



Town of Ayer
Zoning Board of Appeals
Ayer Town Hall – 1 Main Street – Ayer, MA 01432

Rules and Procedures

Section I – AUTHORITY

The Ayer Zoning Board of Appeals (ZBA), pursuant to the provisions of Massachusetts General Laws, Chapters 40A, Section 12, hereby adopts the following Rules and Procedures governing the organization, procedures and conduct of the Board, and governing review and action on special permits, variances, appeals, and comprehensive permits.

These Rules shall be on file with the Ayer Town Clerk and with the Administrative Coordinator for the Zoning Board of Appeals. Amendments to these Rules may be made periodically and shall become effective upon the filing with the Town Clerk and shall supersede any previous filings.

Section II – BOARD ORGANIZATION

A. Members and Terms

- a. The Ayer Zoning Board of Appeals shall consist of five (5) members appointed by the Select Board.
- b. The Board may have up to two (2) alternate members appointed by the Select Board.
- c. Each member shall serve a three (3) year term and it shall be arranged that the term of one member shall expire each year.

B. Elections

- a. The Board shall annually elect Officers to the Board after Board member appointments, during the first regularly scheduled meeting of the fiscal year.
- b. Alternate members shall not vote to elect officers, nor shall they serve as officers.

C. Officers and Staff

- a. Chair – The Chair shall preside over all hearings and meetings of the ZBA. The Chair is responsible for the orderly conduct of the Board, and shall rule on points of order, unless overruled by a majority of the Board present at that time.
- b. Vice-Chair – The Vice-Chair shall act as Chair when the Chair is absent or is unable to perform their duties.
- c. Clerk – The Clerk shall serve as Chair in the absence of both the Chair and Vice-Chair.

- d. Alternate Members – An Alternate Member shall sit on the Board in the case of absence, inability to act, conflict of interest on the part of any member, or in the case of a vacancy of the regular membership.
- e. Administrative Coordinator – All clerical work shall be undertaken by the Administrative Coordinator under the direction of the Board and the Town Manager. This shall include all correspondence, sending of notices required by law, receiving and reviewing all applications, taking of minutes of all meetings, and compiling/maintaining all records and files.

D. Quorum

- a. The minimum quorum is three (3) members.

Section III – TYPES OF APPLICATIONS.

A. Variance

Filed when owing to circumstances relating to soil conditions, shape or topography of specific land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Ayer Zoning Bylaws would involve substantial hardship, financial or otherwise, to the petitioner and when desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Ayer Zoning Bylaws.

Variances require a vote of at least four (4) out of five (5) votes in the affirmative. (M.G.L. c. 40A, §10 and Ayer Zoning Bylaw §320-3.2(B)(2)).

B. Special Permit

Filed when the ZBA has been designated as the Special Permit granting authority per the Ayer Zoning Bylaws in relation to special or zoning requirements. Special permits may be issued only for uses that are in harmony with the general purpose and intent of the Zoning By-Law and meet the specific requirements therefore set forth in therein. Special Permits may impose conditions, safeguards, and limitations on time or use.

Special Permits requires a vote of at least four (4) out of five (5) votes in the affirmative. (M.G.L. c. 40A, §9 and Ayer Zoning Bylaw §320-3.4).

C. Administrative Appeal

Any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from the Building Commissioner, or his/her designee, or from any administrative officer under the provisions of M.G.L. c. 40A, by any regional planning agency in whose area the town is situated, or by any person, including an officer or board of the town, or of an abutting city or town aggrieved by an order or decision of the Building Commissioner a building inspector or other administrative official, in violation of any provisions the Ayer Zoning Bylaw of M.G.L. c. 40A.

Administrative Appeals requires a vote of at least four (4) out of five (5) votes in the affirmative. (M.G.L. c. 40A, §15 and Ayer Zoning Bylaw §320-3.2(B)(3)).

D. Comprehensive Permit

Pursuant to G.L. c. 40B §.21, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a single application to the ZBA in lieu of separate applications to other applicable Boards such as the Selectboard, or the Planning Board. The ZBA 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.

Comprehensive Permits require a majority vote, with at least three (3) out of five (5) votes in the affirmative. (M.G.L. c. 40B, §21 and Ayer Zoning Bylaw §320-3.2(B)(4)).

Section IV – APPLICATION PROCESS

- A. Applications can be found on the Town of Ayer’s website or at the request of the Administrative Coordinator.
- B. It is encouraged that applications be submitted and reviewed by the Administrative Coordinator before being stamped by the Town Clerk.
- C. The Board needs to open the public hearing within sixty-five (65) days of receiving an application. If an applicant would like to have their hearing heard at a specific regularly scheduled meeting applications are due at minimum twenty-one (21) days prior to that meeting. Meeting dates and deadlines are listed on the Town of Ayer’s website.
- D. Complete applications shall include thirteen (13) hardcopies of:
 - a. Completed Hearing Application Form.
 - b. A summary of the proposed project.
 - c. A certified plot plan (if deemed necessary by the Zoning Enforcement Officer).
 - d. Any correspondence with the Building Commissioner/Zoning Enforcement Officer.
 - e. Pictures and other documentation to support the request.
 - f. A certified list of abutters (1 copy).
 - g. A signed letter from the owner of the property allowing an agent or attorney to represent them during the hearing process.
 - h. A check for \$165, made payable to the Town of Ayer.
- E. The Administrative Coordinator shall draft the official Public Hearing Notice to be posted at the Town Hall and in the local newspaper at least fourteen (14) days prior to the Hearing.
 - a. The Public Hearing Notice will appear twice in consecutive weeks in the same local newspaper (*The Nashoba Valley Voice*, or *The Lowell Sun*).

