

TOWN OF TRURO



ZONING BOARD OF APPEALS

Rules and Regulations

Approved and Accepted by the Zoning Board of Appeals:
November 18, 2024

TABLE OF CONTENTS

I.	APPOINTMENT	1
II.	MEMBERSHIP.....	1
III.	ANNUAL POLICY REQUIREMENTS.....	2
IV.	ELECTION OF OFFICERS	2
V.	DUTIES OF OFFICERS AND MEMBERS	2
VI.	MEETINGS OF THE BOARD – TIME AND PLACE.....	2
VII.	MEETINGS OF THE BOARD – QUANTUM OF VOTE; QUORUM AND ATTENDANCE	2
VIII.	MULLIN RULE (MGL c. 39, Sec. 23D).....	3
IX.	APPLICATIONS TO THE BOARD	3
X.	PUBLIC NOTICE OF HEARINGS.....	3
XI.	HEARINGS, BOARD ACTION/REVIEW	4
XII.	CONTINUED HEARINGS	5
XIII.	DECISIONS OF THE BOARD	6
XIV.	CHAPTER 40B COMPREHENSIVE PERMIT	6
XV.	ANNUAL REPORT	9
XVI.	HIRING OF OUTSIDE CONSULTANTS	9

TOWN OF TRURO

Zoning Board of Appeals

Rules and Regulations

The following rules and regulations are hereby adopted by the Truro Zoning Board of Appeals and shall govern the submission of all appeals and the conduct of all hearings. These rules and regulations are adopted in accordance with MGL c. 40A, Sec. 12.

The Zoning Board of Appeals shall have the power conferred on it under Chapter 40A of the General Laws of Massachusetts and under the Town of Truro Zoning Bylaw, which powers shall include the review of Special Permit and Variance applications, except for Variances as to use, and the appeal of decisions of the Building Commissioner. The Board also hears applications for comprehensive permits under MGL c. 40B.

I. APPOINTMENT:

In accordance with the Town Charter the Select Board is the appointing authority for the Zoning Board of Appeals.

II. MEMBERSHIP:

The Zoning Board of Appeals shall consist of five (5) regular Members and two (2) Alternate Members. The term of office of a regular member shall be for 3 years, with the terms so arranged that the term of one member expires in one year, two Members in the next year, and the remaining two Members in the third year. The terms of each Alternate member shall be for one year.

Each member will be sworn by the Town Clerk to the faithful performance of his or her duties, shall take up the duties of the office immediately, and shall carry out their responsibilities in accordance with Massachusetts General Law, The Truro Charter, and Truro Zoning Bylaw.

The Alternate Members shall sit with the regular board Members at hearings. They shall be designated by the Chairman to serve on cases in the absence or recusal of regular Members and shall vote only when so designated. At the discretion of the Chair, alternates may participate in discussions of matters before the Board, including cases in which the alternates will not be voting.

Any member may be removed for cause by the Select Board upon written charges and after a public hearing MGL c. 40A, Sec. 12.

Any member whose term is expiring may seek reappointment by completing the online Application to Serve on a Board or Committee found on the Select Board webpage.

Each member will be given an official Town email account which should be used for **all** Town-related business. This email account is considered a **public** account. Private email accounts of member, if used for Town business, are subject to Public Records requests.

III. ANNUAL POLICY REQUIREMENTS:

All personnel who serve the Town of Truro in the capacity of Board/Committee Members, Elected Officials, Appointed Officials, or Volunteers must complete the annual requirements as posted on the Truro Town Clerk webpage, including an online Conflict of Interest training which certificate must be completed every two years.

IV. ELECTION OF OFFICERS:

At the first meeting in a new fiscal year (July meeting), the regular Members shall annually elect a Chair, Vice Chair, and Clerk, to serve until the Board is reorganized after the following June 30th. The election shall take place after appointments or reappointments to the Board are made.

V. DUTIES OF OFFICERS AND MEMBERS:

1. The Chair shall conduct and control all hearings; shall set the agenda for meetings; shall appoint one or both Alternates to serve in the absence of regular Members; shall call special meetings as necessary; shall appoint an acting clerk when the Clerk is absent; and shall sign documents for the Board.
2. The Vice Chair shall act in the absence, disability or disqualification of the Chair, and shall exercise or perform all the duties and responsibilities of the Chair.
3. The Clerk shall perform duties as assigned.
4. Members shall notify the Chair if unable to attend a meeting.
5. Members shall check Town email for important information and/or updates to material.

