

Zoning Board of Appeals

Michael Sheehan, Chair
Mary Kate Daly
Shannon Greenwell
Rachel Churchill
Al Porro



Acting Director of Community
Development
Sarah Dixon

January 3, 2023

Norwood Senior Center
275 Prospect Street

Remote participation available at GoToMeeting

Zoning Board of Appeals Meeting Minutes

Present: Mary Kate Daly
Rachel Churchill
Shannon Greenwell
Al Porro

1. **CALL TO ORDER:** The meeting was called to order at 7:00 p.m. by the acting Chair, Ms. Daly, who outlined the meeting procedures.
2. **PUBLIC HEARINGS**
 - Proposed Rules and Regulations (continued from December 6, 2022)

Ms. Daly, the Acting Chair, reopened the public hearing. Ms. Dixon opened the working draft on the television screen and reviewed the written comments received which were now incorporated into the draft. The Chair referenced the previous discussion of selecting a date for the election of a Chairperson and a Board Clerk either annually at the beginning of the calendar year or at the beginning of May after term expiration. Mr. Porro and Ms. Churchill expressed their preference for going by calendar year. Ms. Greenwell said that doing it in May would sync with the terms and anyone leaving or joining the Board. The Chair asked if all appointments end in April. Ms. Dixon said they are supposed to, however, it could vary based on members' appointment letters. She noted that the ZBA members are appointed by the Selectmen and other Boards may be appointed by the General Manager while others are an elected Board. Discussion was had regarding the pros and cons of each and whether to be specific in the wording or leave flexibility on when reorganization should occur. Attorney Hern addressed the Board stating that he had submitted suggested revisions of the proposed Rules & Regulations. He also expressed that more specific language made the regulations clearer and removed doubt. He recommended reorganization annually in May.

Ms. Churchill suggested, in reference to "Member Participation, to add "Associate Members participation at the discretion of the Chair". Board members voiced their affirmation of the proposed change.

Attorney Hern suggested language change from "two motions are required to take any action" to "a motion and a second" and further added that it should be removed so as not to cause confusion. Ms. Daly said that it should also be moved to a different section. Ms. Dixon recommended striking the two sentences. She noted that it was already addressed under Section 10 under "public hearings."

Ms. Churchill said that there were comments received regarding the section on site visits: the extent of discussions and whether questions can be posed. Ms. Dixon read the proposed edits with the existing text into the record; "no deliberations or decisions shall be made, nor questions asked of the applicant, nor discussions by the Board on said site visit." Attorney Hern voiced concern stating the need for Board members to ask questions on site visits such as where a particular thing would be located. He offered a suggestion of having multiple site visits with a non-quorum of members present at each one to avoid any Open Meeting Law (OML) issues with asking questions. Ms. Dixon recommended alternate language that eliminated "questions" and

instead to have the regulation state “no discussion by the Board on such site visit that would be in conflict with the Open Meeting Law” which she said would ensure that the Board knows its obligations to comply with OML on site visits. The Board was satisfied with the recommended language.

