

Zoning Board of Appeals

Rules of Procedure

Town of Spencer, Massachusetts

The Spencer Zoning Board of Appeals (ZBA), pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12, hereby adopts the following Rules and Regulations governing the organization, procedures and conduct of the Board, and governing review and action on Special Permits, Variances, Appeals and Comprehensive Permits.

Article I

Authority and Organization

Section 1. Authority.

The Town of Spencer Zoning Board of Appeals was established by Article 42 of the Town Meeting held on March 10, 1966, pursuant to the authority of Massachusetts General Laws (MGL) Chapter 40A, Section 12. This article set the membership at three full members and two associate members, appointed by the Board of Selectmen.

The appointing authority for the ZBA was subsequently granted to the Town Administrator under Chapter 186 of the Acts of 1998: An Act Establishing a Board of Selectmen-Town Administrator Form of Government in the Town of Spencer.

Section 2. Rules of Procedures.

These *Zoning Board of Appeals Rules of Procedure* are adopted by the ZBA to guide the Board in the performance of their duties. Any committee of the Board so appointed by the Chairperson shall follow these *Zoning Board of Appeals Rules of Procedure* to the extent applicable to the conduct of its proceedings. These Rules can be suspended by majority vote of the Board or Committee to meet particular circumstances.

Section 3. Membership.

A. Number and Qualifications. The ZBA shall consist of three full members, and up to two alternate members, appointed by the Town Administrator, with concurrence of the Board of Selectmen.

B. Length of Terms. Each member of the ZBA shall be appointed to a three year term, with one member appointed annually. Terms shall begin on July 1 and shall end on June 30 of the applicable year. Mid-term vacancies shall be filled by the Town Administrator by appointments for the balance of the unexpired term.

C. Attendance/Absences. Members are expected to attend all ZBA meetings and all Committee meetings to which they are appointed. If a Member is unable to attend a meeting, the Chairperson or Office of Development & Inspectional Services (ODIS) shall be notified as far in advance as possible. ODIS shall keep records on an annual basis of the number of absences of members.

D. Removal. If a Member has a total of six absences from the annually scheduled regular meetings, the ZBA shall consider and may recommend to the Town Administrator and Board of Selectmen that the Member's appointment be reconsidered.

Section 4. Officers.

The only officer of the ZBA shall be a Chairperson, elected annually by the ZBA members for one-year terms beginning at the first meeting in July. The position shall not be filled by a Member beginning his or her first year of service on the ZBA. Administrative and professional support shall be provided by the Office of Development & Inspectional Services (see Article VII).

A. Chairperson.

The Chairperson shall be a voting member of the ZBA and shall:

- a. Preside at all meetings and hearings of the ZBA;
- b. Act as spokesperson for the ZBA;
- c. Sign documents for the ZBA except as otherwise required by MGL for endorsement of approved plans;
- d. Designate a ZBA Member or personally act as liaison with other governmental agencies and Town boards;
- e. Assign or delegate tasks to other ZBA Members as may be necessary to perform the Board's functions;
- f. Make appointments to committees of the ZBA and be an ex-officio member of all committees with a voice in discussions, but with no authority to vote on questions before such committees;
- g. Work with the staff to ensure all business is conducted in accordance with procedures and state laws; and,
- h. Perform other duties approved by the ZBA;
- i. Appoint a Clerk at the start of the meeting, who will announce and read the agenda items into the record during the meeting.

B. Specially Designated Chairperson.

If the Chairperson cannot attend a regular meeting, or needs to recuse themselves, notification to other ZBA members and Town staff should be made three days ahead of the scheduled meeting. In the absence of, or

recusal by, the Chairperson, an acting Chairperson shall be elected by the members present at a ZBA meeting.

Section 5. Duties of the ZBA.

Enabled under Massachusetts General Laws (MGL) Chapter 40A, Section 14, the duties of the ZBA include:

- a. To hear and decide appeals in accordance with MGL Chapter 40A, Sections 8 & 15, and Section 7.1.2.A of the Spencer Zoning Bylaw.
- b. To hear and decide applications for special permits upon which the board is empowered to act per Section 7.2.1.B of the Spencer Zoning Bylaw).
- c. To hear and decide petitions for variances under Sections 7.1.2.A and 7.3 of the Spencer Zoning Bylaw.
- d. Additionally, the ZBA is the Comprehensive Permit Granting Authority per Massachusetts General Laws (MGL) Chapter 40B.

In exercising the powers granted by this section, a board of appeals may, in conformity with MGL Chapter 40A, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

Article II **Meetings**

Section 1. Regular and Special Meetings.

A. Meeting Schedule. An annual schedule of regular meetings of the ZBA shall be adopted, published and posted at the Memorial Town Hall in December of each year. Regular meetings shall be held once a month. Meetings shall be held at the time and place stated in notices and shall be open to the public.