VI. MEETINGS OF THE BOARD – TIME AND PLACE:

All meetings of the Board shall be open to the public, under the provisions of the Open Meeting Law. The Board may cancel meetings in the absence of business to be heard.

All meetings of the Board shall be recorded and available for later viewing on the Town of Truro webpage.

The Board continues to hold meetings remotely, using meeting platforms such as Zoom. Links to meetings are provided on the Town calendar and on the ZBA's webpage (ZBA Calendar, Agendas). Hybrid meetings are at the discretion of the Chair.

VII. MEETINGS OF THE BOARD – QUANTUM OF VOTE; QUORUM AND ATTENDANCE:

1. Quantum of Vote. The concurring vote of four (4) members is required to grant a special permit, to grant a variance, or to reverse an order or decision of the Building Commissioner; this includes any Alternate(s) designated to sit on the matter.
2. The quorum of the Board for transacting other business, such as approval of minutes, shall be three (3) Members, including Alternates.

3. The quorum for organizing the Board (electing officers) shall be three (3) Members; Alternates may not vote on the election of Board officers.
4. A member of the Board who is absent from a session in which a continued application is considered is not disqualified from voting on that matter if that member has satisfied the requirements of MGL c. 39, Sec. 23D ("Mullin Rule") by watching the recorded proceedings, reviewing all evidence received at the missed session, and so certifying in writing. See Section VIII below.

VIII. MULLIN RULE (MGL c. 39, Sec. 23D):

1. Any Member or Alternate seated on a case for the initial session of a public hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.
2. For a Member or Alternate to be eligible to utilize the provisions of the "Mullin Rule" in a case, that Member or Alternate must have been a sworn Member or Alternate at the time the public hearing on the application in the case was opened.

IX. APPLICATIONS TO THE BOARD:

Any submittals relating to new or existing applications (including public comments) must be filed with the Town Clerk in accordance with the Rules, Regulations, Fee Schedule, and Meeting Schedule of the Truro Zoning Board of Appeals. Note that all submittals must be collated into ten (10) packets and shall also be submitted electronically to the Planning Department Assistant to be considered a complete application.

All applications must conform to the procedures set forth in submitting an Application for Hearing (*see Forms on the ZBA webpage*). Supplemental material, *electronic and paper*, including public comments, for a hearing shall be received no later than **Noon Monday** of the **prior** week (*see ZBA Meeting Schedule on the ZBA webpage for filing deadlines*). Late or incomplete submittals will **not** be reviewed at that meeting and may result in a continuance of the hearing. Written comments from the public not received within the above timeframe for packet inclusion may instead be addressed by the public during the Public Comment portion of the hearing.

If an applicant wishes to postpone (continue) a scheduled hearing, at least seven (7) days advance notice, in writing (email acceptable), must be given to the Zoning Board of Appeals through the Planner/Planning Department Assistant. Approval of such request is at the discretion of the Board. The Applicant will be required to grant to the Board an extension of time for Board action by a period equal to the length of the postponement/ continuance.

X. PUBLIC NOTICE OF HEARINGS:

Planning Department Assistant shall follow procedures to notify abutters and publish the Public Hearing Notice as defined in MGL c. 40A, Sec. 11.

