

**RULES AND REGULATIONS
OF THE
WILMINGTON BOARD OF APPEALS**

SECTION I - AUTHORITY AND PURPOSE

- 1.1 AUTHORITY** - The Rules and Regulations of the Wilmington Board of Appeals are adopted pursuant to and under the authority of the Wilmington Zoning Bylaw Subsection 8.4, "The Zoning Act" of the Commonwealth of Massachusetts, Chapter 40A, §12 of the General Laws and other applicable provisions of the Massachusetts General Laws.
- 1.2 PURPOSE** - The purpose of the Rules and Regulations is to establish uniform standards and procedures for conducting the business of the Board of Appeals. The Rules and Regulations shall apply to all matters over which the Board of Appeals has jurisdiction including:
- 1.2.1** To hear and decide appeals from any decisions of the Inspector of Buildings
 - 1.2.2** To hear and decide applications for special permits as authorized by the Wilmington Zoning Bylaw
 - 1.2.3** To hear and decide petitions for variances as authorized by the Wilmington Zoning Bylaw
 - 1.2.4** To hear and decide applications for permits in accordance with the Official Map of the Town of Wilmington
 - 1.2.5** To hear and decide applications seeking authorization and a Comprehensive Permit to build low and moderate income housing contemplated by GLc 40B, §21 and
 - 1.2.6** To hear and decide upon all matters otherwise legally coming under the jurisdiction of the Board of Appeals.

SECTION 2 - ORGANIZATION OF THE BOARD OF APPEALS

- 2.1 MEMBERS AND OFFICERS** - The Board of Appeals shall consist of five members appointed by the Board of Selectmen. The Board of Appeals shall annually, at their first meeting in May, elect a chairperson and clerk from its regular members and may employ, subject to appropriation, a secretary and such other assistance as is necessary.
- 2.2 CHAIRPERSON'S POWER AND DUTIES** - The chairperson shall preside over all hearings and meetings of the Board of Appeals. Subject to the rules as stated herein, the chairperson shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chairperson shall designate associate members to sit on the Board as may be deemed necessary and in the event of a vacancy on the Board shall designate an associate member to act as a member until the vacancy is filled by appointment of the Board of Selectmen.

In addition to powers granted by Massachusetts General Laws and the Wilmington Zoning Bylaw, and subject to these Rules and Regulations and further instruction of the Board of Appeals, the chairperson shall supervise the work of the Secretary, arrange for necessary help and exercise

Revised at a regular meeting on April 26, 2004, §4.2.4 through §4.2.9.3 inclusive.

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general supervision over the Board's activities. The chairperson shall appoint an acting chairperson to preside over any hearing or meeting or to perform all duties and exercise all powers of the chairperson in the absence of that person for any reason.

2.3 SECRETARY - A Secretary shall be appointed by the Board of Appeals and, subject to the direction of the Board and its chairperson, shall undertake all of the clerical work of the Board including all correspondence, sending of all notices required by law and the Rules and Regulations and orders of the Board, receive and scrutinize all petitions and applications for compliance with the rules and Regulations of the Board, keep dockets and records of the Board's proceedings, compile all required documents, and maintain necessary files and indices.

2.4 QUORUM - A quorum for the purpose of conducting hearings and transacting other business of the Board of Appeals is as followed as defined in M.G.L. ch 40A Sec. 9 (special permits) and Sec. 15 (variances and appeals) and Sec. 21 (comprehensive permits).

- Comprehensive Permits requires a positive vote of three members of the five member board.
- Special Permit requires a positive vote of four members of the five member board.
- Variances and Appeals requires a concurring vote of four member of the five member board.
- Where the board lacks quorum at a scheduled hearing, the chairperson should indicate that the hearing will be continued to a date, time and place certain. Where the board has only the bare minimum to meet quorum, the applicant will be afforded an opportunity to schedule a continued hearing at which absent members may participate; otherwise, the applicant will need the unanimous vote of those present.

2.5 REGULAR HEARING DATES - The regular hearing dates of the Board of Appeals shall be held as necessary at 7:00 P.M. on the second Wednesday of each month, or at other times determined by the Board. If a regular hearing is cancelled, it shall be held on the next regular hearing date unless otherwise provided.

2.6 MEETINGS OF THE BOARD - Meetings of the Board of Appeals may be called by the chairperson or at the request of two members. Written notice thereof shall be given to each member at least 48 hours before the time set, except that announcement of a meeting at any hearing or other meeting of the Board attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law for all meetings.