B. Regular Meetings. On the second Tuesday of each month, the ZBA may hold a regular meeting to take action on applications, zoning by-law amendments, zoning map amendments or specific projects. A Public Hearing may be required as part of this meeting as per Massachusetts General Laws.

C. Special Meetings. Other special meetings may be called by the Chairperson of the ZBA, or by vote of the Members, upon 24 hours notice that is posted and delivered to all members of the ZBA and posted on Town Hall bulletin boards.

Written verification of meeting notification shall be given to the Town Clerk and placed in the permanent records of the ZBA.

D. Executive Sessions. The ZBA may enter executive session only to discuss matters as allowed under the Massachusetts Open Meeting Law. The proceedings of executive sessions are secret and all attendees are honor-bound not to divulge the proceedings. The ZBA can request attendance by non-members as they deem appropriate. A simple majority vote must be taken by the ZBA to enter executive session. A detailed listing of circumstances under which the Board may enter into Executive Session is included as **Appendix A** to these *Rules of Procedure*.

Section 2. Notices.

A. General Notices. Office of Development & Inspectional Services staff shall give the notice required by statute or by-law for all meetings of the ZBA and for all meetings of committees of the Board as per Massachusetts Open Meeting Law. Notice shall be posted and provided to all ZBA Members at least five (5) days in advance of public hearing meetings and twenty-four (24) hours in advance of all other meetings. Such notices shall include the date, time, place and purpose of the meeting.

B. Public Hearing Notices. ODIS staff shall give notice at least 14 days prior to a Public Hearing for Definitive Subdivision Plan applications by advertising twice in a newspaper of general circulation in the Town of Spencer, with the first such notice being published at least 14 days in advance of the hearing. A copy of this notice shall be sent by registered mail to the applicant and all owners of land abutting the land which is the subject of the definitive subdivision plan.

Section 3. Agenda.

A written agenda shall be furnished by ODIS staff to each member of the ZBA, and shall be posted on Town Hall bulletin boards and on the ZBA's webpage at least five (5) days prior to each regular meeting and at least twenty-four (24) hours prior to a special meeting. An agenda may be changed at the related meeting by a majority vote of the members present.

Section 4. Quorum.

A majority of the members of the ZBA as constituted or a majority of a Committee of the ZBA shall constitute a quorum for that body. A quorum shall be present before any action is taken by the Board or Committee. If there is lack of a quorum, the project may be discussed by those members present; however, no action shall be taken and the project is rescheduled to the next regular Board

meeting. If there is a lack of a quorum of a Committee of the ZBA, the project may be discussed by those members present and they may forward their comments on the project to the ZBA at the Board's next regular meeting. Since committees are advisory in nature, the Chairperson of the ZBA may take the submitted comments, note in the record that they represent comments from individual Committee members and not the full Committee, and may then decide to take action on the project or remand the project back to the Committee for a full Committee recommendation.

ODIS staff will notify the Chairperson in the event projected absences will result in the lack of a quorum for a particular meeting.

Section 5. Rules of Order.

The most recent edition of *Roberts Rules of Order* shall govern the conduct of meetings of the ZBA, except as otherwise provided for by the procedures set forth herein.

Section 6. Voting.

A. General. A Board Member must be present to vote. Each Member, including the Chairman, shall vote on every question before the ZBA unless disqualified by law.

B. Disqualification. The question of disqualification shall be decided by the Board Member affected, who shall announce the reason for disqualification, give it to the Chairperson in writing, and have it placed in the minutes of the meeting. Any Member so disqualified shall leave the Board's table while the disqualifying matter is being considered and refrain from deliberating or voting on the question.

Section 7. Appearances of Citizens.

Except for public hearings, no person shall be permitted to speak before the ZBA unless invited to do so by the Chairperson.

Section 8. Minutes.

A. ZBA Meetings. Minutes of each ZBA meeting shall be recorded by ODIS staff and approved at the next available meeting after their preparation. Final approved Minutes may be posted on the Town's Web site for public information, and shall be kept in the permanent records of the ZBA as required by state law.

B. Lack of Quorum. If there is lack of a quorum of the ZBA or a Committee, minutes may be recorded but shall include a statement in the footer of each page

indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved.

Article III **Public Hearings**

Section 1. Public Hearing Requirements

Items appearing before the ZBA which require a Public Hearing according to Massachusetts General Law are: Appeals, Special Permits, and Variances (as delineated in Section 7.1.2 of the Spencer Zoning Bylaw, amended as of Nov. 16, 2017).

Section 2. Conduct of Public Hearings.

The following sequence shall be followed:

- a. The Chairman declares the public hearing open after reading the item on the agenda;
- b. Staff presentation of the application or proposal and their recommendation to approve, approve with conditions, or disapprove;
- c. The Applicant, his attorney, or agent may make remarks;
- d. Comments from the public, which shall be directed to the ZBA;
- e. The Applicant, his attorney, or agent shall have the right to reply last;
- f. The Chairman declares the public hearing closed;
- g. Motion and discussion by the ZBA; and
- h. Action by the Board.

