



TOWN OF EASTHAM

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Eastham Planning Board Rules and Regulations

I. Authority:

The Eastham Planning Board (the “Board”) was established in accordance with the provisions of Massachusetts General Laws (MGL) Chapter 41 - Section 81-A, and is governed by MGL Chapter 41 (the “Subdivision Control Act”), MGL Chapter 40A (the “Zoning Act”) and the Town of Eastham Zoning Bylaws (“Site Plan Approval Special Permit” and “Residential Site Plan Approval”).

II. Membership and Duties:

The membership of the Board shall consist of seven (7) Members and two (2) Alternate Members appointed by the Board of Selectmen. The Members shall hear and decide on cases presented to the Board in accordance with the powers invested in the Board under the specific statutory authority. Alternate Members shall only be eligible to vote on requests for Site Plan Approval - Special Permit. Members shall inform the Chairman of anticipated absences as early as possible.

III. Standards of Conduct for Board Members:

The primary obligations of the Board members are to serve the public interest, to conduct themselves so as to maintain public confidence in the Planning Board, to meet the fundamental responsibility of fairness and to comply with all statutory regulations. Individual Board members, including the Chairman, shall not meet with an applicant or representative outside of a Board meeting unless authorized to do so by the Board.

IV. Conflict of Interest:

A Board member shall not participate in official capacity in matters in which such participation is prohibited by the Conflict of Interest Law. The Board member shall, at any meeting where the particular matter is discussed, disclose orally the existence of the conflict-of-interest, remove themselves from the meeting at the time, and leave the meeting room during all times that particular matter is being discussed (except as allowed by the Conflict of Interest Law).

V. Officers:

The Board Members shall elect from its membership a Chairman, a Vice-Chairman and a Clerk yearly. This reorganization will typically occur at the July meeting.

VI. Duties Of Officers:

The duties and powers of the officers of the Planning Board shall be as follows: The Chairman shall preside over all meetings of the Board, the Chairman shall have the power to call all regular and special meetings of the Board in accordance with these Rules and Regulations, to set the agenda for those meetings, to sign documents of the Board and to see that all actions of the Board are properly taken and meetings proceed in accordance with Open Meeting Law.

The Vice-Chairman shall act as the Chairman during the absence, disability or disqualification of the Chairman, and shall exercise or perform all the duties and responsibilities of the Chairman. In the absence on the Chair and Vice Chair, the Clerk shall act as Planning board Chair.

In the absence of all officers, the Board members present at a meeting shall elect an acting Chair.

VII. Regular Meetings:

Regular meetings of the Board are scheduled for the third Wednesday of each month in the Town Hall at 5:00 pm. At such meetings the Board shall consider all matters properly before the Board. A regular meeting or special meeting may be cancelled or rescheduled by the Chairman. The Chairman may also cancel a scheduled meeting up to (3) hours prior to the time scheduled for that meeting due to circumstances beyond the Chairman's control.

All materials (i.e., revised plans, informal discussion information etc.) to be considered by the Planning Board shall be submitted to the Planning Department no later than noon on the Wednesday of the week prior to the meeting for inclusion on the agenda. The agenda for the meetings shall be filed with the Town Clerk and publicly posted in Town Hall at least 48 hours, not including Sundays or legal holidays, prior to such meetings.

VIII. Special Meetings:

Special meetings of the Board may be called by the Chairman. Written notice of all Special Meetings is to be posted in Town Hall in accordance with the Open Meeting Law. The notice must contain the designated time, place and purpose of the meeting. Special meetings shall be held at reasonable hours and in publicly accessible places.

IX. Preliminary Conference:

Town of Eastham Zoning Bylaws Section 3.9.8.1 Eastham Corridor Special District and Section 10.1.4.2 Site Plan Approval Residential encourages prospective applicants to schedule a preliminary conference with the Board prior to the filing of an application. All materials shall be submitted to the Planning Department no later than noon on the Wednesday of the week prior to the meeting for inclusion on the agenda.

The Board will review preliminary materials in an attempt to avoid unnecessary deficiencies in the application to be filed and to promote efficiency in the formal review and hearing process. The Board will not be responsible for assuring the accuracy, correctness or thoroughness of any application submitted for review. All comments made by Board members are of an advisory nature only and are non-binding.

