

# Montague Planning Board

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## RULES AND REGULATIONS

As of 6/18/2019

The Montague Planning Board in accordance with Chapter 40A, Section 9 hereby adopts the following Rules and Regulations, governing the organization and conduct of the Board.

### ARTICLE I: GENERAL ORGANIZATION AND CONDUCT

#### Section 1: MEMBERS AND OFFICERS

The Montague Planning Board, herein after called the Board, shall consist of five members appointed by the Board of Selectmen. The members shall elect on a yearly basis, a Chair and Vice-Chair of the Board, as needed.

#### Section 2: THE CHAIR

The Chair shall preside at all meetings and shall exercise such powers as properly appertain to their office or as may be delegated to the chair by the Board.

#### Section 3: THE VICE-CHAIR

In the absence of the Chair, the Vice-Chair shall assume the responsibilities of the Chair.

#### Section 4: THE CLERK

The Clerk or the Board's agent shall be responsible for mailing to the Board members, at least three working days prior to each regular meeting, a notice of the meeting, the agenda of the meeting, and the minutes of the previous meeting (s). The Clerk or the Board's agent shall be responsible for keeping full and accurate records of all regular and special meetings of the Board. The Clerk or the Board's agent shall be responsible for maintaining the official copy of the Board's Rules and Regulations and all official policies set forth by the Board.

#### Section 6: APPOINTMENTS

A majority of the Board shall:

- Appoint one of its members to serve on the Montague Capital Improvements Committee.
- Appoint one of its members to serve on the Franklin County Regional Planning Board.
- Appoint standing subcommittees as may be constituted
- Appoint or nominate Board members or qualified others to serve as Board representatives to such other boards, committees, and task forces as authorized by state and local law.

#### Section 7: ATTENDANCE

Following two unexplained consecutive absences, the Board member will be contacted by the Chair to ascertain the intentions of said member about their future attendance. If any member has more than 3 unexplained absences a year, the Planning Board shall ask the Board of Selectmen for a replacement.

#### Section 8: AMENDMENT OF RULES AND REGULATIONS

These Rules and Regulations may be added to, amended, or rescinded by a majority vote of the Board members present at any regular meeting and a copy of the proposed amendment given to each member of the Board.

*Town of Montague is an Equal Opportunity Provider & Employer*

## Section 9: APPROVAL OF POLICY

A suggested policy can be presented to the Board in writing at any regular meeting. An item will become policy after written presentation when voted upon favorably by a majority of Board members present at the following successive regular meeting.

## ARTICLE II: MEETINGS

### Section 1: REGULAR MEETINGS

Regular meetings of the Board shall be held on that day or days of each month set by the Board at its annual organizational meeting. Meetings shall be once a month at a minimum.

### Section 2: ANNUAL ORGANIZATION

The annual organizational meeting of the Board shall be the first regular meeting of the Board in July of each year.

### Section 3: PROCEDURE

The rules of parliamentary procedure comprised in Robert's current edition of "Rules of Order" shall govern the Board and its deliberations.

### Section 4: SPECIAL MEETINGS

Special meetings of the Board may be called by:

1. The Chair
2. In the Chair's absence, the Vice-Chair
3. A majority of the Board

The Clerk or the Board's agent shall be responsible for posting notice thereof at least 48 hours, including Saturdays, but not Sundays or legal holidays, prior to such meeting in accordance with Chapter 39, Section 23A, of the General Laws.

The Clerk or the Board's agent shall be responsible for notifying all members by email in such cases, if possible. In all other cases the Clerk or the Board's agent shall make reasonable effort to notify all members by telephone. In all cases the Clerk or the Board's agent shall be responsible for informing members of the agenda of the meeting.

### Section 5: ORDER OF BUSINESS

The order of business of regular meetings shall be:

1. Call to Order by Chair.
2. Approval of Meeting Minutes
3. Items listed on items
6. Adjournment.

### Section 6: QUORUM

At any of the aforementioned meetings a quorum shall consist of 3 (three) voting members of the Board. In the absence of any one of the full members of the Board, an Alternate member shall have full voting power, and can help constitute the quorum. A number less than a majority may adjourn.

## **ARTICLE III: PUBLIC HEARINGS**

### **Section 1: NOTICE**

Notice of hearings shall be advertised as required by Chapter 40A, Section 11, including notice to all parties of interest.

### **Section 2: SITE VISIT**

The Board, or a designated subcommittee, may make a site visit to the property that is the subject of the application. The applicant will be notified of the site visit. If the Board judges the application to be insignificant in its impact, the Chair may waive the site visit.

