

The Town of Hamilton Zoning Board of Appeals

Welcome. Below is some information that as a new Member of the Town of Hamilton Zoning Board of Appeals which you may find to be helpful. Please feel free to contact the Building Department with any questions, concerns, or requests.

- The mission of the Zoning Board of Appeals is to hear and decide applications in a timely, professional, and impartial manner for property owners requesting variances of the Zoning Ordinances, appealing decisions of the Building Inspector, or requesting Comprehensive Permits pursuant to MGL Chapter 40B.
- The Board consists of 5 Members: 3 Active Voting Members, and 2 Alternate Members, per the Town Zoning Bylaws (pages 95 & 96) and Massachusetts General Law (MGL) 40A, Section 12.
- Members are appointed by the Town of Hamilton Select Board
- Members are sworn in by the Town Clerk
- Members must be a resident of the Town of Hamilton
- A Member of the Zoning Board of Appeals is an Employee of the Town of Hamilton
- The Chair of the Zoning Board of Appeals is paid a bi-annual stipend and he/she is responsible for writing the Decisions and of Conducting the flow of the Meetings.
- Town Policy is that the Town Manager should approve any requests to speak to Town Counsel
- Per Massachusetts General Law each Zoning Board of Appeals shall elect annually a Chairman from its own number and a Clerk, and may, subject to appropriation, employ experts and clerical and other assistants.
- There is an Employee of the Town who will draft Meeting Minutes. Once the draft Meeting Minutes are done the Board Members will receive a copy to review; typically prior to a Meeting, though it may be at the Meeting. The Board reviews and approves the Meeting Minutes. Edits may be agreed upon and then approved the Meeting Minutes as Amended. The Approved Meeting Minutes are kept on file by the Office of the Town Clerk and are Public Record.
- There is a lot of helpful, educational, information for the Members of the Board of Appeals on the web page for the Zoning Board of Appeals on the Town web site. The Town web site is: hamiltonma.gov
- The State web site has a lot of good information and/or links to other sites. The State of Massachusetts's web site is: mass.gov
- The Citizen Planner Training Collaborative is a site with a lot of valuable information and they offer interesting and helpful trainings to all Municipal Employees. If you would like to be reimbursed for the cost of paying for training please submit a receipt to the Building Department. Web Site: <https://masscptc.org/>
- A direct link to research MGL 40A is <https://malegislature.gov/laws/generallaws/parti/titlevii/chapter40a>. It is also a site to research other MGL.
- Zoning Board of Appeals Members are required to participate in Ethics Training & Open Meeting Law Training. Members will be contacted by the Office of the Town Clerk. If you have questions or would like to learn more about either or both topics you can find a lot of information on the State web site.

- The Zoning Board of Appeals is a Quasi-Judicial Administrative Board that hears and decides zoning related matters pursuant to MGL 40A & 40B.
- Due to the fact the Board consists of 3 Members and 2 Alternate Members, a Quorum of Zoning Board Appeals Members is 2 Members.
- A Public Body Member may lawfully email a Quorum of the Public Body only to discuss scheduling a meeting, distribute a meeting agenda, or to distribute reports or documents to be discussed at a meeting, provided that no opinion of a member of the public body is expressed.
- Members of Zoning Board of Appeals may communicate with Members of the Public through any social media platform. However, Members of the Zoning Board of Appeals must be careful not to engage in deliberation with the other Members of the Public Body through such communications. If a Member of a Public Body communicates directly with a Quorum of the Zoning Board of Appeals over social media platforms such as Facebook or Twitter, that communication may violate the Open Meeting Law. Zoning Board of Appeals Members should proceed with caution when communicating via these platforms.
- To learn more about Open Meeting Law there is a web page on the State of Mass web site: Frequently asked questions about the Open Meeting Law: <https://www.mass.gov/info-details/frequently-asked-questions-about-the-open-meeting-law>
- The Town of Hamilton Zoning Bylaw was first adopted in 1954 pursuant to the Massachusetts Zoning Act M.G.L. CHAPTER 40A as amended.
- Robert's Rules of Order is a guide for conducting meetings and making decisions as a group which is followed during Meetings. (A "cheat sheet" will be given to new Board Members).
- Zoning Board of Appeals Meetings are typically held the first Wednesday of the month, starting at 7:00 p.m.
- Zoning Board of Appeals Members may choose to do a drive-by of a property that has submitted an application prior to the Meeting when the application will be presented.
- In the Town of Hamilton (2021) there are 4 Zoning Districts and 5 Overlay Districts. (More information in the Zoning Bylaw)
- The Zoning Board of Appeals may decide a Site Walk is required in order to better understand an application. If a Site Walk is planned then a Notice must be posted with the Office of the Town Clerk.
- A Variance is a request to deviate from current Zoning Bylaw requirements. If granted, a Variance essentially waives a specific requirement of the Zoning Bylaw.
- A Special Permit or a Finding of Fact is authorization to construct a building or establish a use that is not allowed by right. Special Permit Applications for other uses are either reviewed by the ZBA or Planning Board, depending on the district or specific use. A Special Permit will lapse after two years, unless a shorter time period is specified in the Zoning Bylaw or Ordinance, if a substantial use has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause. Excluded from any lapse period is the time required to pursue or await the determination of any

AGENDAS

Every agenda must have the name of the public body that is meeting, the date and time of the meeting, where the meeting is being held (location, room, and address), and a list of topics that are reasonably expected to be discussed at the meeting. Items may be heard out of the listed order. The agenda items listed are those items which were reasonably anticipated by the Chair to be discussed at the meeting. Not all items listed on the

agenda may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. Meeting dates, time, and location are subject to change as allowed by the Open Meeting Law.

Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to the meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of the meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

MEETING MINUTES

Meeting Minutes must be created and approved in a timely manner, must include: the date, time and place of the meeting; the members present or absent; the decisions made and actions taken, including a record of all votes; a summary of the discussions on each subject; a list of all documents and exhibits used at the meeting; and the name of any member who participated in the meeting remotely. While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. While public bodies must identify in the minutes all documents and exhibits used at a meeting and must retain them in accordance with the Secretary of the Commonwealth's records retention schedule, these documents and exhibits needn't be attached to or physically stored with the minutes.

PUBLIC HEARING NOTICES

In all cases where notice of a public hearing is required notice shall be given by publication in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing and by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. In all cases where notice to individuals or specific boards or other agencies is required, notice shall be sent by mail, postage prepaid.

"Parties in interest" as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner 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 Permit Granting Authority or Special Permit Granting Authority may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five nor more than ten additional days to reply.

No Public Hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

Applicants are responsible to pay for the publication of the Public Hearing Notice in a local newspaper. The Applicant will submit the required form with the application to the Building Department. The Public Hearing Notice will be published in the Tri-Town Transcript, which is a weekly paper.

MEETINGS

The Chair will announce the opening of the Public Hearing and address the applicant. The applicant should state the reasons why he/she should be granted the zoning relief requested. The applicant should also be prepared with supporting evidence such as architectural plans, photographs, building models, letters or petitions signed by abutters or any other evidence that supports their appeal. After the applicant has presented their case to the ZBA, the ZBA will hear comments in support and in opposition. The ZBA will make a decision by motion and vote. A ZBA Member will make a motion and another ZBA Member must second the motion. Often, the decision of the ZBA will include conditions which must be followed to maintain the relief granted. In most cases, the ZBA will make a decision at the Public Hearing. On occasion, the ZBA may decide to continue

the Public Hearing to a later date; typically the next regularly scheduled meeting. (The ZBA typically meets the first Wednesday of every month).

WHAT HAPPENS ONCE A SPECIAL PERMIT IS APPROVED?

Once the Special Permit Decision is written it will be recorded with the Town Clerk and a copy will be sent to the Applicant. If the Decision was to approve the application: Once twenty days have elapsed from the date the Decision was date stamped by the Town Clerk, the Applicant should bring a copy of the Decision to the Town Clerk. (Not 20 days from the date of the Public Hearing) If there were no Appeals filed, the Town Clerk will give the Applicant a document which states no Appeals have been filed. (The Applicant would be notified if there are any Appeals filed as soon as one is filed). The Applicant will bring the document you received from the Town Clerk and the Decision to the Southern Essex Registry of Deeds, Shetland Park, 45 Congress St., Suite 4100, Salem, MA 01970. A copy of the Decision stamped by the Registry of Deeds should be submitted to the Inspectional Services Office. If the Applicants is going to submit a Building Permit Application a copy of the Recorded Decision must be included. The fact that an Applicant received the approval by the Zoning Board of Appeals is important, but there may be further requirements prior to being able to use the property as stated in the Decision even if construction is not required.

TOWN OF HAMILTON PROFESSIONALS YOU MAY NEED TO CONTACT

Building Commissioner Richard P. Maloney is the Zoning Enforcement Officer. Rich is available for questions at 978-626-5246 or buildinginspector@hamiltonma.gov

Mary-Ellen L. Feener is the Administrative Assistant for the Inspectional Services Department. She provides the forms to applicants; ensure the notices are sent to the abutters, notices are sent to the abutting towns, and the Public Hearing Notice is published properly in a local newspaper and with the office of the Town Clerk. She is the support staff for the Building Department (Building, Electrical, Plumbing & Gas Fitting), Sealer of Weights and Measures, Zoning Board and Planning Board. For the Zoning Board of Appeals she maintains the web page on the Town web site, emails packets to the Board Members and in some cases send them via regular mail, fields all phone calls and emails for the ZBA. She is available at 978-626-5250 or at permitting@hamiltonma.gov

Patrick Reffett, Director of Planning & Inspectional Services: Phone: 978-626-5248 or at preffett@hamiltonma.gov

A FEW COMMON ACRONYMS

BOH	Board of Health
Con. Com.	Conservation Commission
ZBA	Zoning Board of Appeals
FIN. COM.	Finance Committee
MGL	Massachusetts General Law
AMI	Area Median Income
FEMA	Federal Emergency Management Agency
FIRM	Flood Insurance Rate Map