X. Applications:

No Application shall be deemed to have been submitted to the Board until all the required forms, plans and fees have been received by the Board in the manner prescribed below: Original Application with signatures (the "Package"), Twelve (12) copies of the Application accompanying plans, supporting documents and appropriate filing fee(s) are to be submitted to the Planning Department. Once determined to be complete by the Planning Department and a denial letter from the Building Inspector (if applicable) is issued, the Package is brought to the Town Clerk's office and date stamped. The Clerk shall keep the original Application and the remaining ten (10) copies are to be given to the Planning Department.

All owners of record shall acknowledge the Planning Board application by signing the original application or submitting a letter of authorization to act on behalf of property owner/owners.

Application forms are available in the Planning Department and on the Town of Eastham website. No application shall be deemed complete unless all required information and fee are included.

All posting, advertising and abutter notification shall be completed in accordance with applicable statutes.

XI. Waivers:

All waivers must be requested in writing and be properly noticed. If an Application is filed under statutes with waiver provisions (Subdivision Control Act, Site Plan Approval – Special Permit or Residential Site Plan Approval), waivers shall be recorded and voted upon by the Members in an open public meeting.

XII. Planning Board Site Visits:

Prior to the opening of a public hearing Planning Board members, alternates, and staff should conduct site visits individually. Members should familiarize themselves with the proposed work location. They should introduce themselves to the property owner if they are to enter the property. Board members are strongly encouraged to do a "windshield survey" of the neighborhood to ascertain characteristics of same.

XIII. Public Hearings:

All hearings and meetings of the Planning Board shall be open to the public except as may be determined by the Board in accordance with the provisions of the Massachusetts Open Meeting Law, authorizing executive session. No person shall be excluded from a meeting or public hearing unless he or she is considered by the Chair to be a "serious hindrance" to the workings of the board.

An applicant may appear in his own 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 may decide on the matter using the information it has otherwise received, or continue the hearing.

XIV. Executive Session:

For reasons specified in MGL Chapter 39 – Section 23B, the Board may enter Executive Session subject to the following procedures:

1. The session must be convened in an open meeting and notice given
2. Chairman announces the purpose of Executive Session
3. Majority must vote in recorded roll call for Executive Session
4. Chairman announces whether the meeting will reconvene in open session
5. Votes taken in Executive Session must be recorded roll call votes

XV. Hearing Procedure:

The Chairman shall call the meeting to order when a quorum is present. Public Hearings are held at the date and time advertised. Prior to opening a new Public Hearing the Chairman will confirm that proper posting, advertising and abutter notification has been completed. The legal notice is read by the Chairman, Planner's Report presented, the petitioner or agent shall present their case. In the event that neither an applicant or applicant's representative is present at the hearing, the Board shall grant a continuance to the following regular meeting.

The Chair shall open the hearing at the advertised time in the specified meeting place, and proceed in the following order:

- a) The Chair will read the notice of hearing as published
- b) The applicant or his representative shall present his case to the board
- c) Questions and comments from the Planning Board
- d) Questions and comments from representatives of other Town boards, and Town officials
- e) Questions and comments from abutters to the property
- f) Questions and comments from other interested parties
- g) Responses from the applicant
- h) The Chair shall close the public hearing
- i) The Board will discuss the application

Any person who favors, objects or questions any Application shall have the right to speak, at the discretion of the Chairman after petitioner completes presentation. The Chairman will ask for the names and addresses of all persons making public comment.

A motion to continue a hearing to another meeting may be requested by the Applicant or by a member of the Planning Board the continuance shall be made to a date certain.

The Board shall not consider any additional materials once the evidentiary portion of the public hearing has been closed, as this material would not be subject to public review and comment.

XVI. Findings:

The Board shall make Findings of Fact as necessary to support its decision to either Approve, Approve with Conditions or Deny an Application. Minimum findings should include site information, zoning compliance, compliance with applicable decision criteria and others pertinent facts deemed necessary to support a final decision. The findings shall be recorded and voted upon by the Members in an open public meeting.

XVII. Conditions:

The following standard conditions shall apply in written decisions:

1. Board of Health approval and Conservation Commission approval, if applicable.
2. No Building Permit shall be issued until the application complies with all sections of the Town of Eastham Zoning By-Law.
3. Any changes to the project stamped by the Town Clerk on (date)_____ except those that are de minimis must be reviewed by the Planning Board. If the Board finds a change to be substantial re-notice is necessary for a new hearing.
4. Any changes to final grade must be reviewed by the Planning Board.
5. The Planning Board reserves the right to monitor the ongoing construction for compliance with the approved plan.

