

**INSTRUCTIONS FOR PETITIONERS FILING TO APPEAR
BEFORE THE TOWN OF EDGARTOWN
ZONING BOARD OF APPEALS**

1. Please review all rules and regulations of the Zoning Board of Appeals (attached) prior to your filing and appearance. The Building/Zoning Official must sign the application prior to submittal to this office.
2. To be granted a variance the petitioner must show that the circumstances relating to soil conditions, shape or topography of the land or structure, would cause substantial hardship, financial or otherwise. The petitioner must also show that the variance may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw. Be prepared to present this data to the Board at the public hearing. It is strongly suggested the information be prepared in writing, and include all factors relevant to the question of hardship.
3. In requesting a special permit the petitioner should be prepared to present data that tends to indicate that the public convenience and welfare will be substantially served by granting the permission requested; that the permission requested will not tend to impair the status of the neighborhood; that the site is an appropriate location for the proposed use; and that the permission requested will be in harmony with the general purposes and intent of the regulations in the Zoning Bylaws.
4. The required names and addresses of abutters to abutters within a 300 foot radius from the applicant's property lines will be obtained and processed by the Board of Appeals Assistant.
5. When the application, fee, and supporting documentation are received by the Board of Appeals, and verification of abutters and their addresses has been completed, the application will be filed with the Town Clerk, thus beginning the public hearing process for the Board of Appeals. This process will begin with an ad being placed in the Vineyard Gazette, which the applicant will be billed for.
6. The Board of Appeals has 100 days from the time of filing with the Town Clerk through the Board of Appeals office to make a decision on the application of an appeal or a variance. The Board has 65 days to hold a public hearing, and ninety days after that to make a decision on the application of a special permit.

ZONING BOARD OF APPEALS
TOWN OF EDGARTOWN MASSACHUSETTS

RULES AND REGULATIONS

Adopted October 8, 1969
Amended October 3, 1979
Amended May 11, 1983
Amended December 14, 1983
Amended October 23, 2023

Section 1 - OFFICERS

At the first regular meeting following the confirmation of the annual appointee, the Board shall elect all officers of the Board to include a chairperson and vice-chairperson and clerk. Alternates do not participate in this act.

Section 2 - CHAIRPERSON: POWERS AND DUTIES

The chairperson 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. He/she shall appoint such committees as may be found necessary or desirable.

In addition to powers granted by general laws and local ordinances, 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, at each meeting, report on all official transactions that have not otherwise come to the attention of the Board.

Section 3 - VICE-CHAIRPERSON

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

Section 4 - CLERK

The clerk shall be such person as may be designated by the Board. Subject to the direction of the Board and its Chairperson, he/she shall supervise all of the clerical work of the Board including; all correspondence of the Board, sending all notices required by law and the rules and orders of the Board, receive and scrutinize all applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain necessary files and indexes and call the roll at all Board meetings.

Section 5 - ALTERNATE MEMBERS

The chairperson of the Board shall designate an alternate member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member. In the

event of a vacancy on the Board the Chairperson may designate an alternate member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term.

Section 6 - QUORUM

A quorum of the Board shall consist of five (5) members. The only exception being that at a hearing, an applicant has the choice to proceed with four members if five are not present.

Section 7 - MEETINGS

Meetings may be called as required by the Chairperson, or at the request of two (2) members. Written notice thereof shall be given to each member at least 48 hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice of such meeting. Notices shall be posted publicly as required by law. Said meetings shall be held in the Town Hall.

ARTICLE II APPLICATIONS TO THE BOARD

Section 1 - APPLICATION FORM

Every application for action by the Board shall be made on the official form. These forms shall be furnished by the Clerk 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. All information called for by the form shall be furnished by the applicant in the manner therein prescribed.

Section 2 - FILING PERIOD

Every application shall be filed and every appeal taken within thirty (30) days from the date of refusal of a permit by, or the date of the order, ruling decision or determination of, the Building/Zoning Inspector.

Section 3 - PLAN OF LAND TO ACCOMPANY PETITION

Each application and petition to the Board shall be accompanied by six (6) copies of the plot plan(s), floor plans, and elevations.

The size of the plan shall be not less than 8 1/2" X 11" drawn to scale (preferred size for plot plans: 11" x 17"); it shall have a north point, names of streets, zoning districts, property lines and location of buildings on surrounding properties. The location of buildings or use of the property where a variance or special permit is requested and distances from adjacent buildings and property lines shall be verified in the field and shown on the plan. The dimensions of the lot, buildings, and required parking spaces shall be shown. Entrances, exits, driveways, etc., that are pertinent to the granting of the variance or special permit shall be shown. All proposed additions and new construction shall be shown in red. All plans presented shall remain a part of the

records of the Board of Appeals. Also required is a sketch of any proposed building in an application for a special permit for a small business in a residential district.

Section 4 – FEE SCHEDULE

SPECIAL PERMIT:

Residential - \$200

Commerical or mixed use - \$300

VARIANCE: \$250

APPEAL: \$300

COMPREHENSIVE PERMIT: \$250

MODIFICATION: \$100

All applications shall be accompanied by a check in the appropriate amount, payable to the Town of Edgartown.