SECTION 3 - PROCEDURE FOR APPLICATION

3.1 GENERAL PROCEDURE - All applications for hearing must be date stamped by the Town Clerk and filed with the Board's secretary. All applications shall be made by the owner of the property noted in the request or with the owner's written permission.

Prior to filing any application it shall be reviewed with the Board's secretary to assure its completeness and each such application shall be accompanied by all applicable site plans, building plans and such other information as may be required by the Wilmington Zoning Bylaw or as may reasonably be deemed necessary by the Board's secretary. Failure to provide all applicable site plans, building plans and other required information including the specific reference (s) to all applicable sections of the Zoning Bylaw may result in the need for a new application and hearing.

3.2 APPLICATION REQUIREMENTS - Any person who wishes to make an application for hearing

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shall file one original application package along with one copy of the following:

3.2.1 APPLICATION FOR HEARING - Every application for action by the Board of Appeals shall be made on an official application for entitled "Board of Appeals - Application for Hearing" which is hereby made part of the Rules and Regulations and shall be furnished by the Inspector of Buildings or the Board's secretary upon request. Any other communication purporting to be an application or petition shall be treated as mere notice of intention to seek Board action until such time as it is made on the official application form. All information called for by the application form shall be furnished by the applicant in the manner therein prescribed together with all information specified in the applicable provisions of the Wilmington Zoning Bylaw.

3.2.2 PLANS AND SPECIFICATIONS - The applicant shall file one original and one copy of prints of all applicable plans and specifications which shall clearly show the nature of the specific request being made. Insofar as practicable all plans shall be drawn to scale, shall not exceed 11 x 17 inches for residential and 24x36 inches for commercial along with one electronic copy and shall indicate as applicable: the title of the plan including assessor's map and parcel number the scale and a date the name and address of the owner and the applicant and name, seal and address of the designer, engineer or surveyor, the zoning classification and the location of any zoning district boundaries including Flood Plain, the location of all existing and proposed buildings or parts thereof, structures, signs, parking and loading spaces and the limit of all paving and storage areas all required landscaping and such other information as is necessary to ensure the purposes of the Wilmington Zoning Bylaw.

3.2.3 FILING FEE

3.2.3.1 Application for a Special Permit, Variance, an Appeal or an Official Map hearing shall be accompanied by two checks, one payable to the Town of Wilmington for one hundred dollars (\$100.00) and one to the Wilmington Town Crier for forty dollars (\$40.00).

3.2.3.2 In the event that an application to the Board involves more than one of the above matters, each application requires two checks, one payable to the Town of Wilmington for one hundred dollars (\$100.00) and one to the Wilmington Town Crier for forty dollars (\$40.00). In addition, all applications for a repetitive petition shall be accompanied by a new check payable to the Town of Wilmington in the same amount as if it were an original application.

3.3 INFORMATION TO BE FURNISHED TO THE BOARD OF APPEALS

3.3.1 SPECIAL PERMITS - In the case of a Special Permit the following points, based on the Zoning Act, GLc 40A, §9, shall be identified and factually supported on the application form and verbally at the hearing:

3.3.1.1 That the proposed use (conditions and character of operations) is in harmony with the general purpose and intent of the Wilmington Zoning Bylaw and

3.3.1.2 That the use complies with all requirements of the Wilmington Zoning Bylaw.

3.3.2 VARIANCES - In the case of a Variance the following points based on The Zoning Act, GLc 40A, §10, shall be identified and factually supported on the application form and verbally at the hearing:

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- 3.3.2.1 That there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located
- 3.3.2.2 That due to those circumstances especially affecting the land or structure, a literal enforcement of the provisions of this Bylaw would involve substantial hardship, financial or otherwise to the petitioner or appellant
- 3.3.2.3 That desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this Bylaw and
- 3.3.2.4 That desirable relief may be granted without substantial detriment to the public good.
- 3.3.3 **APPEALS** - In the case of an appeal the following points, based on The Zoning Act, GLc 40A, §8, shall be identified and factually supported on the application form and verbally at the hearing:
 - 3.3.3.1 The specific nature and the grounds for the appeal and
 - 3.3.3.2 All documents and papers constituting the record of the case.
- 3.3.4 **OFFICIAL MAP** - In the case of an Official Map the following points, based on improved Methods of Municipal Planning, GLc41, §81E, shall be identified and factually supported on the application form and verbally at the hearing:
 - 3.3.4.1 Sketch plan showing the property and the location of the nearest paved roadway to the lot and
 - 3.3.4.2 A copy of any plan of the property on record in the Middlesex Registry of Deeds or Land Court.

