

Town of Ashburnham

**Procedural Rules Governing the
Planning Board**

Ashburnham, Massachusetts



Adopted December 14, 2006

ASHBURNHAM PLANNING BOARD

John MacMillan, Chair
Robert MacLeod
Joseph Kalagher, Vice Chair
Bruce Whitney, Clerk
Thomas Ruble

1. Introduction

These procedural rules and regulations govern the operation of the Planning Board and prescribe the procedures for submitting plans and petitions to the Board. They are intended to serve the general public and to educate new Board members by describing the Board's powers, duties and mode of operation.

The Planning Board was established pursuant to the Subdivision Control Law, Massachusetts General Law Chapter 41 Section 81A et seq. Its powers and duties are set forth therein. Additional responsibilities are set forth in The Zoning Act, MGL c. 40A, and in the Ashburnham Zoning Bylaw. This document is not intended to supersede any of the above laws.

The Planning board has the power to hear and decide applications for Site Plan Review under Section 5.10 of the Zoning Bylaws and acts as the Special Permit Granting Authority (SPGA) for Open Space Residential Developments (OSRD) and Common Driveways under Sections 5.13 and 5.14 of the Zoning Bylaws of the Town of Ashburnham.

The Planning Board is most frequently called upon to make decisions on -

- Endorsing "Approval Not Required" (ANR) plans;
- Approving subdivisions;
- Granting Special Permits;
- Reviewing Site Plans;
- Amending the Zoning Bylaw
- Scenic Road Permit

The details of such review are covered in the Planning Board "Rules and Regulations Governing the Subdivision of land" and various Special Permit Rules and Regulations.

Consult with Planning Board

The Board is available for consultation to help ensure that the application and plans will contain such information as the Board requires in making its decision.

2. Organization

2.1 Members and Officers

The Planning Board shall consist of five members elected pursuant to Section 13 of Chapter 428. An act establishing a selectmen form of government for the Town of Ashburnham ("Town Charter"). The Planning Board, when acting as the Special Permit Granting Authority shall also have one (1) Associate Member. The Board of Selectmen and Planning Board shall appoint the Associate Member for a period of three (3) years. The members of the Board shall annually elect from themselves all officers of the Planning Board to include a Chairman, Vice Chairman, Clerk, a delegate to the Montachusett Regional Planning Commission (MRPC), And a representative of the Montachusett Joint Transportation Committee (MJTC).

2.2 The Chairman

The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules, the chair shall decide all points of order, unless overruled by a majority of the Board in session at the time. The chairman shall appoint such committees as may be found necessary or desirable. The Chair, on behalf of the Board, may subject to appropriation, employ experts and clerical and other assistants.

In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning Bylaw of the Town of Ashburnham, and subject to these rules and further instructions of the Board, the Chairman shall transact the official business of the Board and supervise the work of the Town Planner and the Land Use Administrator on Planning Board matters. The Chairman may call upon an Associate Member to sit on the Board for the purpose of acting on a Special Permit Application in the case of absence, an 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. The Chairman shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

2.3 Vice Chairman

The Vice Chairman shall act as Chairman if the Chairman is absent, disabled or otherwise unable to perform his duties. If both the Chairman and the Vice Chairman are absent, the Clerk shall act as the Chairman and appoint an acting Clerk.

2.4 Clerk

The Clerk shall keep a record of all hearings and meetings of the Planning Board. If the Clerk is not present at any such meeting or hearing, a temporary Clerk shall be appointed to perform the duties of the Clerk at such meeting or hearing.

2.5 Montachusett Regional Planning Commission (MRPC) Representative

The MRPC Representative of the Ashburnham Planning Board shall attend monthly MRPC meetings of the same as the representative of the Town of Ashburnham. The MRPC representative shall keep the Board informed of the actions and programs of the MRPC which have an effect on the Town of Ashburnham. Appointment shall run from July, 1st to June 30th of the current fiscal year.

