



Town of South Hadley

BOARD OF APPEALS

TOWN HALL - ROOM 204
SOUTH HADLEY, MA 01075

Rules and Regulations

Appendix of Forms:

Application for Variance

Decision on Variance

Notice of Administrative Appeal

Decision on Administrative Appeal



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Zoning Board of Appeals
Rules and Regulations
Adopted September 21, 2005

Article I—Organization

Section 1. Election of Officers

The Zoning Board of Appeals (ZBA) a/k/a the “Permit Granting Authority” and “Special Permit Granting Authority” shall annually elect the following officers from among its members: chair; vice-chair; and clerk. A chair/clerk is permissible. A majority of all regularly appointed ZBA members must vote favorably to elect each officer. Associate ZBA members shall not participate in the vote.

Section 2. Duties of Officers

A. Chair:

The chair shall transact the official business of the ZBA; coordinate with the clerk and staff when necessary; conduct the meetings and public hearings of the ZBA; and decide all points of order, unless overruled by a majority of the members of the ZBA. The chair shall vote and be recorded on all matters coming before the ZBA.

B. Vice-chair:

The vice-chair shall act as chair in case the chair is absent, disabled, or otherwise unable to perform his or her duties.

C. Clerk:

The clerk shall supervise all clerical work of the ZBA, subject to the direction of the ZBA and the chair. Clerical work shall include, but not be limited to correspondence of the ZBA; sending of all notices required by law and these Rules and Regulations; filing the ZBA’s Rules and Regulations and all amendments thereto with the city/town clerk; compiling, filing, and mailing copies of all decisions and detailed records; maintaining necessary files and indexes; and calling the roll at all ZBA meetings. If the

clerk is absent, the chair shall appoint an acting clerk. The draft of minutes of a meeting shall be submitted to the Planning Board office within 14 days of that meeting.

Section 3. Associate Members

The chair shall designate an associate member to sit on the ZBA in case of the absence, inability to act, or conflict of interest on the part of any ZBA member. In the event of a vacancy on the ZBA, the chair may designate an associate member to act as a member of the ZBA until another person or the associate is appointed to fill the unexpired portion of the vacated term. Associate members are encouraged to attend all ZBA meetings and hearings in case it is necessary for the chair to designate an associate in the middle of a case. With permission from the chair, associate members may participate in meetings and hearings.

Article II—Meetings

Section 1. Quorum

A quorum for taking any action on zoning applications, petitions, and appeals is three members. Only those members who have participated in all aspects of a case may decide the case.

Section 2. Regular Meetings

Regular meetings of the ZBA shall be held at 7 PM on the third Wednesday of the month in Room 204 of the Town Hall, unless notice is otherwise provided. All regular meetings of the ZBA shall be posted publicly in the Town Hall. If a regular meeting day falls on a holiday or election day, the meeting shall be rescheduled and held at such time and place as publicly posted in the Town Hall.

Section 3. Special meetings

Special meetings may be called by the chair, or at the request of two members. Written notice of a special meeting shall be given to each member at least 48 hours before the time set. A notice of every special meeting shall be posted publicly in the Town Hall.

Section 4. Viewing

The ZBA may conduct a site visit of the property that is the subject of a petition, application, or appeal. No deliberations or decisions shall be made by the ZBA on such site visit that would be in conflict with the Open Meeting Law.

Section 5. Open Meeting Law

All meetings of the ZBA shall be subject to and comply with the Open Meeting Law, M.G. L. Chapter 39, Sections 23A-23C.

Article III—Public Hearings

Section 1. Notice

A. Notice Contents:

Notice of public hearings shall be advertised as required by M.G.L., Chapter 40A, Section 11. The notice shall contain the name and address of the applicant, petitioner, or appellant; a description of the area or premises and street address, if any, or other identification of the property that is the subject of the application, petition, or appeal; the date, time, and place of the public hearing and the subject matter of the special permit application, variance petition, or administrative appeal.

