

Easthampton Zoning Board of Appeals Rules

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Section 1 - Authority

Under Mass General Laws Ch. 40A Section 12, the Zoning Board of Appeals (abbreviated throughout 'ZBA') may adopt rules for the conduct of its business that are not inconsistent with the provisions of the Easthampton Zoning Ordinance or Massachusetts General Laws and shall file a copy of said rules with the city or town clerk.

Section 2 - ZBA Officers

The Mayor shall make appointments to the Board of Appeals pursuant to the Zoning Act, M.G.L. Ch. 40A Sec. 12.

In accordance with Section 12.61 of the Easthampton Zoning Ordinance, the ZBA shall consist of five regular members and up to two associate members.

Pursuant to Easthampton Zoning Ordinance Sec. 12.62, the terms of ZBA members shall be arranged so that the term of one member shall expire each year.

The first ZBA meeting in January shall begin as an organizational meeting. At that time, the Board shall elect a Chairperson, a Vice Chairperson, and a Secretary. Subject to fiscal appropriation, the Board may employ experts and clerical and/or other assistants.

The Chairperson of the ZBA shall preside at the meetings of the ZBA. In the absence of the Chairperson, the Vice Chairperson shall preside. In the absence of both, the members present will elect a board member to preside over the meeting.

In the event that the Chairperson can no longer serve, the Vice Chairperson shall assume the powers and duties of the Chairperson.

If a vacancy occurs in the office of Vice Chairperson, the board shall elect a new Vice Chairperson from among its members at the first regular meeting after the vacancy has occurred.

If at any point there are fewer than five appointed regular members of the ZBA, the Board Chairperson shall promote the currently appointed associate member with the most seniority to serve in the vacant regular member role. Concurrently, that member shall also apply to the Mayor to be officially promoted to regular member status. In the case that no current associate members want to be promoted to regular member status, the position will be made available to members of the public who are not currently Board members.

Section 3 - Meetings and Agendas

The Chairperson in coordination with the Planning Department shall schedule regular meetings and submit the agendas to the City Clerk in accordance with MGL ch. 30A, §§18-25 ("Massachusetts Open Meeting Law"). Any two members of the ZBA may schedule a meeting of the ZBA and must submit the agenda to the City Clerk in accordance with the Massachusetts Open Meeting Law.

The ZBA will meet on the fourth Wednesday of each month. Meetings begin at 6pm and the board will make all reasonable efforts to conclude by 8pm. Meetings are held in the Municipal

Building unless otherwise posted with proper notice in accordance with the Massachusetts Open Meeting Law. The frequency, time, and place may be changed by a majority vote of the ZBA.

The ZBA will schedule additional meetings as needed. The Chair shall notify the City Clerk of the date and time of any such additional meetings.

Any executive sessions held by the ZBA shall be governed by Massachusetts General Laws, Chapter 30A, § 21.

Section 4 - Quorum and Actions of the ZBA

Three members, including both regular and associate members, shall constitute a quorum.

No more than five members, including both regular and associate members, shall participate in a special permit, variance, comprehensive permit, or administrative appeal hearing.

In order to approve an application for a variance, a special permit, or an administrative appeal, a supermajority of at least four of the members must vote to approve the application.

In order to approve an application for a comprehensive permit or a special permit for transit-oriented development proposals as defined in Chapter 358 of the Acts of 2020, a simple majority of at least three of the members must vote to approve the application.

If a member of the ZBA is absent and an Application would therefore require a unanimous vote for approval by the Board, the Applicant may at their discretion request to either postpone the hearing until a full Board is present or withdraw their application without prejudice before any votes are taken and resubmit at a later time.

Section 5 - Conduct of Meetings

The Chairperson or other presiding officer shall call each meeting to order and inform all present that they will identify speakers as appropriate for the respective portion of the meeting, and that those wishing to speak must identify themselves by raising their hand (or otherwise non-verbally expressing desire to speak) and wait to be identified and granted the floor by the Chairperson or presiding officer.

The presiding officer shall follow the meeting agenda unless the members present agree to address agenda items in a different order.

To preserve order during the meeting, only one person at a time as recognized by the chairperson may speak or provide comments. Any comment made out of turn may not be preserved on the public record and the Board Chairperson may order said comment to be disregarded by all parties.

Board members and members of the public may signal their desire to speak by raising their hand and waiting to be recognized by the chairperson. Board members must obtain

permission to speak in order to make a motion, but seconding a motion may be undertaken without permission to speak.

The Chairperson may allow other means by which participants can signal their desire to speak to any non-verbal, non-disruptive signal.

The Chairperson may identify speakers who, by virtue of compromised access to the public meeting venue, disability, or similar impediment, are unable to utilize the signal and may allow them to speak or utilize another means to signal their desire to comment on the agenda item.

The Chairperson ~~shall~~ may call on a person who has signaled their desire to speak and permit them to do so. Upon the conclusion of their comment, the Chairperson may either speak or identify another speaker who has signaled their desire to speak and permit them to comment.

The Chairperson may limit the amount of time for discussion for any particular meeting item.

