

# The Town of Hamilton Zoning Board of Appeals

Welcome to the Town of Hamilton Zoning Board of Appeals.

Below is some information that new Zoning Board of Appeals may find to be beneficial. Please feel free to contact the Building Department with any questions, concerns or requests.

Agendas must have the following information: The name of the public body that is meeting, the date and time of the meeting, where the meeting is being held (location, room, address), a list of topics that are reasonably expected to be discussed at the meeting insufficient details to reasonably advise the public of the general issues to be discussed, provided however, that if a topic was not reasonably expected at the time of posting, it may be discussed at the meeting

Meeting Minutes: must be created and approved in a timely manner, must include: the date, time and place of the meeting; the members present or absent; the decisions made and actions taken, including a record of all votes; a summary of the discussions on each subject; a list of all documents and exhibits used at the meeting; and the name of any member who participated in the meeting remotely. While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

The Town web site is: [hamiltonma.gov](http://hamiltonma.gov) There is a lot of helpful, educational, information for the Members of the Board of Appeals on the web page for the Zoning Board of Appeals.

The State web site is: [mass.gov](http://mass.gov) This site has a lot of good information and/or links to other sites.

The Citizen Planner Training Collaborative is a site with a lot of valuable information and they offer interesting and helpful trainings to all Municipal Employees. If you would like to be reimbursed for the cost of paying for a training please submit a receipt to Mary-Ellen. Web Site: <https://masscptc.org/>

Members are required to do Ethics Training & Open Meeting Law Training – you will be contacted by the office of the Town Clerk. If you have questions or would like to learn more about either or both topics you can find a lot of information on the State web site [mass.gov](http://mass.gov)

Mary-Ellen L. Feener is the Administrative Assistant for the Inspectional Services Department and the Zoning Board of Appeals. She assists with reviewing the applications and provides the forms to applicants; ensure the notices are sent to the abutters, abutting towns, and ensures the Public Hearing Notice is published properly in a local newspaper and with the office of the Town Clerk as required by Massachusetts General Law. She is available at 978-626-5250 or at [permitting@hamiltonma.gov](mailto:permitting@hamiltonma.gov)

Richard Maloney is the Building Inspector and it is his responsibility to enforce Zoning. Rich reviews all Zoning Board of Appeals Applications, prepares the Board memos regarding each application and meets with Applicants as needed to discuss what they would like to present to the Zoning Board of Appeals. Rich's phone number is: 978-626-5246 and his email address is: [rmaloney@hamiltonma.gov](mailto:rmaloney@hamiltonma.gov)

Patrick Reffett, is the Director of Planning & Inspectional Services. Patrick's phone number is 978-626-5248 and his email address is: [preffett@hamiltonma.gov](mailto:preffett@hamiltonma.gov)

Both Rich and Patrick are available to Board Members and the Public to answer questions about a specific application or a general question regarding zoning.

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The Board consists of 5 Members: 3 Active Voting Members and 2 Alternate Members per the Town Zoning Bylaws (pages 95 & 96) and Massachusetts General Law (MGL) 40A, Section 12  
Members are appointed by the Selectboard

Members are sworn in by Town Clerk

Members must be a resident of the Town of Hamilton

A Member of the Zoning Board of Appeals is an Employee of the Town of Hamilton

The Chair of the Zoning Board of Appeals is paid an bi-annual stipend

The Chair is responsible for writing the Decisions

Town Policy is that the Town Manager should approve any requests to speak to Town Counsel. You can contact either Rich or Patrick with such a request.

Per Massachusetts General Law each Zoning Board of Appeals shall elect annually a Chairman from its own number and a Clerk, and may, subject to appropriation, employ experts and clerical and other assistants

### **MEETING MINUTES**

There is an Employee who will draft Meeting Minutes. Once the draft Meeting Minutes are done the Board Members will receive a copy to review; typically prior to a Meeting, though it may be at the Meeting. The Board reviews and approves the Meeting Minutes. Edits may be agreed upon and then approved the Meeting Minutes As Amended. The Approved Meeting Minutes

### **A FEW COMMON ACRONYMS**

BOH	Board of Health
Con. Com.	Conservation Commission
ZBA	Zoning Board of Appeals
FIN. COM.	Finance Committee
MGL	Massachusetts General Law
AMI	Area Median Income
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map

## **EXECUTIVE SESSIONS**

*(For more information about Executive Sessions please review the Open Meeting Law and M.G.L)*

While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session.

