

JUN 21 2023

WESTPORT ZONING
BOARD OF APPEALS

**TOWN OF WESTPORT
ZONING BOARD OF APPEALS**

PROCEDURAL RULES and REGULATIONS

ARTICLE I - ORGANIZATION

SECTION 1. – APPOINTMENTS

The Zoning Board of Appeals (Board) consists of five (5) regular members appointed by the Select Board for a term of five (5) years, and up to two (2) alternate members appointed by the Select Board for a term of one (1) year.

SECTION 2. – CHAIR

The Chair shall receive and review all documentation for each petition, vote and be recorded on all matters coming before the Board. The Chair shall issue the call for and preside over all meetings and hearings; decide all points of order, unless overruled by a majority of the panel in session at the time; and appoint such committees as may be found necessary or desirable. In addition to powers granted by the General Laws of the Commonwealth and the Town of Westport By-Laws, and subject to these Rules and further instructions of the Board, the Chair, or his/her designee, shall transact the official business of the Board; work with the Zoning Board Administrator; request necessary help; and exercise general supervisory power. The Chair shall, at each meeting, report on all official transactions that have not otherwise come to the attention of the Board.

SECTION 3. – VICE-CHAIR

The Vice-Chair shall receive and review all documentation for each petition, vote and be recorded on all matters coming before the Board. The Vice-Chair shall have such powers and be charged with such duties as the Chair shall designate and shall act as Chair when the Chair is absent or otherwise unable to perform his/her duties.

SECTION 4. – SECRETARY

The Secretary shall take meeting minutes when the Zoning Board Administrator is not available.

SECTION 5. – ZONING BOARD ADMINISTRATOR

The Zoning Board Administrator is a Town staff employee.
Duties include:

- Reviewing applications that have been filed with the Board for completeness and accuracy prior to filing with the Town Clerk.
- Work with all Board members to determine an appropriate meeting data, schedule the matter for hearing before the Board.

- Prepare public notices within required time schedule.
- Prepare mailing labels, envelopes and postage for abutters and others required to be notified, such as the Town of Dartmouth, City of Fall River, petitioners' representatives, Building Commissioner, Planning Board and the Cable Office.
- Prepare and post meeting agendas.
- Maintain all documents that have been filed for the Board's review; distribute documents, such as architectural plans, site plans, correspondence and other documents filed by the applicant to all the Members of the Board prior to the hearing.
- As appropriate, communication with Town Counsel regarding matters that require his/her review and attendance at future hearings.
- Communication with attorneys who may contact the Board with questions or concerns. Disseminate the communications to Board members.
- Communication with other Town departments regarding agenda items; research Board database of decisions to determine whether the Board has issued prior decisions on a particular property that will be before the Board.
- When required, scheduling virtual meetings and monitoring the meetings.
- Attend meetings and record notes of regular session and executive session meetings.
- Attendance at on-site meetings as required by the Board.
- Following up on tasks that were discussed at a meeting that require further action.
- Posting of minutes of the meetings, once they have been approved by the Board, to the Board's web page of the Town's website.
- Prepare drafts of the decisions.
- Prepare Deed Restrictions that accompany the Special Permit decisions for accessory apartments.
- Distribute drafts of decisions and minutes to the Board Members and ensuring that all proposed revisions or changes are received in a timely manner.
- Forward official decision that has been filed with the Town Clerk to the petitioners, with instructions as to how to comply with the 20-day appeal period, obtaining certification from the Town Clerk, and recording of the decision with the Bristol County Registry of Deeds.
- Prepare communications to petitioners, attorneys and members of the public or Town departments.
- Process requests for records.
- Draft Annual Report of the Board.
- At various intervals, review the budget and existing funds available for use up to the end of fiscal year.
- Review current fiscal year's budget with Zoning Board Chair, Town Accountant and Town Administrator to determine projections for upcoming fiscal year budget.
- Process invoices for submission to the Town Accountant for payment, being mindful of the budget for the Board for a particular fiscal year.
- Maintain and update the Board's web page on the Town of Westport website; including updates to the database of decisions.
- Maintain and update the Shared Google Drive to include minutes of the Board meetings and decisions.
- Order office supplies and postage.
- Process all incoming postal mail and e-mail.

