



Town of Ware Rules & Regulations of the Planning Board

Adopted July 16, 2020
Amended: July 21, 2022

Planning & Community Development
126 Main Street
Ware, MA 01082

413.967.9648
www.townofware.com

Town of Ware Planning Board Rules and Regulations

INTRODUCTION

The purpose of this set of Rules and Regulations is to assist Planning Board members, Town of Ware staff and members of the public to better understand the procedures and requirements of the Ware Planning Board. These Rules and Regulations blend the directions and requirements that are found in the state and local laws, Town of Ware Home Rule Charter, and the Zoning Bylaws of the Town of Ware. In cases where the Massachusetts General Laws are cited, the reader may want to refer to the Massachusetts General Laws to determine if any changes have been made. The Planning Board will be diligent keeping these regulations revised and up to date, but changes in the Massachusetts General Laws or Federal Laws will superseded these regulations.

These Rules and Regulations are adopted by the Ware Planning Board under the authority of and in compliance with the General Laws of the Commonwealth of Massachusetts and the Zoning Bylaw of the Town of Ware.

ADOPTION OF RULES AND REGULATIONS

The Planning Board shall adopt and from time to time amend rules relative to the issuance of Site Plan Review, Special Permits, procedures and related matters. A copy of all rules and regulations adopted by the Planning Board shall be filed in the Town Clerks office and in the Department of Planning and Community Development. Any changes shall need a majority vote of the Planning Board and shall be effectively immediately upon vote.

Adopted on - July 16, 2020

TABLE OF CONTENTS

CHAPTER 1: GENERAL INFORMATION	4
1.0 Planning Board Membership	4
2.0 Officers.....	4
2.1 Election of Officers	4
2.2 Chair.....	4
2.3 Vice-Chair.....	4
2.4 Alternate Member	4
3.0 Agendas / Notices.....	5
3.1 Agendas	5
3.2 Posting Public Meetings Notices & Meeting Room	5
3.3 Notices.....	5
4.0 CONDUCTING A MEETING	6
4.1 Open Meeting Law	6
4.2 Basic Requirements of the Open Meeting Law.....	6
4.3 Executive Session.....	6
4.4 Minutes and Records	8
4.5 Audio Recording by Observers	8
4.6 The Mullen Rule	8
5.0 VOTING & QUORUM	9
5.1 Regular Meeting	9
5.2 Zoning Amendments	9
5.3 Site Plan Review.....	9
5.4 Special Permits.....	9
5.5 Subdivision Approval	10
5.6 Rule of Necessity	10
6.0 PUBLIC HEARING PROCESS	11
6.1 Public Hearing on Proposed Rules and Regulations.....	11
6.2 Public Hearing on Zoning Amendments.....	11

6.3 Site Plan Review and/or Special Permit 12

6.4 Subdivision Approval 13

7.0 REPORTS..... 15

8.0 OFFICIAL FILES AND RECORDS..... 15

8.1 Requirements and Summary of the Public Records Law 15

8.2 Public Records Request 15

8.3 Responding to Public Request..... 16

8.4 Exemptions to the Public Record Law Requirements 16

8.5 Public Records Maintained by the Planning & Community Development Office 16

CHAPTER 2: SITE PLAN REVIEW 18

2.0 SITE PLAN REVIEW..... 18

2.1 Application 18

2.2 Contents of Application..... 18

2.3 Receipt of Applications..... 19

2.4 Waivers..... 20

2.5 Concurrent Hearing with Special Permit 20

2.6 Fees..... 20

2.7 Disposition of Application 20

CHAPTER 3: SPECIAL PERMIT 22

3.0 Special Permit 22

3.1 Application..... 22

3.2 Contents of Application..... 22

3.3 Receipt of Application 24

3.4 Waivers..... 24

3.5 Concurrent Hearing with Site Plan Review 24

3.6 Fees..... 24

3.7 Disposition of Application 25

CHAPTER 4: PROJECT FINANCIAL SURETY 26

4.1 Cash Deposit..... 26

CHAPTER 1: GENERAL INFORMATION

1.0 Planning Board Membership

Planning Board members are elected officers. The Planning Board consists of five board members who are elected to serve a five-year term. An Alternate member is appointed by the Town Manager.

2.0 Officers

2.1 Election of Officers

The Planning Board shall annually elect a Chair, Vice-Chair and Clerk of the Board.

2.2 Chair

The Chair presides at all meetings, decides questions of order, calls special meetings, and signs official documents that require the Chair's signature. The Chair has the same rights as other members to offer resolutions, make or second motions, discuss questions, and vote thereon. The Chair is also responsible for ensuring that the provisions of the Open Meeting Law are met.

2.3 Vice-Chair

The Vice-Chair acts for the Chair whenever the latter is absent from meetings and performs other necessary duties.

2.4 Alternate Member

An alternate member will be appointed by the Town Manager to serve on the Planning Board for a period of one year and serve:

1. When a regular member is unable to participate on an application, at a public hearing or other matter before the Planning Board due to absence or conflict of interest;
2. The alternate member shall regularly attend the scheduled meetings and/or work sessions of the Planning Board so as to be available for designation when required and familiar with the applications and/or matters pending before the Planning Board.

