



# CITY OF GLOUCESTER

## ZONING BOARD OF APPEALS

### RULES OF PROCEDURE

Pursuant to Massachusetts General Law c. 40A, section 12, following a duly-noticed public meeting held on January 25, 2018, the Zoning Board of Appeals hereby adopts these Rules of Procedure, rescinding all prior versions thereof.

The adopted parliamentary authority for the Zoning Board of Appeals is Robert's Rules of Order.

#### ARTICLE I: ORGANIZATION

##### **Section 1 - Board Members**

The Zoning Board of Appeals (hereinafter, "the Board") consists of five regular members and two associate members. Both regular members and associate members are appointed by the Mayor, subject to confirmation by City Council. The terms of Board members, their qualifications for office and related matters are set forth at Section 1.4 of the Gloucester Zoning Ordinance.

##### **Section 2 - Election of Officers**

At its first regularly scheduled meeting in January, the regular members of the Board shall elect a Chairperson, a Vice-chairperson and a Clerk, each of whom shall serve for a term of one year.

##### **Section 3 - Chairperson; Powers and Duties**

The Chairperson shall preside over all Board proceedings. The Chairperson shall rule upon all points of order, and may be overruled only by a majority of those members voting on the matter under consideration. The Chairperson shall appoint such committees and designates as he/she deems necessary, and shall supervise the Board's secretary.

##### **Section 4 - Vice-Chairperson; Powers and Duties**

The Vice-Chairperson shall act as Chairperson whenever the Chairperson is absent, disabled or otherwise unable to perform his/her duties.

##### **Section 5 - Clerk of the Board; Powers and Duties**

Subject to the direction of the Chairperson, the Clerk of the Board shall be responsible for all administrative matters of the Board. At the request of the Board, the Clerk shall draft and transmit correspondence on its behalf.

##### **Section 6 - Legal Affairs Coordinator**

The Chairperson may appoint one regular member of the Board to serve as liaison (hereinafter, "Legal Affairs Coordinator") between the Board and the city's Office of General Counsel. The Legal Affairs Coordinator shall consult with General Counsel to review the status of all legal proceedings to which the Board is a party, and shall regularly report on such matters to the Board.

### **Section 7 - Associate Members**

In the event of the absence, inability to act or conflict of interest on the part of a regular Board member, prior to commencement of each such affected hearing the Chairperson shall designate an associate member to participate in said hearing. In the event of a vacancy on the Board, the Chairperson shall designate an associate member to act as a regular Board member until another person is appointed to fill the unexpired portion of the vacated term.

### **Section 8 - Board Secretary**

The Board's secretary shall send out all notices required by law and as directed by the Board. The secretary shall keep dockets and minutes of all Board proceedings, compile all required records, maintain necessary files and indexes, and when so directed by the Chairperson shall call the roll at Board meetings. The secretary shall respond to all inquiries from applicants and the general public concerning matters before the Board. The secretary shall also submit Board minutes to the Clerk's Office as soon as is reasonably possible after Board meetings, in compliance with Massachusetts General Law (hereinafter, "GL").

### **Section -9 - Quorum**

Four members of the Board, either regular or associate members, shall constitute a quorum.

### **Section 10 - Regular Meetings**

A regular meeting of the Board shall be held at 7:00 p.m. on the second and last Thursday of each month, at City Hall or at such other location designated by the Board. If a regular meeting day falls on a holiday or Election Day, the meeting shall be held on the next regularly scheduled meeting day. No hearing shall commence or continue after 11:00 p.m. but this cut-off time may be extended by a majority vote of the Board.

### **Section 11 - Special Meetings**

Special meetings may be called by the Chairperson or at the request of two Board members. Written or e-mail notice thereof shall be given to each regular and associate member at least 48 hours before the time set for the meeting. Public notices shall be posted as required by law.

## **ARTICLE II: APPLICATIONS TO THE BOARD**

### **Section 1 - Application Form**

Every application to the Board shall be made on forms which are available at the Building Department and which may be modified from time to time by the Building Inspector in consultation with the Board. Any other written communication purporting to be such application shall be treated as a notice of intent to file but shall not be deemed an application for purposes of the time limits set forth in GL c. 40A and the Zoning Ordinance.

All information called for by the application form shall be furnished by the applicant in the prescribed manner. No application shall be placed on the Board's hearing docket until it has been certified as complete by the Building Department and time-stamped by the City Clerk's office. The deadline for the filing of applications shall be no later than noontime on the third Thursday before the meeting at which the application is to be heard.

### **Section 2 – Amendment or Supplement of Application**

Once an application is certified as complete by the Building Department, any amendment, supplement or other material changes to an application must be filed no later than seven days prior to the hearing on said application.

**Section 3 - Special Filing Requirement for Certain Pre-existing Buildings**

In all cases where one or more variances are sought for an existing residential building in order to allow the applicant to request a special permit for a new use or change in use, the application shall be accompanied by the following certifications:

- A. Current Health Department inspection certificate for each residential unit in the building; and
- B. Current Building Department inspection certificate for each residential unit in the building.

**ARTICLE III: HEARINGS**

**Section 1 - Notice of Hearings**

Notice of hearings shall be provided as required by GL c. 40A, Section 11 and Sections 1.5.6 and 1.5.7 of the Zoning Ordinance.

**Section 2 - Hearings to be Public**

All hearings shall be open to the public. No person shall be excluded unless he or she is considered by the Chairperson to be a serious hindrance to the workings of the Board. The Chairperson may limit the speaking time of any person whose testimony is deemed repetitive, irrelevant or otherwise inappropriate.

