



# *Town of Warren*

## **Zoning Board of Appeals**

### **Rules & Regulations**

#### **ARTICLE I - ORGANIZATION**

The Zoning Board of Appeals, hereinafter referred to as "the Board," is appointed by the Selectmen of the Town of Warren to hear petitions or appeals submitted to it in accordance with these Rules and Regulations. The Board shall publish, post, and notify the public at large and the abutters; deliberate; and render decisions regarding the petition or appeal in accordance with the Town Zoning Bylaws and the Massachusetts General Laws Chapter 40A.

**1. Composition of the Board**

The Board members are appointed by the Selectmen of the Town of Warren and consist of (5) five regular members.

**2. Length of Term**

The term limit for any appointed board member shall be (3) three years, at which time the Board of Selectmen may move to reappoint the member or appoint a new member.

**3. Election of Officers**

At the first regular meeting following the annual appointment of any new member by the Selectmen, the Board shall elect its own officers for the ensuing twelve-month period. They are Chairman, Vice-Chairman and Clerk.

- In the event that the regularly elected Chairman and Vice-Chairman are not longer capable of carrying out their duties as the result of resignation, removal, or permanent disability in performance of their duties, the clerk shall act as temporary Chairman pro-tem. Officers will be elected at the first regular meeting following the Selectmen's re-establishment of a fully-staffed board.
- In the event that all three of the officers of the Board are no longer available the Board shall elect a Chairman and a Clerk on a pro-tem basis from the remaining members.

**4. Responsibilities of the Chairman**

The Chairman shall:

- Preside over meetings of the Board and decide all points of order, unless over-ruled by a majority of the Board acting in session at that time
- Appoint such committees as necessary or desirable
- Transact the official business of the Board
- Supervise the work of the Clerk
- Direct the work of the Board
- Prepare the decisions of the Board, or delegate the responsibility to another member of the Board

**5. Responsibilities of the Vice-Chairman**

The Vice-Chairman shall:

- Act as Chairman in case the Chairman is absent, disabled or otherwise unable to perform his/her duties
- Plan and monitor the budget of the Board and authorize the expenditure of the Board's funds, as previously approved by the Board and as authorized pursuant to Town Meeting

**6. Responsibilities of the Clerk**

The Clerk shall:

- Provide notifications required by law and the rules and regulations of the Board
- Receive and review all petitions before the Board for their technical compliance with the rules and regulations
- Make recommendation to the Board as to the action the Board should take with regard to incomplete applications
- Maintain the minutes of the Board's proceedings
- Compile records and files as required
- File notifications of decisions of the board with the Town Clerk
- Call the roll at Board meetings

## **ARTICLE II - MEETINGS/HEARINGS**

Regular meetings of the Board will be held on the dates and at the locations and times set by the Board. Any other meetings of the Board may be called by the Chairman, or by a majority of members of the Board, as required to carry out the business of the Board, but in conformity with requirements of the Massachusetts General Laws for notice and posting.

**1. Notice of Hearings**

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 or petitioner; a description of the area or premises and street address, if any, or other identification of the property that is subject of the appeal or petition; the date, time, and place of the public hearing; and the subject matter of the administrative appeal or variance petition.

**2. Quorum of the Board**

A quorum shall consist of (3) three members to hold a meeting, and (4) four members to hold a hearing on an appeal or a variance in order to comply with the voting requirements. Any member who has missed one session of a hearing may vote provided the conditions of M.G.L. Chapter 39, Section 23D are met.

**3. Absence of a Quorum**

In such a case where there lacks a quorum, the Chairman shall reschedule the hearing on consultation with the Board. By posting appropriate notice, the Clerk shall notify all interested parties of the time and place of the rescheduled meeting. Further, the Clerk shall notify, in writing, the applicant, all abutters and any other persons who may have displayed an interest in the current matter before the Board. Such parties must file their name and address with the Clerk at the meeting at the time of postponement in order to be eligible to receive written notice. At the discretion of a quorum of the Board, advertised notice of continuance may also be given in a newspaper of general circulation in the town.

No additional fee will be required for a petition rescheduled because a meeting was lacking a quorum.



## ARTICLE III - PUBLIC HEARINGS

### 1. **Open Meeting Law**

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

### 2. **Public Hearing**

All hearings shall be open to the public. No person shall be excluded unless determined by the chair to obstruct the workings of the Board.

### 3. **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 town.

### 4. **Rule of Necessity**

The rule of necessity shall permit a member who would otherwise be disqualified due to a conflict of interest 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. Prior to proceeding, the disqualified member must disclose for the record the facts creating the conflict of interest.

### 5. **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:

- Clerk will swear in all who wish to address the Board at the hearing
- Applicant, petitioner, or agent presents the petition or appeal
- Board members ask questions
- Those in favor speak after first providing their names and addresses for the record
- Those opposed speak after first providing their names and addresses for the record
- All reports of boards, municipal officials, or others are read into the record
- Municipal board representatives and officials ask questions
- Board members ask for additional information from any or all parties
- The applicant, petitioner, or agent provides a rebuttal restricted to the matters raised by other presentations or questions
- The chair, upon majority vote of the Board, 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 has been gathered

The members of the Board may direct questions at the end of any party's or person's presentation. All questions shall be directed through the chair.

