

ZONING BOARD OF APPEALS
WEST TISBURY, MASSACHUSETTS

RULES AND REGULATIONS

Approved September 1, 1981 and Amended September 6, 1989

Revised and Amended by board vote on October 10, 2024 (4-0)

There is hereby established a Zoning Board of Appeals (“The Board”) consisting of five (5) members to be appointed by the Select Board as provided in Chapter 40A of the General Laws and with the duties and powers as set forth in said Chapter 40A of the General Laws, each for a term of five (5) years to be staggered. There are two (2) alternate members similarly appointed by the Select Board, each to serve for a term of two (2) years.

Article I – ORGANIZATION

Section 1: Members and Officers

At the first regular meeting following the annual Town Meeting, the Board shall elect all officers of the Board to include a Chair and a Vice-Chair. Alternate members do not participate in this act.

1.1 Chair – The Chair 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. The Chair shall transact official business, supervise the work of the Zoning Administrator, appoint committees as may be found necessary, and report official transactions to the Board.

1.2 Vice-Chair – The Vice-Chair shall act as Chair in case the Chair is absent, disabled or otherwise unable to perform his/her duties.

1.3 Alternate Members – The Select Board shall appoint two alternate members to the Board of Appeals (WT ZBL 10.3-1). The Chair of the Board shall designate an alternate member to sit on the Board as a voting member in the case of absence, inability to act or apparent conflict of interest on the part of any board member, or in the event of a vacancy of the regular membership.

1.4 Appointment to Other Boards – The Board of Appeals appoints a representative, either from its membership or outside it, to the Affordable Housing committee and will consider requests for other board appointments.

Section 2: Quorum

A quorum for a public meeting of the Board shall consist of a minimum of three (3) members. A quorum for a public hearing by the Board shall consist of a minimum of four (4) members and is governed by the requirements set out under the relevant provisions of G.L. c.40A or G.L. c.40B.

2.1 Remote Participation – A board member may call in to participate remotely and be considered part of the voting quorum as long as there is a minimum of three members present at the meeting.

Section 3: Resignations

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

Article II – FUNCTIONS OF THE BOARD

Section 1. Public Meetings

Public meetings of the Board of Appeals shall be held twice per month on Thursdays at 5:00PM at the West Tisbury Town Hall, or at a time and place as deemed necessary by the Board and Board Administrator, and be conducted in accordance with the Open Meeting Law, G.L. c.30A §§18-25 and the Zoning Act, G.L. c. 40A, §11. Agendas for Board meetings and hearings, drawn up by the Zoning Administrator, shall be publicly posted at least 48 hours before the meeting, both on the Town's website and at Town Hall.

Public meetings, while open to the public, are not public hearings. Applications for a Special Permit, Variance, Appeal, or Comprehensive Permit require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside a public hearing.

Business conducted at public meetings shall include:

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

Section 2: Public Hearings

Public hearings are scheduled by the Zoning Administrator after a complete application is received and stamped by the Town Clerk.

2.1 Public Notice – Notice of public hearings shall be published once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing in a newspaper of general circulation in accordance with G.L. c.40A §11. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, and not less than fourteen (14) days prior to the hearing. In addition, the Town shall send by regular mail, postmarked at least 14 days prior to the date of the hearing, said notice to the certified property owners of land within 300 feet of the property line and any other interested

parties.* Application will also be referred to the Zoning and Building Inspector and other town boards or committees for comment if relevant, such as the Conservation Commission, Board of Health, Historic Commission, etc. (*If property locus abuts with any other island town, applicant will be asked to secure and forward that town's abutters' list to the ZBA administrator.)

2.1.1 Referral to the Planning Board – Per West Tisbury Zoning Bylaw 9.2-1D: “Upon submission, the Site Plan shall be referred to the Planning Board for review, unless the Planning Board is the special permit granting authority (SPGA). The Planning Board shall make a written report to the Zoning Board of Appeals on or before the date of the public hearing on the proposed Special Permit. The Planning Board’s failure to report shall be deemed a favorable recommendation.”

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

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

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

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

- a. Notation by the Board all submitted materials and observations of the site visit, if applicable;
- b. Applicant’s presentation and evidence gathering;
- c. Questions from the Board;
- d. Read correspondence into the record;
- e. Comments and questions from the public;
- f. Applicant’s response;
- g. Final comments and questions from the public, applicant and Board, in that order;
- h. Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain.
- i. Open the Board meeting for deliberations, including but not limited to:

- identify, review, and make findings of fact
- identify, discuss, and establish condition(s)
- review and make findings required under any applicable section of the Zoning Bylaw.

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

Approval may be subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw. The Board’s written decision shall state the specific findings of fact and reasons for its decision based on the applicable sections of the Zoning Bylaw.

Conditions of a decision which require that the applicant return to a future public meeting for review and approval of site plans, management plans, signs or other matters shall include a date certain for said review.

Denial of an application may be based on a finding that either: (1) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (2) a determination, based on specific findings, that the project does not meet the applicable sections of the Bylaw.

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

1. The concurring vote of at least 4 members of the board shall be necessary to reverse any order or decision of the Building and Zoning Inspector or any other administrative official or to decide in favor of the applicant on any matter upon which the Board is required or authorized to pass.
2. The Board Chair may designate one (1) or two (2) alternate or associate members as voting members, as per G.L. ch.40A §12: “...*in case of absence, inability to act or conflict of interest on the part of any member thereof...*”
3. The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for its decision.

