

Chapter 197

ZONING BOARD OF APPEALS RULES AND PRACTICES

[HISTORY: Adopted by the Board of Appeals of the Town of Orleans 6-7-1985. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 164.

Subdivision regulations — See Ch. 192.

ARTICLE I Organization

§ 197-1. Membership; terms. [Amended 2-20-2008]

A. The Orleans Zoning Board of Appeals shall consist of five regular members and three associate members. Each of the members shall be appointed by the Selectmen for three-year overlapping terms, or the unfulfilled portion of a departing member's term. At least one, but not more than two, regular member's term shall expire each year.

B. Associate member' terms are also three years in length or unfulfilled portions thereof. [Amended 5-21-2008]

§ 197-2. Powers and duties. [Amended 2-20-2008]

A. All members may vote on issues concerning organizational and internal matters, and rules and regulations. All such issues shall be decided in conjunction with a regular or special meeting. The vote of a majority of the members voting shall prevail.

B. Only five members may vote on issues concerning petitions, applications, or appeals pending before the Board. Regular members always are entitled to vote on such issues. If a regular member is absent or for some reason elects not to vote, an associate member shall be appointed by the Chairman to vote in the place of that member. All members in attendance at a meeting, whether voting or not, may enter into discussions of the Board prior to a vote, except as stated in Subsection C below.

C. If a member has a conflict of interest or has withdrawn because of possible prejudice, that member shall not participate in the Board discussion or the vote, and that member's position or conflict should be stated upon the call of the case giving rise to the conflict.

§ 197-3. Officers. [Amended 2-20-2008]

In conjunction with the last regular meeting of the Board in June of each year, the Board shall elect a Chairman, Vice Chairman, and Clerk from among the regular members to serve a one-year term. Any such elected person may be removed by a vote of any four regular members in attendance at a duly called meeting.

§ 197-4. Chairman.

A. The Chairman shall preside at all meetings of the Board and shall decide all points of order.

B. The Chairman may be overruled by a majority of those then sitting at that session.

C. The Chairman may vote on all matters before the Board.

D. The Chairman shall supervise the work of the Clerk and Secretary and shall generally transact the business of the Board. In the absence or illness of the Clerk, the Chairman may assume the Clerk's duties or appoint any member, or the Secretary, to temporarily carry on the Clerk's duties.

§ 197-5. Vice Chairman.

When the Chairman shall be unable to act for whatever reason, the duties and responsibilities of the Chairman shall become those of the Vice Chairman.

§ 197-6. Clerk. [Amended 2-20-2008]

In the absence of the Chairman and Vice Chairman, the Clerk shall preside at meetings of the Board. The Clerk shall supervise all the written communications of the Board with the public, including by co-signing the written decisions.

§ 197-7. Secretary to the Board. [Amended 2-20-2008]

The Board shall employ a Secretary to the Board and any other clerical assistants, as needed, subject to appropriation.

§ 197-8. Quorum.

Unless otherwise stated or prohibited by law, three members shall constitute a quorum for all internal matters; four members shall constitute a quorum for voting upon all petitions, appeals or variances.

§ 197-9. Regular meetings. [Amended 2-20-2008]

Regular meetings generally are held in the Town offices on the first and third Wednesday of each month, except August. Unless otherwise duly noticed, the meetings are scheduled to commence at 7:00 p.m. The date and starting time for a regular meeting may be scheduled at other times if duly noticed.

§ 197-10. Special meetings.

Special meetings may be called by either the Chairman or the Clerk or any other two members on forty-eight-hour's notice, provided that six of the eight members be contacted in person or by phone and that at least five of the eight members attend. No member who attends a special meeting may protest the lack of proper notice.

ARTICLE II
Applications

§ 197-11. Application forms. [Amended 2-20-2008]

Applications for variances or special permits or appeals to overrule an administrative official or the Building Inspector will be available in the Building Inspector's office. These must be filled out completely and correctly. Incomplete and incorrect applications may be returned to the petitioner, applicant or appellant or rejected at the meeting. A rejection at the meeting may result in a denial of the application.

§ 197-12. Official filing date.

A. The Town Clerk will receive all complete and correctly filled out applications for variances or special permits or appeals, noting the time and date of acceptance. This becomes the legal date of filing. The Clerk's stamp does not validate an incorrect or incomplete form. New forms, if needed, must be reaccepted and redated by the Town Clerk when correct.

B. Petitions for appeals of decisions by the Board of Appeals must be correctly filed within 20 days of the date the decision is received by the Town Clerk.

C. Petitions for appeals to the Board of Appeals where a person is aggrieved by reason of inability to obtain a permit, or by enforcement action, from any zoning administrator(s) must be correctly filed within 30 days from the date said decision or order is filed with the Town Clerk.

§ 197-13. Fees. [Amended 2-20-2008]

A. Each application, when submitted to the Town Clerk for validation, shall be accompanied by a check in the amount of \$30 to cover administrative costs plus an amount equal to first class postage and certified mail fee times the number of abutters and abutters to abutters that must be notified. The check shall be made out to the Town of Orleans.

B. The applicant bears all responsibility for recording at the Registry of Deeds any special permit or variance or comprehensive permit granted by the Board. [Amended 5-21-2008]

§ 197-14. Additional materials required for hearing. [Amended 2-20-2008]

A. All applications shall be accompanied by scale drawings of the site(s) under discussion showing all information pertinent to the hearing. This should include, where appropriate, dimensions, setbacks, contours, parking layout, landscaping, structures (extant or proposed), dates of construction of existing structures and coverage calculation, drainage and elevations of land and structures.