XI. HEARINGS, BOARD ACTION/REVIEW:

	# DAYS TO OPEN PUBLIC HEARING	# OF DAYS FOR BOARD ACTION	# OF DAYS TO FILE DECISION
Variance	65 days after filing of application <i>40A s. 15</i>	100 days after filing of application <i>40A s. 15</i>	14 days after board action <i>40A s. 15</i>
Special Permit	65 days after filing of application <i>40A s. 9 & Bylaw s. 30.8.E</i>	90 days after close of hearing <i>40A s. 9 & Bylaw s. 30.8.D</i>	<i>not specified; use same date as for board action – 90 days</i>
Appeal from Building Commissioner	65 days after filing of appeal <i>40A s. 15</i>	100 days after filing of application <i>40A s. 15</i>	14 days after board action <i>40A s. 15</i>
Comprehensive Permit	30 days after filing of application <i>40B s. 21</i> <i>760 CMR 56.05(3)</i>	180 days after hearing opens, it must close <i>40B s. 21</i> <i>760 CMR 56.5(3)</i>	40 days after close of hearing <i>40B s. 21</i> <i>760 CMR 56.05(8)</i>
*Assert Safe Harbor	15 days after hearing opens <i>760 CMR 56.03(8)</i>		
*Circulate 40B Application to Local Boards	7 days after filing of application <i>760 CMR 56.05(3)</i>		
*Insubstantial/Substantial Change Determination	20 days after filing of application	<p><i>If board finds change insubstantial, permit is deemed amended.</i></p> <p><i>If board finds substantial:</i></p> <ul style="list-style-type: none"> • hearing must open within 30 days of determination, • 180 days for hearing, • 40 days to render decision after close of hearing 	

At start of meeting, Chair will read instructions for viewing/participating in meeting and for public comment as noted on Agenda. Minutes, if any, may be deferred to end of meeting at Chair's discretion.

The Board shall conduct its meetings in accordance with the open meeting law provisions of Open Meeting Law, MGL c. 30A, Sec. 18-25.

Before start of Hearing:

1. For the purpose of deciding an application, five (5) non-recused individuals shall be designated by the Chair. These shall normally be regular Members of the Board. In the

absence or recusal of one or more Members, an Alternate or Alternates shall be seated instead of the absent Member(s).

2. In the event that only four (4) voting members are present, the Chairman shall inform the applicant that if the hearing goes forward, a vote to approve must be unanimous and shall provide the applicant with the opportunity to request a continuance to a date certain, which shall be granted. This must be done before any presentation of the applicant's case or discussion with the Board.
3. On an application for a project that is likely to span multiple meetings, or for a Comprehensive Permit under MGL c. 40B, Sec. 21, in order to assure a number sufficient to vote, the Chair shall have the discretion to seat all members of the Board and all Alternates for the hearing on the Application. On the vote on whether to grant the application, no more than five (5) shall vote, with any Alternate voting only if fewer than five regular Members are available to vote.

Start of Hearing:

1. The hearing commences with the reading of the legal notice by the Chair.
2. The applicant or the applicant's agent shall present the case for the application or appeal.
3. Members of the Board may then ask questions of the applicant.
4. Abutters, Town officials or Town employees, and other interested parties may then make comments or ask questions, and the applicant may respond.
5. The Chairman shall then close the public portion of the hearing.
6. The Board shall then discuss the application.
7. At any point in the discussion, the applicant may request a continuance to make appropriate revisions to the application. At any point before a vote on whether to grant a Special Permit or Variance or to act on an Appeal, the applicant may request that the application be withdrawn without prejudice.
8. In taking whatever action the Board believes appropriate, there shall be created Findings of Fact, on which the Board shall vote, and such Conditions as the Board wishes to attach to its decision, on which the Board shall vote. The Board shall then vote on a Decision to approve or reject the application.
9. Denial of an application precludes submission of the same application for a period of two years. Upon withdrawal of an application without prejudice, the applicant may reapply at any time upon the filing of a new application.

XII. CONTINUED HEARINGS:

If a hearing is to be continued to a later meeting, the motion to do so shall contain a date certain for the hearing to be resumed. Any revised plans or supplemental information provided by the Applicant for consideration of the Board at a continued hearing shall be submitted no later than Monday noon of the prior week to the date set by the Board for continued hearing.

Note: Only new material is posted/distributed, so if an application is continued, Board members should retain materials previously distributed.

XIII. DECISIONS OF THE BOARD:

1. Written decisions stating the rationale, and Findings/Conditions, for the Board's actions are required and shall also include motions, vote, and members in attendance (voting and nonvoting):
 - a. The grant (or modification) of a Special Permit, or the approval of a Variance, requires a vote in favor by at least four (4) Members or Alternates.
 - b. The grant of an appeal from an action of the Building Commissioner requires a vote of at least four (4) Members or Alternates.
 - c. Other decisions of the Board require a simple majority vote.
2. All decisions must be signed by either the Chair, Vice Chair, or Clerk and filed with the Town Clerk.

