Appeals

Appeal Form

Special Permits

General Special Permit Form
Accessory Family Dwelling Unit Special Permit Form
Finding/Special Permit for Nonconforming Uses & Structures

Variances

Variance Form

Comprehensive Permits

Comprehensive Permit Form
Comprehensive Permit Rules and Regulations

Extension

Extension Form

Modification

Modification Form

Withdrawal

Withdrawal Form

SECTION I. GENERAL

1.1 AUTHORITY

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.

1.2 PURPOSE

The purpose of these rules is to establish uniform procedures for conducting the business of the Board under its jurisdiction to hear and decide:

1. Appeals in accordance with MGL c. 40A, Section 8;
2. Applications for special permits when designated as the special permit granting authority herein in accordance with the provisions of MGL c. 40A, Section 9;
3. Applications for special permits to change, alter, or extend lawfully pre-existing non-conforming uses and structures to the extent allowed by Section 5.5 in accordance with the provision of MGL c. 40A, Section 6;
4. Petitions for variances in accordance with MGL c. 40A, Section 10;
5. Applications for comprehensive permits under MGL c. 40B, Sections 20-23;

1.3 APPLICABILITY

Any person applying to the Board, whether or not governed by any other federal, state, or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these rules.

1.4 ORGANIZATION

1.4.1 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 Select Board for three year terms. The regular members shall elect all officers of the Board annually, which shall include Chair, Vice-Chair, and Clerk. The regular members shall also adopt and/or amend these Rules and Regulations.

1.4.2 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.

1.4.3 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.

1.4.4 Clerk – Duties

The Clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board.

In the absence of Town staff designated as the recording secretary, the Clerk of the Board shall act as the recording secretary.

1.4.5 Associate Members

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

1.4.6 Quorum

Three members shall constitute a quorum. However, where only three members are present, but four members are required to grant an application, the Board may continue a scheduled hearing without testimony to ensure that a four member board is available to the applicant.

1.4.7 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.

The Board may cancel a regular scheduled meeting in advance if members are unable to attend or there are no hearings scheduled.

1.4.8 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.

1.4.9 Absences

Pursuant to the Town'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.

Additionally, no member of the Board shall be disqualified from voting on any matter solely due to said member's physical absence at a meeting if said member attends via remote participation.

1.4.10 Reorganization

The Board shall take reorganization of the Board as the first matter on the agenda at the beginning of each fiscal year.

1.5 DEFINITIONS

(Placeholder for future definitions.)

1.6 WAIVERS

1.6.1 Compliance with Rules and Regulations

Strict compliance with these rules may be waived if the Board finds that the waiver is in the public interest or is irrelevant to the project, and is consistent with the intent and purpose of the Zoning Bylaw and these Rules.

1.6.2 Applicant Request for Waivers

Requests for waivers must be submitted by the applicant at the time of submitting an application or during the hearing process. Waivers must be submitted in writing. Such requests must clearly identify the provision(s) of the Rules from which relief is sought and be accompanied by a statement setting forth the reasons why, in the applicant's opinion, granting of such waiver(s) would be in the public interest or the specific information required is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of the Bylaw and these Rules.

1.6.3 Unacceptable Waivers

Applicants may not request waivers from Sections: 1.1 AUTHORITY, 1.2 PURPOSE, 1.4 ORGANIZATION, 1.6 WAIVERS, 1.7 AMENDMENTS TO THE RULES & REGULATIONS, 1.8 EFFECTIVENESS or as otherwise provided herein.

No request for a waiver shall be construed as to circumvent or waive any sections of Medway Zoning Bylaws, Massachusetts General Laws, or any other federal, state, or local regulations, laws, permits, variances, or approvals.

1.7 AMENDMENTS TO THE RULES & REGULATIONS

1.7.1 Amendments

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

All amendments and applicable documents shall be filed with the Town Clerk and kept on file by the Board.

1.8 EFFECTIVENESS

1.8.1 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 and then subsequently amended April 18, 2018.

The Rules previously adopted and amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.

1.8.2 Reference Effectivity

Any reference herein to any statute, bylaw, or regulation shall include any amendment thereto or any successor statute, bylaw, or regulation.

