

Zoning Board of Appeals
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RULES and REGULATIONS
Zoning Board of Appeals

Revised: October 26, 2020

In accordance with the General Laws of Massachusetts, Chapter 40A, Section 18, the following Rules and Regulations were adopted by unanimous vote of the Town of Shrewsbury Zoning Board of Appeals on June 26, 1974.

In accordance with the General Laws of Massachusetts, Chapter 40A, Section 12 the Rules and Regulations were amended by unanimous vote of the Zoning Board of Appeals on October 26, 2020.

Paul George, Clerk

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Rules and Regulations of the Shrewsbury Zoning Board of Appeals

Purpose

In accordance with the General Laws of Massachusetts, Chapter 40A, Section 9 & 12, the following Rules and Regulations were adopted by unanimous vote of the Town of Shrewsbury Zoning Board of Appeals on February 27, 2012 (TBD by vote of the Board).

Applicants shall also refer to Section IX of the Shrewsbury Zoning Bylaw. These sections list general requirements, procedures, approval criteria, public hearing and final action requirements.

Article I - Definitions

Abutters - The owners of land located directly adjacent to a property for which an application has been filed, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred (300) feet of the property line of the Applicant as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town. The Shrewsbury Assessor's Office shall certify the names and addresses of abutters and such certification shall be conclusive for all purposes. For purposes of a variance and or a special permit public hearing and decision notices, an abutter is a "party in interest" as defined below.

Applicant - The person who submits an application for special permit or variance approval and his administrators, executors, heirs, devisees, successors, and assigns. The Applicant must be owner of all land included in the application and submitted plan or proposal, or any person who shows specific written authorization by the owner to submit the application and to speak for and bind the owner as to any representations regarding the property or the owner's intent, with regard to any agreements made with the Board as part of the permit review and approval process and with regard to the owner's understanding of any conditions imposed upon the project by the Board's special permit decision document. Proof of ownership shall include a copy of the latest recorded deed or Land Court certificate as well as of the Shrewsbury Board of Assessors' current listing for the property. The Applicant is considered a "party in interest" with regard to required public hearing and decision notices.

Building Inspector – The Building Inspector of the Town of Shrewsbury.

Drainage - The control of surface water within the tract of land to be developed by any means of collecting, diverting, handling, dispersing, or disposal of surface runoff. Such control shall be designed by a registered professional engineer.

Engineer - A registered professional engineer qualified to practice civil engineering in the Commonwealth of Massachusetts.

Lot - A continuous parcel of land with legally definable boundaries.

Parcel - An area of land in one ownership, with definite boundaries, which may or may not constitute a lot or group of lots available for use as the site of one or more buildings.

Parties in Interest - The Applicant, the owner of record, and abutters as defined above, the Zoning Board of Appeals, and the Zoning Board of Appeals of every abutting city or town. Parties in interest are legally entitled to notice of special permit public hearings and decisions under M.G.L. c. 40A, § 11 and the Shrewsbury Zoning Bylaw.

Person - An individual, two or more individuals or a group or association of individuals, a trust, a partnership, or a corporation having common or undivided interests in a tract of land.

Project - The proposed buildings, parking, roads, and so forth, that are the subject of the special permit application.

Site - The entire tract on which a proposed use or development is located.

Surveyor - A registered land surveyor qualified to practice surveying in the Commonwealth of Massachusetts.

Town Engineer – The Shrewsbury Town Engineer.

Town Planner – The Shrewsbury Town Planner.

Tract - A continuous area of land, which may be subdivided or unsubdivided, may be crossed by roadways or streams and may be in single or multiple ownership, which is proposed for development under these Rules and Regulations.

Wetland - Land subject to the provisions of M.G.L. c. 131, § 40.

Zoning Enforcement Officer – The Town of Shrewsbury Building Inspector.