ARTICLE III HEARINGS

Section 1 - NOTICE

Notice of hearings shall be advertised as required by the provisions of the General Laws, Chapter 40A. In addition, a copy of the advertised notice shall be sent by mail, at least 14 days prior to the date of the hearing, postage prepaid, to the applicant or petitioner, to the owners of all property deemed by the Board to be affected thereby as they appear on the most recent local tax list, to the Planning Board of every abutting town and to the Building Inspector and all those listed in the law.

Section 2 - HEARINGS TO BE PUBLIC

All hearings shall be open to the public. No person shall be excluded unless he is considered by the Chairperson to be a "serious hindrance" to the workings of the Board.

Section 3 - REPRESENTATION AND ABSENCE

An applicant may appear in his/her own behalf, 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 decide on the matter using the information it has otherwise received.

Section 4 - ORDER OF BUSINESS

- a. Reading of Petition and legal notices by the Clerk.
- b. Applicant's presentation, together with presentation of exhibits, if any.
- c. Letters and reports from Town Boards and Departments, then letters pro and con.

- d. Opponents' presentation, if any, and questions by those seeking information.
- e. Applicant's rebuttal, restricted to matters raised by opponents' presentation.

Members of the Board who are hearing the case may direct appropriate questions during the meeting.

Section 5 -BRIEF TO BOARD

It is recommended that every appeal and every application for a variance or special permit be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on the General Laws, Chapter 40A, Section 10, should be clearly identified and factually supported:

- a. The particular use proposed for the land or building.
- b. The conditions especially affecting the property for which the variance is sought.
- c. Facts which make up the hardship.
- d. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- e. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent of purpose of the zoning ordinance.

Briefs may be filed at the public hearing or within such time thereafter as may be fixed by the Board, but in no case later than five (5) days after the public hearing.

A detailed record of proceedings, including the vote on each question, must be filed with the Town Clerk within fourteen (14) days of the decision.

ARTICLE IV DISPOSITION OF THE BOARD

Section 1 - VOTING REQUIREMENT

The concurring vote of at least four (4) members of the Board shall be necessary in any action taken by the Board.

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 decisions.

Section 2 - WITHDRAWAL

An application may be withdrawn by notice in writing to the Clerk at any time prior to the hearing by the Board. After an advertisement, withdrawal only by Board approval.

Section 3 - RECONSIDERATION

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Section 4 - REAPPLICATION

In order to have a petition reheard within two (2) years, the petitioner must request permission from the Planning Board and the Permit Granting Authority, showing new evidence that substantially alters the conditions of the petition. At least four (4) members of the Planning Board must agree that this condition has been met. Once the Boards agree the petitioner must reapply to the Board of Appeals in a normal manner.

Section 5 – TWO YEAR LIMITATION ON GRANTS: EXTENSIONS

If an application is granted by the Board all permits necessary for the prosecution of the work shall be obtained and construction shall be commenced within two years from the date of filing of the Board's decision in the Office of the Town Clerk.

Reasonable extension of said time may be granted by the Board in the case of an appeal to the Superior Court under General Laws, Chapter 40A, Section 21, or for any good cause shown.

ARTICLE V POLICIES AND ADVICE

Any advice, opinion, or information given by any Board member or the Clerk, or any other official or employee of the Town of Edgartown shall not be binding on the Board. Because of the annoyance caused by individuals appealing personally to members of the Board it is declared to be the policy of the Board to discourage any such personal appeals.

ARTICLE VI AMENDMENTS

These rules may be amended by an affirmative vote of not less than four (4) members of the Board, provided that such amendment shall be presented in writing at regular meeting of said Board.

NOW THAT YOU HAVE BEEN APPROVED

Your application to the Edgartown Zoning Board of Appeals has been approved. Outlined below are the next steps in the process for getting a building permit.

- a. The decision (along with any conditions) will be filed within fourteen (14) days of the hearing, with the Town Clerk.**
- b. The appeal period will begin at that time, running twenty days. It is during this time that any person with an interest who is aggrieved by the decision of the Board may appeal to the appropriate court.**
- c. If no appeals are filed during this period, on the twenty-first day after the filing of the decision the Town Clerk will attest to the same.**
- d. At that time the final paperwork will be prepared and mailed out. Once you have received this you must record it in the Registry of Deeds, Dukes County Courthouse. You will be given a copy of the stamped-recorded document.**
- e. Stamped copies of that document must be brought to the Building Department and the Zoning Board office prior to any permits being issued.**

PLEASE NOTE: The Building Inspector (and ZBA, if required) must approve any substantive or material changes made to the plans or the project during construction. Failure to do so may nullify your permit and may require removal of the unapproved construction.

IF YOU ARE DENIED

You may not bring the application back for two years without going before a joint Planning Board and Zoning Board of Appeals public hearing process to prove specific and material changes in the condition on which the denial was based. This process is called a Repetitive Petition.

You also have the right to file an appeal to the appropriate court within the twenty-day appeal period.