- Perform other similar or related duties as required, or as situations dictate.

SECTION 6. – MEMBERS

At the first regular meeting following the confirmation of the annual appointees, the Board shall elect officers from the five (5) regular members, including a Chair, a Vice-Chair, and a Secretary. All members, whether regular or alternate, vote for Board officers. All officers shall remain in office until their successors are elected.

In the case of both the Chair and Vice-Chair being absent or otherwise unable to serve as Chair for a particular meeting or matter before the Board, the Board shall have the authority to appoint a temporary Chair from among the remaining seated Board members subject to the ability of the remaining Board members to constitute the require quorum of four (4) members.

Only the members seated to vote on the petition may vote.

SECTION 6.1 – REGULAR MEMBERS

The five regular members shall receive and review all documentation for each petition, participate in the hearing, vote on and be recorded on all matters before the Board.

SECTION 6.2. – ALTERNATE MEMBERS

The alternate members shall receive and review all documentation for each petition and participate in the hearing. Alternate members present at any hearing participate in the hearing.

The Chair shall designate an alternate member to sit on the Board in the event of the absence, inability to act or conflict of interest of any Board member, or in the event of any vacancy.

ARTICLE II – APPLICATION

SECTION 1. – APPLICATION FORM

Every application to the Board shall be complete in all respects and shall be submitted on an approved form adopted for that purpose. Application forms can be obtained through the Zoning Board Administrator, the Town Clerk, or the Town's official website: <https://www.westport-ma.com/zoning-board-appeals>. All applications for Variances, Special Permits, Administrative Appeals, or Findings, shall be filed with the Town Clerk, together with the required information as stated in the application packet and the Filing Instructions. The petitioner is encouraged to submit the application to the Zoning Board Administrator for review and comment prior to formally submitting the application to the Town Clerk. In that case, the Zoning Board Administrator will review the application for completeness and advise the petitioner if the application is incomplete or inaccurate.

SECTION 2. – FEES

Each application shall be accompanied by a check made payable to the Town of Westport. Application fees are posted on the Town's official website: <https://www.westport-ma.com/zoning-board-appeals>. The fee is non-refundable after the Town Clerk has recorded the petition and the petition has been advertised.

The Board does not have the authority to waive or adjust fees.

When considering an application for a Variance, Special Permit, planned development approval, comprehensive permit, or any other permit, appeal, Finding or approval within the authority of the Town of Westport Zoning Board of Appeals under the Zoning By-Laws of the Town of Westport, Massachusetts or any other applicable federal, state or local law, rule, requirements or regulations, the Board may determine that the assistance of outside consultants is warranted, for instance and without limitation, to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Board lacks the necessary expertise to perform the work related to the matter before the Board. To provide for such assistance, the Board may require that an applicant deposit a sum of money, in an amount to be determined by the Board, to retain and utilize the services of such consultants who will be selected by the Board. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

SECTION 3. – ADVICE

Any statement, advice, opinion or information given by a member of the Board or the Zoning Board Administrator outside of any official action by the Board or any statement, opinion or information given by any other official or employee of the Town shall not be binding on the Board.

SECTION 4. – SUBMISSION OF APPLICATION

One (1) original and ten (10) copies of the complete application and supporting documents shall be filed with the Town Clerk together with the filing fee. The Town Clerk shall record the application and submit ten (10) copies of the properly completed application including supporting documents to the Zoning Board Administrator. The Zoning Board Administrator will then docket the matter(s) and circulate the application(s) to the Board members.

SECTION 5. – PUBLIC NOTICE

The Zoning Board Administrator shall advertise the hearing for each petition in a newspaper of general circulation in the Town of Westport, for two (2) consecutive weeks, the first publishing to appear at least fourteen (14) days prior to the hearing date.

SECTION 6. – NOTIFICATION

The Zoning Board Administrator shall notify the petitioner and all abutters of the date of the initial hearing. The notification shall be via a letter sent to the petitioner and all abutters.

ARTICLE III - HEARING/MEETING

For this Article the 'Chair' is defined as the person assigned to be 'Chair' for the hearing/meeting. The 'Chair' could either be the Board 'Chair', Board 'Vice-Chair', or the Board 'Temporary Chair' as defined in Article 1.