Article II-Organization

Section 1 – Officers

The Zoning Board of Appeals (ZBA) shall annually elect the following officers from among its regular members: chair, vice-chair, and clerk. A majority of all regularly appointed ZBA members must vote favorably to elect each officer. Associate ZBA members shall not be eligible to hold office and shall not participate in the vote of officers. All terms shall expire on April 1 of each year. Vacancies for unexpired terms shall be filled in the same manner as in the case of original election.

Section 2 – Powers and Duties of Officers and Town Employees

Chair – Meetings of the ZBA shall be held at the call of the chair. He or she shall have the power to administer oaths, summon witnesses and call for the production of papers. Unless overruled by a majority of the Board in session at the time of meeting, he shall decide all points of order. In cooperation with Town employees assigned to the ZBA by the Board of Selectmen, the chair of the ZBA shall transact the official business of the Board, supervise the work of the clerk, request necessary professional assistance, and exercise general supervisory powers over the day-to-day functions of the Board. The chair may represent the ZBA before other Town boards, commissions, and officials. When speaking for the Board, the chair shall only express official opinions on business that has come before the ZBA and for which a formal vote has been taken.

Vice-Chair – The vice-chair shall act as the chair or the clerk in the event the chair or clerk is absent or otherwise unable to perform his or her duties.

Clerk – Subject to the direction of the Board and its chair, the clerk shall supervise all of the clerical work of the Board. Clerical work shall include but not be limited to review of all correspondence, notification of all abutters required by law, review of applications for compliance with the rules of the Board, preparation of meeting minutes, posting of agendas, filing of decisions, compiling required records, maintaining necessary files and any other functions permissible by Town Bylaws and Massachusetts Law.

Town Employees – The Town Manager is responsible for assigning employees to provide necessary technical and professional assistance for the Board. In cooperation with the chair and clerk of the ZBA, Town Employees shall be responsible for carrying out the day-to-day functions of the ZBA. Employees shall perform clerical work under the supervision of the ZBA Clerk. Staff shall be responsible for determining those parcels of land requiring notification in accordance with applicable provisions in Chapter 40A of the Massachusetts General Laws. Subject to compliance with these regulations, staff shall prepare the Form of Appeal, Application Checklist, and application guide/instructions.

Section 3 – Alternate Members

The chair shall designate an alternate member to sit on the Board in the event of absence, inability to act, or conflict of interest on the part of any regular Board member. In the event of a vacancy on the Board, the chairman may designate an alternate

member to act as the member of the Board until such time as the vacancy is filled by the Board of Selectmen.

Section 4 – Quorum

Four Board members, regular or associate shall be present at all public hearings. The associate member of the Planning Board would be the last alternate considered in case of absence, inability to act, or conflict of interest on the part of all other Board members.

Section 5 – Hearings and Meetings

All public hearings called by the chair of the Board shall convene in the evening hours at a time no later than 9:00 PM.

Special meetings may be called by the chair or at the request of two regular members. Written notice thereof shall be given to each member at least 48 hours before the time set, except that announcement at any meeting attended by all members shall be sufficient notice of such meeting. Notices of all meetings shall be posted in accordance with current requirements of the Open Meeting Law. Meetings shall adjourn no later than 10:30PM. If the Board wishes to extend the meeting past 10:30PM, they must vote to do so no later than 10:29PM.

Section 6 – Site Visits

The ZBA or its members may conduct a site visit of the property that is the subject of a petition, application or appeal. No deliberations or decisions shall be made by the ZBA on such site visit that would be in conflict with the Open Meeting Law.

Section 7 – Open Meeting Law

All meetings of the ZBA shall be subject and comply with current Open Meeting Law.

Article III – Submittal Procedures

Section 1 – Application Form

Every Application for action by the ZBA shall be made on the Form of Appeal prepared by staff and approved by the Board. Any communication purporting to be an application, unless approved by the ZBA clerk or majority vote of the Board, shall be treated as mere notice of intention to seek relief and until such time as it is made on the official application form. All information called for by said form shall be furnished by the petitioner, at the time of application, and in the manner therein prescribed.

