



The Commonwealth of Massachusetts

TOWN OF TEMPLETON
Zoning Board of Appeals
690 Patriots Road
Templeton, MA 01468

ZONING BOARD OF APPEALS

RULES AND REGULATIONS

The Templeton Zoning Board of Appeals, pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12, 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.

ARTICLE I – ORGANIZATION

Section 1: Members and Officers

The Zoning Board of Appeals shall consist of five regular members and one alternate member, all appointed by the Select Board. The regular members shall elect all officers of the Zoning Board annually; officers consist of a Chair, Vice-Chair, and Clerk. The regular members shall also adopt and/or amend these Rules and Regulations. For all other issues requiring a vote at a business meeting, all members, regular and alternate, may vote, each having one vote. A majority vote is required to adopt or approve business matters covered by this section.

1.1 Chair - In addition to the powers granted by the Massachusetts General Laws and the Templeton Zoning Bylaw, Section 9.2, and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, appoint such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. He/she shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing/meeting. The Chair shall be responsible for the orderly conduct of the Board's business, whether conducted during a public hearing or a public meeting. The Chair may use her/his discretion to rule out of order unsolicited or irrelevant comments made by members of the public. 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.

1.2 Vice-Chair - The Vice-Chair shall act as Chair when the Chair is absent or is otherwise unable to perform her/his duties. If both the Chair and the Vice-Chair are absent, the Clerk shall act as Chair and shall appoint an acting Clerk.

1.3 Clerk - The Clerk shall be a member of the Board and shall, subject to review by the Chair, supervise all of the clerical work of the Board including: scheduling of hearings, receiving, and reviewing for completeness, all applications and related plans, ensuring that the applications comply with Massachusetts General Laws, Templeton Bylaws and the rules and Regulations of the Board. Prepare and review Board correspondence; prepare Board decisions; prepare analysis related to applications before the Board; ensure that the building department secretary sends all notices required by law, review legal advertisements for content, prepare rules and orders of the Board, keep the minutes of the Board's proceedings, compile all required records, and maintain necessary files. If the Clerk is absent, the Chair shall appoint an acting Clerk.

ZBA Rules and Regulations (Cont)

1.4 Alternate Member – An alternate member shall sit on the Board in the case of absence, inability to act or apparent conflict of interest on the part of any Board member, or in the event of a vacancy of the regular membership.

Section 2: Support Staff

2.1 Building Department Secretary - The building department secretary shall, subject to review by the Chair, and under the direction of the Clerk, conduct the administrative work of the Board. Specifically, the secretary shall: Receive the applications for variances, appeals, special permits and comprehensive permits from the ZBA Clerk; Prepare all legal advertisements for review by the Clerk, prior to sending to the local newspaper, mailing out copies of applications to Board members; mailing the public hearing notices to the Board members and abutters, mailing the decisions of the Board to its members. The Clerk shall assume these duties in the absence of staff support.

Section 3: Quorum

Five regular members and an alternate member shall constitute the panel for all public hearings or meetings. Three members shall constitute a quorum.

Section 4: Resignations

If a regular member or associate member resigns from the Board, the resignation shall be submitted, in writing, to the Chair of the Select Board and a copy shall be provided to the Town Clerk. Subject to any applicable restrictions relating to the terms of the appointment of the individual, the resignation may specify a future effective date, so as to allow completion of any pending cases to which the member has been assigned. Unless otherwise stated, the resignation shall become effective upon the filing of same with the Town Clerk.

ARTICLE II - FUNCTIONS OF THE BOARD

Section 1: Public Meetings

Public meetings shall be conducted in accordance with MGL Chapter 39, Section 23A through 23C. Notice for each meeting shall be filed with the Town Clerk and publicly posted on the official bulletin board in the Town Office Building at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Agendas for Board meetings and hearings shall be posted in like manner and sent to any interested parties. Public meetings, while open to the public, are not public hearings. Applications for special permits, variances, appeals or comprehensive permits require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside of a public hearing. Business conducted at public meetings shall include:

- Review and approval of final plans showing improvements to sites, landscaping, signs, lighting and related matters.

- Other documents required by conditions attached to existing permits.

- Minimal changes in previously approved site plans may be approved by the Board at a public meeting.

- Other matters for which the Board is not required to hold a public hearing.

The Board may seek clarifying information or testimony from the public as it deems necessary during a meeting, but unsolicited comments from the public may be ruled out of order. A unanimous vote of all members of the Board is necessary for approval of all plans, signs, and all other items required by conditions attached to existing permits.

