

RULES & REGULATIONS OF THE BOARD OF APPEALS
Agawam, Mass.

The Board of Appeals was established by a vote of the Town of Agawam on July 24, 1945. In accordance with the provisions of Section Fourteen (14) of Chapter Forty-A (40A) of the General Laws, the said Board of Appeals shall have all powers and duties of a board of appeals as set forth and as required in said Chapter Forty-A (40A) as amended, known and cited as "The Zoning Act". The powers of the Board shall be:

1. To hear and decide appeals taken as provided in Section Eight (8) of The Zoning Act, Massachusetts General Laws, Chapter 40A
2. To hear and decide appeals from actions taken by other town boards and officials under the building code (including plumbing), zoning ordinances, subdivision control regulations and other rules and regulations adopted regulating the use of land and buildings as cited under the Charter of the Town of Agawam.
3. To hear and decide applications for special permits upon which the Board is empowered to act under Section 180 of the Town of Agawam Zoning Ordinance and Massachusetts General Laws, Chapter 40A, Section 9.
4. To hear and decide petitions for variances as set forth under Section Ten (10) of The Zoning Act, Massachusetts General Laws, Chapter 40A
5. To hear and decide questions relating to the interpretation of the Zoning Ordinance
6. To hear and decide requests for Comprehensive Permits as set forth under Chapter 40B of the Massachusetts General Laws

The Board of Appeals of Agawam shall consist of three (3) members who shall be appointed by the Town Council for terms of three (3) years and so arranged that the term of one appointee shall expire December 31 of each year. Such Board shall elect annually a Chairperson, Vice Chairperson and a Clerk from its own number.

Two (2) associate members of the Board of Appeals shall be appointed by the Town Council for terms of three (3) years and so arranged that the terms of the appointees shall not expire in the same year ending December 31st. The Chairperson of the Board of Appeals may designate any such associate member to sit on the Board in case of absence, inability to act or interest on the part of a member thereof. In the event of a vacancy on said Board, the Chairperson may designate any such associate member to sit as a member of the Board until such vacancy is filled in the manner provided for in Section 12 of The Zoning Act. Any associate member, while sitting on the Board, shall have the authority and responsibility of the member whom he/she replaces.

Any member may be removed for cause by the appointing authority upon written charges and after a public hearing.

Vacancies shall be filled for un-expired terms in the same manner as in the case of original appointments.

The powers and duties of the Board of Appeals members shall include, but not limited to, the following:

Chairperson: The chairperson shall decide all points of order, unless overruled by a majority of the board in session at the time. He/she shall appoint such committees as may be found necessary or desirable. In addition to powers granted by general laws and local ordinances (by-laws), and subject to these rules and further instructions of the board, the chairperson shall transact the official business of the board, supervise the work of the clerk, request necessary help, direct the work of all subordinates, and exercise general supervisory power. He/she shall report at each meeting on all official transactions that have not otherwise come to the attention of the board. The Chairperson shall conduct all meetings and public hearings and designate an associate member to sit on a case in the absence of a regular member.

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

Clerk: Subject to the direction of the board and its chairperson, the clerk shall supervise all of the clerical work of the board including preparing the board's correspondence, sending all notice required by law and the rules and orders of the board, receiving and scrutinizing all applications for compliance with the rules of the board, keeping dockets and minutes of the board's proceedings, compiling all required records, maintaining necessary files and indexes.

No member or associate member of the Board of Appeals may act on any cases in which they may have any interest. No member or associate member of the Board of Appeals may represent before such Board any party of interest in any matter pending before it.

Meetings of the Board of Appeals shall be held at the call of the Chairperson or Acting Chairperson. If the Chairperson or Acting Chairperson is unable to call a meeting, or is unreasonable in delaying a call for a meeting that is deemed to be in the best interest of the Board's business, a demand meeting may be called by two (2) members of the said Board who shall file by certified or registered mail a written notice of intent to the Town Council and to the Chairperson or Acting Chairperson of the Board of Appeals as the circumstances may require.