The signature of the record owner of the subject property and the applicant, if different, or their duly authorized agent shall appear on all Forms of Appeal submitted.

Section 2 – Requirements for Filing

Applications, petitions, and appeals shall comply with all requirements of the Town Zoning Bylaw and The Zoning Act, including requirements concerning size, form, content, and style of required plans. Any application, petition, or appeal that is not complete and accurate shall not trigger the times for action under The Zoning Act, even if the application, petition, or appeal is filed with the Town Clerk and the ZBA. The ZBA may deny any incomplete and inaccurate application, petition, or appeal and notify the Town Clerk and appellant of such denial.

The Board may, with good cause, waive any formal or informal requirements for application, petition, or appeal upon submittal of a written request by the applicant and majority vote of the Board.

Section 3 – Plans of Land

Each application shall be accompanied by two copies of

1.

a plot plan of the subject lot prepared and stamped by a Professional Civil Engineer or Professional Land Surveyor registered in Massachusetts drawn at a scale of 1" = 40' or another appropriate scale as determined by the ZBA or its agent.

Plans shall contain the following:

- a. North arrow;
- b. Names of existing and proposed streets;
- c. Zoning district boundaries that fall within the locus of the plan;
- d. Names and addresses of abutters;
- e. Property lines and location of buildings on abutting properties and properties directly across any street or way from the subject property;
- f. Dimensions of the subject property boundaries including bearings & distances and verified distances from buildings, structures, and uses on abutting properties;

- g. Location of all existing or proposed uses, structures, and buildings on the subject property, principal or accessory along with the perpendicular distances from all property lines to the nearest point of the proposed building, structure, or use;
- h. Zoning analysis table listing required, existing, and proposed conditions;
- i. Parking analysis for all uses other than single family and two family residences;
- j. Location of all building entrances or exits, drives, ways, parking lots, and loading areas;
- k. Elevations and locations on the plan of all existing and proposed signs on the subject property;
- l. Location of utility lines and connections on the subject property;
- m. Location of all prominent vegetated areas;
- n. Location of trash disposal areas for all uses other than single family and two family residences;
- o. Drainage calculations, as necessary to demonstrate there will be no adverse impacts to adjacent properties or roadways;
- p. Proposed changes shall be denoted in RED.
- q. All additional information required by the Zoning Bylaw.

Section 4 – Application Fee

All applications shall be accompanied by a check payable to the Town of Shrewsbury in the amount of three hundred dollars (\$300.00).

Section 5 – Filing Procedure

The applicant, petitioner, appellant, or agent shall file two (2) hard copies and one (1) electronic copy of a complete and accurate Application for Appeal together with two (2) hard copies and one (1) electronic copy of the required plans, any reports, photos, renderings or other supporting materials and application fee in the office of the Town Clerk.

Article IV – Hearings

Section 1 – Notice

Notice of all public hearings shall be conducted in accordance with the requirements of Massachusetts General Law Chapter 40A, Section 11.

Section 2 – Hearing to be Public

All hearings shall be open to the public. At the hearing, any party, whether entitled to notice thereof or not, may appear in person or by agent or attorney. No person shall be excluded unless deemed by the chair to be a serious hindrance to the proceeding of the hearing.

Section 3 – Representation and Absence of the Appellant

An applicant may appear on his own behalf or be represented by an agent or an attorney. The applicant shall authorize such representation by an agent in writing. In the event of absence of the appellant or his representative at a duly scheduled hearing, the Board may render a decision on the appeal using information submitted or otherwise received.