3.0 Agendas / Notices

Unless otherwise stated, the requirements and procedures identified in this handbook apply to all types of Planning Board meetings including: special meetings, working sessions, site visits, emergency meetings, and public hearings. A public meeting occurs at any time a quorum of the Planning Board members gets together to discuss or consider any public business or policy over which the Board or Committee has some jurisdiction or advisory power. Regular meetings of the Board are scheduled the first and third Thursday of the month, in the Board of Selectmen Meeting Room in the Town Hall. Other meetings are scheduled as necessary.

3.1 Agendas

All agenda items shall be submitted to the Planning & Community Development Department no later one week prior to the meeting for inclusion on the agenda.

3.2 Posting Public Meetings Notices & Meeting Room

The agenda for the meeting shall be filed with the Town Clerk and publicly posted in the Town Hall at least 48 hours, not including Saturdays, Sundays or legal holidays, prior to such meetings.

3.3 Notices

Notice of the public hearing shall be given and the notice of the public hearing shall be:

1. Published in a local newspaper of general circulation in the Town once in each of two successive weeks.
 - a. The first publication shall not be less than fourteen (14) days before the day of the hearing.
 - b. The date of the public hearing should not be counted in the fourteen (14) days.
2. The public notice shall be mailed to:
 - a. Individual(s) owning land to be affected by application
 - b. Abutters within 300-feet to the affected parcel(s) per a Certified Abutters List
 - c. Planning Board of all abutting towns
3. The public notice shall include:
 - a. Name of the applicant
 - b. Subject matter, sufficient for identification
 - c. Time, date, and place of the hearing
 - d. Subject matter of the hearing and nature of action requested
 - e. Place where applications and plans may be inspected
4. The applicant shall be responsible for paying the costs directly to the local newspaper and shall bring a copy of receipt or confirmation received.

4.0 CONDUCTING A MEETING

4.1 Open Meeting Law

The Massachusetts Open Meeting Law requires that all meetings of elected or appointed boards, committees or subcommittees be open to the public except for the nine specific situations (listed below) where Executive Session is required. The Law does not apply to chance meeting or social occasions; however, such meetings cannot be used to circumvent the requirement of discussing and deliberating at public meetings. The Law does not apply to administrative meetings or to advise on administrative matters.

4.2 Basic Requirements of the Open Meeting Law

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except under those circumstances listed below.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by the circumstances listed below.

No votes taken in open session shall be by secret ballot.

Except in emergency, a notice of every meeting of any governmental body shall be filed with the Town Clerk at least forty-eight (48) hours excluding Saturdays, Sundays, and legal holidays, prior to such meetings.

The notice shall be printed in easily readable type and shall contain the date, time, and place of such meeting.

4.3 Executive Session

Executive Session is a meeting that is closed to the public for one of the nine purposes listed below:

1. To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight (48) hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:
 - a. to be present at such executive session during discussions or considerations which involve that individual.
 - b. to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

- c. to speak in his own behalf.
2. To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight (48) hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:
 - a. to be present at such executive session during discussion or considerations which involve that individual.
 - b. to have counsel or a representative of his choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.
 - c. to speak in his own behalf.
3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigation position of the governmental body, to conduct strategy sessions in preparation for negotiations with nonunion personnel, to conduct collective bargaining sessions or contract negotiations with nonunion personnel.
4. To discuss the development of security personnel or devices.
5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
6. To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.
7. To comply with the provisions of any general or special law or federal grant-in-aid requirements.
8. To consider and interview applicants for employment by preliminary screening committee or a subcommittee appointed by a governmental body if an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of preliminary screening committee or subcommittee appointed by a governmental body, to consider and interview applicants who have passed a prior preliminary screening.
9. To meet or confer with a mediator, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or body, provided that:
 - a. any decision to participate in mediation shall be made in open meeting session and the parties, issues involved and purpose of the mediation shall be disclosed, and;
 - b. no action shall be taken by any governmental body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open meeting after such notice as may be required in this section.

The following required procedures must be followed:

1. The Town Board shall first convene in an open session for which an agenda has been posted.
2. A motion is made to enter into Executive Session and the Chair has cited the purpose for an Executive Session.

3. A majority of members have voted to go into Executive Session and the vote of each member is recorded on a roll call vote and entered into the minutes.
4. The Chair states before the Executive Session whether or not the governmental body will reconvene after the Executive Session.
5. All votes taken in Executive Session shall be recorded roll call votes and shall become a part of the record of said executive session.

4.4 Minutes and Records

The Planning Board is required to maintain accurate records of its meetings referred to as “minutes”. All minutes shall be approved by a majority vote of the Planning Board. All “original copies” minutes shall be signed by the Board and shall be promptly filed in the minute books in the Planning & Community Development Department.

Each set of minutes must include the following:

1. The date and time of the meeting
2. The location of the meeting
3. The name of members who are present
4. Names of additional participants of the meeting
5. An “exact record” of motions, votes and official actions taken
6. The subjects discussed
7. Summaries of discussions to aid in understanding decisions and/or providing factual information that may be useful to the Board or other persons reading the minutes.

Minutes may also include or have attached to:

1. Applications
2. Supporting materials, letters, requests or reports.

The minutes need not be verbatim transcript of all that was said at the meeting. Audio recordings may not be used as permanent of meetings. Written minutes must be prepared with the information outlined above.

4.5 Audio Recording by Observers

A meeting of the Planning Board may be recorded by any person in attendance by means of a recording device, digital or otherwise, any other means of audible reproduction, or by means of videotape equipment fixed in or more designated locations determined by the Planning Board except when a meeting is held in Executive Session, provided that in such recording there is no active interference with the conduct of the meeting.

