

**ZONING BOARD OF APPEALS
ESSEX, MASSACHUSETTS**

RULES AND REGULATIONS

Revised January 6, 2022 by vote on December 16, 2021

Pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12 and Chapter 40B, s.21, the Essex Zoning Board of Appeals (the “Board”) hereby adopts the following revisions to the Board’s existing Rules and Regulations governing the organization, procedures and conduct of the Board, and governing review and action on variances, appeals and comprehensive permits. The Rules and Regulations that follow replace, in their entirety, any and all prior Rules and Regulations adopted by the Board.

ARTICLE I - ORGANIZATION

Section 1: Members and Officers

The Zoning Board of Appeals shall consist of three (3) regular and two associate members, all residents of the Town of Essex and appointed by the Board of Selectmen. The regular members shall elect all officers of the Zoning Board annually; officers consist of a Chair, Vice-Chair, and Clerk. The regular members shall also adopt and/or amend these Rules and Regulations. For all other issues requiring a vote at a business meeting, all members, regular and associate, may vote, each having one vote. A majority vote is required to adopt or approve business matters covered by this section.

1.1 Chair - In addition to the powers granted by the Massachusetts General Laws and the Essex Zoning Bylaw and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, advise any zoning staff, appoint such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. He/she shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing/meeting. The Chair shall be responsible for the orderly conduct of the Board’s business, whether conducted during a public hearing or a public meeting. The Chair may use her/his discretion to rule out of order unsolicited or irrelevant comments made by members of the public. All points of order subject to these rules shall be decided by the Chair unless overruled by a majority of the Board in session at the time. The absence of the Chair shall not preclude the Board from conducting the Board’s business.

1.2 Vice-Chair - The Vice-Chair shall act as Chair when the Chair is absent or is otherwise unable to perform her/his duties. If both the Chair and the Vice-Chair are absent, the Clerk shall act as Chair and shall appoint an acting Clerk. The absence of the Vice-Chair shall not otherwise preclude the Board from conducting the Board’s business.

1.3 Clerk - The Clerk shall be a member of the Board and shall, in the absence of the staff assistant and subject to review by the Chair, supervise all of the clerical work of the Board including: reviewing all correspondence of the Board, sending all notices required by law, preparing rules and orders of the Board, reviewing all applications for compliance with the

rules of the Board, keeping dockets and minutes of the Board's proceedings, compiling all required records, and maintaining necessary files and indices. If the Clerk and staff assistant are absent, the Chair shall appoint an acting Clerk.

1.4 Associate Members - Associate members shall sit on the Board in the case of absence, inability to act or apparent conflict of interest on the part of any regular Board member, or in the event of a vacancy of the regular membership.

Section 2: Quorum

Two (2) members/associate members of the Board shall constitute a quorum of the Board. The number of Board members required to vote to approve a particular application is governed by relevant provisions of G.L. c.40A (application for a variance or appeal of a decision or failure to issue a decision by the Building Inspector) and G.L. c.40B, s.20-23 (application for a comprehensive permit).

Section 3: Resignations

If a regular member or associate member resigns from the Board, the resignation shall be submitted, in writing, to the Board of Selectmen and a copy shall be provided to the Town Clerk. The resignation shall become effective upon the filing of same with the Town Clerk.

ARTICLE II - FUNCTIONS OF THE BOARD

Section 1: Public Meetings

Public meetings shall be conducted in accordance with the Open Meeting Law, G.L. c.30A ss.18-25 and the Zoning Act, G.L. c. 40A, s. 11. Agendas for Board meetings and hearings, drawn up with the assistance of staff, shall be filed with the Town Clerk and any interested parties.

Public meetings, while open to the public, are not public hearings. Applications for variances, appeals or comprehensive permits require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside of a public hearing.

Business conducted at public meetings shall include:

- Review and approval of final plans required as conditions of a comprehensive permit or other decisions of the Board, such as but not limited to improvements to sites, landscaping, signs, lighting, and related matters;
- Other documents and/or information required by or related to conditions attached to existing comprehensive permit, or other decisions of the Board, such as but not limited to compliance with conditions, enforcement orders, and related matters;
- Review and/or approval of *de minimus* changes in previously approved site plans, floor plans, elevations, management plans, or other aspects of an approval. In all cases, the purpose of the review is for the Board to determine whether the changes are significant enough to require formal modification of the permit and/or conditions.