3.4 **PUBLIC HEARING AND NOTICE**

- 3.4.1 **NOTICE** - Notices shall contain: the name of the applicant a description of the area or premises (street address or other adequate identification of the location of the area or premises) the date, time and place of the public hearing and the subject matter of the application with specific reference to all applicable sections of the Wilmington Zoning Bylaw or General Laws.

Notice of hearings shall be advertised as required by the provisions of GLc 40A, §11, or GLc 41, §81AA. In addition, copies of the notice shall be sent by mail at least seven days prior to the date of the hearing, postage prepaid, to all parties in interest, and provided to the Planning Board, Inspector of Buildings, and, where applicable, other Town Boards and departments. In the event of the Board's failure to give timely notice to parties in interest, the Board of Appeals may continue the hearing until such notice requirement has been satisfied.

- 3.4.2 **HEARINGS TO BE PUBLIC** - All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, General Laws, Chapter 39, §23B.

3.4.3 REPRESENTATION AND ABSENCE - An applicant may appear in his own behalf or be represented by an agent or attorney. In the absence of an appearance, the Board of Appeals may, in its discretion, decide the matter using the information it has received, dismiss the petition with or without prejudice or continue the hearing to a later date.

3.4.4 HEARING PROCEDURE

3.4.4.1 The chairperson shall call the hearing to order and open each hearing by reading, or causing to be read, the notice as advertised.

3.4.4.2 The petitioner or his representative will then present his case, stating fully the reason(s) why the petition or application should be granted.

3.4.4.3 The chairperson may ask the Inspector of Buildings to further explain the application or may ask other Town Officials (Planning Board, Town Engineer, etc.) for their comments and recommendations.

3.4.4.4 When the petitioner or his representative and the Inspector of Buildings or other Town Officials have concluded, the chairperson will allow all abutters of the matter under consideration to speak. Those who wish to speak will rise, address the Board of Board of Appeals, give their names and addresses and then proceed.

3.4.4.5 When all abutters have spoken, the chairperson will then allow other interested parties a similar opportunity to be heard.

3.4.4.6 Rebuttals may only be allowed at the discretion of the chairperson.

3.4.4.7 Members of the Board of Appeals who are hearing the case may direct appropriate questions during the hearing. In addition, the Board may choose to retain any record which has been introduced in evidence, for reference in the consideration of the case.

3.4.4.8 When all facts have been presented, the chairperson will close the hearing and inform the petitioner or his representative and others present of the time requirements involved and the applicable appeals procedure.

3.4.4.9 Decisions will generally be made at the conclusion of the hearing but may be postponed to permit submission of written material or other documents requested by the Board, to permit viewing the property with respect to which an application has been filed or to enable the Board to fully consider all records which have been introduced in evidence.

3.5 ACTIONS BY THE BOARD OF APPEALS

- **3.5.1 VOTING REQUIREMENTS** - Voting is as follows:
 - Comprehensive Permits requires a positive vote of three members of the five member board.
 - Special Permit requires a positive vote of four members of the five member board.
 - Variances and Appeals requires a concurring vote of four member of the five member board

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The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions and of its other official actions, copies of all of which shall be filed in the Office of the Town Clerk and the Planning Board.

3.5.2 WITHDRAWAL - An application may be withdrawn without prejudice by notice in writing to the Board's secretary at any time prior to the publication of notice of a public hearing by the Board of Appeals. Withdrawal of an application thereafter with or without prejudice requires Board approval and, in either event, there shall be no return of any fee paid with such application.

3.5.3 REPETITIVE PETITION - No appeal, application or petition which has been unfavorably and finally acted upon by the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless (1) all but one of the members of the Planning Board consent to a repetition after notice is given to parties in interest of the time and place of the proceedings to consider such consent and (2) the Board of Appeals finds specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its records prior to scheduling a new hearing.

3.5.4 LIMITATION OF APPROVAL

3.5.4.1 A Special Permit shall lapse if a substantial use thereof has not commenced except for good cause or in the case of a permit for construction, if construction has not commenced except for good cause within two years from the date of the grant thereof.

3.5.4.2 Any rights authorized by a variance which are not exercised within one year from the date of grant of such variance shall lapse and may be reestablished only after notice and a new hearing.