1.8.3 Severability

The invalidity of any section of these Rules and Regulations shall not invalidate any other section herein.

SECTION 2. APPLICATION PROCEDURE

2.1 PETITIONER OR APPLICANT

2.1.1 Appeals

An appeal may be taken by any person aggrieved as provided in G.L. c. 40A, §8.

2.1.2 Special Permits & Variances

A petition or application may be brought by a property owner, a tenant, a licensee, a prospective purchaser, representative, or other applicant provided that documentation from the owner certifying the applicant's legal interest and right to file accompanies the petition or application.

2.1.3 Comprehensive Permit

An application for a comprehensive permit may be made only by a public agency or by a limited dividend or nonprofit organization.

2.1.4 Responsibilities

Submission of information, filing deadlines, fees, included but not limited to application fees, outside consultant fees, and legal notice fees, certified list of abutters, completeness of application, and any other rules and/or requirements as outlined herein shall be the responsibility of the Applicant or designated Representative.

2.2 PRELIMINARY REVIEW

2.2.1 Pre-Application Review

Consultations between a prospective applicant and Board staff prior to the filing of an application with the Board is *strongly recommended and can prevent serious delays in the processing of the final application*. All consultation between a prospective applicant and Board staff will be included in staff reporting to the Board. However, reviewing Town Bylaws and Rules & Regulations remains the responsibility of the applicant. The applicant shall not take any recourse on the grounds that staff overlooked providing information to the applicant or that staff provided information which is irrelevant to the applicant's request.

Please refer to Section 2.4.3 for more details on the completeness and thoroughness of applications.

2.2.2 Advice & Interpretation of Bylaw

Any advice, opinion, suggestions, comments, and information or interpretation of the Zoning Bylaw 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 Department.

2.2.3 Burden of Proof

The burden of proof rests entirely upon the applicant to submit valid reasons why the appeal, application, variance, or otherwise should merit favorable action by the board within the powers vested in the Board. The submission of zoning decisions, Supreme or Appeal Court case decisions, legal advice, and/or additional documentation is helpful but not mandatory.

The applicant shall apply under all applicable sections of the Zoning Bylaw. If the applicant does not believe a section of the Bylaw to be applicable, the burden of proof shall rest entirely the applicant to establish such opinion. The applicant shall comply with all applicable sections of the Bylaw until such time that documentation is provided supporting otherwise and the Board is able to make a well-informed determination, finding, or decision on the matter.

Staff cannot assure the thoroughness, completeness, or correctness of any final application, but can provide guidance to the applicant regarding what they believe will assist the applicant through the hearing process. Applying under all applicable sections of the Bylaw remains the responsibility of the applicant.

2.3 CONTENTS OF APPLICATION

All information called for by these Rules and Regulation shall be furnished by the applicant, at the time of the application, and in the manner as prescribed herein.

2.3.1 General Application Form

Each application for action by the Board shall be made on an official application form, which shall be furnished by the Community and Economic Development Department 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, 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:

1. Applicant Name; Applicant address; Applicant telephone number and/or email address
2. Attorney, Engineer, and/or Consultant(s) name(s); address; telephone number and/or email address
3. Property Owner, if different than the Applicant; Property Owner address and telephone number and/or email address
4. Location of Property
5. Zoning District
6. Assessors' Parcel ID
7. Registry of Deeds Book & Page No. and date or Land Court Certificate No. and date of current title source
8. Present use of property
9. Proposed use of property
10. Requested relief and cited (sub-) section(s) of the Zoning Bylaw under which the application is made and a list of all requirements that the proposed project must meet
11. A description of the proposal, how the proposal meets the aforementioned requirements, and an analysis and explanation or evidence of why the Board should grant the relief sought by the applicant
12. Description of how the application meets the Design Review Guidelines, when applicable
13. Signature of Applicant and date
14. Signature of property owner and date
15. Requested waivers
16. If the property is located in a designated Historic District or is designated as a Historic Landmark
17. If the property is located in the Groundwater Protection District
18. If the project is located in the Floodplain District
19. If the proposal is subject to the jurisdiction of the Conservation Commission
20. If the proposal is subject to approval by the Board of Health or Board of Selectmen
21. If the property location is tax delinquent with the Treasurer's Office
22. If the applicant has applied for and/or been refused a building permit
23. Date the lot and structures were built, when applicable
24. If the property, buildings, and structures, and/or use conform to the current Zoning Bylaw, and if not, describe the nonconformity
25. Location for stamp of Town Clerk
26. Location for review by the Zoning Enforcement Officer/Building Inspector
27. Location for receipt of the Board and review of the Board
28. All other Forms and additional requirements referenced herein

