

Town of Tolland, MA
Board of Appeals
Rules and Regulations Chapter 40A
Revised 05/01/04

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Article I Organization

Section 1.1 Authority

The following rules and regulations are adopted by the Tolland Board of Appeals under authority of, and in compliance with Chapter 40A, Section 12, Chapter 41, Section 81-AA; Chapter 40B, Section 20 to 23, of the General Laws; and the Zoning By-Laws of the Town of Tolland.

Section 1.2 Membership

The Board of Appeals shall consist of three members appointed by the Selectmen for the term of three year terms in length, so arranged that the term of one member shall expire each year.

The Selectmen shall also appoint three associate members of the Board of Appeals, who shall serve the term of three years. An associate member shall act as member of the Board in the consideration and determination of any matter in which he is requested so to act by the Chairman or Acting Chairman of the Board, when and in the event that a member does not act by reason of illness, conflict of interest, absence, or other incapacity.

Section 1.3 Officers

The Board of Appeals shall elect a Chairman and a Clerk at the regularly scheduled meeting in May of each year.

Section 1.4 Duties of Officers

Section 1.41 Chairman

The Chairman shall preside at all Board Meetings. In the absence of Chairman, the clerk shall preside as the Acting Chairman. The Chairman or Acting Chairman may administer oaths, summon witness and call for production of papers.

Section 1.42 Clerk

The Clerk of the Board shall have the responsibility of publishing and posting notices of meetings and hearings: and of mailing notices of hearings and Board's decisions to persons and town agencies as provided herein or as required by law.

The Clerk shall keep detailed record of Board's 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 Board's decision, and Board's other official actions; and subject to the direction of the Board and its Chairman, shall conduct all correspondence of the Board and maintain necessary files and records.

Section 1.5 Meetings

The regular meeting of the Board of Appeals shall be on the third Wednesday of each month at 7:00P.M. Special meetings shall be held at the call of the Chairman or any other officer in the absence of the Chairman. The election of officers shall be held in May at the regular meeting.

Section 1.51 Quorum

The presence of two members shall constitute a quorum.

Section 1.52 Order of Business

The order of business at all regular meetings of the Board shall be as follows:

- A.** Roll Call
- B.** Minutes of the previous meeting
- C.** Communications
- D.** Unfinished Business
- E.** New Business

Article II Application to the Board

Section 2.1 Application Form

Any appeal, application or petition to the Board of Appeals shall be filed in duplicate (including two sets of plans) with the Town Clerk. Applicant shall forthwith transmit it to the Clerk of the Board of Appeals together with all submitted papers and proceedings, and in case of an appeal, a copy of it to such officer or board whose order or decision is being appealed. Copies of any such appeal, application or petition shall also be forwarded to the Planning Board and to such other boards, officials or persons as may be designated by the Board of Appeals.

Any communication, purporting to be an application, shall be treated as a mere notice of intention to seek relief, until such time as it is made in proper form to the Board of Appeals.

Section 2.2 Filing Period

Any appeal shall be filed within Thirty (30) days from the date of refusal of a permit or the date of an order, ruling, decision or determination by the Selectmen, Building Inspector, or other Administrative official.

Section 2.3 Fees

Application shall be accompanied by a filing fee of \$350 to pay for required advertising and mailing costs, Public Hearings, required transcripts, etc.

Article III Hearings

Section 3.1 Hearing Dates

Any appeal, application or petition filed in proper form shall be scheduled for a hearing within sixty – five (65) days.

Section 3.2 Quorum

A Quorum for hearings by the Board shall consist of three members.

Section 3.3 Notice

Notice of a public hearing must be published once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing. Such notice must identify clearly the subject matter of the hearing, and contain the following printed in bold face type:

- A.** The name of the petitioner;
- B.** The location of the area or premises which are subject of the petition; including street address, if any.
- C.** The date, time and place of the public hearing.
- D.** The nature of the action requested.

A copy of the advertised notice shall be sent by mail, postage prepaid, to the applicant or petitioner, to the owners of all abutting properties, and owners of land directly opposite on any public or private street, as they appear on the most recent local tax list, to the Planning Board and to other concerned Town Agencies.

Section 3.4 Hearings to be Public

The applicant or any party, whether entitled to notice of the hearing or not, may appear on his own behalf or be represented by agent or attorney at said hearing. In the absence of any appearance on behalf of any applicant, the Board will proceed to dispose of the matter on record before it.