Before going into an executive session, the chair of the public body must first:

1. Convene in open session;
2. State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
3. State whether the public body will reconvene in open session at the end of the executive session; and
4. Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, the member must state at the start of the executive session that no other person is present or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant's location. While in executive session, the public body must keep accurate records, all votes taken must be recorded by roll call, and the public body may only discuss matters for which the executive session was called.

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A Variance is a request to deviate from current Zoning Bylaw requirements. If granted, a variance essentially waives a specific requirement of the Zoning Bylaw.

A Special Permit or a Finding of Fact is authorization to construct a building or establish a use that is not allowed by right. ... Special permits for other uses are either the ZBA or Planning Board, depending on the district or specific use.

The mission of the Zoning Board of Appeals is to hear and decide applications in a timely, professional, and impartial manner for property owners requesting variances of the Zoning Ordinances, appealing decisions of the Building Inspector, or requesting Comprehensive Permits pursuant to MGL Chapter 40B.

➤ Meetings are typically held the first Wednesday of the month, starting at 7:00 p.m.

## **VARIANCE, SPECIAL PERMIT, FINDING, APPLICATIONS-DIRECTIONS ON HOW TO SUBMIT AN APPLICATION**

All forms/applications/information may be found on the Town web site – [hamiltonma.gov](http://hamiltonma.gov) on the Zoning Board of Appeals web page. Board Members who would like to review the M.G.L. regarding submitting an application may want to start by reviewing

All applications require a completed List of Abutters request being submitted to, and completed by, the Assessor's Office. There is a \$15.00 application fee. The form may be found on many different pages of the Town web site, and/or on the web page go to the tab at the top labeled "Where Do I Go For?" An employee in the Assessor's Office will email the Applicant and the Building Department /Zoning Board of Appeals Office/Inspectional Services Department (all the same office) a copy of the list of abutters.

Once the application is received the Building Department will do the following:

The Public Hearing Notice will be written

The Public Hearing Notice will be posted with the Town Clerk's office

The Public Hearing Notice will be published in a local newspaper per Massachusetts General Law 40A

The Public Hearing Notice will be mailed to the abutters per Massachusetts General Law

The Public Hearing Notice will be mailed to the abutting Towns

The Public Hearing Notice will be hand-delivered to any necessary Town Departments for review/comment.

If there are comments they will be shared with the Board Members prior to the meeting.

A copy of the Public Hearing Notice will typically be posted on the Town web site

The Agenda for the Meeting will be posted with the Town Clerk's Office, typically posted on the Town web site, and typically sent via email or by regular mail to the Applicant by the Building Department

It is important that you also submit a complete newspaper application form for the Salem News for the publication of the Public Hearings. The form is on web site.

The Application Fee is \$75.00.

### **THE PUBLIC HEARING PROCESS**

The Chair will announce the opening of the Public Hearing and address the applicant. The applicant should state the reasons why he/she should be granted the zoning relief requested. The applicant should also be prepared with supporting evidence such as architectural plans, photographs, building models, letters or petitions signed by abutters or any other evidence that supports their appeal. After the applicant has presented their case to the ZBA, the ZBA will hear comments in support and in opposition. The ZBA will make a decision by motion and vote. A ZBA Member will make a motion and another ZBA Member must second the motion. Often, the decision of the ZBA will include conditions which must be followed to maintain the relief granted. In most cases, the ZBA will make a decision at the Public Hearing. On occasion, the ZBA may decide to continue the Public Hearing to a later date; typically the next regularly scheduled meeting. (The ZBA typically meets the first Wednesday of every month).