2.3.2 Plot Plans, Elevations, Architectural Plans, and Floor Plans

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 staff. The plans shall include all information pertinent to the petition or application as required by the Zoning Bylaw, other Bylaws or Rules and these Rules and Regulations.

All plans shall include following information:

1. Owner's name
2. The address of the subject property
3. The Book and Page No. and date or Land Court Certificate No. of the subject property as recorded in the Registry of Deeds
4. The Assessor's Parcel ID(s)
5. Zoning District
6. Name and address of individual or company who prepared the plan
7. Scale
8. North arrow
9. Boundary lines
10. Dimensions of buildings and/or structures
11. Dimensions of subject lot
12. Property lines
13. Names of streets
14. Location of buildings and/or structures, parking areas, driveways, fences, and other pertinent features on the lot
15. Setbacks of buildings and/or structures
16. Area calculations for lot coverage and impervious coverage
17. Topography (as needed for variance applications)
18. Soil conditions (as needed for variance applications)
19. Labels of existing and/or proposed buildings and/or structures, rooms, and other pertinent features
20. Addresses of and structures on adjacent properties

All plans shall be no more than 5 years old and must have all buildings and structures drawn to scale.

All changes requested by the applicant shall be clearly identified, preferably in red or royal blue ink. All changes should be properly labeled as "proposed."

- (a) To the extent that an application request involves extension, alteration, modification, or any other applicable changes to the **exterior** of an existing building or structure, or the construction of a new building or structure, each application shall be accompanied by existing

and proposed elevations and architectural plans. The size of the document(s) shall be 11" x 17" or such other size as determined to be appropriate by the Board or its staff. The plans shall include all information pertinent to the petition or application as required by the Zoning Bylaw, other Bylaws or Rules and these Rules and Regulations.

- (b) To the extent that an application request involves extension, alteration, modification, or any other applicable changes to the *interior* of an existing building or structure, or the construction of a new building or structure, each application shall be accompanied by existing and proposed floor plans. The size of the document(s) shall be 11" x 17" or such other size as determined to be appropriate by the Board or its staff. The plans shall include all information pertinent to the petition or application as required by the Zoning Bylaw, other Bylaws or Rules and these Rules and Regulations.

2.3.3 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.

2.3.4 Treasurer's Certification

In accordance with Article XVI of the Medway General Bylaws, each application to be filed shall include certification from the Treasurer which certifies that the property or properties in question are not tax delinquent. An Applicant who is unable to receive certification from the Treasurer may still apply to the Board at the Applicant's own risk; failure to pay outstanding taxes or bills may be grounds for denial or dismissal of an application.

2.3.5 Filing Fee

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 Department or Town Clerk.

All filing fees must be submitted via check, money order or electronic payment through the Town's electronic permitting system. No other forms of payment shall be accepted.

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.

2.3.6 Legal Notice Payment

Each application must be properly advertised in accordance with MGL c. 40A Section 11. The applicant is responsible for the cost of advertisement. The Board shall prepare and submit a legal notice to be published in the *Milford Daily News*, or other local newspaper. This legal notice will appear in two consecutive issues of the newspaper, the first notice at least 14 days prior to the date of hearing. The cost varies based upon the information required for the notice. The Board will forward the advertisement proof with the total to be paid by the applicant.

All legal notice payment must be submitted via check or money order payable to the newspaper. No other forms of payment shall be accepted.

All legal notice payment shall be submitted to the Community and Economic Development Department. The Board shall be responsible for mailing the payment to the appropriate billing facility.

Applicants may not request a waiver from the cost of the legal notice.

2.3.7 Recording Decisions

The applicant is responsible for recording any decision that needs to be recorded at the Norfolk County Registry of Deeds.

2.3.8 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 Select Board, 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.