3.5.5 DECISIONS

3.5.5.1 Decisions of the Board of Appeals shall be made in writing and shall contain the following:

- (a)** Case number, name and address of the applicant and identification of the land affected
- (b)** Name and address of the owner of the land affected if not the applicant
- (c)** Place, time and date of the Public Hearing
- (d)** Dates hearing was advertised and name of paper and a statement that the applicant and parties in interest were notified
- (e)** Brief account of the hearing
- (f)** Date the decision was rendered, the vote of the Board specifically stating what member voted for and which voted against, whether the application was granted or denied in whole or in part and the reasons therefore and the conditions, if any, imposed.

- 3.5.5.2** The Board's secretary will send a copy of its decision forthwith to the owner, the applicant if other than the owner, the Planning Board, the Town Clerk, the Inspector of Buildings and, where applicable, other Town Boards and departments, and will send notices of its decision to parties in interest and every person present at the hearing who requests that notice be sent and states the address to which such notice is to be sent.
- 3.5.5.3** A variance or special permit does not become effective until the Town Clerk certifies that no appeal of the decision has been filed in Superior Court within the 20 day statutory appeal period or that if an appeal has been filed, it has been dismissed or denied. A certified copy of the decision shall be recorded in the Middlesex North Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.
- 3.5.5.4** The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds and for paying the recording fees.

SECTION 4 - PROCEDURE FOR COMPREHENSIVE PERMIT TO BUILD LOW AND MODERATE INCOME HOUSING

- 4.1** **GENERAL PROCEDURE** - All applications for hearings shall be filed with the Inspector of Buildings or the Board's secretary and notice of such application shall be given to the Town Clerk. Prior to filing any application it shall be reviewed with the Inspector of Buildings or the Board's secretary to assure its completeness and each application shall be accompanied by all applicable site plans, building plans and such other information as may reasonably be deemed necessary by the Inspector of Buildings or the Board's secretary.
- 4.2** **APPLICATION REQUIREMENTS** - Any public agency, non-profit organization or limited dividend organization which wishes to make an application for a Comprehensive Permit in accordance with GLc 40B, §21, to construct or substantially rehabilitate low or moderate income housing shall file the following:
- 4.2.1** **APPLICATION FOR HEARING** - Every application for action by the Board of Appeals shall be made on an official application form entitled "Board of Appeals - Application for Hearing" which is hereby made part of these Rules and Regulations and shall be furnished by the Inspector of Buildings or the Board's secretary upon request. Any other communication purporting to be an application or petition shall be treated as mere notice of intention to seek Board action until such time as it is made on the official application form. All information called for by the application form shall be furnished by the applicant in the manner therein prescribed.
- 4.2.2** **PLANS AND SPECIFICATIONS** - The applicant shall file sets 2 sets plus one electronic copy of the following plans and specification:
- 4.2.2.1** Preliminary site development plans showing the locations and outline of proposed buildings the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas and proposed landscaping improvements and open areas within the site.
- 4.2.2.2** Report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street

elevations, traffic patterns and character of open areas, if any, in the neighborhood.

4.2.2.3 Preliminary architectural, scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed by a registered architect.

4.2.2.4 Tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas.

4.2.2.5 Where a subdivision of land is involved, a preliminary subdivision plan.

4.2.2.6 Preliminary utilities plan showing the proposed location and types of sewage, water and drainage facilities including hydrants.

4.2.2.7 Documents indicating evidence of the applicant's organization as a public agency, non-profit organization or limited dividend organization, evidence of its interest in the property and written communication from the subsidizing agency indicating that the site is acceptable.

4.2.2.8 Complete list of all requested waivers or exceptions from local codes, ordinances, bylaws or regulations, including the Wilmington Zoning Bylaws.

4.2.3 FILING FEE - Applications for a Comprehensive Permit hearing shall be accompanied by a check payable to the Town of Wilmington based on the following table:

\$9 per unit – Limited Dividend Organization

\$3 per unit – Non-profit Organization

\$0 – Public/Local

4.2.4 PROJECT REVIEW FEES: If, after receiving an application, the Board determines that it requires technical advice unavailable from municipal employees, it may employ outside consultants. Whenever possible, it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fee by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

4.2.4.1 A review fee may be imposed only if:

(i) The work of the consultant consists of review of studies prepared on behalf of applicant, and not of independent studies on behalf of the Board,

(ii) The work is in connection with the applicant's specific project, and

(iii) All written results and reports are made part of the record before the Board.