2.6 Montachusett Joint Transportation Committee (MJTC)

The Planning Board shall appoint a representative to the MJTC. It is not a requirement that the representative be a member of the Planning Board. Appointment shall run from July, 1st to June 30th of the current fiscal year.

2.7 Quorum

Three (3) members shall constitute a quorum for normal business. The quorum requirement for special permit hearings and decisions is four (4) members.

2.8 Meetings

All meetings – both regular and special – shall be open to the public in accordance with MGL c. 39 §23A-24 unless the Board votes to go into executive session. Notice of any meeting shall be filed with

the Town Clerk and must be publicly posted in the office of the Town Clerk or on the principal official bulletin board of the Town at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the meeting in conformance with the Commonwealth of Massachusetts' Open Meeting Law. The Board's agenda should also be posted.

If it becomes necessary to adjourn or extend a meeting to another time, these same notice requirements apply to the adjourned or extended meeting.

All decisions and votes taken by the Board shall take place at meetings.

All meetings, while open to the public are not all public hearings. The Board will seek information or testimony, as it deems necessary. The Chairman may rule unsolicited comments from the public out of order.

No meeting or hearing may be opened without a quorum of three (3) Board members present (or four (4) members for a Special Permit hearing) except for the purpose of continuing the meeting or hearing to a future date due to lack of a quorum.

All meetings, public hearings and executive sessions shall be held in conformance with the Commonwealth of Massachusetts' Open Meeting Law.

It should be remembered that "telephone meetings" (discussion by telephone among members of a governmental body on an issue of public business within the jurisdiction of the body) are a violation of the Open Meeting Law. This is true even if individual telephone conversations occur in serial fashion.

With the advent of computers, it has become more common for persons, both at home and at work, to communicate through electronic mail, or "e-mail." Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting." Thus it is a violation to e-mail to a quorum messages that can be considered invitations to reply in any medium, and would amount to deliberation on business that must occur only at proper meetings. It is not a violation to use email to distribute materials, correspondence, agendas or reports so that committee members can prepare individually for upcoming meetings.

Except when a meeting is held in executive session, any person in attendance may record the meeting with a tape recorder or any other method of sonic reproduction, so long as no active interference with the conduct of the meeting arises as a result of the recording. Except when a meeting is held in executive session, any person attending the meeting may videotape the meeting from one or more fixed locations determined by the Chair, so long as there is no active interference with the meeting.

Board meetings will not continue past 11 p.m. unless voted by a quorum (3 members) of the Board.

All persons testifying before the Board should address the Board members only. Discussions between persons testifying before the Board and non-Board members should only occur as authorized by and through the Chair. All other persons shall be silent at the request of the Chair. If a person persists in disorderly behavior during a meeting after warning from the Chair, the Chair may order him or her to

withdraw from the meeting. If the disorderly person does not withdraw, the Chair may order the person removed until the meeting is adjourned. See M.G.L., c. 39 §23C.

No signs may be displayed in the meeting room during the Board's meetings.

Where possible, a draft of the meeting's minutes shall be transmitted to the Board members for their review prior to the next regularly scheduled meeting.

2.9 Regular Meetings

Regular meetings of the Planning Board are normally held at 6.30 pm on the second and fourth Thursday of the month at the Town Hall. If a regular meeting day falls on a holiday or any day of national, state, or municipal election or caucus or primary or is in conflict with session of town meeting, the regular meeting will be cancelled and instead a special meeting may be held at some proximate time.

The Chairman or his designate shall draw up the agenda for regular meetings. Agenda items are to be in the Land Use Office no later ten (10) days prior to the next regularly scheduled meeting. Exceptions may be made for filing of "Approval Not Required" plans or for any other items authorized prior to the meeting by the Chair, or at the meeting by a quorum (3 members) of the Board. Agenda packets are to be mailed out no later than the Friday preceding the next regular meeting. 7:00pm – 7:15pm of each regular Planning Board meeting is set aside for "Open Discussion and/or Public Comment, with no appointment necessary. During "Open Discussion", the Board may suggest an appointment at a future meeting. All "Approval Not Required" (ANR) plans submitted for Board endorsement shall be scheduled on the Agenda for 7:15pm in order of submission. The Board may entertain items not placed on the agenda under the category "Other Business", as time permits. See Appendix A for sample agenda.