A notice is then mailed to the Applicant/Applicant's Representative/Applicant's Attorney and all abutters stating outcome of hearing and including this notation: Appeals of Board decisions are governed by MGL c. 40A, Sec. 17, and any such appeal must be filed within twenty (20) days after the decision has been filed in the Office of the Town Clerk, Truro.

XIV. CHAPTER 40B COMPREHENSIVE PERMITS – RULES & REGULATIONS

ARTICLE I. GENERAL

Section 1. Purpose and Scope

These Comprehensive Permit Rules (the "Rules") establish procedures for submittal and review of an application to the Truro Zoning Board of Appeals (the "Board") for a comprehensive permit (an "Application") under Massachusetts General Laws, Chapter 40B, Sections 20-23 (the "Act") and the regulations promulgated thereunder, at 760 CMR 56.00, et seq. They are required by Massachusetts General Laws, Chapter 40B, Section 21 and by 760 CMR 56.05(1). The purpose of the Act is to facilitate the development of low- and moderate-income housing in Massachusetts.

ARTICLE II. DEFINITIONS

- (a) Board means the Truro Zoning Board of Appeals, established by Massachusetts General Laws, Chapter 40A, Section 12, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.
- (b) Local Board means any local board or official, including but not limited to the Board of Health, Planning Board, Conservation Commission, Historical Commission, Department of Public Works, Fire Department, Police Department, Building Inspector and Select Board. All boards and commissions performing functions usually performed by locally elected or appointed boards and commissions shall be deemed local boards.
- (c) Limited Dividend Organization means any entity which proposes to sponsor housing under the Act, is not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.

ARTICLE III. FILING, FEES & NOTICE

Section 1. Submittal Materials

The Rules identify plans and other reports required to be submitted to the Board in support of an Application. The materials listed below shall be submitted to the Board simultaneously with the Application. The Board recognizes that for many proposed projects, plans may not be at a definitive stage of development when the Application is filed. However, the Board needs to receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing information and materials promptly with the Application will result in a quicker process and enable the Board to become better informed.

- (a) Required Materials. Ten (10) copies of the following materials shall be submitted simultaneously with an Application to the Board:
 - (i) Preliminary Site Development Plans: A set of preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; open areas within the site; and other improvements. The plans shall also have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, rights of way and easements and names of abutting property owners. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the foregoing, which need not bear an architect's signature and seal. All projects of five (5) or more units must have site development plans signed and sealed by a registered architect or engineer.
 - (ii) Report on Existing Site Conditions: A report on and summary of existing conditions on the site and in the surrounding area.
 - (iii) Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building, which shall be prepared by a registered architect and, for projects of five (5) or more units, sealed by said architect. Said drawings shall include typical floor plans, typical elevations and sections, and shall identify construction type and exterior finishes.
 - (iv) Tabulation of Proposed Buildings: A tabulation of proposed buildings by type, size (e.g. number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the site to be occupied by buildings, by parking and other paved vehicular areas, by open areas and by other improvements.
 - (v) Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under Massachusetts General Laws, Chapter 41, Section 81K.
 - (vi) Utilities Plan: A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants.
 - (vii) Application for Project Eligibility & Project Eligibility Letter: A copy of the application for project eligibility submitted to the subsidizing agency, as well as the written determination of project eligibility by said subsidizing agency containing all of the findings required by 760 CMR 56.04(4).
 - (viii) List of Requested Exceptions to Local Requirements & Regulations: A detailed list of requested exceptions to local requirements and regulations, which shall include an analysis of each requirement or regulation for which an exception is sought, the location on the plans for which the exception is sought (if applicable), and an

explanation of why the project will not be economic unless the Board grants the requested exception.

(b) Additional Materials. The following materials may be required by the Board:

- (i) Environmental Impact Analysis: An “Environmental Impact Analysis” prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Environmental Impact Analysis shall assess the impact of the development on the environment within the development and adjacent thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post development impacts. Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Environmental Impact Analysis.
- (ii) Traffic Impact Report: A Traffic Impact Report prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project’s impact on the congestion, safety and overall convenience of the roadway system providing access to the proposed project. Impacts on both vehicular and pedestrian travel shall be addressed. Road intersections to be studied shall be mutually agreed upon by the Board, its consultants, and the applicant.
- (iii) Long-Term Monitoring: A long-term monitoring plan identifying the governmental agency or other entity which shall be responsible for project monitoring for the duration of the project’s affordability. A cost estimate to implement the long-term monitoring plan shall be submitted.
- (iv) Tenant/Owner Selection: A plan identifying the governmental agency or other entity that will be responsible for marketing the project and selecting tenants or owners.
- (v) Landscape: A preliminary plan of proposed landscaping of the project site. The Board will normally include a condition in a comprehensive permit requiring approval of a definite landscaping plan prior to issuance of a building permit and maintenance of the landscaping by the owner(s) of the project.