All applications submitted to the Board of Appeals, which must receive Site Plan Review from the Planning Board, shall be accompanied by 16 sets of plans. Any other application shall be accompanied by 6 sets of plans. Such plans shall be drawn to scale, shall show the north arrow as well as the accrual dimensions, radii and angles of the lot to be built

upon, the exact size and location of the main building and accessory buildings on the lot or to be erected on the lot, the distance of same to the nearest existing building located on abutting property, and such other information and plans as may be necessary to determine the merits of the application. The Board reserves the right to change the requirements for plans submitted.

A certified copy of the deed of ownership of the property concerned must be submitted with the application. An application fee, determined by the Town Council, shall be submitted with each application.

The Board shall send notices by registered or certified mail, postage prepaid, to all "parties of interest". "Parties of interest" shall mean the petitioner, abutters and owners of land which lie within three hundred (300) feet of each side of the land in question irrespective of street intersection as they appear on the most recent applicable tax list. The Planning Boards of the abutting towns and cities to the Town of Agawam shall be notified. The following Agawam Town boards and departments shall be notified: Planning Board, Building Dept., Assessor, DPW, Engineering Dept., Conservation Commission, Fire Dept., Police Dept. and Board of Health.

The Board of Appeals shall cause to be made a detailed record of its proceedings, showing the motions properly before the Board and the vote of each member on each motion, and setting forth clearly the reason or reasons for its decision, and other official actions in cases pending before it, copies of which shall be filed within fourteen days in the office of the Town Clerk and shall be a public record. No copy of such proceedings may be transmitted until each member shall have the opportunity to approve the written minutes by affixing his/her signature and date thereon

The Board shall fix a time for the hearing of any appeal or matter referred to it:

Special Permit:

1. a public hearing shall be held within sixty-five (65) days from the date of such filing with the Town Clerk
2. a decision shall be made within ninety(90) days from the date of the public hearing

Variances and Appeals:

1. a public hearing shall be held within sixty-five(65) days from the date of such filing with the Town Clerk
2. a decision shall be made within one hundred (100) day from the date of filing

The Board of Appeals shall cause the notice of the time and place of such hearing thereof to be published in at least one local newspaper in accordance with The Zoning Act, Chapter 40A, General Laws of the Commonwealth of Massachusetts, once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing. The Chairperson or Acting Chairperson of the Board may administer oaths, summon witnesses, and call for the production of papers.

The general format of the public hearing shall be:

1. Call to order of the petition before the Board
2. The petitioner and/or representative shall be given full opportunity to present the merits of the appeal or request without interruption by anyone.
3. The Board members may question the petitioner or representative in matters concerning the application.
4. The Board shall hear remarks or other comments from those in attendance in favor of the request of the petitioner. The Planning Board, Health Agent, Building Inspector, and/or a representative of any board or official from whom the appeal is taken may present any views in favor of the petition or may correct any statements previously made that may reflect upon the conduct of the Board or official from whom the appeal is taken.
5. The Board shall hear remarks or other comments from those in attendance opposed to the request of the petitioner. The Planning Board, Health Agent, Building Inspector, and/or a representative of any Board or official from whom the appeal is taken shall make known the reason for the negative position taken on the petitioner's original application.
6. The Board shall give the petitioner ample opportunity to answer any argument against his/her petition and to make final closing comment to the Board on the merit of the petition.
7. The Board shall read any correspondence that is received concerning the petition.
8. The Board shall extend the courtesy of accepting petitions of names of residents of the Town who wish to take a position pro or con on the petition.
9. The final remarks of the public hearing shall be made by the Board relative to the right of any citizen and/or petitioner to appeal the Board's decision in the Superior Court, Housing Court or Land Court within twenty (20) days after the decision of the Board has been filed with the Town Clerk.
10. A detailed record of the meetings of the Board on matters requiring a public hearing shall be filed with the Town Clerk in accordance with the law.
11. A notice of the decision of the Board shall be mailed forthwith to parties of interest, to the Planning Board, Building Inspector, Town Assessor, and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.

The Board of Appeals may impose conditions, safeguards and limitations both of time and use. A continuation of the permitted use may be conditioned with compliance of regulations.

