



Town of North Andover
Massachusetts

ZONING BOARD OF APPEALS

MEMBERS

BOARD MEMBERS

Albert P. Manzi, III, Esq., Chairman
Ellen P. McIntyre, Vice-Chairman
Richard J. Byers, Esq. Clerk
Joseph D. LaGrasse
Richard M. Vaillancourt

ASSOCIATE BOARD MEMBERS

Thomas D. Ippolito
Daniel S. Braese, Esq.
Michael P. Liporto

RULES AND REGULATIONS

The Zoning Board of Appeals at its regularly scheduled monthly meeting unanimously adopted the foregoing rules and regulations, Tuesday evening, April 10, 2001; amended Tuesday evening November 11, 2002; Tuesday evening, December 9, 2003; and amended Tuesday evening June 13, 2006.

PURPOSE

The purpose of this by-law is the promotion of the health, safety, convenience, morals and welfare of the inhabitants of the Town of North Andover, as provided by Chapter 40A of the General Laws of the Commonwealth of Massachusetts, as amended by Chapter 808, Acts of 1975, and as they may be further amended by regulating and restricting the use of land and buildings, thereby;

1. Encouraging the most appropriate use of land.
2. Preventing overcrowding of land.
3. Conserving the value of land and buildings.
4. Lessening congestion of traffic.
5. Avoiding undue concentration of population.
6. Providing adequate light and air.
7. Reducing the hazards from fire, flood, panic and other dangers.
8. Assisting in the economical provision of transportation, water, sewerage, schools, parks, open space and other public facilities.
9. Controlling the use of bodies of water, including watercourses.
10. Reducing the probability of losses resulting from floods.
11. Preserving and increasing the amenities of the town. Including, but not limited to, open space grants, watershed and environmental preservation and historical sites and areas.
12. Conserving health.
13. Encouraging housing for persons of all income levels.

Table of Contents

<u>ARTICLE I - ORGANIZATION</u>		<u>PAGE</u>
Sec. 1	ORGANIZATION	4
2	CHAIRPERSON, VICE CHAIRPERSON, CLERK	4
3	ZONING BOARD OF APPEALS, SECRETARY	5
4	REGULAR MEETINGS	5
5	SPECIAL MEETINGS	5
6	ORDER OF BUSINESS	5
 <u>ARTICLE II - APPLICATION TO THE BOARD</u>		
Sec. 1	APPLICATION FORM	6
2	FILING PERIOD	6
3	PLANS TO ACCOMPANY APPLICATION	6-7
4	APPLICATION DOCKETED BY SECRETARY	7
5	VERIFICATION OF BUILDING COMMISSIONER	7
 <u>ARTICLE III - HEARINGS</u>		
Sec. 1	QUORUM	8
2	NOTICE OF HEARINGS	8
3	HEARINGS TO BE PUBLIC	8
4	PARTIES MAY BE REPRESENTED & (ADDENDUM)	8
4-A	COMPREHENSIVE PERMIT	9
5	ORDER OF BUSINESS	9
6	BRIEF TO THE BOARD	9
7	TIME FOR FILING WRITTEN MATERIALS	9
 <u>ARTICLE IV - DISPOSITION BY THE BOARD</u>		
Sec. 1	VOTING REQUIREMENTS	10
2	WITHDRAWAL	10
3	RECONSIDERATION	10
4	RE-OPENING OF HEARINGS	10
5	RE-APPLICATION & REPETITIVE PETITION	11
6	ONE YEAR LIMITATION ON GRANTS - EXTENSION	11
 <u>ARTICLE V - POLICIES AND ADVICE</u>		11
 <u>ARTICLE VI - ORDER OF BUSINESS, FORMAT AND PROCEDURE TO BE FOLLOWED IN THE MATTER OF APPEAL</u>		11-12
 <u>ARTICLE VII - AMENDMENTS - AUTHORITY</u>		
Sec. 1	AMENDMENTS	12
2	ROBERT'S RULES OF ORDER MANUAL TO BE AUTHORITY	12
List of Amendments		12

RULES AND REGULATIONS

ARTICLE 1
ORGANIZATION

Sec. 1

A. ORGANIZATION

Within two (2) weeks of the beginning of each calendar year, the Board shall organize by majority vote of a chairperson, vice-chairperson and clerk. The chairperson shall preside at all meetings of the Board. In case of his/her absence or disability, the vice-chairperson shall preside. In case of both being absent the most senior member of the quorum shall preside. This procedure will be used when a conflict of interest may cause the chairperson or vice chairperson not to be able to sit on a petition.