(c) Pro Forma. A complete pro forma detailing the projected costs and revenues of the proposed project may be required if, following consultant review of the project, the Board proposes modification of the project or imposition of a condition that the applicant contends renders the proposed project uneconomic. The pro forma shall itemize all development costs, including hard costs, soft costs and site development costs, and all profits and distributions, in accordance with the Department of Housing and Community Development’s (DHCD) “Comprehensive Permit Guidelines,” (the “Guidelines”) dated February 22, 2008, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

Section 2. Fees

(a) Administrative Fee. An Application shall be accompanied by an administrative fee in the amount of Two Thousand Dollars (\$2,000.00) plus One Hundred Dollars (\$100.00) per unit proposed. Said fee shall be paid by check made payable to the Town of Truro.

(b) Consultant Fee. In addition to the administrative fee above, an applicant may be required to pay an amount into an escrow account established pursuant to G.L. c. 44, § 53G (the “Escrow Account”), said amount to be determined by the Board in its sole discretion and to be used for consultant review of the Application in accordance with 760 CMR 56.05(5) and Section XX of the Board’s Rules and Regulations. If necessary, the Board may require that the Escrow Account be replenished during the Board’s review of the Application.

Section 3. Notice

Upon receipt of a complete Application, the Board shall provide notification and a copy of the same to each Local Board as required by 760 CMR 56.05(3), as may be amended.

XV. ANNUAL REPORT

During January of each year, the Chair shall complete and submit an annual report of the Board’s activities for the preceding calendar year as requested by Administration. The annual report shall highlight that year’s activities in a general manner.

XVI. HIRING OF OUTSIDE CONSULTANTS

- A. As provided by Section 53G of Chapter 44 of the Massachusetts General Laws, the Zoning Board of Appeals may impose on applicants reasonable fees for the employment of outside consultants with respect to any matter before the Board pursuant to G.L. c. 40A; G.L. c. 40B; the Town’s Zoning Bylaw; and/or pursuant to any other statute or regulation authorizing action by the Board.
- B. Said fees shall be deposited in a separate account, established by the Town of Truro Treasurer or his/her designee, and such funds shall be expended at the direction of the Board or its designee. Funds deposited in this account shall only be used as allowed by this section and for the review of a specific project for which the fee has been collected from the applicant. Any excess amounts, if any, shall be refunded to the applicant, or the applicant’s successor in interest.
- C. The consultant shall be chosen by, and report only to, the Zoning Board of Appeals. The Zoning Board of Appeals shall give written notice to the applicant of the selection of an outside consultant pursuant to this Regulation and G.L. c. 44, s. 53G, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered.
- D. The fee must be received in its entirety prior to the initiation of consulting services. The Board may request additional consultant fees if necessary for a review which requires a larger expenditure than originally anticipated or new information which requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to determine the application is administratively incomplete. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to deny the permit application.

- E. The applicant may appeal the selection of the outside consultant to the Truro Select Board, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or related field. Such administrative appeal must be in writing and received by the Select Board and a copy received by the Zoning Board of Appeals so as to be received within 10 days of the date consultant fees were requested by the Zoning Board of Appeals. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

TRURO ZONING BOARD OF APPEALS
Rules and Regulations

We, the undersigned Members of the Truro Zoning Board of Appeals, hereby certify the Rules and Regulations, as approved and accepted November 18, 2024, with an effective date of November 18, 2024, to be a true copy.

TRURO ZONING BOARD OF APPEALS

Christopher Lucy, Chair

Darrell Shedd, Vice Chair

David Crocker, Clerk

Arthur Hultin

Russell Braun

Leah Camhi, Alternate Member

Robert Tilden, Alternate Member

Attest:

Nicole Tudor
Temporary Acting Town Clerk, Town of Truro

, 2025