4.6 The Mullen Rule

The Town of Ware has adopted the Mullen Rule, or Missed Meeting Rule, which allows a member of the Board to miss up to one (1) meeting of a public hearing which requires a Board vote. In such situations, the member of the Board shall review audio or video recording of the meeting, as well as

any documents submitted at said meeting, and such action by the Board member shall be considered evidence suitable to vote on the topic of the public hearing.

The adopted the provisions of MGL, §23D (a) states “Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for one or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory 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 he has examined all evidence received at that 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 hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.”

The appropriate form for use by Board members can be found in the Appendix of these Rules and Regulations.

5.0 VOTING & QUORUM

5.1 Regular Meeting

A quorum for a meeting of the Planning Board shall be a majority of the entire membership – three of five members. No action of the Planning Board shall be valid and binding unless taken or ratified by an affirmative vote of the majority of the members attending the meeting.

5.2 Zoning Amendments

The majority of the entire membership of the Planning Board shall concur on a report regarding a proposed adoption or amendment of a Zoning Bylaw or Ordinance. No Zoning Ordinance or Bylaw or amendment thereto shall be adopted or changed except by a two-thirds (2/3) vote of a Town Meeting. No proposed Zoning Bylaw which has been unfavorably acted upon by Town Meeting shall be considered by Town Meeting unless the adoption of the proposed bylaw is recommended in the final report of the Planning Board. (MGL., c40A, §5)

5.3 Site Plan Review

The majority of the Planning Board membership present shall vote in the affirmative for a Site Plan Review to be approved.

5.4 Special Permits

The majority of the entire membership of the Planning Board shall vote in the affirmative for a Site Plan Review to be approved.

5.5 Subdivision Approval

The majority of the entire membership of the Planning Board shall vote in the affirmative for a Subdivision Approval to be approved.

5.6 Rule of Necessity

If a member of a Planning Board has a conflict of interest, that member will be disqualified from acting on that Board matter. Under certain circumstances, the members of the Planning Board may invoke the “Rules of Necessity” to allow disqualified members to act. The Rule of Necessity provides that a Board may invoke this rule for a member(s) who would be disqualified from participation on a specific Town Board action, (e.g. because of a conflict of interest to participate because of lack of a quorum needed to take action.) The Rule of Necessity is not a Law written and passed by the Legislature. Rather, the Rule of Necessity was developed because judges applied it in their court decisions.

Requirements for Use of the Rule of Necessity by Elected Board Members:

1. The rule of necessity may be used only when an elected board is legally required to act on a matter and it lacks enough members to take valid official action solely due to board members being disqualified by conflicts of interest from participating in the matter.
2. If an elected board cannot act because one or more members have a conflict that can be addressed under the conflict of interest law by making a written disclosure or using an exemption, the rule of necessity may not be invoked.
3. Before invoking the rule of necessity, every effort must be made to find another board or other authority in the municipality with the legal power to act in place of the elected board that could not obtain a quorum due to conflicts of interest. Town Counsel should be consulted to identify another municipal board or authority to act.
4. The rule of necessity may not be invoked for mere convenience. The lack of a quorum because of illness or absence of a member does not permit the rule of necessity to be invoked. However, when a board is legally required to take action by a certain time that is about to expire and is unable to do so because of the lack of a quorum due to illness or absence of a member, the rule of necessity may be invoked.
5. Once a quorum of board members has been obtained, the rule of necessity may not be used to break a tie vote.

Procedure for Invoking the Rule of Necessity by an Elected Board:

The Rule of Necessity may be invoked by the chairperson, or acting chairperson, of the Planning Board after receiving advice, preferably written, from Town Counsel or the State Ethics Commission. If the chairperson is disqualified, then the Rule of Necessity may be invoked by a disinterested board member. (If all board members are conflicted, then the chairperson should invoke the rule of necessity.) When the Rule of Necessity is invoked, each board member who has a conflict must disclose the facts that create the conflict, and then may participate in the matter.

If it is proper for the Rule of Necessity to be used, it should be clearly indicated in the minutes of the meeting that the Board was unable to obtain a quorum due to disqualification of members and, at a last resort, that all those disqualified may now participate under the authority of the Rule of Necessity. Each disqualified member who wishes to participate under this Rule must first disclose publicly the facts that created the conflict. It should be noted, however, that invoking this Rule does not require all previously disqualified members to participate; it merely permits their participation. This Rule may only be used as a last resort. Every effort must be made to find another Board capable under the law of acting in place of the Board that could not obtain a quorum.

6.0 PUBLIC HEARING PROCESS

A Public Hearing is the process of collecting information that pertains to the pros and cons of an idea, motion, or proposed action from individuals. It is a tradition that Public Hearings provide each individual who desires to speak an opportunity to voice their opinions. It is very important that the Chair of the Planning Board states clearly how the Public Hearing will be conducted and stay with the described process. Also, the Planning Board shall not accept as testimony, evidence or attestation, nor cause to be read into the public record or minutes of any meeting, any correspondence in which an author fails to self-identify themselves or list their place of residence. This is not to exclude the right of the author to have the Board withhold the name and/or address upon request.

6.1 Public Hearing on Proposed Rules and Regulations

A Planning Board should adopt and amend from time to time, reasonable Rules and Regulations relative to Subdivision Control Law or with any other provisions of a statute ordinance or bylaw within the Town. A Public Hearing must be held on the proposed Rules and Regulations and followed proper notification guidelines.