### **WHAT TO DO ONCE A VARIANCE, SPECIAL PERMIT, FINDING, IS APPROVED**

Fourteen (14) days after the day the Public Hearing is closed the Special Permit Granting Authority (the Zoning Board of Appeals), must file the written Decision with the Office of the Town Clerk. You will be notified once the Decision for the Variance, Special Permit, or Finding, has been submitted and date stamped by the Town Clerk.

If the Decision was to approve the application: Once twenty days have elapsed from the date the Decision was date stamped by the Town Clerk you should contact the Office of the Town Clerk. *(Not 20 days from the date of the Public Hearing.)* The Decision can be picked up on the day after the 20 Days. If the Decision was to deny or accept a withdrawal of the application, the Decision will be filed with the Office of the Town Clerk within 14 days once the Decision is reached.

If there were no Appeals filed within the 20 Day Appeal Period, the Town Clerk will give you a document which states no Appeals have been filed. (You will be notified if there are any Appeals filed). Massachusetts General Law (M.G.L. 40A, Section 17), outlines the process for an Appeal of the Decision of the Zoning Board of Appeals or any Special Permit Granting Authority.

You may bring the document you received from the Town Clerk and the Decision to the Southern Essex District Registry of Deeds, Shetland Park, 45 Congress St., Suite 4100, Salem, MA 01970. **OR** The Southern

Essex District Registry of Deeds recently launched a website for citizens to be able to electronically record Decisions: <https://www.aitsearch.com/PublicERES/>

A copy of the Decision stamped by the Southern Essex District Registry of Deeds must be submitted to the Inspectional Services Office/Building Department. If you are going to submit a Building Permit Application you may want to include the copy of the Decision with the Building Permit Application. No Building Permit will be approved until a copy of the Decision stamped by the Registry of Deeds is submitted.

The fact an application was approved by the Zoning Board of Appeals is an important step but there may be further requirements prior to being able to use the property as stated in the Decision even if construction is not required. Construction and/or the approved Use may not begin until the Decision is recorded and a Building Permit issued for construction and often for an approved Use.

Variations must be filed with the Southern Essex District Registry of Deeds and exercised within one (1) year from the date they are granted. The Local Zoning Board may grant an extension for up to six months, as long as the extension is filed before the expiration of the one-year period. (M.G.L. 40A Section 10). A Finding or a Special Permit must be filed and exercised within two (2) years. (M.G.L. 40A Section 9).

A Variance, a Special Permit, A Finding, will not take effect until it is recorded with the Southern Essex District Registry of Deeds.

### **ROBERT'S RULES OF ORDER**

Robert's Rules of Order is a guide for conducting meetings and making decisions as a group which is followed during Meetings. (A "cheat sheet" will be given to new Board Members).

### **MASSACHUSETTS GENERAL LAW 40A**

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A>

Section 1	Title of chapter
Section 1A	Definitions
Section 2	Repealed, 1987, 685, Sec. 2
Section 3	Subjects which zoning may not regulate; exemptions; public hearings; temporary manufactured home residences
Section 3A	Multi-family zoning as-of-right in MBTA communities
Section 4	Uniform districts
Section 5	Adoption or change of zoning ordinances or by-laws; procedure
Section 6	Existing structures, uses, or permits; certain subdivision plans; application of chapter
Section 7	Enforcement of zoning regulations; violations; penalties; legally nonconforming structures; notice of action; jurisdiction of superior court
Section 8	Appeals to permit granting authority
Section 9	Special permits
Section 9A	Special permits for adult bookstores, adult motion pictures theaters, adult paraphernalia stores, adult video stores or establishments which display live nudity
Section 9B	Solar access
Section 9C	Child care facilities; allowable floor area; charges of owner; family incomes
Section 10	Variations

Section 11	Notice requirements for public hearings; parties in interest defined; review of special permit petitions; recording copies of special permit and variance decisions
Section 12	Boards of appeal; membership; rules
Section 13	Zoning administrators; appointment; powers and duties
Section 14	Boards of appeal; powers
Section 15	Appeals to permit granting authority; notice; time; boards of appeal hearings; procedure
Section 16	Final unfavorable decisions by permit granting authorities; reconsideration; withdrawal of petitions for variance or applications for special permit
Section 17	Judicial review