The Chairperson may mute or eject unruly meeting participants. The Chairperson may delegate enforcement to other board members or City staff.

After all items on the agenda have been addressed, any ZBA member may move to adjourn the meeting. If another member seconds the motion, a vote shall be held. A vote of the majority of members present is required to adjourn a meeting.

Section 6 - Public Hearing Procedure

During public hearings, the Board shall conduct the proceedings in accordance with the following structure:

1. Introduction of Agenda Item by Board Chairperson
2. Applicant presentation
3. Board discussion and inquiries
4. Applicant responses (if directed to by the chairperson)
5. Board discussion (if desired by Board members)
6. Public comment, including any asynchronously received public comments
7. Applicant responses (if directed to by the chairperson)
8. Further Board discussion (as needed)
9. Vote (continue, approve, or deny)

Applicants and speakers from the public will raise their hand or otherwise signal their intent to comment, identify themselves for the record, and address their comments to the Board.

The ZBA shall grant wide latitude to abutters and members of the public wishing to comment on an application, while reserving the right to limit presentations which are uncivil or which are not relevant to the matters under consideration by the ZBA. The ZBA may also limit public comments that duplicate previously expressed public opinions.

Any ZBA member may call on the chairperson to conduct a “straw poll” in order to hold an informal, non-binding vote to determine members’ impressions of an application before the Board. If the chairperson agrees to do so, they shall conduct a vote. This vote shall not be taken to be binding and does not constrain Board members from making decisions not in keeping with their straw poll vote. Board members may abstain from participating in the straw poll.

A ZBA member may move to close the public hearing when such member believes the ZBA has received all information necessary to render its decision. If another member seconds the motion, a vote shall be held. Public hearings shall be closed by a majority vote of the ZBA members.

After a vote to close the Public Hearing, all discussion from members of the public including the Applicant is forbidden unless specifically answering a question posed by the Board.

Following the close of a public hearing the ZBA shall deliberate until it reaches its decision. Any ZBA member may determine that the ZBA has reached its decision and move to approve the application before it, with or without conditions. If another member seconds the motion, a vote shall be held. See Section 4 - Quorum and Actions of the ZBA for the majorities necessary to approve an application.

Section 7 - Motions

The wording of motions to approve or deny an application should be made in the affirmative per the June 28, 1993 opinion from the City Solicitor. To this end, motions should be made so that votes in favor are votes for approval and votes opposed are for denial.

Section 8 - Decisions and Amendment

Following the close of a public hearing and the rendering of a decision by the ZBA, the Chairperson, or other presiding officer, shall draft a decision that accurately reflects the action taken by the ZBA.

Written decisions of the ZBA shall be filed with the City Clerk as soon as possible after the ZBA has voted. See Section 12 - Application Timetables and Expiration for more details.

Per MGL Ch.40A §11, no variance or Special Permit granted by the ZBA may take effect until the close of the statutory appeal period twenty days from the filing of the Decision with the City Clerk.

In the event of a clerical or other inadvertent error in a decision, the ZBA may, without holding a new public hearing, amend its decision so that the record will reflect the true intention of the Board. In this context, the correction of a clerical or other inadvertent error may not make a substantive amendment which will change the result of the original decision or which will grant relief different than that originally granted.

Section 9 - Record Keeping

The Secretary shall keep a record (minutes) of all proceedings, both in regular and executive sessions. If financial means allow, the Board may employ and delegate the taking of minutes to a Clerical Assistant.

The Secretary or Clerical Assistant shall transmit copies of the previous meeting's minutes to all board members before the next scheduled meeting. After the Board approves the minutes, a copy shall be forwarded to the City Clerk and the City Planning Department. In accordance with MGL Ch.30A §21, minutes of executive sessions shall be made public as soon as disclosure would no longer defeat the purposes of the executive session.

Copies of approved minutes may be requested through the City Clerk who will provide copies of the requested minutes.

Section 10 - Filing Deadlines for Regular Meetings

Any items of business that are to be presented to the ZBA at its regular meeting for action shall be submitted to the City Clerk, who will time-stamp and deliver the material to the Planning Department. Items will be placed on the agenda provided the following schedule is met:

- Special Permits, Appeals, Comprehensive Permits, and Variances - no later than 12:00 noon, three (3) weeks prior to the scheduled meeting.
- Other Business - no later than 10:00 a.m. the Thursday one (1) week prior to the scheduled meeting.

The Chairperson, with consultation from the Planning Department or City Clerk, shall set the agenda and determine placement of business on the meeting agenda. The agenda shall be delivered to all board members, the City Clerk, and the Planning Department no later than the Thursday prior to the meeting.

Section 11 - Legal Notification

Special Permits, Comprehensive Permits, Appeals, and Variances all require legal notification consistent with the MGL Chapter 40A, Section 11. All fees for legal notification are in addition to the fees for appearing before the ZBA and shall be paid by the applicant prior to the start of the Applicant's hearing.