4.2.4.2 A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B.

4.2.5 All fees assessed pursuant to this section shall be reasonable in light of:

4.2.5.1 The complexity of the proposed project as a whole,

- 4.2.5.2 The complexity of particular technical issues,
 - 4.2.5.3 The number of housing units proposed,
 - 4.2.5.4 The size and character of the site,
 - 4.2.5.5 The projected construction costs, and
 - 4.2.5.6 Fees charged by similar consultants in the area.
- 4.2.6 As a general rule, the Board will not assess any fee greater than the amount which might be appropriated from Town funds to review a similar Town project.
- 4.2.7 Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee by the applicant. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a bidder or offeror, the Board may deny the comprehensive permit.
- 4.2.7.1 The Board will select the consultant after reviewing both the bid or proposal, and any comments received from the applicant pursuant to §4.2.4.2(iii)(c) above, but will not formally award the contract until such review fee has been paid.
- 4.2.8 Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Board of Selectmen.
- 4.2.8.1 The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
 - 4.2.8.2 The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.
 - 4.2.8.3 The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Board shall stand.
- 4.2.9 **Special Accounts:** Each review fee shall be deposited in a special account established by the Town Account pursuant to M.G.L. c. 44 §53G. This amount may be augmented by the applicant from time to time, as required by the Board.
- 4.2.9.1 Funds from the special account may be expended only for the purposes described in §4.2.4.1 above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B.
 - 4.2.9.2 Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.
 - 4.2.9.3 The Town's accountant shall submit annually a report of the special account to the Board of Selectmen and the Town Manager for their review. This report shall be published in the Town's Annual Report.

- 4.3 SUBMISSION TO OTHER TOWN BOARDS AND OFFICIALS** - The Board of Appeals shall, within ten days of its receipt of an application for a Comprehensive Permit, refer the application to the Planning Board, Board of Health, Conservation Commission, Water and Sewer Commission, Town Engineer and Inspector of Buildings for written reports and recommendations and no decision shall be made until such reports are returned or 30 days have elapsed following such referral without receipt of such reports.
- 4.4 PUBLIC HEARING AND NOTICE** - The Board of Appeals shall hold a public hearing within 30 days of receipt of an application for a Comprehensive Permit. The public hearing and notice shall follow the provisions set forth in Subsection 3.4 above unless otherwise specified in GLc 40B, §21.
- 4.5 ACTION BY THE BOARD OF APPEALS** - The voting requirements and decisions shall follow the provisions set forth in Subsection 3.5.1 and 3.5.5 above unless otherwise specified in GLc 40B, §21. Decisions of the Board shall be made within 40 days after the termination of the hearing. In its decision the Board shall make such findings as it deems appropriate and may impose such additional conditions, safeguards and limitations as it deems appropriate including but not limited to the following:
- 4.5.1** Grant of a subsidy by a state or federal financing agency
 - 4.5.2** Compliance with any requirement imposed by the financing agency
 - 4.5.3** Finding by the financing agency that the applicant is a public agency, a non-profit or limited dividend organization, and that the applicant has suitable interest in the proposed site
 - 4.5.4** Securing of the approval of any state or federal agency with respect to the proposed housing which the applicant must obtain before building
 - 4.5.5** Directions or orders to local agencies or officials designed to effectuate the issuance of a comprehensive permit and the construction of the approved housing
 - 4.5.6** Requirement to obtain approval of a Definitive Subdivision Plan, all building, plumbing, gas, electrical and other local approvals/permits, and
 - 4.5.7** Any other condition consistent with the statute and the regulations of the Town of Wilmington.

SECTION 5 - ADMINISTRATION

- 5.1 POLICIES AND ADVICE** - Any advice, opinion or information given to an applicant by any Board of Appeals member, the Inspector of Buildings, the Board's secretary or any other official or employee of the Town prior to a public hearing shall not be binding on the Board. Individuals are discouraged from appealing personally to members of the Board prior to a public hearing.
- 5.2 WAIVERS** - The Board of Appeals may waive strict compliance with any of these Rules and Regulations if it deems it in the public interest and if a written record is kept of such waivers, and the reasons for them.
- 5.3 AMENDMENTS TO RULES AND REGULATIONS** - These Rules and Regulations may be amended by a majority vote of the members of the Board of Appeals, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

- 5.4 EFFECTIVE DATE** - These Rules and Regulations were adopted at a regular meeting of the Board of Appeals on June 27, 1995, and become effective as of July 1, 1995. The Rules previously adopted and subsequently amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.