

# Zoning Board of Appeals

## Rules and Regulations



Removed from Zoning Bylaws at Annual Town Meeting April 29, 2014

Zoning Board of Appeals  
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[Adopted by the Zoning Board of Appeals 2-6-1992, Amended 4-24-07  
Removed from Zoning Bylaws April 29, 2014 Annual Town Meeting]

**ARTICLE IX**  
**Applications**

**~ 171-44. Application form.**

Every application for action by the Board, including appeals from decisions of the Building Inspector and petitions for variances and special permits, shall be made on the official form of the Zoning Board of Appeals (ZBA), which shall be furnished by the Town Clerk or the Building Inspector upon request. Any communication purporting to be an application shall be treated as merely advisory, and no notice shall be deemed to have been given until such time as it is made on the official application form and filed with the Town Clerk and the Building Inspector. Information called for by the form shall be furnished by the applicant in the manner therein prescribed.

**~ 171-45. Filing.**

Every application shall be filed with both the Town Clerk and the Building Inspector. The Town Clerk shall indicate the date on which the application was received and transmit a copy of the dated application to the applicant. 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 of Appeals. It shall be the responsibility of the applicant to furnish all supporting documentation with the application, and the dated copy received from the Town Clerk does not absolve the applicant from this responsibility.

**~ 171-46. Copy of plan required.**

Each application and petition to the Board shall be accompanied by three copies of the following described plan. Plans must be submitted to the office of the Town Clerk at the same time as the application. Failure to comply with the requirements of the application form and those listed below may result in a dismissal of an application as incomplete.

A. Size of plan: 8 1/2 inches by 11 inches or 11 inches by 17 inches drawn to scale, or a clear and reasonable representation of the proposal. Preferred scale: one inch equals 40 feet. NOTE: For projects the ZBA determines to be "major projects," plans must be of a size and scale to be determined in consultation with the Zoning Board of Appeals.

B. Features to be indicated on the plan:

- (1) Site orientation:
  - (a) North point.
  - (b) Zoning district(s).
  - (c) Names of streets.
  - (d) Wetlands (if applicable).
  - (e) Names of owners of properties within a minimum of 300 feet as shown on the most recent tax list.
  - (f) Location of buildings on surrounding properties.
  - (g) Measurements of all relevant features, lot lines, etc.

C. Additional information required:

- (1) Existing features are to be shown in black.
- (2) Proposed features are to be shown in color.
- (3) Setback, side and rear yard dimensions shall be indicated by dashed line.
- (4) Graphic scale.
- (5) Date of plan.
- (6) Title of plan.
- (7) Name of applicant, owner of record (if different) and designer or surveyor.

D. Special requirements for other projects. In addition to the above-mentioned features, plans for major projects must show detailed utilities and topographic information and must bear the stamp of a registered architect, engineer or surveyor. The ZBA may require further information to be shown.

E. The Board shall have the authority to alter or waive these requirements as it deems necessary or appropriate in particular cases.

**~ 171-47. Application and review fees.**

A. All applications shall be accompanied by an applications fee in the form of cash or check, payable to the Town of Whately, according to the following schedule:

- (1) Residential/agricultural: \$175.00
- (2) Commercial/industrial: \$225.00

B. When reviewing an application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. The Board may require that applicants pay a review fee consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of an application.

C. In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws and regulations.

D. Funds received by the Board pursuant to this section shall be deposited with the Municipal Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the application.

E. Review fees may only be spent for services rendered in connection with the specific project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

**ARTICLE X  
Organization**

**~ 171-48. Members and officers.**

The Zoning Board of Appeals shall consist of three regular and two alternate members appointed by the Board of Selectmen. The regular members of the Board shall elect all officers of the Zoning Board, to include a Chairperson, Vice-Chairperson and Clerk.

**~ 171-49. Chairperson; powers and duties.**

A. The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. He/she shall appoint such committees as may be found necessary or desirable.

B. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning Bylaw of the Town of Whately 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 and exercise general supervisory power. He/she shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

**~ 171-50. Vice-chairperson; powers and duties.**

The Vice-Chairperson shall act as Chairperson in the case the Chairperson is absent, disabled or otherwise unable to perform his/her duties. If both the Chairperson and the Vice-Chairperson are absent, the Clerk shall act as Chairperson and appoint an Acting Clerk.

**~ 171-51. Clerk; powers and duties.**

The Clerk shall be a member of the Board and shall, subject to review by the Board and its Chairperson, supervise all of the clerical work of the Board, including all correspondence of the Board, sending of all notices required by law, preparation of rules and orders of the Board, receiving and scrutinizing all applications for compliance with the rules of the Board, keeping dockets and minutes of the Board's proceedings, compiling all required records, maintaining necessary files and indices and calling the roll at all Board meetings. If the Clerk is absent, the Chairperson shall appoint an Acting Clerk.

