



TOWN OF EASTHAM

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TOWN OF EASTHAM ZONING BOARD OF APPEALS

Rules and Regulations of the Zoning Board of Appeals

The following rules and regulations are hereby adopted by the Eastham Zoning Board of Appeals and shall govern the submission of all appeals and the conduct of all hearings. These rules and regulations are adopted in accordance with MGL 40A, Sec. 12.

I. MEMBERSHIP:

- A. The Zoning Board of Appeals shall consist of five (5) regular members and two (2) Alternate members, all to be appointed by the Board of Selectmen. The term of office of a regular member shall be for 3 years, with the terms so arranged that the term of one member expires in one year, two members in the next year, and the remaining two members in the third year. The terms of each Alternate member shall be for three years.
- B. The Alternate members shall sit with the regular board members at hearings. They shall be designated by the Chairman to serve on cases in the absence of regular members, and shall vote only when so designated.

II. ELECTION OF OFFICERS:

The regular members shall annually elect a Chairman, Vice-Chairman, and Clerk, to serve until the Board is reorganized after the following June 30th. The election shall take place at the first meeting after appointments or reappointments to the Board are made in June or July.

III. DUTIES OF OFFICERS:

- A. The Chairman shall conduct and control all hearings; shall set the agenda for meetings; shall appoint one or both Alternates to serve in the absence of regular members; shall call special meetings as necessary; shall appoint an acting clerk when the Clerk is absent; and shall sign documents for the Board.
- B. The Vice-Chairman shall act in the absence, disability or disqualification of the Chairman, and shall exercise or perform all the duties and responsibilities of the Chairman.
- C. The Clerk shall record all matters before the Board; shall assemble and prepare the minutes of all hearings held by the Board; and shall see that signed copies of approved Minutes are delivered to the Town Clerk.

IV. MEETINGS OF THE BOARD: TIME AND PLACE:

All meetings of the Board shall be open to the public, under the provisions of the Open Meetings Law. Meetings and hearings of the Board shall be held on the first Thursday of each month, beginning at 5:00 p.m., unless otherwise scheduled. The Board may cancel meetings in the absence of business to be heard. The Board shall meet at the Town Hall or at such other place as the Chairman may from time to time designate.

V. MEETINGS OF THE BOARD: QUORUM AND ATTENDANCE:

- A. The quorum of the Board for purposes of considering Special Permits, Variances, and appeals shall be four (4) members, including any Alternate(s) designated to sit on the matter.
- B. The quorum for organizing the Board (electing officers) shall be three (3) Members; Alternates may not vote on the election of Board officers.
- C. The quorum of the Board for transacting other business, such as approval of minutes, shall be three (3) Members, including Alternates.
- D. All participation in proceedings of the Board shall be in person. No remote participation in the meetings of the Board is permitted.
- E. A member of the Board who is absent from a session in which a continued application is considered may, upon return, participate if that member has satisfied the requirements of M.G.L. c. 39, s. 23D ("Mullin Rule") by watching the recorded proceedings, reading the paperwork, and filing an affidavit with the Town Clerk.

VI. MULLIN RULE (M.G.L. c. 39, s. 23D):

- 1. 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
- 2. 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.
- 3. 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.

VII. SITE VISITS:

Members of the Board shall whenever necessary make visits to the sites involved in applications before the Board. Site visits shall be made by members or Alternates individually and such visits are not meetings subject to the Open Meeting Law. No more than two Members shall be present at a site at any one time. In making site visits, members of the Board or Alternates should, when possible, introduce themselves to the property owner.

VIII. APPLICATIONS TO THE BOARD:

All applications to the Board shall be submitted on the form(s) provided by the Board for such application and shall be accompanied by the filing fee required. All information and plans required and specified in the application and checklist are required to be filed for an application to be complete, unless waived by the Board for any particular application. The Applicant shall, at the discretion of the Board, submit satisfactory indication of ownership, occupancy, or special interest in, the land/buildings to which a decision of the Board would apply. The Board may decide not to take action on an application that is not complete according to the specifications required.

The Board, at its discretion, may decline to consider revised plans submitted to the Board at, or immediately before, a hearing.

IX. PUBLIC NOTICE OF HEARINGS:

- A. Notice of all hearings shall be given in an official publication or newspaper of general circulation within Barnstable County once in each of two successive weeks. The first publication is to be not less than fourteen (14) days prior to the date set by the Chairman for a hearing. Special notice by certified mail, postage prepaid, at least 14 days prior to any hearing shall be given by the Clerk of the Board to all persons who are "parties of interest" as defined in MGL 40A Sec. 11. Notice shall be given to the Board of Selectmen, Town Clerk, Planning Board, and the Building Commissioner.
- B. If an applicant wishes to postpone a hearing, at least ten (10) days advance notice must be given to the Zoning Board of Appeals.

X. HEARINGS: PROCEDURE:

- A. 1. For the purpose of deciding an application, five (5) non-recused individuals shall be designated by the Chair. These shall normally be regular Members of the Board. In the absence of one or more Members, an Alternate or Alternates shall be seated instead of the absent Member(s).
- 2. In the event that only four (4) voting members are present, the Chairman shall inform the applicant that if the hearing goes forward, a vote to approve must be unanimous and shall provide the applicant with the opportunity to request a continuance to a date certain, which shall be granted. This must be done before any presentation of the applicant's case or discussion with the Board.
- 3. On an application for a project that is likely to span multiple meetings or for a Comprehensive Permit under Sec. 40(b), in order to assure a number sufficient to vote,

the Chair shall have the discretion to seat all members of the Board and all Alternates for the hearing on the Application. On the vote on whether to grant the application, no more than five (5) shall vote, with any Alternate voting only if fewer than five regular Members are available to vote.