2.10 Special Meetings

Special meetings may be called by the Chairman, or at least two members. Notice – either written or verbal – thereof shall be given to each member at least 48 hours before the time set, or notice at any meeting attended by all members shall suffice. A notice shall be filed with the Town Clerk, and a notice or a copy thereof shall be publicly posted on the principal or official bulletin board in the Town Hall at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

2.11 Executive Sessions

Executive Sessions may be called by the Chairman, or at least two members. All Executive Sessions are required to meet the requirements of M.G.L., c.39 §§23A – 23C.

3. Public Hearing Guidelines

Notice of any public hearing must be mailed to all parties in interest as specified in the applicable statute, Bylaw or Board regulation or to those parties specified by the Board for hearings regarding items not covered by said statutes, Bylaws or regulations, be submitted to the Town Clerk for posting on the Town's principal bulletin board and be published in a newspaper in general circulation in the Town of Ashburnham as required by the applicable statute.

The Chair should strive for balance in all public hearings, providing the applicant and other proponents, and opponents an equal opportunity to speak.

Continued hearings may be held at the discretion of the Board and should be held when additional information and/or negotiations are necessary. The Chair should allow only new information to be presented at subsequent hearings and provide all interested persons with an opportunity to rebut information presented. Hearings should be continued as needed until all information is presented and issues requiring negotiation are resolved. In certain cases, although not required by law, it may be appropriate to provide additional notice to abutters, as in a case where a hearing is opened only for procedural reasons and substantive testimony is expected to begin at a later date, or when there will be an extensive period of time until the continued public hearing.

During the public hearing it is appropriate to explore areas in which conditions might be needed. During the public hearing Board members should:

1. Be careful to avoid the appearance of partiality.
2. Be careful to avoid negotiation of final conditions too early in the process.

Negotiation of specific conditions is likely premature at the beginning of the public hearing process. Conditions should be negotiated after substantial testimony is received and it is clear exactly what the impacts from the proposed development are likely to be. Mitigation must be based upon the actual impacts of a proposed development. If mitigation takes the form of a financial contribution, the financial contribution shall be the estimated full or proportional share of the cost of mitigating such impacts.

Board members should refrain from making statements about their ultimate decision until after the hearing and record are closed.

4. Ex Parte Communications

Board members should not have direct contact with applicants or their representatives outside of the public meeting or hearing process. If contacted by an applicant or representative, one should explain that such communications may only occur during a public meeting or hearing. Applicants are encouraged to contact the Town Planner for consultation and advice concerning proposed projects.

5. Processing Multiple Requests

When an applicant is seeking more than one determination from the Board (i.e. an Open Space Residential Development Special Permit and a Definitive Subdivision Plan Approval), the Board will hold concurrent hearings on each request. The Chair should state the criteria for each request at the start of the hearing process.

6. Public Hearing Procedure

- a. Open hearing(s), noting time each hearing is begun, and noting what date each hearing was originally opened if applicable.
- b. At the opening of the initial session of the public hearing, read the applicable hearing notice out loud. Remind members of the audience to identify themselves before speaking to the Board.
- c. Ask the staff to report regarding any procedural or application deficiencies.

- d. Reference for the record the receipt of written materials submitted for the record.
- e. The Chair may read or summarize letters and other written materials submitted for the record.
- f. Invite the Applicant or his or her representative to address the Board and present their case.
- g. Invite Board members to question the applicant.
- h. Ask the staff for its report on the project.
- i. Invite Board members to question the staff.
- j. Invite any public officials in the audience to make comments.
- k. Invite other interested persons in the audience, beginning with proponents and then opponents, to make comments. Provide an opportunity for rebuttal.
- l. Ask the applicant and the staff for final comments.
- m. Entertain and act on a motion (incl. continuing the hearing to a later date).

