

**TOWN OF TYRINGHAM
PLANNING BOARD
ADMINISTRATIVE RULES AND REGULATIONS**

The Tyringham Planning Board, in accordance with Massachusetts General Law (MGL) Chapter 40A, Section 9, hereby adopts the following Rules and Regulations, governing the organization and conduct of the Board and also governing review and action on Special Permit applications. Information relevant to the administrative procedures for the application for and review of subdivisions can be found within the *Rules and Regulations Governing the Subdivision of Land in Tyringham, Massachusetts*.

In addition to complying with the rules set forth in these Rules and Regulations, applicants must also comply with any and all requirements set forth in the Town of Tyringham Zoning By-Laws and Massachusetts General Laws. No procedure set forth within these Rules and Regulations shall be construed to limit the Planning Board's powers and rights with respect to those documents. The procedural rules detailed in this document are presented to provide the Board and other interested parties, clarification on how the Board conducts its business.

SECTION 1 – ORGANIZATION

- 1.1 Membership and Officers** - The Planning Board shall consist of five members elected annually for staggered terms of five years each. Vacancies shall be filled by the Select Board in accordance with MGL Chapter 41, Section 11 and Town Bylaw Section 7.3. An appointee to a temporary vacancy shall serve until the next Annual Town election, at which time the vacancy shall be filled by election for the remainder of the term. The Planning Board members shall elect, on a yearly basis immediately following the Town Election, a Chair, Vice-Chair, and Clerk of the Board.
- 1.2 Associate Member** - The Select Board shall appoint annually an Associate Member of the Planning Board who shall be available to sit on the Board for the purpose of acting on a special permit application, in the case of absence, inability to act, or conflict of interest on the part of any member of the Planning Board or in the event of a vacancy on the Board, pursuant to MGL Chapter 40A section 9.
- 1.3 The Chair** – The Chair shall be eligible to vote on all matters. Subject to these rules, the Chair shall appoint such standing subcommittees as may be found necessary or desirable. The Chair shall issue the call for and preside at all meetings and hearings; decide all points of order unless overruled by a majority of the board in session at the time, establish meeting agendas, represent the board in certain matters, prepare and submit all reports required by law, and exercise general supervisory power. At each meeting, the Chair shall report on all transactions that have not otherwise come to the attention of the board.
- 1.4 The Vice-Chair** - The Vice-Chair shall act as Chair when the Chair is absent or is unable to perform his/her duties. The Vice-Chair shall have such powers and duties as the Chair shall designate. In the absence of both the Chair and Vice-Chair, the Chair shall appoint an acting Chair prior to the meeting, or the Board members present shall elect an acting Chair.

- 1.5 Clerk** – The Clerk shall keep dockets and minutes of the board’s proceedings including detailed records, compile all required records, maintain necessary files and indexes as required by the Massachusetts Planning Board Records Disposal Schedule issued by the Secretary of State, and mail all required public hearing notices, notices of decisions and copies of decisions as required by Massachusetts General Laws. The Clerk is responsible for sending and posting notices, for receiving and examining applications, for correspondence, for notices of decisions and copies of decisions as required by Massachusetts General Laws.
- 1.6 Planning Board Appointments** - The Chair, with concurrence of a majority of the Board, shall make appointments to such other boards, committees, and task forces as authorized by the Select Board.
- 1.7 Berkshire Regional Planning Commission** - The Board, by majority vote, shall make a recommendation to the Select Board of one of its members to serve as the Town Delegate to the Berkshire Regional Planning Commission. An Alternate Delegate member shall be chosen by the Select Board. The Alternate Delegate does not have to be a member of the Planning Board but must be a resident of the Town of Tyringham. The appointments shall be for a period of one year.
- 1.8 Standards of Conduct for Board Members** - The primary obligations of the Board members are to serve the public interest, to conduct themselves so as to maintain public confidence in the Planning Board, to meet the fundamental responsibility of fairness and to comply with all statutory regulations. Individual Board members, including the Chairman, shall not meet with an applicant or representative outside of a Board meeting unless authorized to do so by the Board. When contacted directly by residents about an issue or concern, Board members should encourage the residents to attend the next regularly scheduled meeting and speak during the public comment period. Individual Board members may not speak for the Board as a whole.
- 1.9 Conflict of Interest** - A Board member shall not participate in official capacity in matters in which such participation is prohibited by the Conflict of Interest Law. The Board member shall, at any meeting where the particular matter is discussed, disclose orally the existence of the conflict-of-interest and remove themselves from their official capacity within the meeting.