Section 2: Public Hearings

2.1 Schedule - Public hearings of the Board of Appeals are normally held during the regularly scheduled meeting date, which is the fourth Wednesday of each month and are scheduled by the ZBA Clerk. They are held in the conference room at the town office building. Others may be scheduled as necessary.

2.2 Public Notice - Notice of public hearings shall be published twice, one being two weeks in advance of the hearing, in a newspaper of general circulation for Templeton, in this case the Gardner News, in accordance with MGL Chapter 40A, Section 11. Notice of public hearings shall be filed with the Town Clerk and publicly posted in Town Office Building, 690 Patriots road and outside the Town Clerk's office at 2 Elm Street, Baldwinville not less than fourteen (14) days prior to the hearing. In addition, a copy of the advertised notice shall be sent by mail, postmarked at least 14 days prior to the date of the hearing, to the following: the ZBA members, the property owner, petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property line, (all as they appear on the most applicable tax list), Town Clerk, Planning Board, Building Commissioner, and any other interested parties. This abutters list can be obtained from the Assessors Office, 2 School Street, Baldwinville during normal office hours.

2.3 Site Visits - The Zoning Board of Appeals may want to view any properties that come before it under applications for special permits, variances, appeals and comprehensive permits unless a decision is made in advance by the Board Chair that no site visit is needed. Applicants will be notified of the site visit, and should be prepared to meet with the Board at the site. 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.

2.4 Hearings to be Public – All applications for special permits, variances, appeals or comprehensive permits shall be considered at properly noticed public hearings. Requests for modifications or changes in any conditions of previous permits or site plans attached thereto shall be heard at a public hearing, where such modifications or changes constitute an amendment to the original permit or decision. Requests for approval of final site plans or other similar materials required in fulfillment of conditions for permits or decisions may be heard and acted on at regular public meetings of the Board. All hearings are open to the public. No person shall be excluded unless he/she is considered by the Chair to be a “serious hindrance” to the workings of the Board.

2.5 Representation and Absence - An applicant may present the application or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of the applicant, the Board may act on the matter using the information it has otherwise received, or the Board may decide by unanimous vote that the petition be denied.

2.6 Hearing Procedure – The Chair shall open the meeting, explain the procedures of the Board and open the evidentiary part of the hearing. All hearings proceed in the following order, with the Chair in charge of all portions of the hearing:

- a. Applicant’s presentation
- b. Notation for the record of all submitted materials and observations of the site visit, if applicable
- c. Questions from the Board
- d. Comments and questions from the abutters and general public in attendance, if applicable.
- e. Applicant’s response
- f. Final comments and questions from the abutters, applicant and Board, in that order
- g. Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain.

2.7 Findings and Decision - Consideration of an application shall be based on findings of fact which the applicant has presented as well as specific findings that the application meets all of the necessary provisions of the Templeton Zoning Bylaws. This process may be referred to as the deliberative part of a hearing, and is conducted within a public meeting. Approval may be subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw. The Board’s written decision shall state the specific findings of fact and reasons for its decision based on the applicable sections of the Zoning Bylaw, Article XXI, including but not limited to Section 4, “Dimensional Regulations” and Section 6.0 “General regulations”. Denial of an application may be based on a finding that either: (1) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (2) a determination, based on specific findings, that the request does not meet the applicable sections of the Bylaw.

2.8 Voting - The record shall show the vote of each Board member upon each question or, if failing to vote, indicating such fact. A concurring vote of four members of the five sitting Board members is necessary in granting special permits, variances, and appeals from the decision of the Building Commissioner (MGL Chapter 40A, Section 15). The Alternate member may vote when a sitting member is not in attendance or has stepped off the Board for reason of conflict.

2.9 Reconsideration - Once a public hearing is closed, whether or not a vote has been taken and a decision has been made, taking of further testimony shall require reopening the public hearing preceded by:

- a. A motion and vote by the Board to reconsider during a duly-constituted public meeting, and
- b. Advertising and notifying abutters in accordance with MGL Chapter 40A, Section 11.

2.10 Extensions – In accordance with MGL Ch. 40A, Section 9, the required time limits for a public hearing may be extended by written agreement between the petitioner and the Board. A unanimous vote of the Board is required for an extension. A copy of such agreement shall be filed with the Town Clerk.

2.11 Filing and Recording – Decisions of the Board are final only when signed by the Board and filed by the ZBA Clerk with the Town Clerk. Time limitations for filing are specific to the type of application (see Article III, Time Requirements for various application types.) No Board decision that grants a special permit, variance, appeal or comprehensive permit shall take effect until a copy of the decision is filed with the Registry of Deeds and bears the signed certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has

been filed. Or, if an appeal has been filed, the appeal was dismissed or denied in district or land court. The applicant bears all responsibility for recording at the Registry of Deeds any special permit, variance, appeal or comprehensive permit granted by the Board. Denials and withdrawals of applications are not recorded at the Registry of Deeds.

