

## SECTION 6.2. PERMIT GRANTING AUTHORITY

### A. Zoning Board of Appeals

The Zoning Board of Appeals (hereinafter termed the ZBA) shall consist of three members appointed by the Select Board. Appointment shall be for three year terms, so arranged that the term of one member shall expire each year.

There shall be one Associate Member of the ZBA for each Member appointed by the Select Board for a three-year term.

Any Member or Associate Member may be removed for cause by the appointing authority upon written charges and after a public hearing.

Vacancies shall be filled for unexpired terms in the same manner as in the case of the original appointments.

The Chairman of the ZBA shall designate the corresponding Associate Member to sit on the ZBA in the case of absence, inability to act, or conflict of interest on the part of any Member thereof, or in the event of a vacancy on the ZBA until said vacancy is filled in the manner herein provided.

No Member or Associate Member of the ZBA shall represent before such board any party in interest in any matter pending before it.

### B. Powers

The ZBA shall have the following powers:

1. To hear and decide appeals in accordance with Section 6.2.C.
2. To hear and decide petitions for variances as set out in Section 6.2.D.
3. To hear and decide applications for special permits upon which the ZBA is empowered to act as Special Permit Granting Authority under this Zoning Bylaw under the procedures set forth in Section 6.3 in exercising these powers, the ZBA may make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may grant or direct the granting of a permit.
4. To hear and decide appeals from decisions of the Planning Board pursuant to Section 5.9.H.

### C. Appeals

1. An appeal to the Permit Granting Authority, as herein provided, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under this Zoning Bylaw and the Zoning Act (Chapter 40A, Mass. General Laws, as amended), by the regional planning agency in whose

area the Town is situated, or of an abutting city or town aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of this Zoning Bylaw or of the Zoning Act (Chapter 40A, Mass. General Laws, as amended).

2. Any appeal under this Section to a Permit Granting Authority shall be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, who shall forthwith, within two business days, transmit copies thereof to such officer or board whose order or decision is being appealed, and to the Permit Granting Authority. Such officer or board shall forthwith, within seven (7) days, transmit to the Permit Granting Authority copies of all documents and papers constituting the record of the case in which the appeal is taken.
3. The concurring vote of all the members of the ZBA shall be necessary to reverse any order or decision of any administrative official under this Zoning Bylaw, or the Zoning Act (Chapter 40A, Mass. General Laws, as amended).
4. If the granting or denial by the ZBA of an appeal would result in or constitute the issuance of a building permit, the ZBA shall issue to the owner and to the applicant if other than the owner, a copy of its decision, certified by the Permit Granting Authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with any statutory requirements for such a decision and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and with the Town Clerk. No building permit resulting from or constituted by such a decision shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days has elapsed and, pursuant to the applicable provisions contained with Chapter 40A, Mass. General Laws, as amended, no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located, and indexed in the grant or index under the name of the owner of record, or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

#### D. Variances

1. The Permit Granting Authority shall have the power, after a public hearing for which notice has been given pursuant to the applicable section of this Zoning Bylaw and by mailing to all parties in interest to grant upon appeal or upon petition, with respect to particular land or structures, a variance from the terms of this Zoning Bylaw where the Permit Granting Authority specifically finds that:
  - a. Literal enforcement of the provisions of the Zoning Bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant owing to circumstances relating to: i)soil conditions, ii) shape, or iii) topography of such land or structures, especially affecting such land or structures but not generally affecting the zoning district in which it is located; and the hardship shall not have been self-created; and

- b. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent or purpose of this Zoning Bylaw.
2. The Permit Granting Authority may impose conditions, safeguards, and limitations both of time and of use, including the continued existence of any particular structures, but excluding any conditions, safeguards, or limitations based on the continued ownership of the land or structures to which the variance pertains, by the applicant, petitioner, or any owner.
3. The concurring vote of all the members of the ZBA, if a three-member Board, shall be necessary to effect any variance in the application of this Zoning Bylaw.
4. No variance may authorize a use or activity not otherwise permitted in the zoning district in which the land or structure is located; provided, however, that such variance properly granted prior to January 1, 1976, but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date.
5. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse, and may be re-established only after notice and a new hearing pursuant to this Section.
6. Application

All petitions for variance, over which the Permit Granting Authority exercises original jurisdiction, shall be filed by the petitioner with the Town Clerk who shall forthwith, within two business days, transmit a copy thereof to the ZBA.