Ms. Dixon said that Mr. Sheehan’s recommendation was to include links/references to where such information could be found, for example, showing where OML obligations/requirements come from. Ms. Churchill suggested adding language to the link references to note that (State Law) changes may be amended, restated, or replaced from time to time. Attorney Hern cautioned that repeating Chapter 40A, local zoning bylaws, or references to court cases runs the risk of a conflict/contradiction due to future changes. He said rules and regulations are intended to govern procedure and not substantive matters. Ms. Dixon stated that there was value to including the most relevant and frequently used State Law information especially for new Board members so they can have them in a single document. Ms. Churchill commented that the Board should decide if the rules and regulations are intended to be a training manual or intended to be rules that govern the operation and actions of the Board while letting the laws speak for themselves. Ms. Greenwell said that she felt rules & regs. were the least helpful in communicating to the community how the Board functions and how the community interacts with the ZBA but felt that there was value to including what the OML generally is. Ms. Churchill expressed support for including Bylaw, General Law, and OML references to show what governs the rules & regs. so long as language “paraphrasing” the laws was not included so the Board wouldn’t have to continually update their rules & regulations. Mr. Porro concurred with using a reference only to things like the OML. The Chair asked members for their final suggested changes for site visits or OML. Ms. Churchill wanted additional language related to outside documents referenced to include “as amended, modified, or replaced from time to time”. Ms. Greenwell and Ms. Churchill further clarified that any language that summarizes or paraphrases OML or other laws should be removed from the rules & regulations. (Section D, Site Visits). Attorney Hern said that the decision of what to include depends on the targeted audience. He said that Board members should get their training “elsewhere” and that less is more in terms of the language of the rules and regs. General discussion was had regarding the “target audience” of the rules & regulations, site visits, and the addition of the word “unreasonable” in the Site Visit section (any “unreasonable” refusal may result in the denial of an application).

Discussion was had regarding owner authorization when an applicant is not the property owner. Ms. Dixon reviewed the Board’s requested edits based on their discussions: redefine the “affidavit” as “authorization”, reduce duplication of submission requirements, and streamlining language. She also reviewed changes that had already been made to the permitting software application structure including adding “applicant contact” for the person submitting the application who will receive all the email notifications as well clarifying additional project proponents and parties inclusive of the owner, engineer, applicant, etc.

The Board reviewed section 4, needing to finalize Review Fees with Accounting and Finance for 53G/revolving funds for consultants. Ms. Dixon said discussions were ongoing with the Town Treasurer regarding setting up special accounts and that she would have him review the language to ensure that it was consistent with best practices.

Regarding pre-application documentation, Ms. Dixon said the Building Commissioner was supportive of an informal pre-application review of the zoning relief requested. Ms. Greenwell suggested adding clarifying language that requires applicants to submit to the Building Dept. prior to submitting an application (to the ZBA). Attorney Hern asked about time limits for the Commissioner to provide his comments. Ms. Dixon said she would confirm the time frame with him.

Attorney Hern questioned whether the Town could require applicants to submit digitally since the application process is governed but State Statutes. Ms. Dixon explained that there are kiosks available for applicants who don’t have access to a computer, scanner, etc. and that additional assistance is available.

Attorney Hern commented that the permitting system did not allow for a Special Permit and Variance to be applied for together. Ms. Dixon explained that it was set up that way because there are different questions for each application and each one incurs a separate fee, however, she added that if it was for the same project that one of the fees could be waived, the public hearing for both would be advertised together, and there would be one decision, citing an example of a Planning Board Major Project Special Permit in conjunction with Site Plan

Review. In the case of two applications such as a Variance and Special Permit, she stated that they could be under one Case # and heard together at a single public hearing.

Ms. Greenwell asked if the regulations should call the permitting software by its name (EnerGov) or just "the Town's permitting software" in case the Town changed vendors in the future. Ms. Dixon said a vendor change was unlikely in the near future and that if they did, they could amend the regulations at that time.

Attorney Hern expressed frustration at having to choose between a variance or special permit when previously an applicant could select both and the Board would decide. Ms. Dixon said that the pre-review meeting with the Building Commissioner would assist applicants in determining what type of relief is needed. It was also noted that the legal notice states that the Board can consider/grant any relief that may be appropriate.

Discussion was had regarding the pre-review requirement with the Bldg. Commissioner versus submitting a Bldg. Permit denial letter. Ms. Dixon explained that in essence they were both the same thing in that they define the relief that is needed.