SECTION 1. – DATE AND PLACE OF HEARING/MEETING

Board hearings are scheduled on an as-need basis. Generally, the hearings/meetings will be conducted at the Westport Town Hall. All hearings/meetings with the exception of Executive Sessions shall be open to the public.

When mandated by the state of Massachusetts, the Board will conduct meetings remotely. If remote meetings are mandated by the State, the remote information shall be provided on the Board's web page on the Town of Westport website.

The hearing shall be held within sixty-five (65) days of the date the application is recorded by the Town Clerk.

SECTION 2. – MEETINGS

Special meetings, including on-site visits, may be held at the order of the Chair or at the request of three (3) members of the Board. Notice thereof shall be given to each member at least 48 hours prior to the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. No member who attends any special meeting may protest lack of notice. All meetings with exception of Executive Sessions shall be open to the public.

SECTION 3. – HEARINGS

All hearings shall be open to the public, and all interested parties shall be heard. The Chair may exclude any person whom he/she deems to be a serious hindrance to the workings of the Board. The Zoning Enforcement Officer may be present at all appeals. Town Counsel may also be present if requested by the Board.

SECTION 4. – REPRESENTATION

The applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance on behalf of an applicant or applicant representative, the Board may proceed on the petition on the record before it, together with any additional information, testimony, or evidence as may be presented to the Board by the public or parties in interest appearing at the public hearing, and the Board may make a decision on the petition.

SECTION 5. - ORDER OF BUSINESS

- a. The Chair calls the meeting to order and leads the pledge of allegiance.
- b. The Chair reads the legal advertisement and other relevant documents for the petition into the record.
- c. The Chair describes the procedure for granting or rejecting each petition.
- d. The Chair announces the Board members who will be seated on the petition. Alternate members will only be seated if one of the five regular members is unable to vote. An alternate member may be seated to replace a regular member by a majority vote of the regular members.
- e. The petitioner, his/her attorney, or other representative explains the petition and presents reasons why it should be granted.
- f. Members of the Board may ask questions of the petitioner, his/her attorney, or the petitioner's representatives at this time.
- g. All communications received by the Board regarding the petition are entered into the record.
- h. After the Board has completed initially questioning the petitioner or the petitioner's representative, the Chair will open the hearing for public comment. Any individual present may ask questions or provide comments regarding the petition. The Chair may limit discussion if the Chair deems the information to be repetitive.
- i. In order to facilitate the hearing, the Chair may impose a time limit for each public comment.
- j. The Chair has the authority to remove any participant if that participant is hindering the hearing.
- k. The petitioner, his/her attorney or other representative has the right to be heard in rebuttal to public comments.
- l. The petitioner or petitioner's representative may request a continuance in order to either provide additional information, or make changes. If a continuance is requested by the petitioner or the petitioner's representative, a member of the Board will make a motion to either accept or reject the requested continuance. After another seated Board member seconds the motion to accept or reject the continuance, the Chair calls for discussion on the motion. The Chair then calls for a vote. If the Board accepts the continuance, the hearing is continued to a date and time agreed upon by the Board. If the Board rejects the continuance, then the hearing continues.
- m. A Board member may request a continuance in order to either acquire legal assistance, or gather additional information such as performing an on-site visit. After another seated Board member seconds the motion to accept to reject the continuance, the Chair calls for discussion on the motion. The Chair then calls for a vote. If the Board accepts the continuance, the hearing is continued to a date and time agreed upon by the Board. If the Board rejects the continuance, then the hearing continues.
- n. The petitioner may request that his petition be withdrawn either with or without prejudice. A member of the Board will make a motion to either accept or reject the request for withdrawal. After another seated Board member seconds the motion to accept or reject the request for a withdrawal, the Chair calls for discussion on the motion including a discussion of whether the withdrawal should be with or without prejudice. The Chair then calls for a vote. If the Board accepts the request for a

withdrawal, the hearing is concluded. If the Board rejects the continuance, then the hearing continues.

