



ZONING BOARD OF APPEALS STERLING MASSACHUSETTS 01564

ADMINISTRATIVE RULES & REGULATIONS FOR SPECIAL PERMITS, VARIANCES AND ADMINISTRATIVE APPEALS

ARTICLE I: GENERAL

Section 1: Purpose and Scope

These Rules are adopted by the Sterling Board of Appeals (hereinafter referred to as the "Board") as authorized by Massachusetts General Laws, Chapter 40A, Section 12, for the purpose of establishing uniform procedures for conducting the business of the Board which, in general, but without limitation, shall consist of hearing all appeals, petitions and applications coming under its jurisdiction as both a permit granting authority and a special permit granting authority by virtue of the applicable provisions of Massachusetts General Laws and the Sterling Protective (Zoning) Bylaw (hereinafter referred to as the "Zoning Bylaw") and other Bylaws.

Such appeals and matters of original jurisdiction, subject to conformance with these Rules, will in general consist of the following:

- a) Administrative Appeals. Receive and act upon all appeals from a decision of the Building Commissioner in performing the duties and responsibilities contemplated by Massachusetts General Laws and the Zoning Bylaw within the Town of Sterling;
- b) Variances. Receive and act upon all petitions for variances from compliance with applicable provisions of the Zoning Bylaw;
- c) Special Permits. Receive and act upon, as a special permit granting authority, all applications for special permits as authorized by the Zoning Bylaw; and
- d) Comprehensive Permits. Receive and act upon, all applications for comprehensive permits pursuant to Massachusetts General Laws, Chapter 40B.
- e) Receive and act upon all matters otherwise legally coming under the jurisdiction of the Board.

Section 2: Petitioner or Applicant

An appeal may be taken by any person aggrieved by any decision of the Building Commissioner. An application for a variance or for a special permit may be brought by a property owner or, provided that documentation from the owner certifying the petitioner's legal interest and right to file accompanies the petition or application, a tenant, a licensee, a prospective purchaser, or other applicant. In the case of an appeal or application for a variance or a special permit, the applicant shall file with the Town Clerk who shall transmit it forthwith to the Board. It is strongly recommended that, prior to filing the application, all applicants discuss the proposed use or structure that is the subject of the application with the Building Commissioner to ensure that all appropriate relief is requested.

Section 3: Conflicts

If there is any conflict between the provisions of these Rules and the Zoning Bylaws, the Zoning Bylaws prevail. If there is any conflict between these rules and the General Laws of the Commonwealth of Massachusetts, the General Laws prevail.

ARTICLE II: ORGANIZATION

Section 1: Elections

The Board shall elect a Chairperson, Vice-Chairperson and Clerk annually at the first meeting of the board following the annual town election, by majority vote of the permanent members. Each shall serve until a successor is duly elected. Associate members shall not vote to elect officers, nor shall they serve as officers.

Section 2: Chairperson - Powers and Duties

The Chairperson shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, s/he shall decide all points of order.

In addition to powers granted by Massachusetts General Laws and the Zoning Bylaws, and subject to these Rules and further instructions of the Board, the Chairperson shall supervise the work of the clerk and administrative assistant, arrange for necessary help, and exercise general supervision over the Board's activities.

Section 3: Vice-Chairperson

The Vice-Chairperson shall carry out all the duties and powers of the Chairperson during the absence or unavailability of the Chairperson.

Section 4: Acting Chairperson

In the event that both the Chairperson and the Vice-Chairperson are absent or unable to participate in a particular matter, then the permanent board members present shall elect, an Acting Chairperson. The Acting Chairperson shall carry out the duties of the Chairperson and shall have all the powers of the Chairperson, but only until such time as the Chairperson or Vice-Chairperson arrives or is able to participate.

Section 5: Administrative Assistant

The Administrative Assistant shall be subject to the direction of the Board and its Chairperson, shall undertake all of the clerical work of the Board including all correspondence of the Board, sending of all notices required by law and the rules and orders of the Board, receive and scrutinize all petitions and applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, and maintain necessary files and indices.