6.2 Public Hearing on Zoning Amendments

Procedural steps for the adoption for Zoning Bylaws or Amendment thereto:

1. The proposed Bylaw or Amendment is submitted to the Selectmen. Such proposal may be submitted by:
 - a. Board of Selectmen
 - b. Zoning Board of Appeals
 - c. Individual(s) owning land to be affected by change or adoption
 - d. Registered voters
 - e. Planning Board
 - f. Regional Planning Agency
2. Within fourteen (14) days of receipt, the Selectmen shall submit the zoning proposal to the Planning Board for review, Public Hearing thereon, and report.
3. Notice of the Public Hearing shall be given and the notice of the Public Hearing shall be:
 - a. Published in a newspaper of general circulation in the Town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days

before the day of the hearing. The date of the Public Hearing should not be counted in the fourteen (14) days.

- b. Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.

The notice shall be mailed by USPS Certified Mail prior to the hearing to:

- a. Pioneer Valley Regional Planning Commission
 - b. Planning Boards of all abutting towns,
 - c. Department of Housing and Community Development
4. The Notice of the Public Hearing shall include:
 - a. The time, date, and place of the hearing
 - b. The subject matter, sufficient for identification
 - c. The place where text and maps may be inspected
 5. Within sixty-five (65) calendar days after the zoning proposal is submitted to the Planning Board by the Board of Selectmen, the Planning Board shall hold its Public Hearing.
 6. The Planning Board shall submit its final report with recommendations to the Town Meeting. The report may be written or oral.
 7. The Town Meeting shall take action on the zoning proposal within six (6) months of the Planning Board Public Hearing. If more than six (6) months have passed, the Planning Board must hold a new Public Hearing before Town Meeting may lawfully vote on the proposal. (MGL., c40A, §5)

6.3 Site Plan Review and/or Special Permit

Procedural steps for a Public Hearing for a Site Plan Review and/or Special Permit:

1. Applicant files a Site Plan Review and/or Special Permit application with the Planning & Community Development Department. When deemed to be a complete application, the Department will provide a copy of the application to the Town Clerk to be time and date stamped into the record.
2. A Site Plan Review and/or Special Permit approval may not be issued until a Public Hearing is held.
3. The Notice of Public Hearing shall include:
 - a. The name of the applicant
 - b. A description of the area or premises including street address, if any, or other adequate identification of the location
 - c. Date, time, and place of hearing
 - d. The subject matter of the hearing
 - e. The nature of the action requested
4. The Notice of the Public Hearing shall be:
 - a. Published in a newspaper of general circulation in the Town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the Public Hearing should not be counted in the fourteen (14) days.

- b. Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.
 - c. The applicant shall be responsible for paying the costs directly to the local newspaper and shall bring a copy of receipt or confirmation received.
 - d. The notice shall be mailed postage pre-paid to the applicant, abutters within 300-feet of all property lines including abutters in another town and across a public or private street or way, and the Planning Board of all abutting towns. The Notice shall also be mailed to other individuals, boards, or agencies for review if required by the Zoning Bylaw.
5. Within sixty-five (65) calendar days after the application is submitted to the Planning Board, the Planning Board shall hold its Public Hearing.
6. Within ninety (90) calendar days or any extended time following the date of the Public Hearing, the Planning Board shall take final action.
7. If the Planning Board fails to take final action within the ninety-day (90) or extended time limit, the Site Plan Review and/or Special Permit shall be deemed granted.
8. After the Decision has been made the Planning Board and/or their designee (employees) shall file a copy of the Decision with the Town Clerk within fourteen (14) days from the date of Decision by the Board.
9. A copy of the Decision shall be maintained in the files of the office of the Planning Board and shall be mailed to the applicant and any other person that so requested a copy at the Public Hearing.

6.4 Subdivision Approval

Procedural steps for a Public Hearing for a Subdivision plan. Be sure to consult The Town of Ware Subdivision Regulations and M.G.L. Chapter 41, §81K through §81GG for complete information.

1. Applicants submits a Preliminary or Definitive Subdivision Plan in accordance with the filing requirements specified in this Regulations and the Town of Ware Subdivision Regulations.
2. Action may not be taken on a Subdivision Plan until a Public Hearing is held.
3. The Planning Board reviews the plans and submits the plan for review to other departments as specified in the Ware Subdivision Regulations.
4. The Planning Board also send Notice of Public Hearing at the expense of the applicant.
5. The Notice of Public Hearing shall include:
 - a. Name of the applicant
 - b. Description of the area or premises including street address, if any, or other adequate identification of the location
 - c. Date, time and place of hearing
 - d. Subject matter of the hearing
 - e. Nature of the action requested.
6. The Notice of the Public Hearing shall be:

- a. Published in a newspaper of general circulation in the Town once in each of two successive weeks. The first publication shall not be less than fourteen (14) days before the day of the hearing. The date of the Public Hearing should not be counted in the fourteen (14) days.
 - b. Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.
 - c. The applicant will be responsible for paying the costs directly to the local newspaper and shall bring a copy of receipt or confirmation received.
 - d. The notice shall be mailed postage pre-paid by the applicant, to abutters within 300-feet of all property lines as per a certified abutters list, and the Planning Board of all abutting towns. The Notice shall also be mailed to other individuals, boards, or agencies for review if required by the Zoning Bylaw.
7. Within the time periods specified in the Ware Subdivision Regulations, other Town Departments must report to the Planning Board.
8. The Planning Board holds the Public Hearing on the Subdivision Plan. It is preferable to have reports of other departments prior to holding the Public Hearing, however, the Planning Board will hold the Public Hearing in the time frames allowed by the M.G.L..
9. After the Public Hearing the Planning Board will make their Decision. In the case of a Preliminary Subdivision Plan, the Board must notify the Town Clerk and the Applicant within forty-five (45) days after the date of submission that the plan has been approved, or that the plan has been approved with modifications, or that the plan has been disapproved.
10. A Decision on a Definitive Plan must be made by either of two ways:
 - a. in a case where a Preliminary Plan was filed, the Decision must be made within ninety-days (90); or
 - b. in a case where a Preliminary Plan was not filed, the Decision must be made within one hundred thirty-five days (135).
11. The Decision of the Planning Board will be to:
 - a. approve the plan if it complies with the Subdivision Control Law, the Subdivision Rules and Regulations of the Planning, and the recommendations of the Board of Health; or,
 - b. modify and approve the plan if it does not comply; or,
 - c. disapprove the plan, stating in detail wherein the plan does not conform to the Rules and Regulations of the Planning Board or the recommendations of the Board of Health. Such disapproval shall be revoked if the plan is amended so that it conforms to the Subdivision Rules and Regulations or recommendations. After a Public Hearing the Planning Board shall approve the amended plan.
12. If the Board fails to take final action within the specified time periods, or further time as mutually agreed upon, the plan shall be deemed approved.
13. After the Decision has been made the Planning Board and/or their designee (employees) shall file a copy of the Decision with the Town Clerk within the specified time period.

14. A copy of the Decision shall be maintained in the files of the office of the Planning Board and a copy shall be mailed to the applicant and any other person that so requested a copy at the Public Hearing.

7.0 REPORTS

The Planning Board shall submit to the Town Manager an annual report of activities for inclusion in the Annual Report of the Town. The report shall be submitted on or before a date specified by the Town Manager.

8.0 OFFICIAL FILES AND RECORDS

The Massachusetts Public Records Law provides right of access to public records, broadly defined to include all documentary materials except eleven specific exemptions such as personnel and medical files, proposals and bids, and appraisals of property. The minutes, informational data, memoranda and circulating materials of any town board are mostly all public information. The Town Board should consult with the Town Clerk if questions arise or a request made under the freedom of information occurs.

Every person having custody of any public record shall at reasonable times and without reasonable delay, permit the requested record to be inspected and examined by any person. Within ten (10) days following a request for inspection or a copy of a public record, a custodian of a public record shall comply with such request or respond to the requesting party regarding the cost and time frame of availability of the requested material.

8.1 Requirements and Summary of the Public Records Law

Access to Public Records: The Massachusetts Public Record Law provides that any person has an absolute right to access to public information. The right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.

Public Records Defined: The Massachusetts General Law broadly define “public records” to include all documentary material or data, regardless of physical form or characteristics, which are made or received by any officer or employee of any Massachusetts governmental entity. As a result, all photographs, papers and electronic storage media of which a governmental officer and employee is the “custodian” constitute “public records”.

8.2 Public Records Request

The individual seeking a public record request relating to the Planning Board shall make the request to the Planning & Community Development Office in person, phone, mail, fax, email, and other means of communication. A requester is not required to specifically identify a particular record. Any request that provides the custodian with a reasonable description of the desired information is sufficient. The

custodians are expected to use their superior knowledge of the records within their custody to assist the requester in obtaining the desired information.

8.3 Responding to Public Request

The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific legal basis for the withholding of the requested materials. The legal basis must include a citation to the statutory exemption upon which the custodian relies and must also explain why the exemption applies. A denial must also advise the requester of their rights to seek redress through the administrative process provided by the Office of the Supervisor of Public Records.

The Public Records Law only applies to information that is in the custody of a governmental entity at the time the request is received. There is no obligation to create a record for a requestor.

Inquiries into a requester's status or motivation for seeking information are expressly prohibited. Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a lawsuit against the holder of the records, must be honored in accordance with the Public Records Law

The Planning Board staff will verify that the Planning Board is actually the custodian of the records being requested.

The Staff of the Planning Board office shall make arrangements with the Requester for the opportunity to inspect and/or receive copies of the requested material.

8.4 Exemptions to the Public Record Law Requirements

Summary of "public records" that are exempted from the requirements of the Public Records Law. Withholding from disclosure those documents, which are specifically or by implication exempted from disclosure by statute. Examples of exempt records include:

- related solely to internal personnel rules and practices of the government unit
- personal identifying information
- medical, health, and hospital records
- attorney work product and materials protected by the attorney client privilege
- and others as guided by the Massachusetts Public Record Law

8.5 Public Records Maintained by the Planning & Community Development Office

The following is a list of some of the Public Records kept by the Planning & Community Development office:

- Site Plan Review
- Special Permits
- Subdivision Plans
- Subdivision Approval Not Required Plans

- Planning Board Minutes
- Master Plans
- Zoning Maps
- Overlay Maps
- Rules and Regulations
- Zoning Bylaws
- Zoning Amendments
- Subdivision Regulations
- Zoning Board of Appeals Minutes

CHAPTER 2: SITE PLAN REVIEW

2.0 SITE PLAN REVIEW

Certain uses within the Town of Ware require Site Plan Review. Please refer to the Ware Zoning Bylaw to determine if Site Plan Review is required for a proposed use.