## 7. Notification and Effectiveness of the Decision

Upon the granting of a variance, or any extension, modification, or renewal thereof, the Permit Granting Authority shall issue to the owner and to the applicant if other than the owner, a copy of its decision, certified by the Permit Granting Authority, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the granting of such variance and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and with the Town Clerk. 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 has elapsed and, pursuant to the applicable provisions contained within Chapter 40A, Mass. General Laws, as amended, no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located, and indexed in the grantor index under the name of the owner or record, or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

## 8. Withdrawal

Any petition for a variance which has been transmitted to the Permit Granting Authority may be withdrawn, without prejudice, by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the Permit Granting Authority.

E. General Rules and Procedures

1. The ZBA shall adopt rules, not inconsistent with the provisions of this Zoning Bylaw for the conduct of its business and for purposes of the Zoning Act, (Chapter 40A, Mass. General Laws, as amended), and shall file a copy of said rules with the Town Clerk.
2. Each ZBA shall elect annually a chairman from its own number and a clerk, and may, subject to appropriation, employ experts and clerical and other assistants.
3. Meetings of the ZBA shall be held at the call of the chairman or when called in such other manner as the ZBA shall determine in its rules. The ZBA shall hold a public hearing on any appeal, application, or petition transmitted to it by the Town Clerk within sixty-five (65) days from the date of transmittal to the ZBA of such appeal, application, or petition. The ZBA shall cause notice of such hearing to be published and sent to parties in interest as provided within the Zoning Bylaws, and not less than fourteen (14) days prior to said hearing, shall notify the Planning Board of the Town and the planning boards of cities and towns adjacent, all of which may then forward recommendations with respect to said matter for the consideration of the ZBA.

The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers.

4. All hearings of the ZBA shall be open to the public. The decision of the ZBA shall be made within one hundred (100) days after the date of the filing of an appeal, application, or petition. Failure by the ZBA to act within one hundred (100) days shall be deemed to be grant of relief, application, or petition sought, subject to an applicable judicial appeal. The ZBA shall cause to be made a detailed record of its proceedings, indicating 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 decision and of its official actions, or in the event of a failure of the ZBA to act within said one hundred (100) days, indicating such fact, copies of which shall be filed within fourteen (14) days of the decision or action, in the offices of the Town Clerk and of the Planning Board, and shall be a public record; and notice of the decision and the reasonings on which such decision is based, shall be mailed forthwith, and within two business days of the aforesaid filing, to the petitioner, applicant, or appellant, to the parties in interest, and to every person present at the hearing who requested that such notice be sent to him and stated the address to which such notice was to be sent, and further, copies of all approved plans shall be sent to the office of the Planning Board. Each notice shall specify that appeals, if any, shall be made pursuant to the applicable section of Chapter 40A, Mass. General Laws, as amended, and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk.

5. No appeal, application, or petition which has been unfavorably and finally acted upon by the Permit Granting Authority shall be acted favorably upon within two years after date of final unfavorable action unless:
  - a. Said Permit Granting Authority finds, by a unanimous vote of a three-member Board, specific and material changes in the conditions upon which unfavorable action was based, and describes such changes in the record of its proceedings; and
  - b. All but one of the members of the Planning Board consents thereto; and
  - c. After notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.
6. The required time limits for a public hearing and action to be taken may be extended by written agreement between the applicant and the Permit Granting Authority. A copy of such agreement shall be filed in the office of the Town Clerk.

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