XVIII. Decision:

Based upon the Findings of Fact, a motion shall be made (and seconded) by a Member making an ultimate finding on the Application to Approve, Approve with Conditions or Deny an

Decisions of the Board shall be processed in accordance with applicable statutory framework. The chairman will prepare a letter to the Zoning Enforcement Officer stating the conditions imposed by the board for any approved project and requesting that the Zoning Enforcement Officer sign, date and return the letter indicating that those conditions were met before issuing an Occupancy Permit.

XIX. De Minimis Changes:

A request for determination of de minimis change may be made upon written request to the planning department. The request should include a narrative explanation and site plan(s)/building plan(s) illustrating the proposed changes. No application fee or abutter notification fee shall be required for determination of a de minimis change and no public hearing is required. The initial request will be reviewed by the town planner and board chair.

- A. If the Town Planner and the Board Chair agree that the proposed change is de minimis, their decision shall stand without review by the Board and shall be recorded in the case file.
- B. If the Town Planner and the Board Chair agree that the proposed change is not de minimis, or if the Town Planner and Board Chair fail to agree on a determination the matter shall be referred to the Board. The board shall make a determination by majority vote.
- C. In the case of such referral to the board the applicant may
 - a) accept the determination that the proposed change is not de minimis, with a public hearing on the proposed change to be scheduled at the first regular meeting of the Board after the timely filing of the necessary application, or

- b) have an opportunity, at the next regular meeting of the Board, to make a presentation contesting the initial determination that the proposed change is not de minimis
 1. If the Board rules that the proposed change is de minimis, then the documents provided to the board, explaining the proposed changes shall be added to the case file and the matter will be considered closed.
 2. If the Board rules that the proposed change is not de minimis, then the applicant shall submit a formal application for modification to an approved board decision which shall be scheduled for a public hearing before the Board after such a timely filing of the application.

The following changes shall be deemed to be de minimis:

1. Changes to infrastructure (underground utilities: water, sewer, electric, drainage) and utility provisions/apparatus with written approval by the agency responsible for the utility.
2. Increases in the type or quantity of landscaping.
3. Shifting of structures, parking spaces or other site amenities less than one (1) foot in distance, provided the change does not result in any violations of setbacks, buffers, or open space requirements.
4. A reduction in the foot print of the proposed structure or a reduction in impervious areas provided that the applicable Parking Requirements of the Zoning Bylaw continued to be satisfied.
5. Façade changes to structures that do not result in an increase to the building footprint or alteration to the vehicular or pedestrian circulation in and around the site.
6. Moving of Accessible Parking spaces pursuant to 521 CMR as most recently amended.

Changes may be considered de minimis only upon the following determinations having been made:

- Changes would not contravene the legal notice, or any finding, or condition in the original approval decision;
- Changes would not alter the prevailing character of the development/site and its relation to the neighborhood as described in the decision letter findings of fact.;
- Changes will comply with Town of Eastham Zoning Bylaw and all other applicable rules and regulations of the Town of Eastham.
- Changes are not applicable to regulatory review thresholds.

XX. Quorum and Voting:

Subdivision Control Act – MGL Chapter 41

Quorum: Four (4) members shall constitute a quorum for acting on applications made under the Subdivision Control Act including: Approval Not Required (ANR) Plans, Preliminary Subdivisions, Definitive Subdivisions, Subdivision Modifications, Amendments or Rescissions. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a subsequent date.

Vote: Section 81L requires “majority of the members” of the Board must provide signatures in order for there to be proper certification or endorsement of a plan. The majority number of the seven (7) Members or minimum four (4) affirmatives votes is required for approval.

Site Plan Approval – Special Permit – MGL Chapter 40A – Section 9

Quorum: Five (5) members of the Board shall constitute a quorum of the Planning Board for acting upon a request for Site Plan – Special Permit. However, if less than seven (7) Members are available for a Public Hearing an Alternate Member may be requested by the Chairman to act as a Member on an Application to constitute as full a Board as possible.

Vote: If necessary, five (5) Members may constitute the Board in hearing and deciding on a Special Permit request, provided the Applicant is in agreement. Agreement to go forward with a five (5) Member Board shall be in writing, signed by an authorized Applicant and the Planning Board Chair or Acting Chair. In such instances a unanimous vote of all five (5) Members shall be required to grant the relief and achieve the supermajority required for a seven (7) member boards as specified in MGL Chapter 40A – Section 9. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a subsequent date.

An Alternate Member may be requested by the Chairman to fulfill the voting requirements of the Board when a voting Member is absent or unable to serve on a continued case, provided the Alternate Member was present during all of the Public Hearing and deliberations on that particular appeal.