The above shall not preclude the Board from having discussion and encouraging questions throughout the hearing. No person shall speak for more than five minutes without the consent of the ZBA Chairman. No person speaking at a public hearing shall be subject to cross-examination. All questions will be posed by members of the ZBA.

Article IV **Finances and Personnel**

Section 1. Personnel and Consultants.

- A. Town Staff.** The Office of Development & Inspectional Services shall provide professional and clerical services to the ZBA, at the sole discretion of the Director of the Office (hereinafter “Director”).

1. Professional services shall be provided by the Director/Town Planner, who shall act as primary assistant to the Board.
2. Administrative support will be provided by Office of Development & Inspectional Services staff, subject to the employment policies of the Town and act under the direction of the Director. Office of Development & Inspectional Services staff is not eligible to vote or to deliberate in the proceedings of the Board. Staff shall:
 - a. Publish and post notices of all meetings of the Board;
 - b. Assist the Director/Town Planner with the preparation of meeting agendas;
 - c. Distribute the agenda, prior minutes and other relevant materials to each Board Member in advance of each meeting;
 - d. Prepare written minutes of ZBA meetings for approval by the Board at its next regular meeting, unless otherwise determined by the Director; and
 - e. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Spencer.

B. Consultants. The Director/Town Planner, with the concurrence of the ZBA, may recommend to the Town Administrator the need for hiring consultants needed to assist the Board in completing its duties for special projects.

C. Peer Review. The Director/Town Planner, with the concurrence of the ZBA, may require that a third-party Peer Reviewer be hired at an applicant's expense in order to provide additional review for more technically complicated applications.

Article V
Adoption, Repeal and Amendment


Section 1. Adoption and Repeal.

These *Zoning Board of Appeals Rules of Procedure* contained herein were adopted by at least a majority vote of the members of the Town of Spencer, Massachusetts ZBA sitting at a regular meeting.

Section 2. Amendment.

These *Zoning Board of Appeals Rules of Procedure* may be amended at any regular meeting of the ZBA by a majority vote of its members held at least seven (7) days after a written draft of the amendment is delivered to all members.

**For the Zoning Board of Appeals
Town of Spencer, Massachusetts**

By: 
Allan Collette, Acting Chairperson

Date of Approval: 1/14/20

APPENDIX A

The Ten Purposes for Executive Session

The Open Meeting Law states ten specific purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session.

The ten purposes for which a public body may vote to hold an executive session are:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.

This purpose is designed to protect the rights and reputation of individuals. Nevertheless, where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this purpose triggers certain rights for the individual who is the subject of the discussion. The individual has the right to be present, though he or she may choose not to attend. The individual who is the subject of the discussion may also choose to have the discussion in an open meeting, and that choice takes precedence over the right of the public body to go into executive session.

While the imposition of disciplinary sanctions by a public body on an individual fits within this purpose, this purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

Generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating before entering into executive session under Purpose 2. A public body may withhold the identity of the non-union personnel or bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

While a public body may agree on terms with individual non-union personnel in executive session, the final vote to execute such agreements must be taken by the public body in open session. In contrast, a public body may approve final terms and execute a collective bargaining agreement in executive session, but should promptly disclose the agreement in open session following its execution.

Collective Bargaining Sessions: These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

Generally, a public body must identify the collective bargaining unit with which it is negotiating or the litigation matter it is discussing before entering into executive session under Purpose 3. A public body may withhold the identity of the collective bargaining unit or name of the litigation matter if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Collective Bargaining Strategy: Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate a definite harm that would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's bargaining or litigating position.

Litigation Strategy: Discussions concerning strategy with respect to ongoing litigation obviously fit within this purpose but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body's does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

Note: For the reasons discussed above, a public body's discussions with its counsel do not automatically fall under this or any other purpose for holding an executive session.

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

This purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. However, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist

that the discussion occur in open session. Purpose 5 does not require that the same rights be given to the person who is the subject of a criminal complaint. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which purpose to invoke when going into executive session.

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

Generally, a public body must identify the specific piece of property it plans to discuss before entering into executive session under Purpose 6. A public body may withhold the identity of the property if publicly disclosing that information would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

Under this purpose, as with the collective bargaining and litigation purpose, an executive session may be held only where an open meeting may have a detrimental impact on the body's negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body's negotiating position.

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality. A public body may withhold that information only if publicly disclosing it would compromise the purpose for which the executive session was called. While we generally defer to public bodies' assessment of whether the inclusion of such details would compromise the purpose for an executive session, a public body must be able to demonstrate a reasonable basis for that claim if challenged.

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

This purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body. It may, however, include a review of résumés and multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body's ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain less than a quorum of

the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

- (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
- (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:

- in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
- in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
- in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
- when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.