B. REPLACEMENT

If it becomes necessary during the fiscal year to replace a Board elected position, the Board will do so at the first regular meeting following notification. Only the open position will be voted on.

Sec. 2 CHAIRPERSON: POWERS AND DUTIES

A. The chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order unless overruled by a majority of the Board in session at the time. He/she shall appoint such committees as may be found necessary or desirable. In addition to powers granted by General Laws and Local by-laws, and subject to these rules and further instructions of the Board, the chairperson shall transact the official business of the Board, supervise the work of the Zoning Board of Appeals Secretary, request necessary help, direct the work of all subordinates, and exercise general supervisory power. He/she shall at each meeting report on all official transactions that have not otherwise come to the attention of the Board.

B. VICE CHAIRPERSON

The vice chairperson will assume all powers and duties when the chairperson is absent.

C. CLERK

The elected clerk of the Board shall be responsible for reading all legal notices and correspondence during the meetings for each petition. In the absence of the clerk the chairperson shall appoint a temporary clerk for that meeting.

Sec. 3 ZONING BOARD OF APPEALS SECRETARY

The Zoning Board of Appeals Secretary shall be such person, not necessarily a member of the Board, as may be designated by the Town Manager. Subject to the direction of the Board and its chairperson, he/she shall conduct all correspondence of the Board; send out all notices required by law and rules and orders of the Board; attend all meetings and hearings; receive and scrutinize all applications for compliance with the rules of the Board; keep dockets and minutes of the Board's proceedings; compile all required records; maintain necessary files and indexes and generally supervise all clerical work of the Board.

The docket of the Board shall be kept up to date and posted in a well-bound book or computer memory bank containing the number of the application, the name of the applicant, a short description by street number or otherwise of the premises, the nature of the application, and the final disposition. All continuances, postponements, dates of sending notices, and other steps taken and acts done shall be noted on the docket.

The "Minutes" of the Board shall include the record of all meetings and hearings, the decisions relating to each case, the vote of each member, those absent being so marked and all other official actions of the Board.

Sec. 4 REGULAR MEETINGS

Regular meetings of the Board of Appeals shall be held at 7:30 p.m. on the second Tuesday of each month in the Town Office Building facilities, North Andover, Massachusetts or other designated site as posted at Town Building. If the regular meeting day falls on a holiday or conflicts with Federal, State, Town Elections and including Town Meetings, the meeting shall be held on the Tuesday following.

Sec. 5 SPECIAL MEETINGS

Special meetings may be called by the chairperson, or at the request of two members. Written or verbal telephone notice thereof shall be given to each member at least 48 hours before the time set, except that announcement of a special meeting at any meeting attended by all voting members of the petition or petitions requiring action shall be sufficient notice of such meeting. Notices shall be posted publicly as required by-laws.

Sec. 7 ORDER OF BUSINESS

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

- a) Roll call or by observation of chair person
- b) Acceptance of minutes of previous meeting
- c) Communications
- d) Report of committees
- e) Unfinished business
- f) New business

ARTICLE II
APPLICATION TO THE BOARD

Sec. 1 APPLICATION FORM

Every application for action by the Board shall be made on the official form available from the Zoning Board of Appeals Secretary. Any communication purporting to be an application shall be treated as mere notice of intention to seek relief until such time as it is made on the official application form. The applicant in the manner therein prescribed shall furnish all information called for by the form.

Sec. 2 FILING PERIOD

Every application shall be filed with a written denial setting forth the reason(s) for a refusal of a permit by the Building Commissioner, ruling decision or determination of the Building Inspector or other administrative official. The ZBA Secretary shall not accept the application until the applicant has submitted all the required information and until the application and the denial are in place.

Sec. 3 PLAN OF LAND TO ACCOMPANY BOARD OF APPEALS PETITIONS

One Mylar (linen) and ten (10) paper copies of the following described plan shall accompany each application and petition to the Board:

The size of the plan shall be 11"X17", drawn to scale, 1 inch equals 40 feet & is to be drawn to scale accordingly; it shall have a north point, names of streets, zoning districts, names and addresses of owner of properties within a minimum of 300 feet of the subject property, property lines and location of building on surrounding properties. The location of building or use of the property where a variance is requested and distances from adjacent building and property lines shall be verified in the field and shown on the plan. The dimensions of the lot, and the percentage of the lot covered by the principal and accessory building, and the required parking spaces shall be shown on the plan of land. Entrances, exits, driveways, etc., that are pertinent to the granting of the variance shall be shown. All proposed data shall be shown in red.