B. Newspaper Publication/City/Town Hall Posting:

Notice shall be published once in each of two successive weeks in a newspaper of general circulation in the City/Town. The first notice shall be not less than 14 days before the date of the public hearing. The date of the public hearing shall not be counted in the 14 days. Notice of the public hearing shall also be posted in a conspicuous place in the City/Town Hall not less than 14 days before the date of the public hearing.

C. Mailing to Parties in Interest:

A copy of the notice shall be sent by mail, postage prepaid, not less than 14 days prior to the date of the hearing to the parties in interest who include: the applicant, petitioner, or appellant; abutters to the property that is the subject of the application, petition, or appeal; owners of land directly opposite on any public or private street or way from the property that is the subject of the application, petition, or appeal; abutters to abutters within 300 feet of the property line of the property that is the subject of the application, petition, or appeal as they appear on the most recent applicable tax list and including property owners located in an abutting city or town, if any; the City/Town Planning Board; and the Planning Boards of all abutting cities and towns, which include Holyoke, Chicopee, Amherst, Hadley and Granby.

D. Assessors to Certify List:

The ZBA or its designee is responsible for determining the parties in interest to receive notice. The assessors maintaining any applicable tax list shall certify to the ZBA the names and addresses of the parties in interest and such certification shall be conclusive for all purposes.

E. Waivers of Notice:

The ZBA may accept a waiver of notice from, or an affidavit of actual notice or any party in interest or any successor owner of record who may not have received a notice by mail. The ZBA may also order special notice to any person, giving not less than five nor more than 10 additional days to reply.

G. No Public Hearing on Date of Election:

No public hearing shall be held on the day on which a state or municipal election, caucus, or primary is held in the City/Town.

H. Time for Holding a Public Hearing:

A public hearing shall take place within 65 days after an application, petition, or appeal is filed with the ZBA. A public hearing may be continued until all necessary evidence is gathered for making a decision.

Section 2. Hearings to be Public

All hearings shall be open to the public. No person shall be excluded unless considered by the Chair to hinder seriously the workings of the ZBA.

Section 3. Representation at Hearings

An applicant, petitioner, or appellant may choose to be represented by an agent at the public hearing. The applicant, petitioner, or appellant shall authorize such representation by an agent in writing, as part of the application, petition, or appeal form used by the ZBA. If the applicant, petitioner, appellant, or agent fails to appear for a duly scheduled public hearing, the ZBA may decide on the application, petition, or appeal using the information it has otherwise received.

Section 4. Order of Business

The public hearing shall be held at the call of the Chair, who shall describe the rules of procedure for the hearing and then read or direct the reading of the public hearing notice to open the public hearing. After the opening of the public hearing, the order of business shall generally proceed as set forth below:

- a. Applicant, petitioner, appellant, or agent presents the application, petition, or appeal.
- b. ZBA members ask questions.
- c. All reports of board, municipal officials, or others are read into the record.
- d. Municipal board representatives and officials ask questions
- e. Those in favor speak after first providing their names and addresses for the record.
- f. Those opposed speak after first providing their names and addresses for the record.
- g. ZBA members ask for additional information from any or all parties.

- h. The applicant, petitioner, appellant, or agent provides a rebuttal restricted to the matters raised by others' presentations or questions.
- i. The Chair, upon majority vote of the ZBA, continues the public hearing to a date, time, and place certain that is announced at the public hearing or closes the public hearing if all testimony, documentation, and evidence have been gathered.

The members of the ZBA may direct appropriate questions at the end of any party's or person's presentation. Testimony may be given under oath of the Chair or the Chair's designee. All questions shall be directed through the Chair.

- j. The Chair, upon majority vote of the ZBA, opens Deliberations, wherein the ZBA deliberates in public but does not allow further public input into the process without another notice and public hearing.