Applicants may not request a waiver from the cost of outside consultant and fees but may work with the Board to determine an adequate level of review and scope of work.

2.3.9 Appeal

Each Appeal shall be made on an official Appeal Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature of the appeal.

Such form shall require, at minimum:

1. The written notice from the Zoning Enforcement Officer, which identifies the violation, or reason for denial; or
2. Any and all materials submitted to the Town boards or officials upon which they made their determination or decision;
3. The appellant's request:
 - a. Reversal of the decision
 - b. Modification to the decision
 - c. Direct issuance of a permit
 - d. Direct the enforcement of a Section of the Zoning Bylaw;
4. Evidence to support grant of appeal to decision;
5. Signature and date of request from Applicant.

2.3.10 Special Permit

Each special permit application shall be made on an official Special Permit Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature for the special permit.

Such form shall require, at minimum:

1. Evidence that all applicable special permit criteria under Section 3.4 of the Zoning Bylaw has been met;
2. Evidence that the requirements of the requested special permit have been met, when applicable. Please refer to the Zoning Bylaw and Application Form specific to the requested relief for more information regarding special permit requirements; and
3. Signature and date of request from Applicant.

2.3.11 Variance

Each request for variance shall be made on an official Variance Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature for the variance.

Such form shall require, at minimum:

1. Circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located;
2. Evidence that a literal enforcement of the provisions of the bylaw would involve substantial hardship, financial or otherwise. Personal hardship and/or self-created hardship do not satisfy the statutory requirement for "hardship;"
3. Evidence that the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw; and
4. Signature and date of request from Applicant.

2.3.12 Finding/Special Permit for Nonconforming Uses and Structures

Each application for extension, alteration, change or substantial extension of a nonconforming use, or for reconstruction, extension, structural change or alteration of a nonconforming structure shall be by Finding/Special Permit application, including for nonconforming single and two-family structures.

2.3.13 Extension

Each request for an extension shall be made on an official Extension Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature for the Extension.

Such form shall require, at minimum:

1. The previous decision to be attached;
2. Evidence that the applicant has made improvements to the land, buildings and/or structures, or otherwise to warrant the necessity of an extension; and
3. For a variance, the time and date requested for an extension, up to but no more than six months from the date of expiration/lapse. For a special permit, the time and date requested for an extension; and
4. Signature and Date of Request from Applicant.

2.3.14 Modification

Each request for a modification to an existing permit shall be made on an official Modification Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature for the modification.

Such form shall require, at minimum:

1. What the application was for;
2. Location of the property;
3. The date of the previous decision;
4. The previous decision;
5. Reason(s) for requesting a modification to the existing decision;
6. Citations of the portion of the decision to be modified;
7. Waivers requested, if applicable; and
8. Signature and Date of Request from Applicant.

2.3.15 Withdrawal

Each request to withdraw an application shall be made on an official Withdrawal Form, which shall be furnished by the Community and Economic Development Department or Town Clerk upon request.

All information called for by said form shall be furnished by the applicant, in precise language, identifying the applicable provisions of the Zoning Bylaw and the specific nature for the request. Such form shall require, at minimum:

1. What the application was for;
2. Location of the property;
3. The date that the application was stamped in;
4. Reason(s) for requesting the application to be withdrawn; and
5. Signature and Date of Request from Applicant.

Applications may be withdrawn without prejudice prior to publication of the notice of a public hearing without any further requirements. Requests to withdraw an application after publication of the notice of a public hearing shall be withdrawn without prejudice only with the approval of the Board.

2.3.16 Comprehensive Permits

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, in accordance with the Board's Comprehensive Permit Rules and Standards, in addition to the Rules and Regulations stated herein. Said Rules and Standards identify additional application requirements and shall be kept on file with the Community and Economic Development Department and Town Clerk.