2.12 Withdrawal - Any application may be withdrawn after filing without prejudice, by notice in writing to the Town Clerk with a copy to the Clerk of the Board at any time prior to publication of legal notice of the hearing in the newspaper. Requests to withdraw after publication of legal notice may be in writing as provided above, or they may be made by the applicant orally at the public hearing. After such publication, withdrawal requires approval by unanimous vote of the Board of Appeals at a public meeting. At least two members of the original Board panel assigned to the application must participate in the vote on the request for withdrawal.

Section 3: Miscellaneous - The Board may at its discretion seek information from any Town official, Board, committee, agency or any other person whom the Board believes may have appropriate expertise in any matter.

ARTICLE III - APPLICATIONS TO THE BOARD

Section 1: Types of Applications and Time Requirements

1.1 Special Permits – Special permits shall only be issued following a public hearing held within sixty-five days after filing an application. When requesting a Special Permit from the Board of Appeals the application shall be reviewed by the Clerk of the Board for completeness before it is filed with the Town Clerk. Once it has been reviewed and deemed complete, the Clerk will schedule a public hearing. The town Clerk shall then transmit the application to the Board of Appeals. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the Bylaw. Such permits may impose conditions, safeguards and limitations on time or use. Time Requirements for Board Action: When an application for a special permit is filed with the Town Clerk, the Board must hold a public hearing within **65 days** from the day of filing. The decision of the Board must be filed with the Town Clerk within **90 days** following the close of the public hearing as established by MGL Chapter 40A, Section 9. Failure by the Board to act within the prescribed time limits shall be deemed approval of the application, and a constructive grant of the permit. Time Requirements for Appeals of a Decision: Any person aggrieved by the Board’s decision for the special permit may appeal to the court within **20 days** as provided in MGL Chapter 40A, Section 17. Time Requirements for Use or Construction: Substantial use or construction of a project authorized by a special permit must commence within **two years** of filing the decision with the Town Clerk. (Section 6.4 of the Zoning Bylaw)

1.2 Variances – When requesting a Variance from the Board of Appeals, whether filing under MGL 40A, Section 10 or the Templeton Bylaws, Article XXI, the applicant shall ensure that the application is reviewed by the Clerk of the Board for completeness before it is filed with the Town Clerk. Once it has been reviewed and deemed complete, the Clerk will schedule a public hearing. Petitions for variances from the terms of the Zoning Bylaw, Article XXI dealing with particular aspects of land or structures are allowed under Section 9.2.2 (2). The applicant has to have been **denied** in writing by the Building Commissioner in order to request a variance under MGL 40A §15 or the Templeton Bylaws Article XXI, and the application petition shall be taken out within **30 days** from the date of such denial. No variance shall be granted without specific findings by the Board that all four conditions of MGL Ch.40A, Section 10 have been met.

The four conditions are:

- a. Circumstances relating to soil conditions, shape, or topography that especially affect the property for which a variance is sought but do not generally affect the zoning district in which the land or structure is located.
- b. Facts showing that substantial hardship, financial or otherwise, will result from literal enforcement of the applicable zoning restrictions to the land or building.
- c. Facts supporting a finding that the relief sought will be desirable and without substantial detriment to the public good.
- d. Facts supporting a finding that the relief sought may be given without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaws.

The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures. However, the Board cannot impose conditions based on the continued ownership of the land or structures to which the variance pertains.

Time Requirements for Board Action: When an application for a variance is filed with the Town Clerk, the Board shall hold a public hearing within **65 days** from the day of filing. The decision of the Board shall be made within **100 days** from the date of filing the application with the Town Clerk. Failure by the Board to act within the prescribed time limits shall be deemed a grant of the variance. **Time Requirements for Appeals of a Decision:** Any person aggrieved by the Board's decision for the variance may appeal to the court within **20 days**, as provided in Section 17 of Chapter 40A. **Time Requirements for Use or Construction:** If the rights authorized by a variance are not exercised within **one year** of the date of such grant, the variance shall lapse. The required time limits for exercising said rights may be extended by written agreement between the petitioner and the Board for an additional period not to exceed **six months**, provided that the application for such an extension is filed with the Board prior to expiration of the variance (MGL Ch. 40A, Section 10). A copy of such agreement shall be filed in the office of the Town Clerk. Use variances are not permitted.

1.3 Appeals of an Order or Decision of the Building Commissioner –The Board of Appeals can receive the following appeals from:

A person aggrieved by an inability to obtain a permit from the Building Commissioner.