- o. When all have appeared who desire to be heard and all relevant communications have been read, a seated Board member provides a motion to close the hearing. After another seated Board member seconds the motion to close the hearing, the Chair calls for discussion to close the hearing. The Chair then calls for a vote to close the hearing. The hearing is closed when a majority of seated Board members votes to close the hearing.
- p. Upon closing the hearing, the Board members will deliberate. At this point no further input from petitioner or the public is allowed unless the Board requests clarification during deliberations. With exception of Board members who are recused, all Board members may be involved in deliberation. By a majority vote of the seated members, the Board may re-open the hearing if new information becomes available prior to taking a petition decision vote.
- q. Upon completion of discussions, the Chair requests that a motion be made. Any seated Board member may make a motion to either grant or reject the petition. After another seated Board member seconds the motion, the Chair requests any further comments prior to calling for a vote. Prior to voting, the Board member who made the motion to grant or reject the petition may withdraw the motion. At conclusion of discussion, the Chair calls for a petition decision vote.
- r. Decisions on the petition will be made by a vote of all seated Board members. In the event that the petition includes more than one required approval such as both a Special Permit and a Variance, each individual appeal type shall be voted upon separately.
- s. The Chair will declare if the petition was granted or rejected.
- t. The Chair will identify that there is a 20 day appeal period from the date the decision is filed with the Town Clerk.
- u. If there is more than one petition scheduled on the agenda, the Chair will announce the additional petitions and the process will continue as above.
- v. After all petitions have been heard, the Chair will request discussion on other items on the agenda.
- w. After completion of discussions on all agenda items, the Chair will request if there is any new business to be discussed or items that could not have been identified 48 hours prior to the meeting. The Board will determine if suggested new matters may be legally discussed or needs to be posted on an agenda for a future meeting.
- x. After disposing of all matters, the Chair will then request a motion to adjourn the meeting. Any Board member may make a motion to adjourn the meeting. After another Board member seconds the motion and discussion on the motion, the Chair calls for a vote to adjourn. The meeting is adjourned when a majority of the Board members vote to adjourn.

SECTION 6. – BRIEF TO THE BOARD

Any interested party may submit to the Board at or prior to the close of the hearing, a written memorandum or brief setting forth facts and points of law that support such party's position. After the close of a public hearing, no petitioner/applicant, or attorney/representative shall interrupt or offer further information while the Board is deliberating or discussing a case, unless asked by the Board for

clarification purposes. The Building Inspector/Zoning Enforcement Officer and/or Town Counsel, if present, may offer clarification and/or contribute information upon request of Board members during deliberations.

SECTION 7. – WITHDRAWALS and CONTINUANCES

The petitioner may request that the petition be withdrawn with or without prejudice at any time prior to abutter notification or scheduling the publication of the notice of hearing.

During a hearing, a petition may be withdrawn with or without prejudice by written request from the applicant or applicant's representative only with the consent of a majority of the seated members of the Board.

Withdrawing a petition with prejudice results in the petitioner not being allowed to apply for a petition that is the same, or substantially the same, for two (2) years. Withdrawal without prejudice allows the petitioner to reapply for the same petition at any time.

A hearing, once opened, may be continued at the discretion of the Board and another date confirmed with oral notice to those present. If the applicant requests a continuance, the applicant or applicant's representative shall do so in writing and shall identify the rationale for the requested continuance and indicate that the decision deadline shall be adjusted accordingly. The Board shall review the rationale for the applicant's request for a continuance, determine if the rationale is reasonable, and by a vote of the seated Board members, deny or grant the continuance. If the Board grants the continuance, the seated Board members will determine the date of the continuance with oral notice to those present.

Continuances will not be re-advertised, however the continued hearing agenda will be posted.

SECTION 8. – HEARING/MEETING MINUTES

The Zoning Board Administrator shall prepare hearing/meeting minutes and distribute to all Board members for approval. The Board shall, during a meeting, approve the hearing/meeting minutes no later than thirty (30) days or three (3) hearings/meetings after the hearing/meeting, whichever is later. The minutes of the Board shall include the record of all meetings and hearings, pertinent questions and answers that are brought up at any hearing, the decisions relating to each case, the vote of each member, those absent being so marked, and all other official actions of the Board.