2.1 Application

Application for Site Plan Review shall be on an official form, which shall be furnished by the Planning & Community Development office upon request. Forms may also be found in the Appendix.

The following information shall be submitted to be indicated as a complete application:

- ✓ 14 Application Packets – See Contents of Application
- ✓ Original Plans – Signed and Stamped
- ✓ 5 Copies of Plans – Full Size (24x36")
- ✓ 7 Copies of Plans – Reduced Size (11x17")
- ✓ All documents emailed or scanned in PDF format

2.2 Contents of Application

The following information shall be furnished by the applicant, or a request for waiver shall be provided in writing at the time of application. If an applicant requests a waiver for a specific item and that is not granted by the Board, the item must be submitted and the Public Hearing shall be continued to allow sufficient time for submittal and review of the item. If the item required is not submitted; that shall be cause for disapproval of an application. The following are the submittal requirements and all submittals shall contain the following information:

1. General Information
 - a. name and address of applicant and owner of record as listed on the Town's tax rolls. If the applicant is not the owner of record, the latter shall also sign the application - use Authorization Form. An attorney may sign the application when acting as the agent for the owner of the property;
 - b. date, north arrow, and scale shall be shown on plan;
 - c. a written description of the proposed use or uses;
 - d. a table or chart indicating the proposed number or amount and types of uses, lot area lot width, setbacks, building height, lot coverage, floor area, parking spaces, percentage of lot coverage and percentage of impervious surface, landscaping, and open spaces as they are required.
2. A site plan drawn at a scale of 1" = 40', unless another scale is previously requested by the applicant and found suitable by the Board. All plans shall be prepared, signed and sealed by a Massachusetts Licensed Engineer, Architect or Landscape Architect, whichever is appropriate, and is in good standing.

3. The plan shall be prepared by a Registered Land Surveyor who shall certify the accuracy of the locations of the building(s), setbacks and all other required dimensions, elevations, and measurements and shall be signed under the penalties of perjury.
4. Lot numbers, dimensions of lot in feet, size of lot in square feet, and width of abutting streets and ways shall be shown on the plan.
5. The location of existing or proposed building(s) on the lot shall be shown with the total square footage and dimensions of all buildings and building elevations and floor plans, and perspective renderings.
6. The plan shall show the location of existing wetlands, water bodies, wells, one-hundred-year floodplain elevation, and other natural features; streams, wetlands, slope areas, geological features, unique vegetation, historic features, and other features that may be important to the site.
7. Existing and proposed topographical lines at two-foot (2') contour intervals on the tract and within fifty-feet (50') thereof are required to be shown.
8. Existing and proposed street network, parking areas and spaces, drainage, and utility systems shall be prepared by a Professional Engineer licensed in Massachusetts and in good standing.
9. The applicant shall submit information regarding all measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased runoff, and flooding.
10. Any additional information which the Board may require. The Board may engage a Massachusetts Professional Engineer experienced in groundwater evaluation, hydrogeology or hazardous and toxic materials to review the application for completeness and correctness and shall require the applicant to pay for the cost of the review.
11. A locus plan at 1" = 100', 200' or 400' scale (as may be appropriate for the location and project) showing the location, names and present widths of the secondary streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership and topography taken from Assessor's plans or field survey if available, or properties therein.
12. The application shall also furnish a narrative summary of the vital statistics of the project. Such statistics shall include total gross and net square footage, number of parking spaces, and estimated amounts of water consumption and sewer discharge.
13. The applicant shall furnish a current Certified Abutter's List form the Assessor's Office.

2.3 Receipt of Applications

An application shall be deemed received when an application or a request has been received in the format prescribed by the Planning Board and is accompanied by all of the supporting materials or documentation and fees as detailed in these Rules and Regulations and in the Zoning Bylaw of the Town of Ware. No application shall be deemed received until it has been checked for completeness and accuracy by Planning Board Staff. If an application is deemed incomplete, it shall be returned to the applicant with a listing of missing information. The applicant shall be given the opportunity to withdraw any incomplete application. The filing fee is non-refundable. In the event the applicant does

not choose to withdraw the application, the Planning Board may deny the applicant for incomplete information.

2.4 Waivers

Upon request, the Planning Board may, at its discretion, waive the submission by the applicant of any of the required information. All waivers must be requested in writing at the time of application; however, waivers will not be decided until the Public Hearing. If the waiver is not granted, then all parties will agree to continue the hearing to allow sufficient time for the applicant to submit the required information.

2.5 Concurrent Hearing with Special Permit

Where Special Permit is required for the proposed use which forms the basis of the Site Plan Review, the applicant shall also file the appropriate information and meet the requirements of Special Permit Application. These Public Hearings shall be held concurrently, but separate Decisions will be reached for each. Information from one hearing or application may be used by the Planning Board to make its determination on any other concurrently filed application.

2.6 Fees

All application shall be accompanied by the appropriate administrative fee and Consultant Review Fee where required.

1. Administrative Fee
 - a. Filing fee shall be submitted with complete application to the Planning & Community Development Department. Contact the Department for a current fee schedule. The applicant shall also bear the cost of the legal notice. The legal notice shall be prepared by the Planning Department and mailed to abutters.
2. Consultant Review Fee
 - a. The applicant shall pay all associated Consultant Review fees as required.