- Other matters for which the Board is not required to hold a public hearing, such as Administrative Meetings.

The Board may seek clarifying information or testimony from the public as it deems necessary during a meeting, but unsolicited comments from the public may be ruled out of order.

Section 2: Public Hearings

2.1 Schedule - Public hearings of the Board of Appeals are scheduled as necessary.

2.2 Public Notice - Notice of public hearings shall 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 in a newspaper of general circulation for Essex in accordance with G.L. c.40A, s. 11. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, and not less than fourteen (14) days prior to the hearing. In addition, the applicant shall apply for, receive, and submit a Certified List of Abutter's prepared by the Assessor's Office (see application form) and the Town shall send by mail (regular mail, certified mail, or both), postmarked at least 14 days prior to the date of the hearing, said notice to property owners of land within 300 feet of the property line as well as every abutting city or town, other relevant Town departments and boards, and any other interested parties.

2.3 Site Visits - The Zoning Board of Appeals may view properties that come before it under applications for variances, appeals and comprehensive permits. The purpose of the site visit is to view the site and its relation to the surrounding area. Site visits are intended to familiarize the Board as to the locus of the proposed permit application and accordingly is not considered testimony, nor is testimony to be taken during any site visit.

2.4 Hearings to be Public – All applications or modifications to a previously issued or adjudicated variance, appeal or comprehensive permit shall be considered at properly noticed public hearings. All hearings are open to the public. No person shall be excluded unless he/she is considered by the Chair to be a “serious hindrance” to the workings of the Board. Requests for modifications or changes in any conditions of previous permits or site plans attached thereto shall be heard at a public hearing, where such modifications or changes constitute an amendment to the original permit or decision.

2.5 Representation and Absence - An applicant may present an application to the Board or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of the applicant, the Board may act on the matter using the information it has otherwise received, or the Board may decide by unanimous vote that the petition be denied, or continue the matter to a new date certain.

2.6 Hearing Procedure (except for Appeals pursuant to G.L. c.40A, s.8) – The Chair shall open the meeting, explain the procedures of the Board and open the evidentiary part of the hearing. All hearings proceed in the following order, with the Chair in charge of all portions of the hearing:

- a. Notation by the Board all submitted materials and observations of the site visit, if applicable;
- b. Applicant's presentation and evidence gathering;
- c. Questions from the Board;
- d. Comments and questions from the public;
- e. Applicant's response;
- f. Final comments and questions from the public, applicant and Board, in that order;
- g. Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain.
- h. Public meeting deliberations, including but not limited to:
 - identify, review, and make findings of fact
 - identify, discuss, and establish condition
 - review and make findings required under any applicable section of the Zoning Bylaw and Section 10.38
 - Motion to approve, or deny followed by a second. Discussion, if any of the motion (motion should be in the form of the agenda item unless modified)

2.7 Findings and Decision - Consideration of an application shall be based on findings of fact which the applicant has presented as well as specific findings that the application meets all of the necessary provisions of the Bylaw. This process may be referred to as the deliberative part of a hearing, and is conducted within a public meeting.

Approval may be subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw.

The Board's written decision shall state the specific findings of fact and reasons for its decision based on the applicable sections of the Zoning Bylaw.

Conditions of a decision which require that the applicant return to a future public meeting for review and approval of site plans, management plans, signs or other matters shall include a date certain for said review. Denial of an application may be based on a finding that either: (1) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (2) a determination, based on specific findings, that the project does not meet the applicable sections of the Bylaw

2.8 Voting - The record shall reflect the vote of each Board member upon each question or, if failing to vote, indicating such fact.

A variance, or appeal from the decision of the Building Inspector issued by the Board shall require a unanimous vote of three (3) members regardless of the number of Board members present and able to vote. A comprehensive permit issued by the Board shall require a vote of at

least two (2) members of the three (3) member Board regardless of the number of Board members present and able to vote.

2.8.1 Pursuant to the accepted provisions of G.L. c. 39, Section 23D, the following additional provisions shall govern public hearings held by the Zoning Board of Appeals:

- 1) A member of the Zoning Board of Appeals participating in an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. To be eligible to vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.
- 2) In addition and notwithstanding the foregoing paragraph:
 - a) The provisions of Section 2.8.1 shall only apply to members participating in adjudicatory hearings which take place over a period of two or more sessions conducted at public meetings. Board members shall not be permitted to avail themselves of this provision for public hearings lasting only a single session.
 - b) The provisions of Section 2.8.1 shall only be available to Board members who are absent from a single session of a multi-session public hearing.