## **COMPREHENSIVE PERMIT**

The Comprehensive Permit Rules (the "Rules") establish procedures for submittal and review of an application to the Zoning Board of Appeals for a comprehensive permit (an "Application") granted under G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder (the "Act"). They are required by G.L. c. 40B, § 21 and by 760 CMR 56.05(1). The purpose of the Act and the Rules is to facilitate the development of affordable housing in Massachusetts. The Rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with the Act. In the event of inconsistency or conflict between the Act and these Rules, the Act governs.

For more on Comprehensive Permits please see the ZBA page on the Town website.

## **OTHER HELPFUL ZONING AND LAND USE RESOURCES**

For Board Members: these documents may be found on the State website mass.gov, the Town web site, or by asking the Building Department for a copy.

These publications are intended only for informational and reference purposes. When a question of legal interpretation arises, local officials should always seek the advice of their municipal counsel.

### **Overview of the Subdivision Control Law**

- Revised December 2009 - Our Department has received numerous questions over the years concerning the operation of the Subdivision Control Law. This publication highlights many of the substantive and procedural requirements that apply to subdivision and non-subdivision plans which require an endorsement or an approval by a planning board. We have also noted interesting court cases that have looked at a variety of issues dealing with subdivision control.

### **The Zoning Act**

- Revised December 30, 2016 - This edition of the Zoning Act will aid planning boards, other municipal officials, and interested residents. The Zoning Enabling Act, Chapter 40A, was enacted by Chapters 368 and 551 of the Acts of 1954 and became effective on August 1, 1954, replacing the previous zoning enabling legislation, Section 25 to 30B, inclusive, of the Chapter 40, General Laws. On December 22, 1975, the Governor signed Chapter 808 of the Acts of 1975, the Zoning Act, which created a new Chapter 40A of the Massachusetts General Laws. The left-hand column of each section of the booklet includes bold-faced annotations which are not part of the law but which have been inserted to facilitate research.

## Adopting Amending Zoning Bylaws

- Revised November 2009 - This outline covers the procedure that a municipality must follow when adopting or amending its zoning ordinance or bylaw. For detailed information regarding this procedure, please refer to Chapter 40A, Section 5.

## Decision Making Requirements of the Zoning Act

Revised November 2009 - This outline covers:

Process for reviewing a special permit

Variance

Appeal

Constructive grants

Reapplication

Enforcement action

The public hearing and decision and voting requirements for Special Permit Granting Authority and Zoning Boards of Appeal are also outlined.

## Grandfathered Lots and Plan Protection

Revised November 2009 - This outline covers:

Separate and common lot protection

Merger theory

Subdivision plan protection

ANR

Perimeter plan

Site plan

## Nonconforming Structures and Uses

Revised November 2009 - This outline covers:

Nonconforming structures and uses

Alteration to nonconforming structures and uses

The six (6) and ten (10) year protection

Section 6 review and finding

Exemption of single and two-family residential structures

Change of nonconforming use

Non-use and abandonment of nonconforming uses and structures

## Procedural Requirements of the Subdivision Control Law

Revised November 2009 - This outline covers:

The process for reviewing ANR plans

Preliminary and definitive plans

The modification, amendment, and rescission of plans.

### The ANR Handbook (Approval Not Required Plans)

- Revised January, 2009 - Due to the numerous questions that have arisen over the years concerning the "Approval Not Required" (ANR) process of the Subdivision Control Law, DHCD felt it would be beneficial to produce and distribute a publication concerning this issue.

### Municipal Planning and Subdivision Legislation

- Revised November, 2008 - This edition of the Municipal Planning and Subdivision Control Legislation will aid planning boards, other municipal officials, and interested residents. The Subdivision Control Law was enacted in 1953 and this publication includes any amendments since its enactment. The left-hand column of each section of the booklet includes bold-faced annotations which are not part of the law but have been inserted to facilitate research.