Section 6: Associate Members

The Chairperson of the Board shall designate an Associate Member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of a member. In the event of a vacancy on the Board, the chairperson shall designate an Associate Member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

Section 7: Quorum

A quorum for the purpose of appeals, petitions, applications, and all other business shall consist of four (4) members.

Section 8: Regular Meetings

Regular meetings of the Board shall be held as necessary on the second Tuesday of the month at 6:00 PM in the Sterling Town Hall, Room 205, or as designated in the meeting notice, or at such other times determined by the Board at a place specified in the meeting notice.

Section 9: Special Meetings

Special meetings may be called by the Chairperson or at the request of two members. Written notice thereof shall be given to each member at least forty-eight (48) hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices of all meetings shall be posted publicly and advertised, as required by law.

ARTICLE III: SUBMISSION OF PETITION OR APPLICATION

Section 1: Application Form

Every petition and application for action by the Board shall be made on an official application form and filed with the Town Clerk with payment of the applicable filing fee. To be a complete application, all information called for by the form shall be furnished by the applicant in the manner therein prescribed and in precise language identifying the applicable provisions of the Zoning Bylaws and the specific nature of the appeal, petition or application. The form to be used is hereby made a part of these Rules. The application form must be signed by the applicant and the property owner, if different.

Section 2: Filing Period

- a) In the case only of an appeal from a decision of the Building Commissioner, a petition or application shall be filed with the Town Clerk within thirty (30) days from the date of issuance of a permit or refusal of a permit by, or an order, ruling, decision or determination of the Building Commissioner.
- b) All appeals, petitions, and applications to be heard at a regular meeting of the Board must be filed during regular office hours a minimum of 35 days prior to the scheduled meeting. (See calendar in the building department or the ZBA web page).

Section 3: Findings of Fact

All appellants, applicants and petitioners shall file completed draft "Findings of Fact" which shall accompany the initial appeal, application or petition and must be filed simultaneously.

Section 4: Submissions

Each application or petition to the Board shall comply with the Zoning Bylaw and be accompanied by the original plus eight (8) copies of the application form, a site plan prepared by and under the seal of a registered engineer or registered land surveyor showing current and proposed conditions and such other plans, sketches or diagrams as are needed to show clearly the nature of the specific request being made by the petitioner. The appellant and/or applicant shall also submit a list of the names and addresses of all parties in interest, as defined in MGL Chapter 40A, Section 11 and the Zoning Bylaw, as certified by the Board of Assessors.

Section 5: Filing Fees and Cost of Public Notice

The Board is responsible for establishing filing fees and may from time to time change application filing fees by amending these Rules and Regulations. Filing fees are non-refundable, unless approved by the Board for good cause. The Board shall deposit all filing fees with the Town Treasurer.

The following administrative fees shall be provided to the Board with the submittal of the application:

- a) An appeal from the action of the Building Commissioner shall be accompanied by a check payable to the Town of Sterling in the amount of four hundred dollars (\$400.00).
- b) All other applications and petition, including an application to amend, modify a variance or special permit, shall be accompanied by a check payable to the Town of Sterling in the amount of four hundred dollars (\$400.00).
- c) All fees are established to cover the cost of and to otherwise defray reasonable expenses incurred by the Board in processing petitions and applications filed with the Board.
- d) In the event that the fee is not paid, the appeal, petition or application shall be dismissed as incomplete pursuant to Section 6 "Dismissal of Incomplete Filings."
- e) The Town shall be exempt from payment of a filing fee, but shall pay the costs of publication.

Section 6: Outside Consultants and Fees

The Board may hire outside consultants for the review and analysis of any application when the Board determines it appropriate. The cost for the outside consultants shall be borne by the applicant pursuant to G.L. c. 44, §53G. The Board shall follow the requirements of the Uniform Procurement Act, G.L. c. 30B, when applicable.