Any topographical feature of the parcel of land relied upon for a variance, such as ledge, rock, peat, or natural conditions of water, brook, or river, shall be shown on the engineering plan. When a variance is requested to sub-divide a parcel of land, the dimensions and area of the surrounding lots may be taken from the deed or plotting plan for comparison of the size of the lots in the neighborhood, noted on the plan as such and marked "approximate". All Site plans shall be the result of an instrument survey certified by a Registered Professional Land Surveyor. Other registered professionals, such as Registered Architects, Registered Professional Landscape Architects, Registered Professional Civil or Geotechnical Engineers, etc., may collaborate on the Site Plan. All plans shall be signed and stamped. Any plans presented with the petition shall remain a part of the records of the Board of Appeals.

If living quarters are to be remodeled, or areas are to be converted into living quarters, in addition to the plot plan, ten copies of the following described plans shall be furnished:

1. A floor plan of each floor on which remodeling is to be done or areas converted into living quarters;
2. A floor plan showing the stairways, halls, doors opening into the hall, and exit doors of each and all floors where no remodeling or converting is to be done;
3. The plans and elevations shall show all existing work. All proposed work shall be shown in red. The size of each plan shall be 11" X 17" or 17" X 22"; it shall be drawn to scale, 1/4 inch equals 1 foot. Use 40 scale. All plans and elevations presented with the petition shall remain a part of the record of the Board of Appeals.

Sec. 4 APPLICATIONS DOCKETED BY ZONING BOARD OF APPEALS SECRETARY

Each application filed shall be issued a "petition" number serially, docketed, and shall be hyphenated with the number of the year in which the application is filed.

All cases docketed more than 30 days next preceding a regular meeting shall be automatically set for a hearing on the next regular meeting day. Cases docketed less than 30 days of the regular meeting day, shall be scheduled for the regular meeting of the succeeding month.

Petitions shall be heard in the order in which they appear on the monthly agenda, except that a petition may be advanced for hearing by order of the Chairperson upon good cause. The petitioner may request a continuance and ask that their petition be heard at the next monthly ZBA meeting by submitting a waiver of time constraints in writing to the ZBA Secretary, the Board shall take a vote on the request and make a motion at the meeting. Where all petitions cannot be disposed of on the day set, the Board may recess from day to day, or until the next regular meeting by majority vote, as it may order.

Sec. 5 BUILDING COMMISSIONER'S VERIFICATION

Upon receipt of an application, the Zoning Board of Appeals Secretary shall request the Building Commissioner or his/her designated representative to make a personal inspection of the premises, review all maps, plot plans and architectural drawings, and be prepared to advise the Board on the physical condition of the property. The Building Commissioner or his/her designated representative may secure from the applicant such information and data as he/she may deem necessary to fully inform the Board with reference to the application, whether or not the official forms require such information and data. Any failure or refusal on the part of an applicant to cooperate with the Building Commissioner in securing necessary information may be grounds for dismissal of the application.

ARTICLE III
HEARINGS

Sec. 1 QUORUM

A quorum of the Board shall consist of four (4) members.

1. When a continued meeting is necessary, only members hearing the initial evidence and subsequent evidence may vote.
2. Petitions under advisement shall have only members hearing the initial evidence voting.
3. In the absence of a voting Board member at subsequent meetings, an associate member may vote if that associate has heard all the evidence of all the meetings for the petition being acted on.
4. All Board members and Associate Board members, voting and non-voting, may participate in all hearings: Public Hearings, Continued Meeting Hearings, and Under Advisement Hearings. They need not have heard all the evidence from previous Continued Meetings or Under Advisement Hearings in order to participate. However, only Board members and Associate Board members who have heard ALL the evidence may vote.

The un-excused absence of a regular member from four or more consecutive regular monthly meetings of the "Zoning Board of Appeals", shall serve as reason to vacate the office. When such a vacancy has been created, the chairperson shall advise the appointive authority forthwith, who shall fill the vacancy within thirty days from associate members presently serving on the Board. The appointing authority will then replace this associate member as soon as possible.

