

TOWN OF WAYLAND ZONING BOARD OF APPEALS

SUMMARY OF THE BOARD'S PROCEDURES AND RULES

This narrative summary is for the benefit of applicants and the general public. It supplements but does not supplant the Rules and Regulations (copies of which are available at the Town Clerk's Office).

The Wayland Zoning Board of Appeals is an appointed quasi-judicial body authorized to function under state and town laws.¹ It meets in Town Building, generally twice a month. Although all members of the ZBA (five regular and three associate) participate in hearings, only the regular members present can vote. If one is absent or steps down due to a conflict of interest (e.g., being an abutter or a business partner of the applicant; see MGL ch. 268A), the chair can appoint an associate member to vote.

The ZBA holds public hearings² to decide on applications for a special permit or variance from the requirements of the Zoning Bylaws; petitions to appeal a decision of the Building Commissioner or Zoning enforcement officer (e.g., declining to issue a building permit; deciding that a property is not a buildable lot; enforcing a zoning violation; declining to enforce a perceived zoning violation); applications for site plan approval; and applications for permission to construct housing not in accordance with zoning and other applicable laws (this is commonly called a Comprehensive Permit under MGL ch. 40B).

Applicants must submit nine copies of all mandatory materials required for an application (one for the file and eight for advance distribution to the ZBA members). A checklist available from the Building Department details the mandatory materials.³ Briefly, these include: a completed application on the official (pink) form; floor plans with dimensions of existing structures; schematic floor plans (e.g., blueprints, architectural drawings, sketches with dimensions clearly marked) and elevations of proposed structures; a detailed survey of the lot (dated, signed, and stamped by a professional land surveyor); copies of any required approvals, particularly from the Board of Health. Any other pertinent material—such as letters from neighbors, photos of the existing house and neighborhood (only one original required, not nine), analysis of the neighborhood lot/house sizes or setbacks, narrative description of the proposal—must also be submitted in advance (these rules also apply to materials submitted by opponents). *This gives members of the ZBA and the public sufficient time to review the submissions, as required by due process.*

Once the application is complete, the ZBA schedules the hearing; places a legal advertisement in a local newspaper, to give notice of the hearing to any interested member of the public; and mails letters to abutters, all as required by law. Board members review the application form, plans, sketches, and other materials submitted, and generally view the property and neighborhood. Under state law, the public hearing must begin within 65 days after the application is filed with the Town Clerk. The public hearing may conclude on the same night, or the ZBA may continue until it decides that all necessary evidence is in the record. Hearings are generally scheduled at 30-minute intervals. *By law, no hearing can begin before the time listed on the legal notice, but any hearing can extend beyond the 30 minutes initially allotted.*

¹ The Zoning Bylaw (Chapter 198 of the Town Code) is available at the Town Clerk's Office in Town Building; on the Town's website, www.wayland.ma.us; and at the Town Library. The state statutes (Mass. General laws chaps. 40A and 40B) are available at the Town Library; and online at www.state.ma.us/legis/laws/mgl/mgllink.htm.

² Because the ZBA is a quasi-judicial body and not a legislative (policy-making) board, members cannot discuss the merits of any matter under consideration with an applicant or the public, outside the public hearing process.

³ **The mandatory (Checklist) materials must be submitted several weeks in advance; all optional materials must be submitted seven calendar days before the hearing date.** Applications for home occupations, signage, comprehensive permits, variances, and petitions to overturn enforcement decisions, require additional materials; see the Checklist.

To begin the hearing, the chair reads the legal notice describing the application and indicates the five voting members of the panel, designating one of them to write the decision. The chair usually invites the applicant and any representatives (e.g., builder, lawyer, relatives) up to the table to present the application, along with any visual aids and additional materials the applicant wants the ZBA to consider. Board members ask the applicant questions during this presentation. The chair then opens the hearing to the public, for their questions or comments, and members may ask additional questions of the applicant or the public. The ZBA may vote to continue a public hearing to a future date, whether to give the applicant time to provide additional information or research that the Board deems necessary; or to allow sufficient time for public comment; or to permit time for further research or site visits at a member's request.⁴

The applicant carries the burden to make a true, complete, and fair presentation. Applicants should familiarize themselves with the legal requirements pertaining to their application prior to the hearing,⁵ and be prepared to present evidence, relevant facts, and documents on each matter necessary to the Board's deliberations. Any false statement to the ZBA and any failure to state a material (significant) fact gives the Board legal grounds to revoke whatever action it has taken on the application. Those who oppose the application are under a similar duty to present their cases truthfully and completely.

Once the Board has heard all relevant evidence, the chair will close the public portion of the hearing and the members will then deliberate. Deliberations are open to the public, but neither the public nor the applicant can participate or make further comments unless the Board decides to reopen the hearing to public input. Based on the documents and testimony presented at the hearing, members' visits to view the site and the neighborhood, and their understanding of state, local, and case law, the ZBA determines the appropriate legal standard to apply, then votes to grant or deny the application. By state law, most matters require the vote of a supermajority, not a simple majority. *This means that four of the five panel members must vote in favor; three affirmative votes are not sufficient.* When only four voting members are present, all four must vote in favor. If only four members are eligible to vote, the applicant can ask the Board to continue the hearing until a full five-member panel can hear the application. Votes to continue are by simple majority.

When the ZBA grants zoning relief, it has the statutory power to impose conditions on the special permit or variance. The ZBA will discuss these conditions during deliberations, and they become an enforceable part of the written decision. The member designated to write the decision generally has 14 days to complete it. The signed decision is filed with the Town Clerk, and notice is mailed to the applicant, abutters, and certain Town departments. During the 20 days after the decision is filed with the Town Clerk, any interested party⁶ who disagrees with it can file an appeal in state court.⁷

Once the 20-day appeal period has run (and if no appeals have been filed), the decision is final. The successful applicant must file the decision at the Middlesex South Registry of Deeds and return a certified copy to the Building Department. Only at that point (i.e., on or after the 35th day following the Board's vote) is the applicant eligible to apply for a building permit in accordance with the ZBA's decision.

⁴ On rare occasions, the Board may decide it needs an outside consultant to assist with assessing complex, specialized, or unusual applications. Under MGL ch.44, §53G, the Board can require the applicant to pay the consultant's fees.

⁵ The legal standards that the Board must apply in reaching decisions are set forth in the Town's zoning bylaws, the state statutes (particularly MGL ch. 40A, Sections 6 and 10), and the case law.

⁶ State law defines *interested party* as the applicant, abutter, certain municipal officials, and certain others. Someone wishing to appeal the Zoning Board's decision should consult an attorney.

⁷ The same procedure applies when the Board denies an application, allows an applicant to withdraw the application, or denies the appeal of (i.e., upholds) an order from the Building Commissioner/Zoning Enforcement Officer. Those wishing to appeal must do so within 20 days after the Town Clerk receives the written decision.