SECTION 2 – PLANNING BOARD ROLES & RESPONSIBILITIES

Roles and Responsibilities - The powers and duties of the planning board include, but are not limited to the following:

- a) Prepare, adopt, amend and implement a Master Plan for the Town.
(MGL Chapter 41 Section 81 D)
- b) Draft and submit zoning amendments for consideration by Town Meeting, holding hearings and making recommendations as appropriate
- c) Adopt, administer and amend Subdivision Rules & Regulations.
- d) Act as a Special Permit Granting Authority when applicable.
- e) Act as an advisor to the Special Permit Granting Authority when applicable

- f) Administer the Town Zoning Laws so far as they concern Approval Not Required sign offs and building permits reviews.

SECTION 3 – MEETINGS

3.1 Open Meeting - All meetings of the Planning Board shall be held in accordance with the provisions of the Massachusetts Open Meeting Law. The term “meeting” has two statutory exceptions (MGL Chapter 39, Section 23):

- A. On site inspection of a property that is the subject of an application
- B. A chance meeting or social meeting at which matters related to official business are discussed, so long as no final agreement is reached

3.2 Meeting Schedule - The Planning Board shall hold meetings at Town Hall at 7:00 P.M. on the first and second Wednesdays of every month with the exception of some winter months. The Planning Board does not hold a regular meeting in the month of August. The Planning Board, by majority vote, may set a different date or time for a particular meeting. The schedule of meeting dates will be posted at Town Hall in July after newly elected members are seated. Notice of all meetings must be filed with and posted at Town Hall at least 48 hours in advance (including Saturday but not Sunday or legal holidays), including date, place and time of meeting and agenda items.

3.3 Quorum and Voting - A quorum of three members of the Planning Board shall be required to conduct routine business.

Board members present may be counted to determine whether a quorum is present even if they abstain from voting affirmatively or negatively. Exception: If the Board member is abstaining due to conflict of interest, they cannot be counted as being present for the quorum for that portion of the meeting for which they are disqualified by reason of conflict of interest.

All votes must take place at a Board meeting in person. No phone-in, email, proxy, or faxed votes are acceptable.

3.4 Special Meetings – Special meetings may be called by the Chair, or at the request of three members. Written notice thereof shall be given to each member at least 48 hours before the time of the special meeting, and posted publically as required by law.

3.5 Agenda Items - Any agenda items that a member desires to include on the meeting agenda shall be submitted to the Chair, or Vice Chair in the Chair’s absence, no later than Tuesday of the week prior to the next scheduled meeting. This will allow time for inclusion of the item on the agenda prior to submission for posting. The agenda shall be duly posted at least 48 hours prior to the meeting (Excluding Saturdays, Sundays & Holidays). The first item on the agenda of every Board meeting will always be the approval of minutes from a previous meeting(s).

3.6 Meeting Minutes – Meeting minutes shall be prepared by the Clerk, or a member designated by the Chair if the Clerk is absent. A draft version of the meeting minutes must be made available to the public within 10 days in accordance with the Open Meeting Law. A hard copy of the draft minutes will be available for viewing at Town Hall. Electronic

versions of the draft minutes will only be distributed to Board members. Upon approval of the meeting minutes at the next regularly scheduled meeting, minutes will be available electronically on the Town website and will also be available at Town Hall.

- 3.7 Public Comment** – The Board will schedule a public comment period for all regularly scheduled meetings. Members of the public are invited to comment on planning issues or concerns during the public comment period. Attendees may speak when recognized by the Chair. Comments are generally limited to three. Once the public comment portion of the meeting is closed, members of the public may comment only if invited by the Chair. Written comments will be accepted by the Board only in cases of extenuating circumstances that prevent individuals from attending the meeting in person.