**~ 171-52. Alternate members.**

Alternate members shall sit on the Board in case of the absence, inability to act or apparent conflict of interest on the part of any Board member or as part of a regularly scheduled rotation among the regular members.

**~ 171-53. Quorum.**

Three members shall constitute a quorum.

**~ 171-54. Meetings.**

A. Meetings of the Zoning Board of Appeals shall be called by the Chairperson as needed or at the request of two or more members and shall be posted 48 hours in advance of the meeting. Public hearings shall be posted as required by MGL C. 40A.

B. Business at meetings shall include site and other plan examinations and all other matters in the province of the Zoning Board except petitions for special permits and variances and appeals from the decision of the Building Inspector. Hearings on petitions and appeals before the Board may be held prior to or following the meeting, as designed by the Chairperson. Meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairperson, be ruled out of order.

C. Site plans which come to the Zoning Board of Appeals may be sent to the Planning Board for an advisory opinion by the Zoning Board of Appeals, the Building Inspector or as required by the bylaw. Site plans need not be approved by the Zoning Board of Appeals until that Board has had opportunity for review.

**ARTICLE XI**  
**Hearings**

**~ 171-55. Notice.**

A. Notice of hearings shall be advertised as required by the provisions of MGL C. 40A. A copy of the advertised notice shall be sent by mail, postage prepaid, so that the postmark date is at least 14 days prior to the date of the hearing, to all parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, all as they appear on the most applicable tax list, the Planning Board, the Planning Board of every abutting city or town and the Building Inspector of Whately.

B. Notice shall also be given by publication in a newspaper of general circulation in town once in each of two successive weeks, the first of which shall be at least 14 days prior to the hearing, and by posting the notice in the Town Hall for the same fourteen-day period.

**~ 171-56. Viewing of property.**

The Zoning Board of Appeals may view any properties which come before it in requests for special permits, variances or appeals from decisions of the Building Inspector.

Applicants should be prepared to meet with the Board at the site prior to the conclusion of the public hearing.

**~ 171-57. Public hearing.**

All hearings shall be open to the public, no person shall be excluded unless he/she is considered by the Chairperson to be a serious hindrance to the workings of the Board.

**~ 171-58. Representation and absence.**

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

**~ 171-59. Order of business.**

A. The order of business at hearings shall be as follows:

- (1) Explanation of procedures by the Chairperson.
- (2) Applicant's presentation.
- (3) Comments from the public, if any, and questions by those seeking information.
- (4) Applicant's response, if any.

B. Subsections A(1) through A(4) will be repeated for each application presented to the Board.

C. Members of the Board who are hearing the case may direct appropriate questions during the hearing.

**~ 171-60. Written memorandum.**

A. It is recommended that appeals from rulings of the Building Inspector and applications 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 C. 40A, ~ 15, should be clearly identified and factually supported:

- (1) The particular use proposed for the land or building.

(2) The circumstances especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located.

(3) Facts which make up the substantial hardship, financial or otherwise, which results from literal enforcement of the applicable zoning restrictions with respect to the land or building for which a variance is sought.

(4) Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.

(5) Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of Chapter 171, Part 1.

B. Memorandum may be filed at the public hearing or within such time thereafter as may be fixed by the Board, but in no case later than 14 business days after the public hearings. Other communications may not be accepted.

## **ARTICLE XII**

### **Disposition by the Board**

#### **~ 171-61. Filing of decision.**

A decision of any hearing shall be filed with the Town Clerk within the time limits established by Chapter 40A of the General Laws of Massachusetts.

#### **~ 171-62. Voting requirements.**

A. The concurring vote of three members of the Board shall be necessary in any zoning action taken by the Board, including the granting of a special permit, variance or overturning a decision of the Building Inspector.

B. The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact. The Board shall, in addition, set forth clearly the reasons for its decision.

#### **~ 171-63. Withdrawal.**

An application may be withdrawn without prejudice by notice in writing to the ZBA Clerk at any time prior to the publication of the notice of the public hearing by the Board.

See Article XI, ~ 171-58. Requests to withdraw at other times may be granted by a unanimous vote of the Board upon formal, written request.

**~ 171-64. 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 occur only during a duly constituted public meeting.

**~ 171-65. Limitations on grants of extensions.**

If a variance is granted by the Board, the rights authorized by the variance shall be exercised within one year from the date of the granting of said variance. In the case of special permits or appeals from a decision of the Building Inspector, a two-year deadline from the date of granting the permit or appeal shall apply. These deadlines can be altered as a condition of the permit or variance. Reasonable extension of said time may be granted by the Board (up to six months) in the case of an appeal to the Superior Court under MGL C. 40A, ~ 17, or for other good cause shown.