2.9 Reconsideration - Once a public hearing is closed, whether or not a vote has been taken and a decision has been made, taking of further testimony shall require reopening the public hearing preceded by (1) a motion and vote by the Board to reconsider during a duly-constituted public meeting, and (2) advertising and notifying abutters in accordance with G.L. c.40A, s.11.

2.10 Extensions – The required time limits to open a public hearing, close a public hearing, render a decision and file a decision with the Town Clerk may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed with the Town Clerk.

2.11 Filing and Recording – No Board decision that grants a variance or comprehensive permit shall take effect until a copy of the decision is filed with the Essex Registry of Deeds and bears the certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has been filed. A variance or comprehensive permit that is not subject to an appeal shall be filed with the Registry of Deeds within six (6) months following the Board's decision or the variance or comprehensive permit shall lapse. If a variance or comprehensive permit is subject to an appeal, the variance or comprehensive permit shall be recorded with the Registry of Deeds within six (6) months following the final disposition of said appeal. **The applicant bears all responsibility for recording at the Registry of Deeds any variance or comprehensive permit granted or amended by the Board.**

2.12 Withdrawal - Any application may be withdrawn, without prejudice, by notice in writing to the Town Clerk with a copy to the Board at any time prior to publication of legal notice of the hearing in the newspaper. Requests to withdraw after publication of legal notice may be in writing as provided above, or they may be made by the applicant orally at the public hearing and accepted by a majority of the Board.

ARTICLE III - APPLICATIONS TO THE BOARD

Section 1: Types of Applications and Time Requirements

1.1 Variances – Petitions for variances from the terms of the Zoning Bylaw dealing with particular aspects of land or structures may be submitted to the Board pursuant to G.L. c.40A, s.10 and the Zoning Bylaw. A grant of a variance requires the Board to make specific affirmative findings as found in G.L. c.40A, s.10. These required findings are conjunctive; each finding must be made based upon the evidence submitted to the Board during the public hearing process in order for the Board to approve a variance from the Zoning Bylaw. The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures.

Time Requirements for Board Action: When an application for a variance is filed with the Town Clerk, the Board shall hold a public hearing within 65 days from the day of filing. The decision of the Board shall be made within 100 days from the date of filing the application with the Town Clerk.

Time Requirements for Appeals of a Decision: Any person aggrieved by the Board's decision or failure to timely issue a decision regarding a properly applied for variance may appeal to the Court as provided for in G.L. c.40A, s.17.

Time Requirements for Use or Construction: If the rights authorized by a variance are not exercised within one year of the date of such grant, the variance shall lapse. The required time limits for exercising said rights may be extended by written agreement between the petitioner and the Board for an additional period not to exceed six months, provided that the application for such an extension is filed with the Board prior to expiration of the variance. A copy of such agreement shall be filed in the office of the Town Clerk.

1.2 Appeals of an Order or Decision of the Building Inspector – Pursuant to G.L. c.40A, s.8 and the Zoning Bylaw, the Board of Appeals may receive the following appeals from:

- A person aggrieved by an inability to obtain a permit from the Building Inspector
- A person aggrieved by enforcement action, or lack thereof, from the Building Inspector
- The regional planning agency, an officer or board of the Town or of an abutting town aggrieved by an order or decision of the Building Inspector or Town official perceived to be in violation of the Zoning Bylaw.

Time Requirements for the Petitioner: An appeal pursuant to G.L. c. 40A, Section 8 must be taken by the petitioner within 30 days from the date of the order or decision that is being

appealed. The application for appeal must be filed with the Town Clerk, specifying the grounds for the appeal. Copies of the application of appeal also shall be filed by the petitioner with the officer or Board whose order or decision is being appealed and with the Zoning Board of Appeals.

Time Requirements for Board Action: As provided in G.L. Ch. 40A, Section 15, a request shall be forwarded to the officer or Board whose decision is being appealed to transmit all documents and papers constituting the record of the case to the Board of Appeals. The Board shall hold a public hearing on any appeal application within 65 days from the date of filing. The decision of the Board shall be made within 100 days from the date of filing the application with the Town Clerk. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed in the office of the Town Clerk.