7. Receiving Testimony

- a. Identify speaker - People speaking to the Board should always identify themselves before speaking.
- b. Credentials - Anyone intending to testify about a matter of a technical nature may be required by the Board to provide, verbally or in writing, the credentials qualifying them to make such technical statements. (For example, a lawyer is not necessarily qualified to make a technical determination about a traffic impact issue. If the attorney is speaking about a technical issue based upon a report prepared by someone else, then you may inquire as to the qualifications of the preparer.) This is particularly important during the applicant's testimony. *Abutters should not be required to state their qualifications for impressions or opinions expressed about a project.*
- c. Time for presentation - Provide the applicant with enough time to state his or her case. The Board may encourage an applicant to "pick up the pace" of a presentation.
- d. Requiring some testimony in written form - So many people may show up to speak about a project that they cannot all be heard within a reasonable amount of time. In this case, the Chair may limit each speaker to a specified amount of time (i.e. 5 or 2 minutes) and require that further testimony from those speakers be submitted in writing. Allow each interested person to speak, even if only briefly. When speakers cannot make all of their comments within the allotted time, provide the address and time frame (final date and time) for submission of further written testimony. Written testimony should be sent to: Ashburnham Planning Board, 32 Main Street, Ashburnham, MA 01430.

8. Recessing, Continuing or Closing the Hearing

- a. Recessing the public hearing - At any point in the public hearing, the Chair may recess the public hearing, conduct other Board business, and then re-open the public hearing.

- b. Continuations - A continued hearing must always be continued to a date, time and place certain. This may include continuation to a later time during the same meeting when, for example, another posted hearing is due to be opened or a presenter whose testimony, in the opinion of the Chair, is important to the hearing, cannot be in attendance until later in the hearing. Check with staff for future meeting dates and available times. Staff will provide an update on any discussions between the staff and the applicant or others which have taken place since the last public hearing or any relevant materials received.
- c. Closing the hearing - The Board shall provide an opportunity for applicants, public officials and other interested persons to address the Board during the public hearing process. Once the Board is satisfied that all relevant testimony has been received, it may close the hearing. It should be noted that the statutory timeframe for the filing of the Board's decision with the Town Clerk will begin upon closure of the hearing, so it may be appropriate to keep the hearing open in order to ensure that all necessary information is received prior to the Board's decision and that sufficient time remains to file the decision in a timely manner.
- d. After the close of the Board's hearing, no new evidence should be considered, with the exception of specific information or materials required by the Board prior to its decision on the application, or prior to signature of the plan or special permit or as a condition of the Board's decision on the project. Information which is the basis for discussions with the applicant must be in the public record.

9. Motions

The Chair may entertain motions made by other Board members sitting on the application. After a second, the Chair should open the floor for discussion by the Board members and, if requested, staff. After discussion, the Chair should call for a vote, with the vote of each member to be identified for the record.

Sample Motion to Continue the Hearing:

"I move to continue this hearing until (date) at (time) at (place) for the purpose of accepting further testimony on this application."

Sample Motion to Close a Hearing:

"I move to close this hearing."

10. Preparing and Adopting Decisions

After the hearing(s) are closed or, for applications not involving a public hearing, when the Board begins discussion of its decision, only Board members who are eligible to vote on the application should discuss the Board's decision and any newly received information that was required by the Board to be submitted prior to its decision. (Non-voting members may comment through the close of the public hearing, or prior to the Board's discussion of its decision on an application not involving a public hearing.) If there is disputed factual testimony or conflicting expert opinions, Board members should state which testimony they found to be more credible (case law requires credibility determinations to be made by the decision makers who actually hear the testimony). The Board may solicit technical assistance from the staff in preparing its decision.