SECTION 4 – PRELIMINARY APPLICATION REVIEW

- 4.1 Informal Meetings** - Prior to filing an application for a special permit or subdivision, applicants are encouraged to schedule a meeting with the Planning Board to discuss projects informally. The purpose of the informal meeting is not to discuss the merits of the potential application or project but rather to provide the applicant with guidance on the application process.
- 4.2 Scope of Board Reviews** - The Board will review preliminary materials in an attempt to avoid unnecessary deficiencies in the application to be filed and to promote efficiency in the formal review and hearing process. The Board may request other town boards or departments to comment prior to the date of the meeting or attend the meeting to ensure efficiency of review. The Board will not be responsible for assuring the accuracy, correctness or thoroughness of any application submitted for review.
- 4.3 Variance** – If an applicant is seeking a variance of the Tyringham Bylaws, the applicant must seek the variance from the Tyringham Zoning Board of Appeals in accordance with Section 7.2.2 of the Tyringham Bylaws.
- 4.4 Preliminary Review Fee** - The first such informal review by the Planning Board shall be free of charge. Subsequent preliminary reviews shall require payment of a fee by the applicant of \$100.00 each at the time of submission. The fee shall be submitted in check form and made payable to the “Town of Tyringham.”

SECTION 5 – SPECIAL PERMIT APPLICATION REVIEW

- 5.1 Planning Board Authority** - The Board shall act as the Special Permit Granting Authority (SPGA) for certain special permits, as designated in the Town of Tyringham Zoning Bylaws. In all other instances the Board shall act in an advisory role to the SPGA.
- 5.2 Application Form** - Applications to the Board shall be made on the official application form. Application forms are available during regular business hours in the Tyringham Town Offices or on the Town’s website. The application shall also include any additional materials as required in the bylaw, or on the application form.

5.3 Date of Submission - Each application for a special permit shall be filed by the petitioner with the Town Clerk and 5 copies of said application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Planning Board. The Planning Board Clerk will notify the Town Clerk as to the official date that a complete application is received.

b. The application shall be submitted to the Planning Board during regular business hours. The date of filing shall be considered the date upon which the Application has been delivered to or received by the Planning Board, determined to be complete and accepted.

c. Application completeness review: The applicant is responsible for providing all information in the application as described in these Rules and Regulations and the Tyringham Bylaw, unless a waiver is requested by the applicant and granted by the Board. Incomplete applications risk denial by the Board.

d. The Planning Board will schedule a Public Hearing within 65 days of the filing date, see 6.1 below.

5.4 Number of Copies - Five (5) standard size copies, no larger than 30" x 42", of the Application (including plan sheets) and two (2) reduced size (8 1/2" x 11") copies shall be required at the time of submission. Each copy of the petition shall be folded so that it will fit neatly into a letter-sized file folder.

5.5 Plan or Map – No application shall be received without a plan or map to scale showing frontage and setbacks, certified by a professional engineer.

5.6 Brief to Board – It is recommended that every application for a special permit be supported by a brief setting forth in detail all facts relied upon by the parties. The following points, based on MGL Chapter 40A section 10, should be clearly addressed and factually supported:

- a) The particular use proposed for the land or building
- b) The conditions especially affecting the property for which a special permit is sought
- c) Facts relied upon to support a finding that the special permit sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

In the case where the Applicant is a person other than the recorded owner of the property, the Applicant shall be required to submit notarized certification executed by the recorded owner of the property that the Application is submitted with the knowledge and consent of the recorded owner.

5.7 Filing Fee - Any application for a Special Permit shall include a fee in the amount of \$100. Fees for Subdivision proposals are specified in the Subdivision Regulations. If hearing expenses exceed this amount the Town will bill the applicant. Expenses for which applicants may be additionally billed include legal advertising, postage, and clerical costs in support of the Board's activities on the application.

5.8 Additional Review Fee - The Planning Board may engage, at the applicant's expense, engineers, planners, lawyers, urban designers, or other appropriate professionals who can

assist the board in analyzing a project to ensure compliance with all state laws and Town Regulations. If the Planning Board elects to engage a consultant to assist with plan reviews, the Board shall notify the applicant, within 30 days of the filing of the application, of its designation of an outside consultant.