Residential Site Plan Approval – Eastham Zoning Bylaws - Section 10.3

Quorum: Four (4) members of the Board shall constitute a quorum of the Planning Board for acting on applications made under the Section XIV of the Eastham Zoning Bylaws for Residential Site Plan Approval. No action shall be taken in the absence of a quorum, except to adjourn the meeting to a subsequent date.

Vote: The concurring vote of the majority of the sitting members present of the Board participating and voting shall be required for any decision on a site plan application (abstaining members being considered not to be voting).

An Alternate Member may be requested by the Chairman to fulfill the voting requirements of the Board when a voting Member is absent on a continued Case, provided the Alternate Member was present during all of the Public Hearing and deliberations on that particular appeal.

Mullin Rule (M.G.L. c. 39, s. 23D):

Any Member or Alternate seated on a case for the initial session of a public hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements

No Member or Alternate, not having been seated on a case at the initial public hearing on the application, may be seated on that case in lieu of an absent Member or Alternate who was seated.

For a Member or Alternate to be eligible to utilize the provisions of the “Mullin Rule” in a case, that Member or Alternate must have been a sworn Member or Alternate at the time the public hearing on the application in the case was opened.

XXI. Fees:

All applications shall be accompanied by the appropriate fee. Fees are set by the Board of Selectmen.

Project Review Fees:

In accordance with M.G.L. Chapter 44, Section 53G, the Planning Board may impose project review fees for those applications which require the services of outside consultants for the review process due to the size, complexity, or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. The Board may engage attorneys, engineers, planners, landscape architects, architects or other appropriate professionals.

Fee Payment

The Planning Board shall determine the amount of the initial deposit to be made and the amount of any additional funds that may be required during the review process. The applicant shall pay such fees to the Town of Eastham and such fees shall be deposited in a special account with the Town.

Expenditure of Fees

Outside consultants retained by the Planning Board shall be paid from this special account. The expenditure of said fees shall be at the direction of the Planning Board, without further appropriation. Said fees are to be expended only in connection with services rendered for the specific project for which the fees were collected.

Excess Fees

After completion of the Planning Board’s review of a project, any excess fee amount, including interest, shall be refunded to the applicant or the applicant’s successor in interest and a final report of said account shall be made available to the applicant or applicant’s successor in interest.

Failure to Pay Fee

Failure to pay a Review Fee by the applicant shall be grounds for disapproval of the subject application.

Administrative Appeals

The choice of a consultant selected by the Planning Board for the review of an application may be appealed in writing to the Board of Selectmen by the applicant, provided such appeal is initiated within two weeks of the selection. The ground for such appeal shall be limited to claims that the selected consultant:

- a) has a conflict of interest;
- b) does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three years of practice in the field at issue or a related field.

The required time limits for action upon an application by the Planning Board shall be extended by the duration of the administrative appeal.

In the event that no decision is made by the Board of Selectmen within one month following the filing of an administrative appeal, the selection made by the Planning Board shall stand.

Reports

The Town Treasurer shall submit annually a report of said special account to the Board of Selectmen and Town Administrator.

The Town Treasurer shall cause said report to be published in the annual report the Town. The Town Treasurer shall submit annually a copy of said report to the director of the Bureau of Accounts.

XXII. Annual Report:

During December of each year, the Chairman shall draft and submit to the Board of Selectmen an Annual Report for the activities of the preceding year. The Annual Report shall highlight the activities of the Board in a general manner and cite general trends. It shall give a summary in statistical format of the Board's activities and decisions.

XXIII. Administration:

Adoption

These Rules and Regulations are hereby adopted on 5/18/16 by the Eastham Planning Board.

Validity

In the event of a conflict between the provisions of these Rules and Regulations and the provisions of the Massachusetts Zoning Act and the Town of Eastham Zoning Bylaw, the provisions of the Massachusetts Zoning Act and the Town of Eastham Zoning Bylaw shall apply.

Amendment

From time to time, the Planning Board may amend these Rules and Regulations. Such Rules and Regulations shall be adopted following a majority vote of the board at a public meeting.

These Rules and Regulations are hereby amended on 1/20/21 by the Eastham Planning Board.

Date Filed with Town Clerk: JULY 30, 2021

Signature of Town Clerk: Cindy Nicholson

PROCESS FOR DETERMINATION OF DE MINIMUS CHANGE TO APPROVED SITE PLANS, SPECIAL PERMITS, VARIANCES