2.7.1 Mullin Rule – In 2023, the Town of West Tisbury voted to adopt the provisions of G.L. ch.9 §23D, also known as “The Mullin Rule,” which provides that a member of any municipal board, committee or commission, shall not be disqualified from voting in the matter solely due to that member’s absence from **no more than a single session** of the hearing at which testimony or other evidence is received. Before a subsequent hearing, the member shall submit written certification that such evidence presented at the missed session was reviewed and whether an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing and must be filed with the office of the Town Clerk.

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

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

2.10 Filing and Recording – No Board decision that grants a special permit or variance shall take effect until a copy of the decision is filed with the Dukes County Registry of Deeds and bears the certification of the Town Clerk that twenty days have elapsed after the decision has been filed and no appeal has been filed. A copy of the recorded document shall be brought to the Zoning and Building Inspector in order for the applicant to move forward. A special permit or a variance that is not subject to an appeal shall be filed with the Registry of Deeds within six (6) months following the Board’s decision or the special permit or variance shall lapse. **The applicant bears all responsibility for recording at the Registry of Deeds any special permit or variance granted or amended by the Board.**

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

2.12 20-Day Appeal Period – Upon filing its decision with the Town Clerk, the Town shall send by regular mail, said notice thereof to the certified property owners of land within 300 feet of the property line and any other interested parties, advising of Appeal procedures under G.L. c.40A §17.

Section 3. Special Meetings

Special meetings may be called by the chair or at the request of two members. Notice thereof shall be given to each member at least 48 hours before the time set. Notices shall be posted publicly as required by law.

Article III – APPLICATIONS TO THE BOARD

Section 1. Types of Applications and Time Requirements

1.1 Special Permit and Variance – Petitions for a special permit or variance may be submitted to the Board pursuant to G.L. c.40A, §9 and §10 and West Tisbury Zoning Bylaws 9.2-2 and 9.3-2. A grant of a special permit requires the Board to make specific affirmative findings as found in G.L. c.40A §9 and as outlined in WT ZBL 9.2-2. A grant of a variance requires the Board to make specific affirmative findings as found in G.L. c.40A. §10 and as set out in WT ZBL 10.3-2. These required findings are conjunctive; each finding must be made based upon the evidence submitted to

the Board during the public hearing process in order for the Board to approve a special permit or variance from the Zoning Bylaw. The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures.

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

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

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

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

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

Time Requirements for the Petitioner: An appeal pursuant to G.L. c. 40A, §8 must be taken by the petitioner within 30 days from the date of the order or decision that is being appealed. The application for appeal must be filed with the Town Clerk, specifying the grounds for the appeal. Copies of the application of appeal also shall be filed by the petitioner with the officer or Board whose order or decision is being appealed and with the Zoning Board of Appeals.

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

1.3 Comprehensive Permits – Pursuant to G.L. c. 40B §20, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a

single application to the Board of Appeals in lieu of separate applications to other applicable Boards such as the Conservation Commission or the Planning Board. The Board of Appeals shall notify each local Board or agency of the application by transmitting a copy of the comprehensive permit application for review and recommendation. The Board shall request the appearance of other Board representatives as are deemed necessary or helpful, and shall take into consideration their recommendations in making its decision.

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

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

Section 2: Application Requirements for Applications to the Board

2.1 Application Form – Every application for action by the board shall be made on the official form or submitted electronically through the Town of West Tisbury's online application system. These forms shall be furnished by the Zoning Administrator upon request. 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 or is submitted electronically and the Zoning Administrator has deemed it complete. All information called for by the form and online shall be furnished by the Applicant in the manner therein prescribed. **It is the responsibility of the applicant to furnish all supporting documentation with the application. In order to be processed, the application must be complete with all required information and filed with the Town Clerk.**

2.2 Information to Accompany Petition – Each application and petition to the board shall be accompanied by the following:

- Two (2) paper copies and an electronic version of a certified, engineered site plan showing the location of property involved and the Assessor's Map and Lot number.
- Two (2) paper copies and an electronic version of relevant floor and elevation plans.
- A narrative describing in detail the proposed project, including as applicable: square footage, setback relief requested, proposed use, hours of operation (in the case of a service business or home occupation), etc.
- Payment of \$200 either online or by check made out to the Town of West Tisbury.
- The Town will secure an abutters' list and notice those affected within 300'. If property locus abuts any other island town, applicant will be asked to secure and forward that town's abutters' list to the ZBA administrator.

Revisions prior to a public hearing – Any new or revised information submitted after an application has been noticed and advertised is not guaranteed to be reviewed by Town officials prior to the public hearing.

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

- Name of property owner, developer and name of engineer/surveyor/landscape architect or builder
- Date, title and scale of plan
- Separate locus map showing site location and location of buildings on surrounding properties, north arrow
- All existing lot lines, easements, rights-of-way, size of property in square feet, setback, side and rear yard dimensions as set forth in the Bylaw
- Location and use of all existing and proposed buildings and structures, including dimensions and heights
- The plan will show work to be done in RED
- Location and names of existing or proposed streets, curb cuts, entrances and exits, parking areas, sidewalks, loading/service areas, utility systems
- Existing and proposed contours and finished grade elevations, including location and volume of significant filling or excavations
- Location of all-natural features within 100 feet of proposed project, such as wetlands
- Number and location of parking spaces required
- Calculation of total lot area, wetlands, building coverage and total lot coverage.

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

ARTICLE IV – ADOPTION

The foregoing rules are hereby adopted this **10th day of October, 2024** by the West Tisbury Zoning Board of Appeals and filed with the Town Clerk. These Rules and Regulations supersede any and all prior versions of the same.

