



TOWN OF FALMOUTH

ZONING BOARD OF APPEALS

59 TOWN HALL SQUARE, FALMOUTH, MA 02540
508-495-7460 - FAX 508-495-7463

5.03: Hearing Process:

- a. All Public Hearings are advertised and held in accordance with the Open Meeting Law;
- b. All application files are open to the public for review prior to and after the hearing;
- c. Everyone attending a Public Hearing is asked to show respect and courtesy by:
 1. Silencing cell phones and other electronic devices;
 2. Listening to Applicants, witnesses and the Board;
 3. Refraining from private conversations in the hearing room or outside of the hearing room;
 4. Refraining from making derogatory statements; and
 5. Exiting the hearing room quietly.
- d. All Public Hearings are recorded (and most are televised) to insure a true and accurate record.
- e. After the Clerk reads the application into the record the Applicant or her/his previously appointed agent will briefly summarize the application and why relief should be granted in accordance with specific sections of the Zoning By-law. (Note: information provided less than one (1) week prior to a Public Hearing by any party may result in a continuance.). It is generally expected that the Applicant's presentation will not exceed 15 minutes in length. Some applications are sufficiently complex that more time is required particularly when there are multiple presenters. To ensure the opportunity for all Applicants to have the full opportunity to be heard on a given evening, should the presentation exceed 15 minutes in length, the Board shall take one or more of the following actions by majority vote of the Voting Members:
 1. Inquire as to how much additional time the Applicant requires to complete the presentation and proceed if a limited amount of time is needed;
 2. Continue the hearing to the end of the meeting, depending on available time; or
 3. Continue the hearing to another date and time.
- f. The Clerk reads all referrals (recommendations) received from pertinent Town Departments.
- g. The Clerk provides information on correspondence received.
- h. The Zoning Administrator will provide any updates and alert the Board to any issues to be considered.
- i. Members will ask questions of the Applicant.
- j. The public will be asked for comment if applicable. It is generally expected that comments from the public in total will not exceed 15 minutes in length. Collective public testimony exceeding this period may result in the termination of public comment in order to accommodate the Board's hearing schedule. Individuals recognized by the Chair will be asked to step forward to the lectern (if physically able), identify themselves for the Board, including address, and state if in opposition, in support or seeking clarification. Only brief, unrepeatable testimony relevant to the zoning issues of the application will be allowed. It is the quality of the testimony, not the quantity that will be of greatest value to the Board in its deliberations. The Chair will help speakers comply with these requirements and may restrict individual testimony out of respect for other speakers. Statements are to be made to the Board. Speakers shall refrain from

conversations with the Applicant or the audience. The Board may ask questions of the speakers. Please note public comment on Variance applications will be limited to the legal standards set forth in the statute and by-law. Brief rebuttal may be allowed by the Chair.

- k. At the close of testimony, the Board will thoroughly discuss the Application if necessary. Based on testimony and the Board's discussion, the Applicant may wish to modify the request or withdraw the request (see § 5.04). Following discussion, several options are available to the Board through the affirmative vote of four (4) Voting Members including:

1. **Continuation:** Should the Board determine that additional information is required; the Public Hearing would be continued to a date certain. The Applicant may be asked to supply the Board with further facts, which can be reviewed by the public in the Zoning Office. The Applicant could also request a continuance;
2. **Vote to close the Public Hearing:** The Board will close the Public Hearing if it is satisfied that all relevant testimony has been received. The Board may chose to leave the record open for a specific time period to receive written documentation for clarification and review. Once the Public Hearing is closed, no new testimony will be allowed unless the Board immediately votes on its own initiative to reopen the Public Hearing, for the sole purpose to clarify any findings or conditions. However, the Board may seek clarification or advice from Town or Special Counsel without reopening the Public Hearing. After the Public Hearing is closed, the Board has several options including:
3. **Take action:** After a full discussion of the application, the Board shall make findings and vote to approve or deny the application. Should there be an insufficient number of votes to either approve or deny an application, the application shall be deemed denied.
4. **Take the matter under advisement:** In cases where documentation is complex or new documentation has been provided at the Public Hearing or based on testimony, the Board may wish to further review testimony and documentation before rendering a decision. The Board will take action at a subsequent Public Meeting, but not at an advertised Public Hearing as all testimony has been received;
5. **Request a draft decision from the Zoning Administrator:** In some cases, the Board may vote to request the Zoning Administrator to draft a decision for review by the Board. The Board will take action at a subsequent Public Meeting, but not at an advertised Public Hearing as all testimony has been received.

- l. Public Hearings shall end at 9:30 P.M. unless extended by Board vote.