Funds received by the Board pursuant to this section shall be deposited with the Treasurer who shall establish a special account for this purpose. Expenditures from this account shall be made at the direction of the Planning Board without further appropriation and shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the Permit. When the review fee account is depleted, an additional deposit shall be made by the applicant.

The applicant may appeal the selection of the outside consultant to the Select Board within 14 days of notification of consultant designation from the Planning Board. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications, as specified in MGL Chapter 44, section 53G.

Review fees may only be spent on services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be refunded to the applicant, or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest.

5.9 Other Permits and Variances - The applicant shall list on the application and provide copies of all variances, permits and other approvals previously issued by town boards or State and Federal Agencies, and a list of any variances, permits or approvals required to complete the proposed work. This list should include but not be limited to any permits from the Board of Health, the Conservation Commission, the Zoning Board of Appeals, the Planning Board, the Select Board, the State Department of Public Works, the Army Corps of Engineers, and the State Department of Environmental Protection; and certificates issued by the Secretary of Environmental Affairs under the Massachusetts Environmental Policy Act.

Note: If any other permits are required, the Applicant is hereby strongly advised to make the applications for such additional permits concurrently with this Petition.

5.10 Review Criteria - The Board shall use the review criteria found in Sections 7.3 of the Tyringham Zoning Bylaw, applicable criteria found in these Rules and Regulations, and any other sections of the Zoning Bylaw in reviewing and making a decision on applications before it.

5.11 Voting Requirements - The concurring vote of four members of the Planning Board shall be necessary to decide in favor of granting a Special Permit, as defined by MGL Chapter 40A. Only those members of the Board who were in attendance at the public hearing may vote on the application in question.

5.12 Rule of Necessity – If more than one member of the Board is disqualified because of actual conflicts of interest, the Board may not be able to act because it does not have a quorum. In these instances, as a matter of last resort, the Board can use what is called the *Rule of Necessity* to permit the participation of the disqualified members in order to allow the Board to act. Prior to invoking the Rule of Necessity, the Chair shall consult with Town Counsel.

5.13 Appeals - Any person aggrieved by a decision of the Planning Board, whether or not previously a party to the proceeding, may appeal such decision in accordance with MGL Chapter 40 section 17 of the Zoning Act.

SECTION 6 – PLANNING BOARD HEARINGS

6.1 Hearing Procedure – The Board shall schedule a hearing to be held within 65 days of an application filing, unless the petitioner agrees in writing to an extension of this period. Any such agreement shall be filed with the Tyringham Town Clerk.

All hearings shall be open to the public. No person shall be excluded unless he is considered by the Chair to be a “serious hindrance” to the workings of the board.

An applicant may appear in his own behalf, or be represented by an agent or attorney. If no one appears on behalf of the applicant, the board may decide on the matter using the information it has otherwise received, or continue the hearing.

The Chair shall open the hearing at the advertised time in the specified meeting place, and proceed in the following order:

- A) The Clerk will read the notice of hearing as published
- B) The applicant or his representative shall present the case to the board
- C) Questions and comments from the Planning Board
- D) Questions and comments from representatives of other Town Boards, and Town Officials.
- E) Questions and comments from abutters to the property
- F) Questions and comments from other interested parties
- G) Responses from the applicant
- H) The Chair shall close the public hearing
- I) The board shall deliberate

The board is not required to deliberate immediately following the close of the public hearing. However, the board shall not consider any additional materials once the public hearing has been closed, as this material would not be subject to public review and comment. The Board shall notify the applicant of its decision within 90 days after completion of the Hearing.

6.2 Advertisement – In accordance with MGL Chapter 40A section 11, notice of public hearing shall be published in a newspaper of general circulation in the Town once a week,

for two consecutive weeks. The first publication shall not be less than fourteen days before the day of the hearing. In addition, a copy of the notice shall be posted in a conspicuous place in the Tyringham Town Hall at least fourteen days before the hearing. A copy of the advertised notice shall also be sent to all “parties of interest.” Parties of interest shall include the applicant or petitioner, abutters, owners of land directly opposite on any public or private street or way, the owners of land within three hundred feet of the property line, and the Planning Board of every abutting city and town.