Mr. Porro asked about the authority to waive fees in the case when two applications/requests for relief are received for the same project at the same time. Ms. Dixon explained the difference between asking a waiver from an application fee for a personal circumstance as opposed to waiving a fee in the permitting software since two fees would not normally be charged as in the case of applying for a Special Permit (SP) and Variance (V) at the same time for a particular project. She paraphrased State Law which relates the fees charged to staff work performed. Ms. Dixon said the review process is the same for two applications (SP & V) for the same project; one review, one legal notice, one public hearing, one decision and thus only one fee will be charged. Discussion was had online payment versus paying by check. Ms. Dixon explained it was a much shorter process for staff and applicants to pay online and that it was primary and preferred way of payment. She stated that there was the ability to pay by check but it was a longer process for staff administratively and less efficient. Ms. Greenwood stated there was a hardship versus an inconvenience in terms of payment methods but was open to exploring paper checks being made at the Treasurer's window.

Ms. Churchill said the mailing notifications to Town Meeting (TM) members seemed burdensome and suggested email notifications to those that have provided emails or the Board could remove the requirement to notify TM members if was not a statutory requirement. Ms. Dixon explained that a new process would have to be created and updated regularly in order to provide notices for each application to TM members in the district of the proposed project. She noted that it was the only Board that notified TM members. Attorney Hern also questioned the practice of notifying non-abutters, specifically TM members, who represent all the constituents in their District which are much larger than the residents that live in the immediate area surrounding the property under review. Ms. Dixon also noted that TM members are more of a political body and notifications for ZBA applications could potentially politicize them and be motivated by political interest. She stated that they were not really district matters but rather they were residential matters; use, home additions, etc. Also noted was the Mr. Sheehan was open to removing the requirement. Ms. Churchill pointed out that the ZBA hearings are already posted on the website and available to TM members. Ms. Dixon said that the applications and decisions are also posted online so they are readily available. Ms. Churchill suggested changing the language to only cite the statutory reference, 40A Section 11, in the proposed regulations. Ms. Dixon said it was important to specify notifications to the "properties within 300" in the regulations. She said the chief complaint after a decision was rendered is "why wasn't I notified?". Adding the specific language gives the ability to reference the regulation showing that it was followed and did not exercise any personal discretion. Ms. Greenwell expressed that she saw the value of listing all parties that are notified.

Attorney Hern said that he would shy away from asking for Selectmen's recommendation as they are the appointing authority of ZBA members and could potentially put undue pressure on members that they appoint. He said that the ZBA is a quasi-judicial Board and cases before them are not under the authority of the Selectmen. Ms. Churchill suggested wording the language to say "The Board of Appeals shall refer all applications to other officials or agencies consistent with 10-4-4. Comments and recommendations submitted by such Boards, Commissions, and Town staff prior to the public hearing shall become part of the application file."

Ms. Dixon interjected with a time reminder that the Custodian needed to close up the building by 10:30 and suggested continuing the public hearing as they were only halfway through the document.

MOTION I to continue the hearing to January 31st at 7 p.m. made by Shannon Greenwell.
The Motion was seconded by Al Porro.

Roll Call Vote:

Al Porro: Yes
Shannon Greenwell: Yes
Rachel Churchill: Yes
Mary Kate Daly: Yes

Roll Call Vote Result: 4-0-0 (Motion Passed):

Ms. Dixon said she kept a record of all the follow-ups and changes that reflect the decisions that Board has made. She said she would create and redistribute a revised draft with all the changes and stated that the Board can then accept or change them as well as finish the review of the remaining regulations.

3. **OTHER BUSINESS**

4. **Board Reorganization** – Clerk Position *-passed over, no vote taken.*

5. **Administrative Updates** *-passed over*

6. **UPCOMING HEARING: January 31, 2023**

7. **Adjournment**

Motion:

Ms. Greenwell made a motion to adjourn. The Motion was seconded by Ms. Churchill.

Roll Call Vote:

Mary Kate Daly: Yes
Shannon Greenwell: Yes
Mary Kate Daly: Yes
Al Porro: Yes

Roll Call Vote Result: 4-0-0 (Motion Passed):

The meeting adjourned at approximately 9:25 p.m.
Minutes respectfully submitted by: Lynn Marchand