B. Copies of other decisions relative to the case shall be included. These must include any required determinations of other Town committees as specified in the application.

C. Failure to provide any of the specified materials may result in denial or continuance of the application as the Board may deem to be appropriate.

§ 197-15. Notification.

A. Owners of abutting land to that involved in the petition, owners of land directly opposite that involved in the petition on any public or private way or street (also called “abutters”) and abutters to the aforesaid abutters whose property is within 300 feet of the petitioner’s land shall be notified of the hearing. This notification shall be by certified or registered mail sent to the address as contained in the latest book of records held in the Tax Assessor’s office.

B. The responsibility for providing the correct names and addresses of all those listed above remains that of the applicant. The names and addresses used for notification shall correspond with those that accompany the application. [Amended 2-20-2008]

C. In addition, the Planning Board of Orleans and the Planning Board of the abutting towns of Eastham, Brewster, Harwich and Chatham and the petitioner and/or his representative shall be notified of the hearing by mail.

§ 197-16. Advertisements. [Amended 2-20-2008]

All applications properly filed for hearing before the Board of Appeals shall be advertised in a local newspaper at least once in each of the two weeks prior to the hearing. The first date of advertisement shall be at least fourteen (14) days prior to the hearing.

§ 197-17. Posting of notice of hearing.

Notices of the hearings shall be posted and remain on the Town Clerk’s bulletin board and in the Building Inspector’s office at least 14 days prior to the hearing date.

ARTICLE III Hearings

§ 197-18. Scheduling of hearings. [Amended 2-20-2008]

Unless extended by written agreement between the petitioner and the Board, all petitions shall be completely heard and closed for the taking of further testimony within 65 days from the official date as designated by the Town Clerk and shown on the correctly filed application.

§ 197-19. Hearings or discussions to be public.

A. All hearings and discussions of issues before the Board of Appeals shall take place in public, and all interested persons shall be given adequate time to express their opinions fully.

B. The Chairman of the meeting may determine any person or persons to be a serious hindrance to the proper workings of the Board and exclude any such person; and may temporarily postpone further discussion on any issue until later in the agenda or to a subsequent meeting within the limits of § 197-18. [Amended 2-20-2008]

§ 197-20. Scaled-down proposals.

During a hearing and before it is closed for public discussion, the applicant may scale down the proposal before the Board (fewer units to be built, less square footage, less lot line setback encroachment, etc.).

§ 197-21. Increases in proposals.

An applicant who wishes to increase the dimensions or scope of a petition must withdraw the current petition, without prejudice, and reapply as if for a new hearing.

§ 197-22. Order of business at hearings.

A. Order. [Amended 2-20-2008]

- (1) The Chairman calls the meeting to order.
- (2) The petition, as advertised, is read by the Chairman or Clerk.
- (3) The Chairman identifies any Board conflicts and contacts with interested parties, and identifies voting members.
- (4) The petitioner, or petitioner's representative, explains the petition and gives the reasons why it should be granted.
- (5) Board questions to petitioner or representative.
- (6) Members of the audience are invited to speak in favor of the petition.
- (7) Members of the audience are invited to speak in opposition of the petition.

(8) Any correspondence in the case file concerning the merits of the petition is read or summarized into the record.

(9) In the event opposition to the petition is presented at the hearing, the petitioner or representative is invited to make rebuttal comments.

(10) When all who wish to speak have been heard and all relevant communications have been read, the Chairman closes the meeting for the taking of further testimony.

(11) The Board discusses the case and comes to a decision.

B. Discussion by the Board members may be carried over to one or more subsequent meetings before rendering an opinion. Members of the Board may ask questions of those present at any time, including the period after the hearing is closed.

§ 197-23. Filing of briefs.

Interested parties may file a brief to the Board, either approving or opposing a petition, at any time prior to closing the hearing for testimony.

§ 197-24. Electronic recording; minutes. [Amended 2-20-2008]

The Secretary shall electronically record all meetings in order to capture salient points of discussion. The minutes shall not be transcripts. Recordings will be available for inspection, with the Clerk's approval, during the twenty-day period while the decision may be contested. Minutes shall be filed as soon as possible after a meeting, but in any case within three weeks of a hearing.

ARTICLE IV Decisions and Dispositions

§ 197-25. Voting requirements. [Amended 2-20-2008; 5-21-2008]

No appeal, variance, or petition may be granted unless four members of the Board of Appeals vote in favor. If only four members are present at any hearing, the Board shall, if requested by the applicant, move the hearing date forward so that a five-member Board will hear the petition, but only upon the condition that the applicant executes a written extension of the time period in which the Board is required to act.

§ 197-26. Decisions and minority opinions.

Decisions shall be written so that they are self-explanatory as to rationale. Minority opinions may be attached to decisions if so desired by those members who hold minority opinions.

§ 197-27. Notice of decisions. [Amended 2-20-2008]

The Board must render a decision within 100 days after the date of the filing of an appeal, application, or petition, except in regard to special permits. The decision on an application for a special permit must be rendered within 90 days following the date of the public hearing. After a decision has been in effect for 20 days, as noted by the Town Clerk, a copy of the decision shall be sent to:

- A. The Town Clerk, Conservation Commission, and Planning Board of Orleans and the Planning Boards of Brewster, Eastham, Harwich and Chatham.
- B. The petitioner or the petitioner's attorney or representative.
- C. Any other individual who has requested a copy of the decision.