The Board will select the consultant after considering the qualifications of the consultant and any comments received from the applicant. The Board will not formally award the contract until the review fee has been paid. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a bidder, the Board may deny the petition, appeal, or application.

Pursuant to G.L. c. 44, §53G, the Board, through this regulation, provides for an applicant's payment of the fees for outside consultants as set forth below:

- a. When conducting any hearing pursuant to these Rules (the subject of which is hereinafter referred to as a "proposal"), the Board of Appeals may determine that the assistance of outside consultants is warranted due to:
 - 1. the size, scale or complexity of the proposal;
 - 2. the complexity of particular technical issues;
 - 3. the number of housing units or square feet proposed; and
 - 4. the size and character of the site.
- b. The Board may require that the applicant(s) 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, traffic consultants,

attorneys, housing specialists and financial analysts, and/or other appropriate outside consultants who can assist the Board in reviewing and analyzing the proposal. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the applicable statutes, codes, bylaws, regulations and conditions, or inspecting a project during construction or implementation. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.

- d. Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the direction of the Board in connection with the hearing of a specific proposal for which a review fee has been collected from the applicant without further appropriation. 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 proposal from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount in this 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.
- f. Prior to paying the review fee, the applicant may appeal the selection of an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications.
- g. Such appeal must be made in writing and may be taken only within seven (7) days after the Board has provided notice to the applicant of the selection of the consultant. The written appeal should specify the nature of the conflict of interest and detail the lack of required qualifications. A copy of the appeal shall be simultaneously provided to the Board.
- h. The time limit for the Board's action on the proposal shall be extended by the duration of any administrative appeal to the Board of Selectmen. In the event that the Board of Selectmen makes no decision regarding the appeal within thirty days following the filing of such appeal, then the selection of the Board of Appeals shall stand.

Section 6: Dismissal of Incomplete Filings

The Board may dismiss an appeal, petition or application if the application form is not complete or the submissions required by Section 4 "Submissions," are not made.

ARTICLE IV: HEARINGS

Section 1: Notice

Notice of hearings shall be advertised as required by the provisions of Massachusetts General Laws, Chapter 40A, and the Zoning Bylaw. In addition, a copy of the advertised notice shall be sent by the clerk by mail, at least fourteen (14) days prior to the date of the hearing, postage prepaid, or delivered, to the Town Clerk and all "parties in interest" (as defined in MGL 40A, §11), and where determined appropriate by the Board, other Town boards and officials.

Section 2: Hearings to be Public

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, Massachusetts General Laws, Chapter 30A, Sections 18 through 25.

Section 3: Representation and Absence

An applicant may appear on his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without good cause indicated by the applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

Section 4: Continuances

A continuance may be requested by an applicant by written request submitted to the clerk in advance of a hearing or orally at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Unless notified in writing that a continuance has been granted, an applicant must appear at a scheduled hearing. Any continuance granted upon request of an applicant shall constitute an agreement by the applicant to extend the time limits for actions by the Board by the duration of the continuance and such agreement shall be set forth in writing and filed with the Town Clerk. The Board, in its discretion, may also continue a public hearing to the extent deemed necessary.

Section 5: Hearing Procedure

- a) Hearings will start at the stated time in the notice unless delayed because of prior hearings. Agenda items may be taken out of order at the discretion of the Chairperson, but in no event shall a hearing commence before its designated time.
- b) At the hearing any party whether entitled to notice thereof or not may appear in person or by agent or by attorney.
- c) At the hearing the Chairperson may administer oaths, summon witnesses and call for the production of papers. The Board shall retain any record which has been introduced in evidence, for reference in the consideration of the case.
- d) No person shall address a hearing of the Board without permission of the Chairperson, and all persons shall, at the request of the Chairperson, be silent. If a person, after warning from the Chairperson, persists in disorderly behavior, the Chairperson may order him/her to withdraw from the hearing.
- e) The Chairperson may continue the hearing immediately if, in his/her opinion, these Rules are being violated and/or the hearing is becoming disorderly.
- f) The Chairperson will open each hearing by reading, or causing to be read, the notice as advertised.
- g) The petitioner or his/her representative will then present his/her case, stating fully the reason(s) why the petition or application should be granted.
- h) When the petitioner or his/her representative has concluded the presentation, the Chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak will rise, address the Chairperson, give their names and addresses, then proceed.