Section 4 – Order of Business

The public hearing shall be held at the call of the chair, who shall describe the rules of procedure for the hearing and then read or direct the reading of the public hearing notice to open the public hearing. After the opening of the public hearing, the order of business will generally proceed as follows:

1. The chair shall read the Form of Appeal and present any materials received in response to the application.
2. Presentation by the applicant, which may be limited at the discretion of the chair. Each plan or other item used as part of the presentation shall be identified by its proper title and date. Each item shall be identified as either part of the application or a copy shall be provided for the file.
3. Questions or comments by the members of the Board. At the direction of the chair, responses shall be made by either Town staff or the applicant.
4. Questions or comments by staff assigned to the Board, followed by responses by the applicant.
5. Questions or comments by members of other Town Boards or Town staff. At the direction of the chair, responses shall be made by either Town staff or the applicant.
6. Questions by members of the public seeking information. Those in favor of the application shall speak first and then followed by those opposed. Persons wishing to be heard must be recognized by the chair and must state their name and address prior to asking a question. At the direction of the chair, responses shall be made by either Town staff or the applicant.
7. Opponent's formal presentation, which may be limited at the discretion of the chair.

8. Applicant's rebuttal, which shall be restricted to matters raised by opponents.
9. ZBA members ask for any additional information needed to render a decision.
10. The chair, upon majority vote of the Board, continues the public hearing to a date, time and place certain that is announced at the public hearing or closes the public hearing if the Board feels they have received sufficient information to render a decision. Upon the close of a hearing, no additional information received by the Board may be used in the making of its decision.

Members of the Board hearing the case may, at anytime, direct appropriate questions during the course of the hearing. All questions shall be directed through the chair.

Article IV – Disposition by the Board

Section 1 – Voting Requirements

The concurring vote of four members of the Board must be obtained for the granting of any appeal. The record shall indicate the vote of each member upon each question or, if failing to vote, indicating such fact and setting forth clearly the reasons or reasons for its decisions, and of its other official actions, copies of which shall be filed in the office of the Town Clerk.

Section 2 – Notice of Decision

A copy of the Board's decision or notice of said decision shall be mailed to the applicant, owner of the subject property, parties in interest, and those requesting notice. Notice shall be completed in accordance with the requirements of MGL Chapter 40 A, Sections 9, 10 and 11.

Section 3 – Withdrawal

An application may be withdrawn without prejudice at any time prior to the public hearing by notifying the Town Clerk in writing. After the opening of the public hearing but prior to the filing of the decision, an application may be withdrawn by mutual consent of the applicant and a majority of the Board. Notification of the withdrawal after the opening of a public hearing must be filed with the Town Clerk.

Section 4 – Reconsideration

Once a petition has been voted upon and the meeting adjourned, reconsideration of a decision shall be allowed only by affirmative consent of all Board members. In no case shall reconsideration be allowed after seven (7) days of the Board's vote or after the decision has been filed with the Town Clerk.

Section 5 – Reapplication

Only upon consent of the Shrewsbury Planning Board, as regulated by MGL Chapter 40A, Section 16, shall reapplication of an appeal, acted unfavorably upon by the Board, be allowed within a period of two years following the date of filing such unfavorable decision in the office of the Town Clerk.

Article V – Amendments and Validity

Section 1 – Amendments

These Rules and Regulations may be amended or repealed from time to time by an affirmative vote of a majority of the Board, provided that such amendments or repeal shall be presented in writing at any meeting or hearing held at the call of the chairman.

Section 2 – Validity

The invalidity of any section of these rules shall not invalidate any other section or regulation contained herein.

Article VI – Policies and Advice

Section 1 – Policies

Any advice, opinion or information given by any Board member or any other official or employees of the Town of Shrewsbury shall not be binding on the Board.

No regular or associate Board member shall appear before the Board for the purpose of representing or presenting any party or matter pending before it.

In cases where it seems to be in the best interest of all parties to the petition, the chair may request written recommendations from Town Boards, officials or employees.