- B. Prior to opening a new public hearing, the Chairman shall confirm that proper posting, advertising, and other notification have been completed.
- C. The Chair shall assure that all members of the public who intend to speak shall provide their names and addresses on a form for that purpose.
- D.
 1. The hearing commences with the reading of the legal notice by the Chairman
 2. The applicant or the applicant's agent shall present the case for the application or appeal.
 3. Members of the Board may then ask questions of the applicant.
 4. Abutters, Town officials or Town employees, and other interested parties may then make comments or ask questions, and the applicant may respond.
 5. The Chairman shall then close the public portion of the hearing.
 6. The Board shall then discuss the application.
 7. At any point in the discussion, the applicant may request a continuance to make appropriate revisions to the application. At any point before a vote on whether to grant a Special Permit or Variance or to act on an appeal, the applicant may request that the application be withdrawn without prejudice.
 8. In taking whatever action the Board believes appropriate, there shall be created Findings of Fact, on which the Board shall vote, and such Conditions as the Board wishes to attach to its decision, on which the Board shall vote. The Board shall then vote on a Decision to approve or reject the application.
 9. Denial of an application precludes submission of the same application for a period of two years. Upon withdrawal of an application without prejudice, the applicant may reapply at any time upon the filing of a new application.

XI. CONTINUED HEARINGS:

If a hearing is to be continued to a later meeting, the motion to do so shall contain a date certain for the hearing to be resumed. Any revised plans or supplemental information provided by the Applicant for consideration of the Board at a continued hearing shall be submitted no later than the Thursday prior to the next regularly scheduled meeting.

XII. DECISIONS OF THE BOARD:

- A. The grant of a Special Permit or approval of a Variance requires a vote in favor by at least four (4) Members or Alternates.
- B. The grant of an appeal from an action of the Building Commissioner requires a vote of at least four (4) Members or Alternates.
- C. Other decisions of the Board may be reached by a simple majority vote.

XIII. EXECUTIVE SESSION:

Subject to the following procedures and for reasons specified in MGL Ch. 39 Sec. 23B, the Board may enter Executive Session.

1. The session must be convened in an open meeting and notice must be given.
2. The Chairman must announce the purpose of the Executive Session.
3. The decision to enter Executive Session may be taken only on a positive, roll-call vote of the members.
4. The Chairman shall announce whether the meeting will reconvene in open session.
5. Votes taken in Executive Session must be by recorded roll call.

XIV. JOINT MEETINGS:

The Board may, in its discretion, hold joint meetings with other regulatory boards to facilitate the presentation of information to the boards before which an application has been filed and to obtain a wider range of perspectives on the application. Each board at the joint meeting shall be formally convened by its Chairman, and the Chairmen of the respective Boards shall have determined who shall preside at the joint meetings. At the conclusion of discussion, each board shall each, separately, take such actions as are necessary, and each board will separately formally adjourn.

XV. CONSULTANTS:

- A. 1. When reviewing an application for, or when conducting inspections in relation to, an application, the Zoning Board of Appeals may seek advice, or hear from, heads of Town departments or their designees. If the Board determines that the assistance of outside consultants is warranted because of the size, scale, or complexity of a proposed project or its potential impacts, or because the Town lacks the necessary expertise related to the application, the Board may engage one or more consultants. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate consultant fees and their payment. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" sufficient to enable the Board to retain consultants chosen by the Board alone, and may also require that an Applicant deposit with the Town Treasurer a sum sufficient to allow consultants to be retained. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

2. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers, or other appropriate professionals to assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but is not limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

B. Administrative Appeals.

1. The choice of a consultant selected by the Zoning Board of Appeals 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.

2. 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.
3. The required time limits for action by the Zoning Board of Appeals upon an application shall be extended by the duration of the administrative appeal.
4. 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 Zoning Board of Appeals shall stand.

XVI. FEES:

- A. The Zoning Board of Appeals may impose project review fees for those applications which require the services of outside consultants.
- B. The Zoning Board of Appeals shall determine the amount of an initial deposit, if any, to be required of the applicant and the amount of any additional funds required during the review process.
- C. The applicant shall pay such fees to the Town of Eastham. Funds received pursuant to this section shall be deposited with the Town Treasurer, who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G. 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 for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose.
- D. Failure by an applicant to pay a Review Fee shall be grounds for denial of the application under consideration.
- E. After completion of the Zoning Board of Appeals' review of a project, any excess fee amount, including interest if any, 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.
- F. The Town Treasurer shall submit annually a report of any special Review Fee account to the Board of Selectmen and the Town Administrator. The Town Treasurer shall cause said report to be published in the Annual Report of the Town. The Town Treasurer shall submit annually a copy of said report to the director of the Bureau of Accounts.

XVII. WAIVERS:

The Board may waive strict compliance with the requirements of these rules and regulations when, in the judgment of the Board, such action is in the public interest and not inconsistent with the Zoning By-Laws of the Town of Eastham.

XVIII. DE MINIMIS CHANGES:

- I. 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.
- II. 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.

XIX. ADMINISTRATION

Adoption

These Rules and Regulations are hereby adopted on 1/7/16 by the Eastham Zoning Board of Appeals.

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 Zoning Board of Appeals 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 3/4/21 by the Eastham Zoning Board of Appeals.

Date Filed with Town Clerk: July 2 2021

Signature of Town Clerk: Cindy Nicholson

Approved by the Board of Zoning Appeals, Town of Eastham, 1/7/2016
 Effective 1/10/2016
 Revised 5/4/2017 Revised 1/18/2018
 Revised 11/7/19 Revised 3/4/21

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