Section 3.5 Order of Business

- A.** Reading of petition and legal notices by the Clerk, together with presentation of exhibits, if any.
- B.** Applicant's presentation.
- C.** Reports of Planning Board and other concerned agencies, if any.
- D.** Opponent's presentation, if any, and questions by those seeking information.
- E.** Applicant's rebuttal, restricted to matters raised by opponent's presentation.
- F.** Members of the Board may raise questions as they deem appropriate.

Section 3.6 Brief to the Board

It is recommended that every appeal, and every application for variance or special permit, be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on General Laws, Ch. 40A, Sec. 10 should be clearly identified and factually supported

- A.** The particular use proposed for the land or building.
- B.** The conditions especially affecting the property for which a variance is sought.
- C.** Facts which make up the hardship.

- D. Facts relied upon to support a finding that the relief sought will be desirable and without substantive detriment to the public good.
- E. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. Briefs may be filed at the public hearing or within such time thereafter as may be fixed by the Board, but in no case later than five days after the public hearing.

A detailed record of proceedings, including the vote on each question, must be filed with the Town Clerk within fourteen (14) days of the decision.

Article IV Disposition by the Board

Section 4.1 Decisions

The decision of the Board of Appeals shall be made within one hundred (100) days after the date of filing of an appeal, application or petition, and the Board shall keep a detailed record of its proceedings showing the vote of each member of each question, or if absent, or failing to vote, indicating such fact, and setting forth clearly the reasons for its decisions, and of its other official actions. Copies of all such records shall be filed within fourteen (14) days in the office of Town Clerk and in the office of the Planning Board, and notice of decisions shall be mailed forthwith to the parties of interest, to the Planning Board, the Selectmen, and to every person present at the hearing who request that notice be sent to him and states the address to which such notice is to be sent.

Section 4.2 Withdrawal

Any application or petition may be withdrawn by notice in writing to the Clerk at any time prior to the hearing of the Board. After an advertisement, withdrawal only by the approval of the Board.

Section 4.3 Reconsideration

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Section 4.4 Repetitive Petitions to the Board of Appeals

Should an appeal, petition, or application be unfavorably and finally acted upon by the Zoning Board of Appeals, no re-application shall be allowed within two (2) years after the date of the unfavorable action unless, upon re-application to the Board which originally heard the matter, all of the following conditions are met:

1. The Board finds specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the records of its proceeding.
2. The Planning Board gives notice to parties of interest of the time and place of proceedings to consider the question of consent to re-application, and
3. All but one of the members of the Planning Board consent thereto.

Section 4.5 Limited or Conditional Zoning Variances

Upon the granting of a limited or conditional variance, the Board of Appeals shall issue to the land owner a notice, certified by the Chairman or Clerk, containing the name and address of the land owner, identifying the land affected, and stating that a limited or conditional variance has been granted which is set forth in the decision of the Board on file in the office of the Town Clerk. No such variance shall take effect until such notice is recorded in the Registry of Deeds.

Section 4.6 One Year Limitation on Grants; Extensions

If an application is granted by the Board, all permits necessary for the prosecution of the work shall be obtained and construction shall be commenced within one year from the date of filing of the Board's decision in the office of the Town Clerk.

Reasonable extension of said time may be granted by the Board in the case of an appeal to the Superior Court under General Laws Chapter 40A, Sec 21, or for any good cause shown.

Section 4.7 Required Filing of Variances at Hampden County Registry of Deeds

If a Variance is granted by the Board or the Board does not act on the application within required time periods and the Variance is considered granted as a result, the property owner is required to register the variance at the Hampden County Registry of Deeds at his/her own expense. Proof of recording must be sent to the Board within 30 days of the Variance being granted for the Variance to remain in effect. Contact:

<http://registryofdeeds.co.hampden.ma.us/> or

50 State Street

Springfield, MA 01103

Phone: (413) 755-1722

Fax : (413) 731-8190

Article V Voting Requirements

Section 5.1

The concurring vote of three members of the Board shall be necessary for any decision on any matter upon which the Board is required or authorized to pass under Chapter 40A of the General Laws or the Zoning Ordinance. Any decision under Section 81-Y, Chapter 41 or under Chapter 40B of the General Laws shall require a simple majority vote of the Board of Appeals.

Article VI Amendments

Section 6.1

These rules may be amended by a simple majority vote, provided that such amendment shall be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.