Section 2 – Advice

It is recommended that every appeal be supported by a brief setting forth in detail all facts relevant and essential to the presentation of an appeal. This is particularly desirable in appeals for variances when the following statutory requirements should be clearly identified and factually supported:

1. The specific use proposed for the land or buildings.
2. The conditions especially affecting the property for which the variance is sought which do not generally affect the zoning district in which the property is located.
3. Facts which make up the substantial hardship, financial or otherwise, which result from literal enforcement of the Zoning Bylaw.
4. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the welfare of the public and the neighborhood.
5. Facts relied upon to support a finding that the relief sought may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

Briefs may accompany the submission of the Form of Appeal or may be submitted to the Board during the course of the public hearing. However, substantial or complicated briefs submitted on the night of the hearing may require a continuation of the hearing to allow sufficient time for review.

It is advised that legal counsel and a professional engineer be retained or consulted relative to the presentation of a complete and thorough appeal.

Section 3 – Review by Consultants

1. **Applicability** - In addition to an application fee, the Zoning Board of Appeals may impose a project review fee on those applications which require, in the judgment of the Board, review by outside consultants due to the size, scale, or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary expertise to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, bylaws and regulations. Such assistance may include, but shall not be

limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulation, or inspecting a project during construction or implementation.

2. Submittal - The Board shall inform the applicant that a project review fee will be required during the first public hearing at which the applicant makes a full presentation of a completed application. Project Review Fees shall be submitted to the Town Treasurer within ten (10) days of request by the Board and shall be deposited in an account established pursuant to M.G.L. c. 44, s. 53G (53G Account). If an applicant fails to submit the required fee, the application shall be deemed incomplete and may be considered adequate grounds to deny an application. No review work by a consultant shall commence until the fee has been paid in full.

3. Project Review Fees - The minimum initial fee shall be \$4,000 for all residential projects with twenty (20) or fewer units or non-residential projects with fifty (50) or fewer parking spaces. Larger projects shall pay an additional fee of \$100 per residential unit exceeding twenty (20) or \$40 per additional parking space.

4. Replenishment - When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, the applicant shall pay an additional Project Review Fee to replenish the account. The ZBA or its staff representative shall notify the applicant of the requirement to pay an additional fee and payment shall be made within thirty (30) days.

5. Administration of Project Review Fees – The Project Review Fee shall be deposited into a special account in accordance with M.G.L. c. 44, s. 53G.

a. Project Review Fees shall be turned over to the Town Treasurer for deposit into a 53G Account.

b. A copy of the latest statement for 53G Account(s) shall be forwarded from the Treasurer to the Board each month.

c. The Town Accountant shall prepare a report on activity in the 53G Account on an annual basis. The report shall be submitted to the Selectmen for their review. This report shall be printed in the Annual Report for the Town.

d. An applicant may request a statement of his or her 53G Account including a statement of current principal and interest and a report of all deposits and payments credited to the account.

e. An applicant may request an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.

6. Excess fees in the 53G Account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

a. With the disapproval of an application before the Board.

b. For approved projects, upon final inspection certifying completion of the project in accordance with the Zoning Bylaw and all conditions of approval.

7. Appeal

a. The choice of a consultant selected by the ZBA for the review of an application may be appealed in writing to the Board of Selectman by the applicant, providing such appeal is initiated within two weeks of the initial selection.

b. The Selectmen shall convene a formal hearing within twenty (20) days of receiving a written appeal by an applicant.

c. In accordance with M.G.L. Chapter 44, Section 53G, “conflict of interest” and “lack of minimum required qualifications” are the only two (2) circumstances by which a consultant may be disqualified.

d. The required time limits for action upon an application by a municipal permit granting board shall be extended by the duration of the administrative appeal.

e. In the event that no decision is made by the board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand.

f. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

8. Delinquent Accounts

a. All fees past due by one month from the date of invoice shall be subject to a monthly interest charge equivalent to the current rate for delinquent tax accounts.

b. All costs incurred by the Town of Shrewsbury associated with collection of past due accounts shall be paid by the applicant.