SECTION 9. – FILING OF MINUTES

The Zoning Board Administrator shall date stamp and file the minutes of each hearing/meeting in the Board files as well as a copy filed in the folder for each subject hearing. The minutes will be filed within fourteen (14) days of the Board approving the minutes.

ARTICLE IV - DECISION

SECTION 1. – VOTING REQUIREMENTS

A quorum of the Board shall consist of four (4) members, regular or alternate. Should fewer than five (5) members of the Zoning Board of Appeals sit to consider an application, the applicant shall have the right to request the continuance of the application until such time as a full five (5) members of the Zoning Board of Appeals, alternate members included, may be available to hear the petition or appeal. In a petition in which only four (4) Board members are capable of hearing the petition, due to member(s) recused, due to the member(s) being a family member to the applicant, is an abutter to the applicant, or for ethics reasons, the hearing will not be continued and a decision will be rendered by the four (4) seated Board members.

A member who was not present for a previous hearing session may be allowed to vote on a continued hearing if he/she has reviewed the documentation and recordings, has signed an affidavit attesting to the completion of the review, and has the affidavit signed by the Town Clerk who files the affidavit.

A concurring vote of four (4) seated members of the Board shall be necessary to grant any action taken by the Board for Variances, Administrative Appeals, and Special Permits. The concurring vote of at least three (3) seated members of the Board shall be necessary to grant any action taken by the Board for a Finding.

Each seated member shall vote either to grant or reject the petition. Seated members shall not abstain from voting. The record shall show the vote of each member upon each question, or if absent shall show such fact.

SECTION 2. – RECONSIDERATION

There shall be no reconsideration of a petition after the meeting at which the vote is taken has been adjourned.

SECTION 3. – DECISIONS

A draft decision, if submitted by Town Counsel, may be used as an instrument for the drafting of the decision and the Zoning Board Administrator may use it as a guideline in preparing the final decision.

At no time shall any petitioner or petitioner's representative be allowed to review a decision before it is filed with the Town Clerk. This applies to all interested parties as well.

A decision shall be filed with the Town Clerk within fourteen (14) days from the date of decision and shall become a public record. A copy of the final decision shall be mailed to the petitioner, applicant, and all abutters.

SECTION 4. – EFFECTIVE DATE OF DECISION

For Variances, Administrative Appeals, and Finding, the Board shall render a decision within 100 days from the date the application was recorded by the Town Clerk, unless the petitioner has formally agreed to a continuance and agreed to an extension of the decision deadline date.

For Special Permits, the Board shall render a decision within 90 days from the date the application was recorded by the Town Clerk, unless the petitioner has formally agreed to a continuance and agreed to an extension of the decision deadline date.

A Board decision shall take effect twenty (20) days after the Board's decision has been recorded by the Town Clerk. The Board decision may only be appealed within the twenty (20) days after the Board decision has been recorded by the Town Clerk. Based on the decision of the Board, the petitioner may be required to record the decision in the Bristol County (S.D.) Registry of Deeds at the expense of the petitioner and a certified copy indicating such Registry recording has been filed with the Board.

SECTION 5. – RE-PETITION

No appeal, application or petition that has been unfavorably and finally acted upon by the Board shall be reconsidered within two (2) years after the date of the final unfavorable action unless:

(a) the Board, by a vote of four (4) of its seated members at a public hearing/meeting votes after making findings of specific and material changes in the conditions upon which the unfavorable action was based; and

(b) unless four (4) of the seated members of the Board consent thereto and after notice is given to parties in interest of the time and place of the proceeding when the question of such consent will be considered.

ARTICLE IV - PROCEDURAL RULES and REGULATIONS APPROVAL

SECTION 1. – APPROVAL AUTHORITY

The Board by majority vote at a hearing/meeting is the approval authority for Procedural Rules and Regulations.

SECTION 2. - AMENDMENTS

These Procedural Rules and Regulations may be amended, revised, or repealed by a majority vote of the Board during a hearing/meeting.

SECTION 3. - POSTING

The Procedural Rules and Regulations shall be posted on the Town's official website <https://www.westport-ma.com/zoning-board-appeals>

Record of Changes

Revision	Date	Description
Rev 0	2/2/2022	Initial release
Rev 1	6/21/2023	Updated to refine procedures, voting requirements, etc