Whenever possible the Board should vote on a decision or draft decision on the same date that the hearing and record are closed, including any proposed conditions (We should talk about this one, as it is not always possible for me to have Draft Decisions together). For Special Permits, the Board should then direct staff to prepare a written decision document for final approval at a subsequent meeting. (The Board may also direct staff earlier in the process to prepare initial drafts of a proposed decision.) For subdivision approvals and other matters, the Board may vote on a final decision and conditions and direct staff to prepare a written decision for filing with the Town Clerk. The Board may require that said decision be reviewed and signed by the Chair or another Board member before filing, or authorize the Town Planner to file the decision on their behalf.

The Board's decision regarding decisions under the Subdivision Control Law, must be filed with the Town Clerk prior to any deadline established by statute or Bylaw. As an alternative, the applicant may request, in writing, an extension of the time required for filing of the Board's decision on a Definitive Subdivision Plan, or the applicant and Board may enter into a written agreement extending the time for filing the Board's decision on a Special Permit application. "Form S" Request for Extension of Statutory Deadline should be used for this purpose (We have that Form for extensions. We should add that Form # here). In either case, the extension must be for a specified number of days or to a specified date and must be approved by the Board with the same plurality required for the decision regarding which the filing period is being extended. Notice of any such extension must be filed forthwith with the Town Clerk. No such extension of time is permissible for a Preliminary Subdivision Plan or an "Approval Not Required "(ANR) plan. See §3.2.9 of the Planning Board Rules and Regulations Governing the Subdivision of Land.

Upon filing of the Board's decision, notice must then be sent to all parties in interest as specified in the applicable statute, Bylaw or board regulation.

11. Zoning Bylaw Amendment

The Zoning Bylaw and Map contain the regulations for determining what type of development is permitted throughout town. The Planning Board plays a pivotal role in amending them. This outlines the steps that should be followed to make successful amendments. To avoid having an amendment disapproved due to a procedural mistake; strict adherence is required to the process established by state law for enacting zoning changes.

11.1 General Information

According to MGL c. 40A §5, a zoning amendment may be proposed at any time and be placed on the warrant of a special or annual Town Meeting. Proposals which will have a significant impact on the Town should be presented well in advance of Town Meeting to allow for careful consideration by local officials and the general public.

11.2 Origination

Amendments may be submitted by:

- The Board of Selectmen
- The Zoning Board of Appeals
- An individual owning land affected by the proposal
- Ten or more registered voters for consideration at an annual Town Meeting

- 100 or more registered voters, or ten percent of the total number of registered voters, whichever is less, for consideration at a Special Town Meeting
- The Planning Board
- The Montachusett Regional Planning Commission (MRPC)

11.3 Steps Required to Ensure Legal Acceptance

Each of the following steps must be followed precisely. The Planning Board should document each step as it happens because such documentation is required when the revised Bylaw is submitted by the Town Clerk to the Attorney General for approval. The requisite documentation is described parenthetically below:

- a. An amendment is initiated by submitting the proposed Bylaw or map change to the Board of Selectmen in the form of an article for Town Meeting. (Document who initiated the amendment proposal and when it was submitted to the Board of Selectmen).
- b. The Board of Selectmen has fourteen (14) days to submit the proposal to the Planning Board for its review. (Retain a copy of the Selectmen’s transmittal memo to the Planning Board).
- c. The Planning Board must hold a public hearing within sixty-five (65) days of its receiving the proposal. Notification of the hearing must be advertised, posted and mailed to certain parties as described below. The hearing notice must contain the following information:
 1. The time, date and place of the public hearing;
 2. The subject matter of the hearing “sufficient for identification”. This must contain enough detail so the reader can make an informed decision on whether to attend the hearing or Town Meeting;
 3. The place where the texts and maps may be inspected. (Retain a copy of the hearing notice.)
- d. The Board must advertise the hearing notice in a local paper in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing. Do not include the date of the publication when counting the fourteen (14) days. (Document the name of the paper and the dates of publication).
- e. The Board must post the hearing notice in the Town Hall for a period of not less than fourteen (14) days before the date of the hearing. (Document when the notice was posted.)
- f. The Board must mail the hearing notice to the Commonwealth’s Department of Housing and Community Development. (Mail with return receipt.)
- g. The Board must mail the hearing notice to the Montachusett Regional Planning Commission (MRPC). (Mail with return receipt.)
- h. The Board must mail the hearing notice to the Planning Boards of the neighboring communities of Fitchburg, Gardner, Ashby, Westminster, and Winchendon. (Mail with return receipt.)
- i. No more than six (6) months can elapse between the hearing and the town meeting vote on the zoning change.