### 6. **Information from Other Municipal Boards and Officials**

The Town Clerk shall distribute copies of complete applications to the following municipal boards and officials: Board of Health, Board of Selectmen, Building Inspector, Conservation Commission, Department of Public Works, Historical Commission, Planning Board, Sewer Commission, and Police and Fire departments. Each board or official may provide comments or recommendations to the ZBA concerning the appeal or petition within (30) thirty days after receipt of the appeal or petition, and may provide copies of such comments or recommendations to the applicant or petitioner. The Town Clerk shall maintain a signature sheet of receipt to verify delivery of appeal or petition.

## 7. **Continuations**

Continuations of adjourned hearings and/or meetings may be scheduled prior to recess, with notice being given to all interested parties in attendance at the hearing or meeting at the time of the recess. In addition, notice of the continuance date shall be posted at Town Hall.

# ARTICLE IV - FILING

## 1. **Forms**

All applicants and petitioners shall use the appropriate forms which upon request will be furnished by the Town Clerk. A petition or appeal, to be valid, must be filed by, or with the specific written authorization of, all owners of record of the property or purchaser on a purchase and sales agreement which is the subject of the petition.

## 2. **Documentation**

The Petitioner or Applicant is solely responsible for submitting (15) fifteen copies of the required documents, which must include the following:

- ✓ Completed/signed Variance Petition or Administrative Appeal
- ✓ Certified list from the Assessor's office of abutters within (300') three hundred feet of the property at issue. Notification to these abutters will be prepared and mailed by the ZBA Clerk. The cost of this mailing is included in the administrative fee.
- ✓ Stamped certified plot plan, prepared by a registered land surveyor within (6) six months of submitting the petition or application.

The survey plan shall be no smaller than 11" X 17" and drawn at a scale appropriate for review, and shall include the following:

- North indicator
  - Zoning district
  - Names of streets
  - Structures thereon and the proposed non-conforming structure highlighted
  - Dimensions from all structures to the lot lines
  - Dimensions of all property lines
  - Location and dimensions of all driveways, sidewalks, parking, wells, leach fields, fences, hedges, and trees
  - Flowing bodies of water, ponds, lakes, or wet lands
- ✓ If applicable, a copy of the decision or order being appealed
  - ✓ Photographs and letters of support from abutting property owners may be submitted

The Board may dismiss any application it determines to be incomplete.

## 3. **Burden of Proof**

The Applicant or Petitioner carries the legal burden to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Any false statement to the Board and/or any failure to state a material fact gives the Board legal grounds to revoke any favorable action it has taken on the application or petition, whether or not the Board explicitly reserves the right to modify or amend its action. Opponents are under a similar legal duty to present their cases truthfully and completely. Under MGL Ch. 40A, Section 15, during the appeal process, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.



4. **Administrative Fees**

The initial application or petition shall be accompanied by a check made payable to the "Town of Warren" in the amount of (\$300) three hundred dollars, which will be used to pay for advertising the public hearing and the cost of postage for mailing notices.

The applicant or petitioner shall pay any additional fees required by the Board to engage consultants to review plans or to determine compliance with approved plans, in accordance with M.G.L., Chapter 44, Section 53G.

## **ARTICLE V - DECISION**

1. **Time Limit**

(100) One hundred days from the certified appeal or petition filing date.

2. **Required Vote**

Any member who has missed one session of a hearing may vote provided the conditions of M.G.L. Chapter 39, Section 23D are met. All favorable actions, including adoption of all conditions and limitations, shall require (4) four members of the (5) five-member Board to vote in favor.

3. **Detailed Record**

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

4. **Filing and Mailing Decision**

The Board shall mail a notice of its decision forthwith, noting the date of filing with the town clerk, to the applicant or petitioner, to all parties in interest as set forth in these Rules and Regulations and under applicable law, and to all parties who officially requested notice be sent. Such notice shall specify that appeals or petitions, if any, must be filed within (20) twenty days after the date of the Board's filing of the decision in the office of the Town Clerk.

5. **Variance Decision**

No variance shall be in effect until the petitioner at his/her expense, records a copy of the decision with the Worcester County Registry of Deeds.


6. **Administrative Appeal Decision**

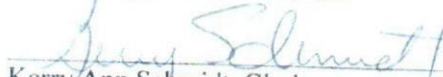
Approved appeals will be submitted to the Building Inspector's office for processing.

## ARTICLE VI - ADOPTION

The foregoing rules and regulations are hereby adopted this 13th day of January, 2021 by the Warren Zoning Board of Appeals; all former rules and regulations of this Board including those adopted June 22, 1989 are hereby repealed.

  
Richard Czaporowski, Chairman

  
Ronald Leger, Vice Chairman

  
Kerry Ann Schmidt, Clerk

  
Matthew Bonneau

  
Martha Giguere