Sec. 2 NOTICE OF HEARINGS

Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A. In addition, a copy of the advertised notice shall be sent by first class certified return receipt mail at least 10 days prior to the date of the hearing. The applicant shall provide a check or money order to: "Town of North Andover - #022-1760-4841" in the amount of the # of all parties in interest identified in MGLA ch. 40A Sec. 11 as listed on the abutter's list times the current postal rate for a first class certified return receipt 2 oz. letter (November, 2003 = \$4.42). The applicant shall supply four (4) sets of mailing labels and one set of first class postage stamps for all parties in interest identified in MGLA ch. 40A §11 as listed on the abutter's list to the ZBA secretary with the application forms. Three sets of labels for each abutter are needed to mail the Legal Notice, and one set of labels with 37¢ stamps are needed to mail the Decision to each abutter. Legal Notices and Decisions will be mailed to the owners of all property deemed by the assessors list as they appear on the most recent local assessor's certified tax list also to the Board of Planning and Development and to the Building Commissioner.

Sec 3 HEARINGS TO BE PUBLIC

Hearings shall be held in the Town Office Building facilities or other designated site and shall be open to the public.

Sec. 4 PARTIES MAY BE REPRESENTED

The applicant may appear in his/her own behalf, or be represented by an agent or attorney at said hearing. In the absence of any representative, on behalf of an applicant, the Board will proceed to dispose of the matter on the record before them. *ADDENDUM: With the advancement of technology, both present and future, said companies associated with these advanced technologies will be required to provide expert engineering advice and such experts should be obtained at the applicant's expense per G.L. Chapter 44, & 53G.

Sec. 4-A COMPREHENSIVE PERMIT

The Board voted to adopt the amendment to the comprehensive permit legal document and that the rules establish the procedures of applications to the ZBA for comprehensive permits under MGL Chapter 40B, S 20-23 (Chapter 774 of the Acts of 1969, the "Act"). The Rules are required by MGL Chapter 40B, S21, as amended by Stat. 1989, c. 593 and by CMR 31.02.

Sec. 5 ORDER OF BUSINESS

- a) Reading of petition of legal notice by the Clerk together with presentation of exhibits, if any.
- b) Applicant's presentation.
- c) Reading of correspondence, pertaining to petition, and the reports of the Building Commissioner, Planning Board, Fire and Police Departments or any other concerned town departments. Property owners and citizens of town may also present correspondence to be read for the record.
- d) Opposition's presentation, if any, and questions by those seeking information.
- e) Applicant's rebuttal restricted to matters raised by opposition's presentation.
- f) Members of the Board, voting and non-voting, who are hearing the case may direct appropriate questions during any part of the hearing.

Sec. 6 BRIEF TO THE BOARD

It is recommended that a brief setting forth in detail all facts relied upon support every appeal and every application for a variance or special permit by the parties. This is particularly desirable in the case of a variance when the following points, based on General Laws, Ch. 40A, Sec. 15, 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 that make up the substantial hardship, financial or otherwise, which result from literal enforcement of the applicable zoning restrictions with respect to the land or building for which a variance is sought.
- d) Facts relied upon to support a finding that the relief sought will be desirable and without substantial 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 by-law.

Sec. 7 TIME FOR FILING WRITTEN NOTICE

All written reports, documents, memoranda, correspondence and/or written material of any kind or nature what-so-ever, from any person, board, commission or department, pertaining to the application, shall be filed in the office of the Board of Appeals no later than the end of the business day the Thursday preceding the date of the hearing. The Administrative Secretary of the Board of Appeals shall not accept any above-defined written materials after such deadline passes.

ARTICLE IV
DISPOSITION BY THE BOARD

Sec. 1 VOTING REQUIREMENT

The concurring vote of four (4) members of the Board shall be necessary to reverse any order or decision of the Building Commissioner or other administrative official, or to decide in favor of the applicant on any matter upon which the Board is required or authorized to pass or to effect any variance in the application of the zoning by-law.

The record shall show the vote of each member upon each question or, if absent or fail to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for its decision, and of its other official actions. In the case of an appeal, the decision of the Board shall be to reverse or affirm, in whom or in part, or to modify the denial of the building permit or any order or decision of the Building Commissioner or other administrative official deemed to be in violation of the zoning law.

Sec. 2 WITDRAWAL

A petition may be withdrawn without prejudice by notice in writing to the Zoning Board of Appeals Secretary at any time prior to the hearing by the Board. A request to withdraw in writing may also be presented to the Board at the regular monthly meeting, for their action. No withdrawal request shall be acted upon AFTER the Board has voted upon A DECISION.