- j. The town meeting warrant must be properly posted: seven (7) days before an annual town meeting, fourteen (14) days before a special town meeting.
- k. The Planning Board Public Hearing must be held at least twenty-one (21) days before the Town Meeting. If not, the Planning Board must submit a report with recommendations or else the amendment cannot be acted upon. The report of the Board is advisory only, but usually carries considerable weight at Town Meeting since it is the Board's responsibility by law with thoroughly evaluating all aspects of the proposal and considering its overall impact on the Town.

In its review, the Planning Board may wish to revise the original proposal to take into account testimony received at the hearing or for a variety of other reasons. In its report to Town Meeting, the Planning Board may recommend amendments to the original proposal without another public hearing if the fundamental character and identity of the proposal are not changed but are designed merely to perfect the proposals. (Document whether the Board's report to the Town was oral or written. If written, retain a copy.)

- l. A two-thirds (2/3's) vote at Town Meeting is required for adoption of a zoning amendment. Town Meeting may amend the original proposal without a new notice, public hearing, and Planning Board report unless the Town Moderator rules that the amendment is outside the scope of the Article or the amendment: 1) changes the identity or substantial character of the original proposal; 2) fundamentally departs from the original proposal; or 3) radically differs from the original proposal.
- m. If the proposed amendment is voted down by Town Meeting, it may not be brought back for a period of two (2) years, unless adoption is recommended in the final report of the Planning Board.
- n. Within thirty (30) days of adjournment of the Town Meeting in which an amendment was adopted, the Town Clerk must submit to the Attorney General a certified copy of the amendment, a statement explaining the Bylaw or map change (may be prepared by the Planning Board), and proof that all of the procedural requirements have been followed. The Attorney General has ninety (90) days after submission by the Town Clerk to act on the amendment; if ninety (90) days lapse without action by the Attorney General, the Bylaw is deemed approved.
- o. After the proposal has received the approval of the Attorney General, it must be published in a town bulletin or pamphlet and be posted in at least five (5) public places in the town, or the amendment can be published twice at least one week apart in a newspaper of general circulation in the Town. (MGL c. 40 §32)
- p. After approval by the Attorney General, a copy of the latest effective Zoning Bylaw must be sent by the Town Clerk to the Department of Housing and Community Development.
- q. For ninety (90) days following the posting or the second publication in a newspaper, legal action may be commenced on the grounds that there were procedural defects in the adoption process. A copy of the petition submitted to the court must be filed with the Town Clerk within seven days after the court action is commenced. After ninety (90) days, no zoning amendment may be invalidated due to procedural defects.

11.4 Effective Date

A zoning amendment legally takes effect immediately upon adoption by Town Meeting. The Attorney General, after receiving notification of the amendment, has ninety (90) days to approve or disapprove the amendment. The Attorney General may invalidate the amendment in full or in part if it is inconsistent with the constitution or laws of the Commonwealth or if procedures required by law were not followed.

12. Policies and Advice

Whereas all decisions of the Board take place only at its meeting, any advice, opinion or information given by any Board member, or any other official or employee of the Town of Ashburnham shall not be binding on the Board.

13. Adoption

The foregoing procedural rules and regulations governing the Planning Board and appendices are hereby adopted this 14th day of December, 2006, by the Planning Board. These Procedural Regulations may be amended from time to time by a quorum of the Planning Board.