2.3.17 Supplemental Information

Providing additional information along with the general application requirements is encouraged to support the application or petition. Some additional information may be requested or required, depending on the type of application. Such information may include, but is not limited to:

- (a) Existing conditions photos:
 - 1. Aerial Imagery, Orthoimagery or Satellite Imagery
 - 2. Street-View Imagery
 - 3. On-Site Photos
 - 4. Locus Maps
 - 5. Photos of Similar Uses
- (b) Existing and/or Proposed Lot Frontage, Shape, Size, Topography, Wetlands, /Soil Conditions
- (c) Current Conditions of Surrounding District or neighborhood
- (d) Approvals and/or Permits from other Town Boards and Departments
- (e) Sound Study
- (f) Environmental Impact Assessment
- (g) Traffic Impact Assessment or Trip Generation Estimates
- (h) Water and Sewer Consumption Estimates
- (i) Executive Summary
- (j) Management Plan
- (k) Existing and Proposed Area of Land to be Altered
- (l) Existing and Proposed Building Coverage
- (m) Existing and Proposed Impervious Surface
- (n) Height, Bulk, and/or Area of Proposed Use
- (o) Hours of Operation
- (p) Grading and/or Drainage Plan
- (q) Parking and/or Circulation Plan
- (r) Landscaping Plan
- (s) Lighting Plan

2.4 FILING PROCEDURE, DEADLINES, & REVIEW

2.4.1 Submission of Applications

Three applications shall be submitted to Community and Economic Development Department, in their entirety, unless otherwise specified by the Board or Board staff. Two applications shall have original signatures of the applicant. The two original applications shall be stamped in with the Town Clerk. One application shall be maintained by the Town Clerk as required by MGL c. 40A, the second application shall be maintained by the Community and Economic Development Department.

The application shall also be provided electronically either on a disc, flash drive, drop-box, email, or other similar means.

Stamping in an application with the Town Clerk shall not be misconstrued as to indicate that an application is complete. Any application that is determined to be incomplete may be denied in accordance with Section 2.4.3 herein.

MGL c. 40A states that an application shall be filed with the Town Clerk and then a certified copy shall be provided to the permit granting authority. The Board suggests that Applicants provide applications to the Community and Economic Development Department to review for completeness prior to submittal to the Town Clerk.

Due to printing costs and staff time and availability, failure to provide **three paper copies and an electronic copy** of the application and supplemental information may be cause to deny the application as incomplete until such time that additional copies are submitted, in accordance with Section 2.4.3 herein. The Board and its staff may require additional paper copies for larger projects or for applications with plans 11 in. x 14 in., 11 in. x 17 in., or larger.

2.4.2 Filing Period

Every application or petition shall be filed at least seventeen business days (Monday – Friday, not including weekends or holidays) prior to the regular meeting date to be considered for scheduling at said meeting. Applications that are not filed seventeen days prior to the regular meeting date shall be considered at the discretion of the Board and its staff.

Requests for an extension shall be filed prior to the expiration or lapse of the permit or variance, in accordance with MGL 40A, Sections 10 and 11, or as otherwise specified in a decision.

Requests to withdraw an application may be filed at any time.

2.4.3 Review of Application, Dismissal of Incomplete Filings

The Board staff shall review each application for completeness.

Review of an application for completeness, as defined by the required information and materials set forth by the Zoning Bylaw and the Rules and Regulations herein, shall not be misconstrued as to indicate that the Board staff has reviewed the application for thoroughness and accuracy of

information. Additional information may be requested by the Board and Staff during any point of the review and/or hearing process.

If the Board staff determine that an application is incomplete, it will provide the Applicant with a list of information which is necessary for an application to be considered complete.

If an application is deemed incomplete due in full or in part to lack of or incorrect contact information, it shall not be the Board or staffs' responsibility to research and obtain said contact information.

The Applicant shall be responsible for checking emails and phone calls that they may receive from staff during the course of their application and hearing process. Failure to check, respond, or provide information requested by staff or the Board expressed through email and/or telephone call shall be the burden of the Applicant.

The Board may deny an appeal, petition, or application if the application is not complete or the submissions required by this section are not made. Such denial may be made during the public hearing without a hearing on the merits without prejudice to refiling when the application and submissions are complete.

Alternatively, staff may request that additional information be provided prior to a hearing or delay scheduling a hearing. If said information is not provided in a reasonable amount of time, as may be determined by the Board or staff, the Board may deny an application without prejudice or deny an appeal, petition, or application on the merits. The Board may also request supplemental information that is not required by the Zoning Bylaw and the Rules and Regulations but which would support the application information and materials.