2.7 Disposition of Application

1. Withdrawal of Application
 - a. An application may be withdrawn without prejudice by an applicant by notice in writing to the Planning & Community Development Department, which notice the applicant shall also deliver to the Town Clerk, at any time prior to the first publication of the Notice of the Public Hearing. After such notice, withdrawal of an application shall be permitted only by Board vote, which shall consist of a majority present and voting.
2. Appeals
 - a. Any person aggrieved by a Decision of the Planning Board may appeal such Decision as provided in MGL., c40A, §17 within twenty (20) days after such Decision has been filed in the office of the Town Clerk.
3. Reapplication

- a. No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a Site Plan Review within two (2) years after the date of the said final unfavorable action, unless the Board finds, by vote of four members, specific and material changes in the condition upon which the previous unfavorable action was based and such changes are described in the record of the Board's proceedings, and after notice is hereby given to parties in interest of the time and place of the proceedings to reconsider in the same manner as provided for in these Rules and Regulations.
4. Lapse of Site Plan Review Decision
 - a. The Town of Ware provides that a Site Plan Review granted shall lapse if a substantial use has not commenced in two (2) years, or in the case of construction, if construction has not begun. The Planning Board may make exceptions for good causes.
5. Extension of Site Plan Review Decision
 - a. Approval in all cases is granted for a two (2) year period from the date of the filing of such approval with the Town Clerk. If a development has not begun during that time period, the applicant may request an extension of the permit. Any request for an extension shall be made prior to the expiration of the existing permit.

CHAPTER 3: SPECIAL PERMIT

3.0 Special Permit

Specific types of uses are only allowed in specific districts by a Special Permit; in some cases, the Planning may serve and in other cases the Zoning Board of Appeals may serve as the granting authority. Please refer to the Ware Zoning Bylaw to determine if a Special Permit is required for a proposed use and who the appropriate granting authority is for your proposed use.

3.1 Application

Application for Special Permit shall be on an official form, which shall be furnished by the Planning & Community Development office upon request. Form may also be found in the Appendix.

The following information shall be submitted to be indicated as a complete application:

- ✓ 14 Application Packets – See Contents of Application
- ✓ Original Plans – Signed and Stamped
- ✓ 5 Copies of Plans – Full Size (24x36")
- ✓ 7 Copies of Plans – Reduced Size (11x17")
- ✓ All documents emailed or scanned in PDF format

3.2 Contents of Application

The following information shall be furnished by the applicant, or a request for waiver shall be provided in writing at the time of application. If an applicant requests a waiver for a specific item and that is not granted by the Board, the item must be submitted and the Public Hearing shall be continued to allow sufficient time for submittal and review of the item. If the item required is not submitted; that shall be cause for disapproval of an application. The following are the submittal requirements and all submittals shall contain the following information:

1. General Information
 - a. name and address of applicant and owner of record as listed on the Town's tax rolls. If the applicant is not the owner of record, the latter shall also sign the application - use Authorization Form (see Appendix). An attorney may sign the application when acting as the agent for the owner of the property;
 - b. date, north arrow, and scale shall be shown on plan;
 - c. a written description of the proposed project;
 - d. a table or chart indicating the proposed number or amount and types of uses, lot area lot width, setbacks, building height, lot coverage, floor area, parking spaces, percentage of lot coverage and percentage of impervious surface, landscaping, and open spaces as they are required.
2. A site plan drawn at a scale of 1"=40', unless another scale is previously requested by the applicant and found suitable by the Board. All plans shall be prepared, signed and sealed

- by a Massachusetts Licensed Engineer, Architect or Landscape Architect, whichever is appropriate, in good standing.
3. The plan shall be stamped by the Registered Land Surveyor who performed the instrument boundary survey and who shall certify the accuracy of the locations of the building(s), setbacks and all other required dimensions, elevations, and measurements and shall be signed under the penalties of perjury.
 4. Lot numbers, dimensions of lot in feet, size of lot in square feet, and width of abutting streets and ways shall be shown on the plan.
 5. The location of existing or proposed building(s) on the lot shall be shown with the total square footage and dimensions of all buildings and building elevations and floor plans, and perspective renderings.
 6. The plan shall show the location of existing wetlands, water bodies, wells, one-hundred-year floodplain elevation, and other natural features; streams, wetlands, vistas, slope areas, geological features, unique vegetation, historic features, and other features that may be important to the site.
 7. Existing and proposed topographical lines at two-foot (2') contour intervals on the tract and within fifty-feet (50') thereof are required to be shown.
 8. Existing and proposed street network, parking areas and spaces, drainage, and utility systems shall be prepared by a Professional Engineer licensed in Massachusetts.
 9. The applicant shall submit information regarding all measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased runoff, and flooding.
 10. When the property is located in an Aquifer Protection Overlay District, please provide projections of down gradient concentrations of nitrogen, phosphorus, and other relevant chemicals to be disposed of on-site, at property boundaries; and at other locations deemed pertinent by the Board, prepared by a Hydro-geologist or Registered Professional Engineer possessing experience and education in Water Supply Protection and Hydrology.
 11. Any additional information which the Board may require. The Board may engage a Massachusetts Professional Engineer experienced in groundwater evaluation, hydrogeology or hazardous and toxic materials to review the application for completeness and correctness and shall require the applicant to pay for the cost of the review.
 12. A locus plan at 1" = 100', 200' or 400' scale (as may be appropriate for the location and project) showing the location, names and present widths of the Secondary Streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership and topography taken from Assessor's plans or field survey if available, or properties therein.
 13. The application shall also furnish a narrative summary of the vital statistics of the project. Such statistics shall include total gross and net square footage, number of parking spaces, and estimated amounts of water consumption and sewer discharge.
 14. The applicant shall furnish a current Certified Abutter's List form the Assessor's Office.