Section 5. Information from Other Municipal Boards and Officials

The following municipal boards and officials, at the discretion of the ZBA, shall receive copies of the application, petition, or appeal and may provide comments to the ZBA concerning such application, petition, or appeal: Town Planner, Planning Board, Board of Selectmen, Board of Health, Conservation Commission, Department of Public Works, Water Department, Building Commissioner, Town Engineer, Fire Chief, Police Chief, and any other municipal boards or officials the ZBA chooses. Such board or official shall make recommendations on the application, petition, or appeal as are appropriate and shall send copies of such recommendations to the ZBA and to the applicant, petitioner, or appellant, who shall have the right to a hearing before any such board. Any board or official who fails to make recommendations within 35 days after receipt of the application, petition, or appeal shall be deemed to have no opposition thereto. Failure of a board or official to make recommendations shall not vitiate that board's or official's jurisdiction over the proposal.

Section 6. Conflict of Interest

A. Conflict of Interest:

No member of the ZBA who has a conflict in interest, under the meaning of the M.G. L., Chapter 268A, shall remain an active participant of the ZBA on any hearing or proceeding concerning a variance or appeal. A conflict of interest shall include, but not be limited to a financial interest; personal interest; potential for self-gain or gain of a relative; and when a member has a substantial personal animosity, ill-will, bias, prejudice, or hostility towards an applicant, petitioner, appellant, or agent. Any member who has a conflict of interest shall leave the hearing and meeting room to avoid any appearance of impropriety, unless such member is a party in interest, who has a right to present evidence and testify to the ZBA.

B. Rule of Necessity:

The rule of necessity shall permit a member who should be disqualified to participate in a hearing, vote, or both, when the only way that a decision can be reached is with the participation of such member. Before any participation on the matter, such member shall make the reasons that would have required disqualification public, and the remaining members of the ZBA may not consider such reasons that would have required disqualification in participating on the matter, making a decision, or both.

Article IV—Filing

Section 1. Forms

All applicants, petitioners, and appellants shall use the forms provided in the Appendix of these Rules and Regulations. Any communication, purporting to be an application, petition, or appeal shall be treated as mere notice of an intention to seek a variance or appeal until such time as a complete and accurate application, petition, or appeal form is filed together with all additional required materials and fees.

Section 2. Requirements for Filing

A. Failure to Comply with Requirements:

Applications, petitions, and appeals shall comply with all requirements of the Town Zoning Ordinance and the Zoning Act, including requirements concerning size, form, content, and style of required plans. Any application, petition, or appeal that is not complete and accurate shall not trigger the times for action under The Zoning Act, even if the application, petition, or appeal is filed with the Town Clerk and the ZBA. The ZBA may deny any incomplete and inaccurate application, petition, or appeal and notify the Town Clerk of such denial.

B. Requirements for Plans

Any plans filed with the application, variance, or appeal shall comply with the requirements stated on the application, variance, or appeal.

Section 3. Filing Procedure

The applicant, petitioner, appellant, or agent shall file six copies of a complete and accurate application, petition, or appeal form, together with two required plans and associated material, with the ZBA. Notice of the date of such filing shall be given to the Town Clerk, who shall certify the date and time of filing in the case of failure of the ZBA to act in a timely manner.

Section 4. Fees

The applicant, petitioner, or appellant shall pay all fees for advertising a public hearing, not limited to the cost of newspaper advertisement and postage costs for mailing notices. In addition, the applicant, petitioner, or appellant shall pay all fees required by the ZBA to engage consultants to review plans or to determine compliance with approved plans. The initial application, petition, or appeal shall be accompanied by a check made payable to the Town of South Hadley in the amount of whatever is the current fee set by the Town of South Hadley.

Article V—Decision

Section 1. Voting Requirements

A. Required Vote:

Any member who participates in making the decision must attend all public hearings concerning the matter, unless the rule of necessity applies and the only way to permit a vote is to have members review the record prior to such decision. All favorable actions, including adoption of all conditions and limitations, shall require three members for a three-member board of the ZBA to vote in favor.

B. Findings:

In order to issue a variance, or decide an appeal, the ZBA must make all findings required by the Zoning Act and the Zoning Ordinance/By-Law. To grant a variance, they must list the evidence for each of the statutory findings from pages 10.3-10.4 of the 2004 *The Zoning Guidebook* by Carol Rolf, Esquire, for the Massachusetts Federation of Planning and Appeals Boards.