2.4.4 Site Visits

All submissions to the Board shall provide the Board and staff with temporary access to the property for completion of site visits. Site visits may be performed as deemed necessary by the Board and/or Board staff. Upon closing of the hearing, temporary access shall conclude, except as allowed in inspection phases or as otherwise required in a decision.

All site visits will be conducted between Monday – Friday, 7:00 am – 7:00 pm. Notice shall be provided to the applicant, representatives, and/or property owner in advance.

The purpose of the site visit is to view the site and its relation to the surrounding area. It is not acceptable for testimony to occur outside the public hearing.

The Open Meeting Law does not apply to site visits, and the applicant may deny permission to members of the public from attending the site visit.

Photos and/or other documentation provided by the Board, staff, or the Applicant from a site visit, or verbal testimony presented at a public hearing relative to a site visit, performed before

or during a public hearing shall be made part of the public record and official proceedings of the hearing.

2.4.5 Hearing Opening

The Board shall hold a hearing on any appeal, application, or petition within sixty-five days from the receipt of notice by the Board of such appeal, application, or petition, unless an extension for opening the hearing is granted by the applicant.

The Board shall hold a hearing on any comprehensive permit application within thirty days from the receipt of notice by the Board of such application, unless an extension for opening the hearing is granted by the applicant.

SECTION 3. MEETING & HEARING PROCEDURE

3.1 MEETINGS

3.1.1 Open Meeting Law

All meetings 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, except when the Board shall vote to go into executive session, in accordance with MGL c. 30A.

3.1.2 Public Meeting & Hearing Guidelines

The Board may adopt Public Meeting & Hearing Guidelines, in addition to the Rules and Regulations stated herein. Said Guidelines may outline proper meeting and hearing procedure and order of business and shall be kept on file with the Community and Economic Development Department and Town Clerk.

3.1.3 Communication to the Board

All communication to the Board outside a convened meeting of the Board concerning proposed or pending matters shall be submitted to the Community and Economic Development Department.

3.2 HEARING NOTICE & PROCEEDINGS

3.2.1 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, postage prepaid, or delivered, to all parties in interest and to the boards, commissions, and departments identified in the Zoning Bylaw and G.L. c. 40A, and where determined appropriate by the Board, other Town boards and officials.

3.2.2 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 denying the petition, at its discretion.

3.2.3 Continuances

A continuance may be requested by an applicant submitted in writing to the Community and Economic Development Department 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.

Additionally, the Board may continue a hearing for lack of information, lack of time available (due to schedule of hearings or time lapsed), to draft a decision, or as otherwise may be needed. Continuances made by the Board without a request by an applicant shall not extend the time limits for actions by the Board.

3.2.4 Hearing Procedure

The Chair shall open the meeting, and then read the public hearing notice to open the public hearing. Hearings will generally proceed in the following order, with the Chair in charge of all portions of the hearing. The Chair may vary the following based upon the circumstances of the hearing:

1. Applicant's presentation
2. Questions and/or comments by the Board members
3. Questions and/or comments from Staff and/or Peer Review Consultants
4. Questions and/or comments from town officials
5. Comments and/or questions from the public
6. Final comments and/or questions from the public, applicant, and the Board

Note to #3, 4, and 5: Comments provided by Staff and Peer Review to the Board regarding suggestions for conditions shall not be misconstrued as to imply that Staff, Peer Review, or the Board are either in favor or opposed of the Application and shall be non-binding. Suggestions for conditions act only as interpretation of the Zoning Bylaw, and/or applicable state law, which address and minimize public safety, health, or other concerns and/or address compliance with the Zoning Bylaw. Should the Board find that the criteria for granting of such request has been met, the Board may include conditions as the members find necessary and are not obligated to include such conditions as may be recommended by non-Board members.

The Board may continue the hearing or deliberations to another date to deliberate or to have a decision drafted. Decisions may be drafted by the Board or by staff based on the information, documents, and testimony presented at a hearing. Verbal testimony does not need to be made referencing documents or supplemental information for that information to be included as part of a decision. Decisions drafted by staff are not to be misconstrued to imply that staff has any influence, bias, or persuasion over the Board's decision. Should the decision be drafted prior to a vote of the Board, the decision shall be presented to the Board and the Board shall review the draft decision during the public hearing or at a public meeting. Should the decision be drafted

subsequent to a vote of the Board, the decision shall be reviewed by the member of the Board authorized to sign it to ensure that it is consistent with the Board vote.