### **Section 3: HEARING PROCEDURE**

The Board shall schedule a public hearing within 65 days of the date of filing, unless the petitioner agrees in writing to an extension of this time period. Any such written agreement shall be filed with the Town Clerk.

All hearings shall be open to the public. The applicant shall appear on his/her own behalf or may be represented by an agent. If the applicant or representative is not present and has not given advance notice of their inability to attend, the Board may act based on the information before it, may continue the hearing or may declare the petition withdrawn without prejudice, or may consider rebate of fees. Prior to opening the hearing, the Chair shall:

- 1) Inquire whether any Board members, staff, or others need to recuse themselves from participating in the hearing or make disclosures at that time regarding potential or perceived conflicts of interest.
- 2) If applicable, declare that the provisions of the Mullin Rule are in effect per Town Meeting authorization on 5/4/13, and summarize those provisions.
- 3) Describe the rules of conduct for the hearing, including but not limited to the following:
  - a) All persons must be recognized by the Chair before speaking;
  - b) Speakers must begin by identifying themselves by name, address, and any pertinent affiliations;
  - c) All questions/comments/remarks should be directed to the Chair, and not to the applicant, other speakers, staff, or others;
  - d) Presenters and speakers are expected to be brief and to the point—the Chair shall determine time limits for individual presentations if necessary, to ensure that all citizens and Board members have the opportunity to speak; and,
  - e) Speakers should focus on asking new questions or providing new information, and avoid repeating previous remarks.

The Chair shall open the hearing and proceed to take testimony in the following order: a) applicant's presentation; b) report on the site visit; c) information from Town staff; d) questions from the Board; e) comments and questions from the public; f) applicant's response; g) final comments and questions from the public, the applicant and staff.

The Chair shall then entertain a motion to close the public hearing or to continue the hearing to a date and time certain. Once the hearing has been closed, deliberations leading to a decision will begin at that same session, or will be postponed until later in the session or to a future date.

Written information from the applicant, staff, Town officials, or members of the public regarding an application shall be submitted to the Planning Department prior to or at the public hearing.

## **ARTICLE IV: SPECIAL PERMIT AND SITE PLAN REVIEW DECISIONS**

### **Section 1: REVIEW CRITERIA**

The Board shall use the review criteria found in Section 8 of the Zoning Bylaw and any other applicable sections of the Zoning Bylaw in reviewing and making a decision on applications before it.

### **Section 2: VOTING REQUIREMENTS**

#### **a) Special Permit**

The concurring vote of at least four (4) members of the Board participating and voting shall be required for any affirmative decision on a Special Permit application.

#### **b) Site Plan Review**

When Site Plan Review is required without a Special Permit, approval requires a simple majority of the Board. A public hearing is not required. Failure of the Board to act within sixty (60) days of submission shall constitute an approval of the site plan.

### **Section 3: DECISION AND FINDINGS**

The Board's written decision shall consist of either:

- a) Approval of the application based on specific findings that the project meets all of the necessary sections of the Bylaw.
- b) Denial of the application based on a finding that either:
  - (i) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or
  - (ii) a determination, based on specific findings, that the project does not meet the applicable sections of the Zoning Bylaw.
- c) Approval of the application, subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw.

The Board's decision shall be filed with the Town Clerk and mailed to the applicant within ninety (90) days of the public hearing, unless extended by written agreement with the applicant, said agreement to be filed with the Town Clerk.

Notice of the decision shall be made in accordance with Chapter 40A, Section 11.

### **Section 4: WITHDRAWAL**

An application may be withdrawn without prejudice by notice in writing to the Town Clerk, with a copy submitted to the Planning Department, at any time.

## **ARTICLE V- CONSULTANT REVIEW FEE REGULATION (adopted 4/4/2000)**

### **Section 1: NEED FOR OUTSIDE EXPERTISE**

When reviewing a permit application,<sup>1</sup> the Planning Board may determine that the assistance of outside professional expertise is required due to the size, scale or complexity of a given project or its potential impact on the health, safety and welfare of the Town. Determination of the need for outside review shall require a majority vote of the members of the Board. When outside review is determined to be necessary, the Board will require that the applicant pay all reasonable expenses for this purpose.

### **Section 2: NOTIFICATION OF APPLICANT AND ASSESSMENT OF FEES**

The Board shall provide the applicant with a written estimate of the cost for outside review within twenty-one (21) days of making a determination that such review is required. Notification of the services required and estimated cost shall be hand-delivered or sent by certified mail. The applicant shall make an initial deposit in the amount of this estimate within ten (10) days of receiving such notification.

If review funds charged are insufficient to cover the costs of such review, the Board may determine by 2/3 vote that additional fees are necessary. Notification of the need for additional fees shall be given and payment received in the same manner as that for the initial fee.