1.3 Comprehensive Permits – Pursuant to G.L. c. 40B s.20, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a single application to the Board of Appeals in lieu of separate applications to other applicable Boards such as the Conservation Commission or the Planning Board. The Board of Appeals 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.

Time Requirements for Board Action: The Board shall hold a public hearing within 30 days of receipt of the application and shall render a decision, based upon a majority vote of the Board, within 40 days after closing the public hearing.

Time Requirements for Decision appeals: Any person aggrieved by the Board's decision for the comprehensive permit may appeal to Court within 20 days as provided in G.L. c40A, s.17. Applicants aggrieved by a denial of the application, or by conditions attached to a grant of the comprehensive permit may appeal to the Massachusetts Housing Appeals Committee if and only if, the Town of Essex is not consistent with local needs or benefitting from a defined "safe harbor" as those phrases are found in G.L. c.40B, s.20 and 760 CMR 56.00 et seq. Such appeal shall be taken within 20 days after the date the decision was filed with the Town Clerk.

Section 2: Application Requirements for Applications to the Board:

2.1 Application Form - Every application submitted for action by the Zoning Board of Appeals, including requests for variances, comprehensive permits, and appeals from the decision of the Building Inspector, shall be made on the official application form of the Board. **It is the responsibility of the applicant to furnish all supporting documentation with the application.**

2.1 Application Form con't

The following information must be included with the application:

- a. A current (no more than 30 days old) and valid "Certified List of Abutters" from the Assessor's office, signed by the Assessor;
- b. Appropriate site plans, floor plans, management plans, memoranda or any other documents that the Building Inspector or staff assistant deem necessary;
- c. The appropriate fee as required in Appendix A.

Revisions prior to a public hearing - Any new or revised information submitted after the initial application is not guaranteed to be reviewed by Town officials prior to the public hearing. Any new or revised information shall be submitted no later than one week prior to the public hearing and shall be submitted in the same manner and to the same extent as required for the initial application.

Site Plans: Unless waived by the Board, all site plans shall be prepared by a Registered Engineer, Surveyor or Landscape Architect, and shall include the following:

- Name of property owner, developer and name of engineer/surveyor/landscape architect or builder
- Date, title and scale of plan
- Separate locus map showing site location and location of buildings on surrounding properties, north arrow
- All existing lot lines, easements, rights-of-way, size of property in square feet, setback, side and rear yard dimensions as set forth in the Bylaw
- Location and use of all existing and proposed buildings and structures, including dimensions and heights
- Location and names of existing or proposed streets, curb cuts, entrances and exits, parking areas, sidewalks, loading/service areas, utility systems
- Existing and proposed contours and finished grade elevations, including location and volume of significant filling or excavations
- Location of all natural features, including significant watercourses, wetlands, water bodies, bedrock outcroppings, stone walls and all trees, including drip lines, of eight (8) inch diameter at breast height (DBH) or larger on the subject property.
- Location of containers and enclosures for storage and disposal of waste, recyclables and, where applicable, waste kitchen oil
- Number and location of parking spaces required; compliance with and/or information regarding compliance with all applicable provisions of Article 7, including but not limited to maneuverability, screening, and design standards.
- Calculation of total lot area, wetlands, building coverage and total lot coverage.

2.2 Waivers or Additional Requirements – The Board shall have the right to modify or waive any of the submittal requirements under Section 2.1 above, or to request additional information necessary to render a decision. For waivers to any applicable provision of these Rules and Regulations, the applicant shall submit, in writing, the specific reasons for a waiver including how or what information has been provided to allow the Board to make the decision without the required plan. To modify or request additional information, the Board must determine the specific additional information necessary to render a decision during a public meeting or public hearing.

2.3 Project Summary, Written Submissions – It is recommended that all applications be supported by a written project summary detailing all relevant facts of the application.

Project summaries shall be filed with the application, with supplementary information submitted at the public hearing or within such time thereafter as may be fixed by the Board to be reviewed as part of a public meeting. Written submissions by the public must be submitted prior to the close of the hearing.

2.4 Revised Final Plans – Revised plans submitted to the Board as a condition of a variance or comprehensive permit shall be reviewed and acted on at a public meeting.