Sec. 3 RECONSIDERATION

There shall be no reconsideration of a vote taken by the Board, except that it shall be requested orally at the hearing at which the vote was taken, or thereafter, in writing, filed with the Zoning Board of Appeals Secretary, by a Board member who participated in the vote to be reconsidered. Such request may be made only for the purpose of correction of a perceived technical error or oversight, or to remedy a perceived procedural deficiency, or for any other perceived substantial reason justifying reopening of the original decision, and must be made before the Board's written decision is filed with the Town Clerk. A motion for reconsideration may be acted upon only by those who participated in the hearing and decision, and their action may be taken, if at all, only prior to the filing of the Board's written decision with the Town Clerk.

A motion to reconsider must be carried by four (4) concurring votes, and if carried, shall have the effect of allowing a motion to amend the decision or to set it aside and re-open the hearing. If any new evidence is to be taken, the hearing must be reopened.

Sec. 4 RE-OPENING OF HEARING

If a re-opening is duly voted, the case shall be put on the next scheduled monthly meeting agenda for a second hearing and notice shall be given as in the case of the original hearing. (Article III, Section 2)

Sec. 5 RE-APPLICATION and REPETITIVE PETITION

No new application covering a matter, which has been unfavorably acted upon by the Board, shall be permitted within two years unless there has been a substantial change in circumstances affecting such property since the prior decision. After the Planning Board approval of a repetitive petition is submitted in writing, the Zoning Board of Appeals members that heard the original evidence on the denial (if available) should be the individuals who will vote to decide if substantial changes affecting such property have been made otherwise, the sitting ZBA members shall be the decision making Board on the substantial change, by examining the evidence presented by petitioner. If the decision indicates that change has been substantially made, then the petitioner will be allowed to present evidence to the Zoning Board of Appeals for their approval in regard to allowing this repetitive petition to be heard after proper legal notice. (Article III, Section 2).

Sec. 6 ONE YEAR LIMITATION ON GRANTS: EXTENSIONS

If the Board grants an application, all permits necessary for the prosecution of the work shall be obtained and construction shall be commenced within one (1) year from the date of filing of the Board's decision in the office of the Town Clerk. The Zoning Board of Appeals may grant an extension (once and only once) not to exceed six months for a variance provided that the applicant submits in writing his/her request prior to the expiration of such one-year period.

ARTICLE V
POLICIES AND ADVICE

Any advice, opinion or information given by any Board member or the Zoning Board of Appeals Secretary, or other official or employee of the Town of North Andover shall not be binding on the Board. Because of the annoyance caused by individuals appealing personally to members of the Board, it is declared to be the policy of the Board to discourage any such personal appeals.

ARTICLE VI
PARTY AGGRIEVED ORDER OF BUSINESS,
FORMAT AND PROCEDURE TO BE FOLLOWED IN THE MATTER OF APPEALS
(G.L. 40A: SECTION 8 & SECTION 15)

- a) Chairperson will call the meeting to order.
- b) Clerk will read the appeal.
- c) Chairperson will call on petitioner to present argument in support of his/her appeal.
- d) Petitioner or his/her Attorney may present his/her case in brief for arguments against validity of permit issued or denied, and call such witnesses as he/she deems appropriate.
- e) Permit holder or his/her attorney may present defense or cross argument supporting the validity or denial of said permit, and call such witnesses as he/she deems appropriate.

- f) Petitioner may review and offer rebuttal on points raised by the Building Commissioner or permit holder but may not add any new material.
- g) Members of the Board, voting and non-voting, may raise questions as they deem appropriate.
- h) The Board may vote at the time the petition is present or may take the petition under advisement or continue the public hearing.

It is recommended that both parties submit briefs of law and fact in support of arguments presented.

ARTICLE VII
AMENDMENTS-AUTHORITY

Sec. 1 AMENDMENTS

These rules may be amended by an affirmative vote of not less than four (4) members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

Sec. 2 ROBERT'S RULES OF ORDER MANUAL TO AUTHORITY

"Robert's Rules of Order", by Brigadier General Henry M. Robert with a guide and commentary by Rachel Vixman, copyright 1967 by Jove Publications, Inc., published by the Berkley Publishing Group, shall be the authority on all questions of parliamentary law and proceedings not specifically covered by the rules of the Board.

List of Amendments:

November 12, 2002	Article III, Section 1, "Quorum". Article III, Section 5, "Order of Business" f. Article VI, g.
December 9, 2003	Article III, Section 2. "Notice of Hearings"
June 13, 2006	Article II, Section 3. "Plan of Land to..."