Failure to pay assessed review fees shall be adequate ground for denial of an application without prejudice.

### **Section 3: TYPES OF CONSULTANTS AND QUALIFICATIONS**

In hiring outside consultants, the Board may engage engineers, planners, attorneys, designers or other appropriate professionals to assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws and regulations. Assistance may include, but shall not be limited to application review, site inspection and construction phase monitoring.

All consultants engaged pursuant to this section must meet the following minimum qualifications: an educational degree in or related to the field at issue or at least three years of practice in the field at issue or a related field.

The Board shall file notice with the Town Clerk of the selection of a consultant, with a copy of said notice to be sent to the applicant at the same time. Such notification shall include the consultant's name and address, field of expertise and credentials.

### **Section 4: APPEAL OF CONSULTANT SELECTION**

An applicant may appeal the outside consultant selected by the Planning Board to the Board of Selectmen within seven (7) days of the time that notice of selection is filed with the Town Clerk. Grounds for appeal are limited to claims that the consultant selected by the Board has a conflict of interest or does not possess the minimum qualifications. Appeals shall be filed with the Town Clerk and a copy given to the Board of Selectmen.

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<sup>1</sup> For the purposes of this section, permit application refers to any application for a special permit, site plan review, preliminary subdivision plan or definitive subdivision plan.

The required time limits for action upon an application to the Planning Board shall be extended by the duration of the administrative appeal. In the event that the Board of Selectmen does not make a decision within one month following the filing of the appeal, the selection made by the Planning Board shall stand.

Such administrative appeals shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

#### Section 5: ADMINISTRATION OF FEES

Fees collected from an applicant pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this account may be made at the direction of the Board with no further appropriation, but only for the purpose of review of the specific project for which the fees were collected.

At the completion of a project, any excess amount in the special fee account for that project, including accrued interest, if any, shall be repaid to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. For the purposes of this section, a project shall be considered complete when:

- (1) A final Certificate of Occupancy is issued by the Building Inspector, or
- (2) If no Certificate of Occupancy is required, by certification in writing by the Building Inspector that the project is complete, or
- (3) Approval of the project is denied and all appeal periods have elapsed without appeal being filed, or
- (4) Applicant submits written notice to the Board that the application is withdrawn, or
- (5) A majority of the Planning Board finds that outside review of the project is complete and votes to release the funds.

The Town Account shall submit an annual report of all special accounts established pursuant to this section as required by MGL Chapter 44 Section 53G.

### **ARTICLE VI- RULE REGARDING SECURITY (adopted 6/19/2019)**

The following rule is adopted pursuant to G.L. c. 44, § 53G½.

Section 1. The Planning Board may, in its discretion, require the provision of and thereafter hold security for the performance of any obligation(s) by an applicant as a condition of or relative to any decision, special permit or site plan approval issued by the Board. That security may, in the discretion of the Planning Board, be in the form of cash, bonds, negotiable securities, sureties or other financial guarantees and in an amount determined by the Planning Board (the "Security Funds").

Section 2. In accordance with G.L. c. 44, §53G½ , the Security Funds will be deposited in a special account established by the Town Treasurer, shall be kept separate and apart from other monies, and interest earned, if any, shall be added to and treated as part of such Funds.

Section 3. The performance secured by the provision of such security and the standards for determining satisfactory completion of such performance shall be set forth in the relevant decision, permit, or approval, the applicable bylaws and regulations pursuant to which such decision, permit, or approval is issued, and the terms of an agreement entered into by the Planning Board and applicant establishing the terms upon which such security is given, held, and may be used.

Section 4. The applicant may secure a determination of its right to return of the Security Funds by sending to the Planning Board and the Town Clerk by certified mail a written statement signed by the applicant that the secured obligation is complete. If the Planning Board determines upon receipt of such request that said obligation has been completed, it shall release the interest of the Town in such Security Funds and return the Security Funds to the person who furnished the same. If the Planning Board determines that the secured obligation has not been completed, it shall specify in a notice sent by certified mail to the applicant and to the Town Clerk within sixty (60) days the details wherein that secured work remains outstanding.

Section 5. In the event of a default by the applicant relative to a secured obligation, some or all of an applicant's Security Funds may be expended, without further appropriation, by the Planning Board in its discretion, to complete such secured obligation. In event of such a default by the applicant, any unused funds will not be returned to the applicant, but will be retained by the Town, pursuant to G.L. c.44, §53G½.

#### **ARTICLE VII- ADOPTION**

These rules and regulations are hereby adopted on 8/23/2011 by the Montague Planning Board, revised 06/18/2019.

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Ron Sicard  
Chairman of the Montague Planning Board