Section 2. Conditions

The ZBA may adopt conditions, safeguards, and limitations on the time or use of any variance or appeal granted, except that a variance may not be subject to a condition based on continuous ownership.

Section 3. Time Limits on Decision-Making

The ZBA shall act on variances and appeals as follows:

--For a variance or appeal, the ZBA shall make its decision within 100 days after the variance petition or appeal was filed with the ZBA, unless the time is extended by mutual agreement. The filing of the decision with the Town Clerk and a mailing of the decision to the petitioner or appellant and a notice of decision to parties in interest and those who requested a notice, shall be completed 14 days after the decision is made.

--The ZBA and the applicant, petitioner, or appellant may mutually agree in writing to extend the time to act. A copy of such written agreement shall be filed with the Town Clerk.

Section 4. Detailed Record

The vote of each member on each motion shall be made a part of the public record, including any absence or failure of a member to vote. The detailed record shall set forth clearly the reason or reasons for the ZBA's decision and its official actions and shall be filed with the Town Clerk within 14 days of the decision.

Section 5. Filing and Mailing Decision

After filing its decision in the office of the Town Clerk, the ZBA shall mail a notice of its decision, noting the date of filing with the Town Clerk, within 14 days of such filing, to the applicant, petitioner, or appellant and to all parties in interest as set forth in these Rules and Regulations and under applicable law, and to all parties who requested notice at the public hearing and provided an address to which such notice was to be sent. Such notice shall specify that appeals, if any, must be filed within 20 days after the date of the ZBA's filing of the decision in the office of the Town Clerk. Each member of the Planning Board shall receive a copy of each Decision.

Section 6. Recording the Decision

No variance or appeal shall be in effect until the applicant, petitioner, or appellant at his/her/its expense, records a copy of the decision with the Hampshire Registry of Deeds.

Article VI—Withdrawal and Reconsideration

Section 1. Withdrawal

An applicant, petitioner, or appellant may withdraw an application, petition, or appeal without prejudice at any time before the public hearing for such application, petition, or appeal is published. After the public hearing is published, the ZBA must agree by a unanimous vote (three-member board) to permit such application, petition, or appeal to be withdrawn without prejudice.

Section 2. Reapplication for Reconsideration

If a variance or appeal is denied, the applicant, petitioner, or appellant must wait two years from the date of the final unfavorable action before reapplying for such variance or appeal unless the applicant, petitioner, or appellant complies with the reconsideration procedures set forth in Section 3 under this Article.

Section 3. Reconsideration Procedures

When a variance of appeal is denied, an applicant, petitioner, or appellant may file for reconsideration of such variance or appeal after showing specific and material changes in the proposal concerning the reasons upon which the previous unfavorable action was based. All but one member of the Planning Board must consent to the reconsideration before the ZBA will determine if there are specific and material changes in the proposal. If such Planning Board consent is granted, and if the ZBA finds specific and material changes in the proposal concerning the reasons upon which the previous unfavorable action was based, then the applicant, petitioner, or appellant may file for reconsideration before the ZBA. After the Planning Board consent, the ZBA may find specific and material changes and reconsider the proposal at the same public hearing, as long as such hearing complies with the procedures set forth in these Rules and Regulations and The Zoning Act.

Article VIII—Adoption

The foregoing Rules and Regulations are hereby adopted this 21st day of September by the South Hadley Zoning Board of Appeals as required by M.G.L. Chapter 40A, Section 12. All prior Rules and Regulations concerning matters addressed in these Rules and Regulations are hereby repealed. A copy of these Rules and Regulations and any amendments thereto shall be filed with the Town Clerk

Martha R. Terry Martha R. Terry, Chair/Clerk

Edward C. Brunelle Edward Brunelle, Member

P. Lannon Pamela Lannon, Associate Member, Acting Member

Reference: *The Zoning Guidebook 2004*, Carol Rolf, Esq., for the Massachusetts Federation of Planning and Appeals Boards, 2004.