2.5 Application Fees – All applications filed with the Town Clerk shall be accompanied by cash or check made payable to the Town of Essex in the specified amount, depending on the nature of the application. See Appendix A for the schedule of fees.

2.6 Other Fees – In accordance with G.L. c.44, Section 53G, the Board may impose Project Review Fees for applications which require the services of outside consultants for the review process due to the size, complexity or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. See Appendix B for an outline of the procedure for Project Review fees.

2.7 Filing – To file with the Board, the petitioner shall submit the application and accompanying documents outlined above to the Town Clerk for certification. The date of receipt, as stamped by the Town Clerk, shall be considered the date on which the application has been filed.

ARTICLE IV – ADOPTION

The foregoing rules and Appendix A-B are hereby adopted this 3rd day of January, 2022 by the Essex Zoning Board of Appeals and filed with the Town Clerk. These Rules and Regulations supersede any and all prior versions of the same.

APPENDIX A APPLICATION FEES

Fees accompanying applications to the Board of Appeals shall conform to the schedule below. The applicant will be responsible for payment directly to the newspaper of the Board's choosing for the publication of a Legal Notice for two consecutive weeks. If payment is not made and the Legal Notice is not published, the hearing will be delayed.

High Impact Uses – **Non-residential = \$500**
Residential = \$300 + \$50/ new dwelling unit

- Residential uses with more than 6 units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Congregate housing for the elderly and disabled, fraternities/sororities
- Institutional Uses – e.g., Medical or residential institutions, cemetery, private lodge or club)
- Research and Industrial Uses
- Telecommunication Towers
- Large Scale Ground mounted Solar Installations

Moderate Impact Uses – **Non-residential = \$300**
Residential = \$150 + \$50/ new dwelling unit

- Residential uses with 6 or fewer total units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Two-family detached
- Dwelling units in combination with stores or other permitted business or commercial uses
- Lodgers/Boarders/Roomers/Bed and Breakfast
- Supplemental apartments
- Retail, Business and Consumer Service Uses
- Motor Vehicle Related Uses

Low Impact Uses - \$50

- Applications for/by owner-occupied single family properties– e.g., accessory uses, other than supplemental apartments, fences, signs

Other:

- Variances = \$300
- Appeals from a decision of the Building Inspector = \$110
- Amendments or modifications to existing permits = Same fee as use

Comprehensive Permits & Affordable Housing Projects * = \$500 + 50 / new dwelling unit

- Limited Dividend Organizations - \$9 per unit
- Non-Profit Organizations - \$3 per unit
- Public Agencies and Local; Local Initiative pursuant to 760 CMR 45.00 - \$0

Town Projects – The application fee for certain Town projects may be waived administratively by the Town Administrator.

APPENDIX B PROJECT REVIEW FEES

In accordance with M.G.L. Chapter 44, Section 53G, the Zoning Board of Appeals may impose project review fees for those applications which require the services of outside consultants for the review process due to the size, complexity, or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. This determination shall be made by the Board during a public hearing after an initial presentation of a project.

The Board may engage attorneys, engineers, planners, landscape architects, architects or other appropriate professionals.

Fee Payment – The Board shall determine the amount of the initial deposit to be made and the amount of any additional funds that may be required during the review process. The applicant shall pay such fees to the Town of Essex and such fees shall be deposited in a special account with the Town.

Expenditure of Fees – Outside consultants retained by the Board shall be paid from this special account. The expenditure of said fees shall be at the direction of the Board, without further appropriation. Said fees are to be expended only in connection with services rendered for the specific project for which the fees were collected.

Excess Fees – After completion of the Board's review of a project, any excess fee amount, including interest, shall be refunded to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or applicant's successor in interest.

Failure to Pay Fee – Failure to pay a Review Fee by the applicant shall be grounds for disapproval of the subject application.

Administrative appeals – The choice of a consultant selected by the Board for the review of an application may be appealed in writing to the Board of Selectmen by the applicant, provided such appeal is initiated within two weeks of the selection. The ground for such appeal shall be limited to claims that the selected consultant:

- a) has a conflict of interest
- b) does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three years or more years of practice in the field at issue or a related field.

The required time limits for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the administrative appeal, the selection made by the Board of Appeals shall stand.