- i) When all those in favor have spoken, the Chairperson will then allow those in opposition an opportunity to be heard. Those who wish to speak will rise, address the Chairperson, give their names and addresses, then proceed.
- j) Rebuttals may only be allowed at the discretion of the Chairperson.
- k) Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Board may be allowed at its discretion.
- l) Members of the Board who are hearing the case may direct appropriate questions during the hearing.
- m) When all facts have been presented, the Chairperson, after motion, will close the public hearing and inform the petitioner or his/her representative and others present that they will be notified of the Board's decision. The Board may deliberate at the same meeting or may deliberate at a subsequent regularly scheduled meeting.
- n) The Board may request a site visit. The applicant and property owner, by signing the Application Form, grant permission for the Board to enter the subject property for the purposes of a site visit.

Section 6: Information to be Furnished to the Board

An applicant may submit written materials in advance of the hearing, at the hearing or at any time prior to close of evidence at the hearing. With the Board's permission, an applicant may submit material subsequent to the close of the hearing, such as a revised plan, but only if the substance reflected in such material was presented at the public hearing and the Board does not rely on such material as evidence. Any legal memorandum must be submitted at least seven (7) days in advance of the hearing unless the Board sets a different deadline. Any applicant may submit a proposed decision to the Board. All submissions shall be made to the clerk.

ARTICLE V: ACTIONS BY THE BOARD

Section 1: Voting Requirements

To effect any variance in the application of the Zoning Bylaws, to reverse any order or decision of any administrative official, or to grant a special permit where so authorized by the Zoning Bylaw, the concurring vote of four (4) members of the Board shall be necessary. The concurring vote of a majority of the Board shall be necessary to effect a decision on any other matter legally coming under the jurisdiction of the Board, such as a Comprehensive Permit. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be filed in the office of the Town Clerk and shall be a public record.

Section 2: Withdrawal

An application may be withdrawn without prejudice by notice in writing to the clerk at any time prior to the publication of notice of the public hearing thereon. After publication of notice of the public hearing, a petition or application may be withdrawn without prejudice only with the consent of the Board.

Section 3: Reconsideration

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board except in accordance with Massachusetts General Laws Chapter 40A, Section 16.

Section 4: Repetitive Petition

In order to have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two (2) years, the petitioner must follow the procedure outlined in Massachusetts General Laws, Chapter 40A, and the Zoning Bylaw.

Section 5: Decisions

- a) The clerk of the Board will send notices of a decision forthwith to the applicant, to parties in interest and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.
- b) No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Worcester County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.
- c) A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the Worcester County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the twelve (12) month periods provided under the second paragraph of M.G.L., Ch. 40A, Section 6.
- d) The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds and for paying the recording fees.
- e) A certified copy of the recorded decision shall be provided to the clerk and is necessary before a building permit dependent on the Board's decision can be issued by the Building Commissioner.

ARTICLE VI. COMMUNICATIONS OUTSIDE A PUBLIC HEARING

No Board members shall provide any advice or express any opinion on any application outside of a public hearing. All communications, whether in writing or verbal, concerning a pending application must be presented to the Board at a public hearing in order for the Board to consider such communication in making its decision.

ARTICLE VII. AMENDMENTS

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting. Any such amendment shall become effective upon filing with the Town Clerk and shall supersede any previously filed Rules.

ARTICLE VIII. EFFECTIVE DATE

These Rules were adopted at a regular meeting of the Board on February 12, 2019 and became effective as of the date filed with the Town Clerk.