3.3 Receipt of Application

An application shall be deemed received when an application or a request has been received in the format prescribed by the Planning Board and is accompanied by all of the supporting materials or documentation and fees as detailed in these Rules and Regulations and in the Zoning Bylaw of the Town of Ware. No application shall be deemed received until it has been checked for completeness and accuracy by Planning Board Staff. If an application is deemed incomplete, it shall be returned to the applicant with a listing of missing information. The applicant shall be given the opportunity to withdraw any incomplete application. The filing fee is non-refundable. In the event the applicant does not choose to withdraw the application, the Planning Board may deny the applicant for incomplete information.

3.4 Waivers

Upon request, the Planning Board may, at its discretion, waive the submission by the applicant of any of the required information. All waivers must be requested in writing at the time of application; however, waivers will not be decided until the Public Hearing. If the waiver is not granted, then all parties will agree to continue the hearing to allow sufficient time for the applicant to submit the required information.

3.5 Concurrent Hearing with Site Plan Review

Where Site Plan Review is required for the proposed use which forms the basis of the Special Permit, the applicant shall also file the appropriate information and meet the requirements of Site Plan Review Application. These Public Hearings shall be held concurrently, but separate Decisions will be reached for each. Information from one hearing or application may be used by the Planning Board to make its determination on any other concurrently filed application.

3.6 Fees

All application shall be accompanied by the appropriate administrative fee and Consultant Review Fee where required.

1. Administrative Fee
 - a. Filing fee shall be submitted with complete application to the Planning & Community Development Department. Contact the Department for a current fee schedule. The applicant shall also bear the cost of the legal notice and abutter's notification. The notice shall be prepared by the Planning Department; however, the responsibility to notify abutters and publish the advertisement on the appropriate dates shall lie with the applicant.
2. Consultant Review Fee
 - a. The applicant shall pay all associated Consultant Review fees as required.
3. Other Costs and Expenses
 - a. The applicant shall pay all associated costs of mailing to abutters and any parties in interest and for publication of any required legal notices. The Planning and Community Development office shall prepare the notice.

3.7 Disposition of Application

1. Withdrawal of Application
 - a. An application may be withdrawn without prejudice by an applicant by notice in writing to the Planning & Community Development Department, which notice the applicant shall also deliver to the Town Clerk, at any time prior to the first publication of the Notice of the Public Hearing. After such notice, withdrawal of an application shall be permitted only by Board vote, which shall consist of a majority present and voting.
2. Appeals
 - a. Any person aggrieved by a Decision of the Planning Board may appeal such Decision as provided in MGL., c40A, §17 within twenty (20) days after such Decision has been filed in the office of the Town Clerk.
3. Reapplication
 - a. No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a Special Permit within two (2) years after the date of the said final unfavorable action, unless the Board finds, by vote of two-thirds (2/3), specific and material changes in the condition upon which the previous unfavorable action was based and such changes are described in the record of the Board's proceedings, and after notice is hereby given to parties in interest of the time and place of the proceedings to reconsider in the same manner as provided for in these Rules and Regulations.
4. Lapse of Special Permit Decision
 - a. The Town of Ware provides that a Special Permit granted shall lapse within two (2) years if a substantial use has not commenced in said time, or in the case of construction, if construction has not begun. The Planning Board may make exceptions for good causes.
5. Extension of Special Permit Decision
 - a. Approval in all cases is granted for a one (1) year period from the date of the filing of such approval with the Town Clerk. If a development has not begun during that time period, the applicant may request an extension of the permit. Any request for an extension shall be made in writing prior to the expiration of the existing permit. If the permit has expired at the time of the extension request, a new filing shall be submitted.

CHAPTER 4: PROJECT FINANCIAL SURETY

Specific types of projects require financial surety to ensure project completion. Typically, the Town will accept a surety bond or a cash deposit for these projects. If there is a specific requirement for the type of bond used as financial surety, it will be outlined in the Zoning Bylaw.

4.0 Cash Deposit

In accordance with M.G.L. Chapter 44 Section 53 G ½, this section outlines the handling of a special account for cash deposits to secure the performance of an obligation by an applicant.

1. Type of financial guarantee required: if a cash bond is required through the approval of Special Permit, the numeric amount will be identified in a condition of the Special Permit.
2. Treatment of investment earnings: interest earned on a cash bond shall be deposited into the General Fund.
3. The performance required and standards for determining satisfactory completion or default: unless otherwise specified in the Zoning Bylaws, the Zoning Enforcement Officer will make the official determination of completion or default. If the project falls into default, after a site inspection the Zoning Enforcement Officer shall inform the Town Manager and the Planning & Community Development Department of the default in writing. Performance standards for construction bonds will be identified in the Special Permit as necessary.
4. The procedures the applicant must follow to obtain a return of the monies or other security: unless otherwise specified in the Zoning Bylaws, the Zoning Enforcement Officer will make the official determination of completion of project through the final inspection, and when appropriate, issuance of a certificate of completion. Upon completion of a project, the applicant shall make written request to the Zoning Enforcement Officer stating the project is complete and requesting a final inspection. If the Zoning Enforcement Officer determines the project default, they shall inform the Town Manager and the Planning & Community Development Department of the default in writing. At that time the funds will be used to bring the project back into compliance by completing the work necessary to restore the site using these monies.