3.2.5 Additional Information

The Board may request additional information from the Applicant at any time. The Board may continue a hearing on the grounds that it requires additional information, from the applicant, staff, or otherwise, in order to make an informed decision. Such information shall be provided, at minimum of seven days in advance of the next hearing date, or as may otherwise be determined by the Board or its staff. Information provided less than seven days in advance shall not be included into the record at the next hearing date and shall not be reviewed at said hearing unless accepted by the Board. Failure to provide the Board with the requested information in a timely manner may result in further continuances.

3.3 ACTIONS BY THE BOARD

3.3.1 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 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.

3.3.2 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.

3.3.3 Decision

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, in accordance with MGL c. 40A Section 9 and 15, and c. 40B, Sections 21-23. Any one member of the Board may sign the decision on behalf of the Board, and the signature of one or more member(s) of the Board shall be sufficient to verify the authenticity of the decision.

The Board may impose conditions, safeguards, and limitations of both time and of use, including the continued existence of a particular structure. Except that variances shall exclude any condition, safeguards, or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner, or any owner.

Anything which an applicant agrees to do at the hearing in relation to their application will be made part of the decision and will be binding on the applicant and their successors in title.

Agreements may be included in the body of a decision rather than a condition of approval. Such agreements shall still be binding.

3.3.4 Filing Decision with Town Clerk

In accordance with MGL c. 40A, Section 9 and 15, and c. 40B, Sections 21-23, the Board shall file an original decision in the office of the Town Clerk and shall maintain copies with the Community and Economic Development Department.

A "Certificate of No Appeal," certification of the Town Clerk that twenty days have elapsed after the decision has been filed and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, shall be requested by the Applicant. Certification from the Town Clerk is required to record a decision with the Registry of Deeds.

3.3.5 Notice of Decision

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 40A, Sections 9, 10, 11, and 15.

3.4 SUBSEQUENT TO THE DECISION

3.4.1 Submission of Final Plans & Additional Information

If a decision requires modifications and/or revisions to the plans provided at time of the application, such plans shall be submitted within 30 days of filing of the decision with the Town Clerk, unless the Board grants an extension requested by the Applicant.

Additional information shall be submitted in accordance as prescribed within a decision.

3.4.2 Recording of Decision

No variance or special permit shall take effect until the decision has been filed with the Norfolk County Registry of Deeds, at the applicant's expense.

Copies of the recording receipt shall be provided to the Community and Economic Development Department and Building Department, and is necessary before a building permit can be issued by the Building Commissioner.

3.4.3 Extension & Modification of Decision

No extension, modification, or renewal of a variance or special permit shall take effect until a copy of the decision is recorded in the Registry of Deeds.

No extension or modification may be applied for to the Board without receipt of the original decision being recorded in the Registry of Deeds being provided to the Board.

3.5 SPECIAL ACCOUNTS

Special Account Fees shall be deposited into a special account as set forth in MGL c. 44, Section 53G. The Board shall maintain accounts for Peer Review and Construction Observation.

Outside consultants retained by the Board to assist in the review of an application shall be paid from this account.

Failure of an Applicant to pay a Special Account Fee shall be grounds for denial of the approval sought.

3.5.1 Replenishment

When the balance in an Applicant's special account falls below fifteen percent of the original Project Peer Review or Construction Observation Fee, the Board may bill the Applicant for supplemental funds to ensure the continued availability of funds so the Town may compensate the outside consultants and neither the review process nor inspections are halted.

3.5.2 Refund

Excess fees in the in the special account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review or construction process. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

3.5.3 Obligations of Subsequent Owners

If at any time prior to completion there is a conveyance or transfer of legal ownership of a site or sites for which a decision has been granted, the new owner shall be responsible for meeting all applicable requirements of these Rules and Regulations by accepting any conditions within the decision and the obligations for any pre-existing Special Account.

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A True Copy
Attest: Stefany Ohannessian
Town Clerk Medway