- 6.3 Contents of Notice** – The public hearing notice shall contain the name of the petitioner or applicant, a description of the area or premises, street address if any, or other adequate identification of the location of the area that is the subject of the application, the date, time and place of the hearing, the subject matter of the hearing, and the nature of action or relief requested, if any. The notice shall include all locations where the application and relevant material can be reviewed, including electronic versions.
- 6.4 Records** – A copy of the minutes of any Special Permit hearing shall be sent to the Town Clerk within 14 days of a decision.
- 6.5 Withdrawal of an Application** – An application may be withdrawn by written notice to the Clerk any time *prior* to the hearing by the Board. After a public advertisement has been made, withdrawal of an application may be made only by an approval of a majority vote of the Board.
- 6.6 Reconsideration** – Once an application has been voted on and the meeting adjourned, there shall be no reconsideration of a decision of the Board.
- 6.7 Reapplication** – In order to have an application re-heard within two years of a prior decision, the applicant must request permission from the Board showing new evidence that substantially alters the conditions of the application. At least three members of the Board must agree that this condition has been met. If the Board agrees, the applicant must reapply in accordance with the normal procedures.

SECTION 7 – PLANNING BOARD RECOMMENDATIONS

- 7.1 Planning Board Authority** – The Planning Board may seek comment and review of applications by the Board of Health, the town engineer, the Conservation Commission, highway superintendent or any other town agency or board. At the discretion of the Chair, the Planning Board may request an All Boards Meeting for major projects.
- 7.2 Time of Review** - Any such board or agency to which petitions are referred from the Planning Board for review shall make such recommendations as they deem appropriate and shall send copies thereof to the permit granting authority and to the applicant; provided, however, that failure of any such board or agency to make recommendations within thirty-five (35) days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.
- 7.3 Review Criteria** - The Planning Board shall evaluate all applications with respect to:

1. Compliance with all applicable requirements of the Zoning Bylaw.
2. Compatibility with the policies and objectives established in the Master Plan.
3. Compliance with all applicable standards and regulations pertaining to the protection of environmentally sensitive areas such as wetlands, flood hazard areas, and watersheds.
4. Compliance with generally accepted elements of good site design, layout and architectural style.
5. General compatibility with surrounding land areas and development.

These review criteria shall apply both to applications for which the Planning Board is the permit granting authority, and for projects for which Planning Board review has been sought from another town board.

SECTION 8 - WAIVER OF RULES & REGULATIONS

- 8.1 Waiver of Compliance** - Strict compliance with these Administrative Rules and Regulations may be waived when, in the opinion of the Board, such waiver is in the public interest and is consistent with the intent and purpose of the Town of Tyringham Zoning Bylaw. Waivers shall be sought only from procedural elements of the Planning Board's Rules and Regulations, and any waivers granted shall not be construed as providing relief from the substantive requirements of zoning.
- 8.2 Request for Waiver of Rules** - A written request for a waiver from these Rules shall be made at the time of filing. If an oral request is made at a hearing or meeting, it shall be reduced to and submitted as a written request prior to the close of the public hearing. Any request must clearly identify the provision or provisions of these Rules from which relief is sought and such request must be accompanied by a statement setting forth the reason or reasons why, in the Petitioner's opinion, the granting of the waiver would be in the public interest and consistent with the intent and purpose of the Bylaw and these Rules.

SECTION 9 – ADMINISTRATION

- 9.1 Adoption** - These Rules and Regulations are hereby adopted on Tuesday October 8, 2013 by the Tyringham Planning Board.
- 9.2 Validity** - In the event of a conflict between the provisions of these Rules and Regulations and the provisions of the Massachusetts Zoning Act and the Tyringham Zoning Bylaw, the provisions of the Massachusetts Zoning Act and the Tyringham Zoning Bylaw shall apply.
- 9.3 Amendment** - From time to time, the Planning Board may amend these Rules and Regulations. Such Rules and Regulations shall be adopted following a majority vote of the board at a public meeting.