The ZBA has the authority to set and adjust the application fees periodically. The current fee schedule (exclusive of fees for Legal Notification) as of December 2014 is:

- Special Permit and Variance applications: \$150.00
- Administrative Appeals: \$ 75.00
- Comprehensive Permit Application: \$250.00 x number of proposed units.
There is no fee associated with Local Initiative Project units (see Comprehensive Permit Rules dated 3/20/2014)
- Other Business - no fee

Section 12 - Application Timetables and Expiration

All business before the ZBA is subject to the following timelines. Business that is not concluded within the required timeline is eligible for constructive approval upon request of the Applicant to the City Clerk

Within 10 days of the receipt of any application to the ZBA, copies of the application must be transmitted to the Building Inspector, Board of Health, Conservation Commission, Highway Department, Historical Committee, Fire Department, Police Department, and ZBA, who will be given 35 days to respond before their failure to respond will be deemed to be lack of opposition.

All hearings before the ZBA, with the exception of Comprehensive Permits, must start within 65 days of the submission of the application and may be continued indefinitely. Hearings may not be closed until all of the above listed boards/agencies have responded on the application or the 35-day statutory period has elapsed.

Special Permits:

- Final action (i.e. filing decision with the City Clerk) must be taken within 90 days of the hearing's closure or it will be eligible for a constructive grant.
- Special permits expire after two years if a substantial use of it has not commenced.

Variances:

- Final action (i.e. filing decision with the City Clerk) must be taken within 100 days of the hearing's closure or it will constitute approval.
- Variances expire after one year if a substantial use of it has not commenced.

Administrative Appeals:

- Must be filed by the Applicant with the City Clerk within 30 days from the date of the order or decision being appealed.
- Final action (i.e. filing decision with the City Clerk) must be taken within 100 days of the administrative appeal's filing with the City Clerk or it will be eligible for a constructive grant.

Comprehensive Permits:

- Hearings must start within 30 days of the submission of the application and may not be continued for more than 180 days once opened.
- Final action (i.e. filing decision with the City Clerk) must be taken within 40 days of the hearing's closure or it will be constructively granted.
- See Comprehensive Permit Rules dated 3/20/2014

Section 13 - Peer Review / Outside Consultant

Purpose. As provided by M.G.L. Ch. 44 §53G, the Easthampton ZBA may impose reasonable fees for the employment of outside consultants, engaged by the ZBA, for specific expert services. Such services shall be deemed necessary by the Board to come to a final decision on an application submitted to the ZBA pursuant to the regulations and requirements of the

Easthampton Zoning Ordinance, the Easthampton Subdivision Regulations, or any other City ordinance, regulation, or rule as they may be amended or enacted from time to time.

Special Account. Funds received pursuant to these rules shall be deposited with the City Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the ZBA without further appropriation as provided in M.G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. For the purposes of this rule, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation acceptable to the Board establishing such succession in interest.

Consultant Services. In hiring outside consultant(s), the ZBA may engage engineers, planners, lawyers, urban designers, or any other appropriate professional who can assist the ZBA in analyzing the project and to ensure compliance with all relevant federal, state, and local laws, statutes, ordinances, and regulations. Specific consultant services may include, but are not limited to, site plan review, stormwater review, traffic analysis, or land use law. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the ZBA. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three (3) or more years of practice in the field at issue, or a related field. The consultant shall be chosen by, and report only to, the ZBA and/or its administrator. Hiring outside consultants shall be in compliance with the Uniform Procurement Act, M.G.L. c. 30B §§ 1-19.

Notice. The ZBA shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed by first class United States Postal Service or delivered by e-mail. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five business days of the date notice is given.

Payment of Fee. The fee must be received prior to the initiation of consulting services. The ZBA may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the ZBA within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the ZBA to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in the Easthampton Zoning Ordinance or Subdivision Regulations. The ZBA will state as such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. When the ZBA's review of a project is completed and a permit issued, any balance in the special account attributable to that project shall be returned within 30 days.

The excess amount, including interest, shall be repaid to the applicant or the applicant's successor in interest.

Appeals. The applicant may appeal the selection of the outside consultant to the City Council, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. Such an appeal must be in writing and received by the City Council and a copy received by the ZBA, so as to be received within ten (10) days of the date consultant fees were requested by the ZBA. The required time limits for action upon the application shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Easthampton City Council within one month following the filing on an appeal, the selection made by the ZBA shall stand.

Section 14 - Code of Ethics

The ZBA requires an atmosphere of professional conduct and civility among its members, and shall not tolerate harassment, discrimination, or offensive behavior based on race, color, religion, national origin, gender, age, disability, sexual orientation or gender identity, nor shall any member of the ZBA use profanity, insulting, threatening, or abusive language in the course of public debate or in testimony before any City Agency, Board or Commission.

Furthermore, this code of ethics shall apply whenever a ZBA member is in any public setting representing said ZBA.

These principles shall be enforced by public admonition through resolution, censure, and other action deemed appropriate by the ZBA. Jurisdiction rests with the ZBA as a whole, and therefore any member may motion for a finding of a violation of this Rule.

Section 15 - Amendment and Revision

These Rules may be suspended, replaced, revised or amended at any time by a majority vote of the ZBA and will take effect upon filing with the City Clerk.