- b. The applicant is responsible for the cost of the legal newspaper ad. The applicant shall be informed of the cost after the ad has been submitted to the newspaper.
 - c. A check made payable to the Town of Ayer for the cost of the legal ad must be received by the Administrative Coordinator at least two (2) weeks before the Hearing.
- F. The Notice to abutters shall be drafted by the Administrative Coordinator and sent to the applicant.
 - a. The Board is responsible for the mailing of the notice by certified mail.
 - b. The notice to abutters must be mailed at least fourteen (14) days prior to the Hearing.

Section V – MEETINGS AND HEARINGS

- A. All meetings shall be open to the public and shall follow the practices and standards of Open Meeting Law as laid out in M.G.L. c 30A, §20. No person shall be excluded unless they are considered by the Chair to be a “serious hindrance” to the workings of the Board.
- B. The ZBA shall meet on the third Wednesday of each month at 6:00pm unless otherwise stated.
- C. General business of the Board is to be discussed in open session, and this shall include the acceptance of minutes, review of correspondence, and administrative matters.
- D. Public Hearings shall be heard and discussed during an open meeting session. Public Hearings may be continued to future meetings as needed.
- E. Hearings Order of Business
 - a. Opening - The Public Hearing shall open with the reading of the Public Hearing Notice.
 - b. Applicant Presentation - The applicant will present their petition to the Board.
 - i. The applicant may have an agent or attorney present on their behalf, but a letter must be submitted to the Board from the owner.
 - ii. If the applicant does not appear, the Board may make a decision based upon the information submitted.
 - c. Board Questions – Members of the Board may question or ask for clarification from the applicant.
 - d. Applicant’s Rebuttal – The applicant’s response is limited to the questions and comments raised by the Board.
 - e. Abutters and Public Questions/Comments – Abutters and the public may ask questions or make comments.
 - f. Applicant’s Rebuttal – The applicant’s response is limited to the questions and comments raised by the abutters and the public.

- g. Close of Comments – The Board Chair will close the Hearing to public comment, to allow for Board deliberation.
 - h. Motion by the Board – The Board may make a motion to grant or deny the request.
 - i. Board Votes.
 - j. Findings of Facts – The Board should state the Findings of Fact for the record.
 - k. Close the Public Hearing – The Board must vote to close the hearing.
- F. Once a petition has been voted upon and the Hearing closed there shall be no more deliberation of the decision by the Board.

Section VI – DECISIONS AND FINDINGS

A. Decisions

- a. Decisions are to be filed with the Town Clerk within fourteen (14) days of the conclusion of the hearing. Notice of the decision is to be sent to all parties in interest.
- b. Decisions are to include the following:
 - i. Name of Applicant
 - ii. Date of submission
 - iii. Location of Property, and Parcel ID
 - iv. Date(s) of the Public Hearing
 - v. Notice Publication Information
 - vi. Petition
 - vii. Findings of Facts
 - viii. Conditions or Restrictions
 - ix. Decision
 - x. Breakdown of the Vote.
 - xi. Members Present and Absent
 - xii. Signature of the Board Chair
 - xiii. Date of Submission to the Town Clerk

B. Findings of Facts

- a. Findings are the basis of the Board's Decision and the Board's identification of the requirements met or not met by an applicant.
- b. Findings should include when applicable:
 - i. The Zone in which the property is located.
 - ii. Any Overlay Districts within which the property is located.
 - iii. Conditions affecting the property.
 - iv. Facts which describe the hardship.
 - v. The proposed use for the property and/or buildings.
 - vi. The relief sought will be desirable and without substantial detriment to the public good.

- vii. The relief sought may be given without nullifying or substantially derogating from intent or purpose of the Ayer Zoning Bylaws.
- viii. Details describing the manner in which the meeting was held.

C. Denial

- a. If a petition has been denied the applicant cannot resubmit for two (2) years, unless the provisions of G.L. c. 40A, § 16 are met as described below.
- b. A petition may be resubmitted within two (2) years with permission from the Planning Board and the Permit Granting Authority.
 - i. New evidence must be shown that substantially alters the conditions of the original petition in which the decision was based upon.
 - ii. A vote of at least four (4) out of five (5) in the affirmative from the Planning Board stating that there has been a substantial change justifying reconsideration.
 - iii. The same is needed from the Permit Granting Authority.
 - iv. Once approval has been obtained from both Boards, the applicant may reapply.

D. Appeals

- a. Once the decision has been filed with the Town Clerk there is a twenty (20) day appeal period.
- b. An appeal may be submitted by any person aggrieved by the decision of the Board per M.G.L c 40A §17.
- c. If no appeal has been filed with the Town Clerk, a certification of such will be created at the request of the applicant within five (5) days of the appeals period lapse.

Section VII – OTHER ACTIONS

A. Withdrawal of Petition

- a. An application can be withdrawn prior to the meeting. A notice must be submitted in writing to the Town Clerk and the Administrative Coordinator.
- b. An application can be withdrawn during a Public Hearing. The Board may vote to allow the withdrawal without prejudice.

No refunds will be given to an applicant.

B. Inaction

- a. Variances – if the applicant has not exercised their rights made possible by the variance within one (1) year the variance shall lapse. An extension can be granted by the ZBA for a period of six (6) months upon the applicants' written request.
- b. Special Permits – an applicant's special permits shall lapse after three (3) years if no actions have been taken to act upon it.

Section VIII – UPDATES TO RULES AND PROCEDURES

- A. The ZBA shall periodically update their rules and procedures.
- B. Rules and procedures shall be updated during a regularly scheduled meeting of the Board.
- C. A simple majority is required to change these rules and procedures.
- D. Finalized rules and procedures shall be on file with the Town Clerk and the Administrator for the ZBA. The most recent update shall supersede all other versions.
- E. Updates to the Hearing Application shall be handled in the same manner.