A person aggrieved by enforcement action, or lack thereof, from the Building Commissioner.

The regional planning agency, an officer or board of the Town or of an abutting town aggrieved by an order or decision of the Building Commissioner or Town official perceived to be in violation of the Zoning Bylaw.

Time Requirements for the Petitioner: An appeal under MGL Ch. 40A, Section 8 must be taken by the petitioner within **30 days** from the date of the order or decision that is being appealed. This order or decision must be in the form of a letter signed by the Building Commissioner stating the reason for the denial. The application for appeal, specifying the grounds for the appeal, shall be reviewed by the ZBA Clerk for completeness before it is filed with the Town Clerk. Once it has been reviewed and deemed complete, the Clerk will schedule a public hearing. Copies of the time stamped application of appeal will be forwarded by the Town Clerk to the Clerk of the Board of Appeals and the officer or Board whose decision is being appealed, as stipulated in MGL Ch. 40A, Section 15. **Time Requirements for Board Action:** The Board shall hold a public hearing on any appeal application within **65 days** from the date of filing. The decision of the Board shall be made within **100 days** from the date of filing the application with the Town Clerk. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed in the office of the Town Clerk.

ZBA Rules and Regulations (Cont)

. Failure by the Board to act within the prescribed time limits shall be deemed an approval of the application and a constructive grant of the appeal. The following steps then must be taken:

The petitioner who seeks such approval by reason of the Board's failure to act shall notify the Town Clerk in writing within 14 days from the expiration of the 100-day or extended time period.

The petitioner shall send notice to parties in interest that any appeal of the grant must be made pursuant to MGL Ch.40A, Section 17.

Any appeal of the grant must be filed with the court within 20 days from the date that the petitioner notified the Town Clerk in writing of the Board's failure to act.

1.4 Comprehensive Permits – Pursuant to MGL Ch. 40B, any public agency, limited dividend or nonprofit organization proposing to build low/moderate-income housing must submit a single application to the Board of Appeals (BOA) in lieu of separate applications to other applicable Boards such as the Select Board, Conservation Commission or the Planning Board. A comprehensive permit allows the Board to override local requirements and regulations that are inconsistent with affordable housing needs if environmental and planning concerns have been addressed. State requirements, including wetland protection, public health and building code requirements, may not be overridden. Filing Requirements: The applicant will adhere to the requirements of the Comprehensive Permit Application and the Comprehensive Permit Application Checklist when preparing an application for a Comprehensive Permit. These documents are available from the Town Clerk and the BOA office. The completed application and checklist will be reviewed by the BOA Clerk for completeness prior to filing with the Town Clerk. Once it has been reviewed and deemed complete, the Clerk will schedule a public hearing. The Board of Appeals shall notify each local Board or agency of the application by transmitting a copy of the comprehensive permit application for review and recommendation. The Board shall request the appearance of other Board representatives as are deemed necessary or helpful, and shall take into consideration their recommendations in making its decision. Time Requirements for Board Action: The Board shall hold a public hearing within **30 days** of receipt of the application and shall render a decision, based upon a **majority** vote of the Board, within **40 days** after closing the public hearing. If the hearing is not convened or the decision is not filed with the Town Clerk within the time allotted, unless the time has been extended by mutual agreement between the Board and applicant (MGL Ch. 40B, Section 21), the application shall be deemed to have been granted and the comprehensive permit shall forthwith be issued. The time limits for exercising the permit shall be determined by law or by condition of the permit. Time Requirements for Decision appeals: Any person aggrieved by the Board's decision for the comprehensive permit may appeal to the court within **20 days** as provided in Section 17 of Chapter 40A. Applicants aggrieved by a denial of the application, or by conditions attached to a grant of the comprehensive permit may appeal to the Massachusetts Housing Appeals Committee through the Department of Housing and Community Development (DHCD) if less than 10 percent of the town's housing stock has been certified by DHCD as affordable housing (MGL Ch. 40B, Section 22). Such appeal shall be taken within 20 days after the date the decision was filed with the Town Clerk.

Duly voted and approved on 27 August 2008 by the undersigned:
Members of the Zoning Board of Appeals:

John Fletcher, Chairman _____ ABSENT _____

Ed Hearn, Vice Chairman _____ SIGNATURE ON FILE _____

Shaun Grimley, Clerk _____ SIGNATURE ON FILE _____

Joe Risi, Member _____ SIGNATURE ON FILE _____

Ron Davan, Member _____ SIGNATURE ON FILE _____

Jean Hearn, Associate Member _____ SIGNATURE ON FILE _____