**Section 3 - Representation of a Party; Absence of Party, Agent or Attorney**

An applicant may appear on his or her own behalf, or be represented by an agent or attorney upon written authorization or by execution of the authorization contained in the application form. In the event that no one appears in support of an application, the Board may (1) render a decision on the basis of the information thus far received, (2) continue the matter until the next scheduled hearing date, or (3) dismiss the application for want of prosecution, with or without prejudice as the circumstances warrant. In all cases, the applicant shall be informed of the Board's action by certified mail.

**Section 4 - Continuances**

Continuances shall only be granted for due cause, upon the approval of a majority of the Board present. "Due cause" shall include, but not be limited to, lack of a quorum, incomplete or inadequate documentation, allowance of time for neighbor consultation and possible compromise, material - change to the original application, or any other circumstance the Board, by majority vote, finds to warrant a continuance. Unless the Board rules otherwise, the fact that only four Board members will be participating in the hearing shall not be considered due cause for a continuance.

**Section 5 - Notice to Abutters of Request for Continuance**

In the event an applicant intends to request a continuance, he/she shall promptly so notify all those persons entitled to notice of the hearing pursuant to Sections 1.5.6 and 1.5.7 of the Zoning Ordinance.

**Section 6 - Rescheduling of Hearing**

Because of due notice requirements, continued hearings shall be scheduled in the following manner:

A. hearings which may in the Board's discretion be continued to its next scheduled meeting:

1. hearings in which the record has been closed but the Board has deferred a vote for purposes of a site visit, review of written material, etc.;
2. hearings where some testimony has been taken but the record is not closed;
3. hearings in which the Board determines that the applicant or other interested party needs additional time to respond to testimony in support or opposition; or
4. hearings where a memorandum of counsel has been submitted less than seven days prior to the hearing.

B. hearings that shall be continued to the second regularly scheduled Board meeting thereafter:

1. hearings where the record has not been opened; or
2. hearings where in the Board's opinion supplementary material submitted after the filing of an application substantially changes the nature, magnitude or scope of the applicant's project to such extent that the application must be re-advertised.

### **Section 7 - Order of the Hearing**

A. The hearing on an application before the Board shall proceed in the following manner:

1. applicant's presentation, starting with his/her name and address;
2. presentation of those persons, if any, in support of the application;
3. presentation of those persons, if any, in opposition to the application or seeking further information on the application;
4. applicant's rebuttal, which shall be restricted to issues raised by those speaking in opposition and those seeking further information.

B. Regular and associate members of the Board, whether or not voting on the application, may direct questions at any time to any person appearing before the Board.

C. On roll call votes, rotation by seniority will be employed to vary which member votes first. The Board chairman shall always vote last.

### **Section 8 - Submission of Written Material at the Hearing**

Plans or drawings which supplement the material filed with the application may be submitted at the time of the hearing, but if in the opinion of the Board such supplementary material changes the nature, magnitude or scope of the applicant's project, the hearing shall be continued pursuant to Article III Section 6(B).

Letters of support or opposition to the applicant's project may be submitted at the time of the hearing, provided that they are factual in nature and not legal argument. The Board may continue the hearing to the next available meeting date if it determines that the applicant or any other interested party needs additional time to respond to a letter in support or opposition. To be considered at a hearing, a memorandum of counsel shall be submitted to the Board and opposing parties, if known, seven days in advance thereof. Memoranda submitted in any other manner shall cause the hearing to be continued to the next regularly scheduled Board meeting.

### **Section 9 - Limitation on Number of Hearings**

No more than eight applications, including continued hearings, shall be heard at a Board meeting.

## **ARTICLE IV: DISPOSITION BY THE BOARD**

### **Section 1 - Vote of the Board**

An application before the Board shall be approved only upon the affirmative vote of four Board members. On all other questions -- procedural or administrative -- a majority vote of those members hearing the application shall be required. The hearing record shall contain the vote of each participating Board member upon each question.

### **Section 2 - Approved Plans**

Whenever a special permit or variance is approved by the Board, the plans and sketches upon which said decision was rendered shall be endorsed by or on behalf of the Chairperson. The plans and sketches so endorsed shall be transmitted directly from the Board to the Building Department.

### **Section 3 - Reconsideration Due to Material Misrepresentation of Facts**

Once an application has been voted upon and the meeting adjourned, the Board may reconsider its decision only if it determines, after due notice and a public hearing, that said decision was based upon a material misrepresentation of facts. Following such hearing, the board may affirm its prior decision, modify said decision or revoke it, partially or in its entirety.

### **Section 4 - Board Review of Draft Decisions Prepared by Counsel**

For the convenience of the Building Department, draft decisions prepared by counsel shall be in the Board's standard format, samples of which may be obtained from the Board secretary. All such drafts shall be submitted to the Chairperson or his/her designee no less than 72 hours prior to the Board's scheduled review of the draft.

### **Section 5 - Withdrawal of an Application**

The filing fee for an application that is withdrawn will not be returned. Similarly, an application which is filed following the withdrawal of a previously filed application shall be accompanied by a second filing fee. The withdrawal of an application is furthered governed by Section 1.5.14 of the Zoning Ordinance.

### **Section 6 - Reapplication**

Except in accordance with the procedures set forth at GL c. 40A, Section 16 and Section 1.5.15 (b) of the Zoning Ordinance, an application which has been denied by the Board shall not be reheard within the following two years.

### **Section 7 - Lapse of Approvals; Extensions**

The lapse of a special permit and the procedure for its extension are governed by Section 1.8.6 of the Zoning Ordinance.

The lapse of a variance and the procedure for its extension are governed by Section 1.7.5 of the Zoning Ordinance.

### **Section 8 - Adoption of Decision**

Except as provided in Article IV, Section 3, the last action of the Board shall be the adoption of the written decision.