The approval of any matter requiring a public hearing is dependent upon the unanimous consent of the three (3) members who are sitting on the case. Any application that has been acted upon unfavorably may not be placed before the Board for reconsideration for a period of two (2) years except by unanimous consent, or all but one member of the Planning Board.

Any person aggrieved by reason of his/her inability to obtain a permit, from any administrative official under the provisions of the Zoning Ordinance, or any officer of

board of the Town of Agawam, or any person aggrieved by any order or decision of the Inspector of Buildings or other administrative official in violation of any provision of zoning matters, may take an appeal within thirty (30) days of the order or decision which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, who shall forthwith transmit copies thereof to such officer or board whose order or decision is being appealed, and to the members of the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.

The Board of Appeals shall require that all papers concerning the proceedings of the Board relative to a petition under its consideration must show dates and signatures of the person or persons connected with the various actions of the case:

1. Date of assignment of petition number
2. Date of public hearing or postponed or continued hearing
3. Date of other official actions with the signatures of the members thereon
4. Date draft of the decision was submitted to office personnel for typing on official Board of Appeals letterheads
5. Date and signature of the members concerned with the decision.
6. Date and time official decision and the minutes relative to the decision was presented to the Town Clerk

A draft of the decision by the Board shall be written by the Chairperson or, in his/her absence, by the Vice-Chairperson, except when the Chairperson shall designate another member of the Board to write the draft of the decision.

The burden of proof rests entirely upon the applicant to submit valid reasons why this appeal should merit favorable action by the Board of Appeals within the powers vested in the Board by The Zoning Act of the Commonwealth. The submission of Supreme Court case decisions is helpful but not mandatory.

The authority of the Board to grant a variance is strictly limited by state law to finding:

1. that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it lies,
2. that a literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise, to the petitioner or appellant
3. that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance

Failure to substantiate all three of the above findings will be fatal to the granting of the variance.

The fact that the proposed use will widen the real estate tax base or increase the tax revenue of the Town is not sufficient reason for consideration of granting a variance.

Where specific requirements are stated in the zoning ordinance:

The Board is obliged to see that these requirements are met before it can consider favorable action on the application.

Where specific requirements are not stated in the zoning ordinance:

The Board is obliged to give consideration to and be guided by the language of Section 180-1 entitled "Purpose" as printed in the zoning ordinance.

Where a special permit shall require an applicant to post a bond with the Treasurer of the Town of Agawam in an amount approved by the Board of Appeals, said bond shall be in an amount sufficient to guarantee conformity with the provisions of the permit issued hereunder.

The Board is obliged to consider all applications according to the language contained in Section 180-7 of the Zoning Ordinance. The Board must consider all applications of non-conforming uses and structures as to the effect such shall have on the public good of the inhabitants of the Town of Agawam.

An applicant may withdraw his/her application from further consideration by the Board of Appeals any time after the filing of the application and prior to the publication of the notice of a public hearing. Applications withdrawn in this time period will be granted "without prejudice" or time penalty.

Any application withdrawn after the publication of the public hearing notice on the application may be granted without prejudice only with the approval of the unanimous vote of the Board's three members. Applications withdrawn after the publication of the public hearing notice and not approved without prejudice by the unanimous vote of the Board will be withdrawn with prejudice and the application shall not be considered on its merits by the Board of Appeals within two (2) years after the date of such withdrawal except with the unanimous consent, or all but one member of the Planning Board.

Notice of withdrawal will be a form provided by the Board of Appeals and will require the signature of the applicant or duly authorized representative.

As of August 14, 2006, the "FCC Office of Engineering and Technology, Bulletin 65" is to be used to monitor the emissions from existing and new personal wireless service facilities and towers. The Board may change this testing protocol by written regulation as stated in Section 180-92 under definitions "monitoring Protocol. Such copy shall be on file with the Town Clerk.

These Rules and Regulations are not inconsistent with the provisions of the zoning ordinance, the local building or planning ordinance, and are required of the Board of Appeals in conducting its business and otherwise carrying out the purposes of Massachusetts General Laws, Chapter 40A.

Amended: August 14, 2006

