

FOXBOROUGH ZONING BOARD OF APPEALS

RULES AND REGULATIONS – October 2021

ARTICLE 1

ORGANIZATION

Sec. 1.01 MEMBERS

(a) The Board consists of five members appointed by the Board of Selectmen, three of whom are regular members and two of whom are associate members. Each regular member is appointed for a term of three years, with the term of one such member to expire each year as of June 1. Each associate member is appointed for a term of one year commencing as of June 1. Vacancies shall be filled for unexpired terms in the same manner as original appointments.

(b) The regular members of the Board at the first regular meeting following the annual appointment of a regular member elect from such number a chairperson, vice chairperson and clerk.

Sec. 1.02 CHAIRPERSON

The chairperson is responsible for exercising general supervisory authority over the Board and its business and responsibilities, including, without limitation, chairing and administering all meetings and hearings of the Board, reporting to the Board on official transactions and other matters that concern and relate to the Board and its business and responsibilities, communicating for and on behalf of the Board with Town of Foxborough officials and other Town of Foxborough boards and committees, representing the Board before Town of Foxborough officials and other Town of Foxborough boards and committees, ensuring preparation of Board decisions on hearings, supervising the responsibilities of the clerk, and addressing such other matters that concern and relate to the Board and its business and responsibilities in the ordinary course or that from time-to-time may arise. The chairperson has discretion to refer to himself or herself, as the case may be, as the chairman or chairwoman.

Sec. 1.03 VICE CHAIRPERSON

The vice chairperson performs such responsibilities of the chairperson as the chairperson may delegate, and acts as the chairperson of the Board in the event of the absence, inability to act or conflict of interest on the part of the chairperson, and in such capacity is authorized to exercise all of the authority, powers and duties of the chairperson as set forth in Section 1.02. the vice chairperson has discretion to refer to himself or herself, as the case may be, as the vice chairman or vice chairwoman.

Sec. 1.04 CLERK

(a) Subject to the direction of the Board and the supervision of the chairperson, the clerk is responsible for the clerical work of the Board, including, without limitation, reviewing applications for completeness and compliance with applicable law and these Rules and Regulations, preparing hearing notices and ensuring that such notices have been advertised and mailed as provided in Section 3.01(a), maintaining dockets and minutes of the Board's proceedings, compiling and maintaining required records,

and addressing such other clerical duties and responsibilities that concern and relate to the Board and its business and responsibilities that in the ordinary course or from time-time may arise.

(b) The duties and responsibilities of the clerk as set forth in Section 1.04(a) may be exercised under the supervision of the clerk by a clerical secretary or administrative assistant who is an employee of the Town of Foxborough.

Sec. 1.05 ASSOCIATE MEMBERS

Associate members are authorized to participate in all matters that come before the Board, and may vote on all such matters except otherwise as provided by Massachusetts General Laws Chapter 40A or these Rules and Regulations. The chairperson of the Board will designate an associate member to act in place of a member of the Board in the event of the absence, inability to act or conflict of interest on the part of a member, or in the event of a vacancy on the Board of a member until such time as an appointment is made to fill the unexpired portion of the vacated term.

Sec. 1.06 QUORUM

Three members must be present for a quorum.

Sec. 1.07 REGULAR MEETINGS AND SITE VISITS

(a) Regular meetings of the Board shall be held commencing at 7:00 p.m. on the third Thursday of each month or such other day as the Board from time-to-time may determine, such meetings to be held in the Andrew A. Gala, Jr. Meeting Room of the Foxborough Town Hall or in such other Town of Foxborough facility as may be available therefor.

(b) The Board may conduct a “site visit” to the property that is the subject of an application that it is considering. No formal motion or decision shall be made, considered or determined at any site visit. The decision by the Board to conduct a site visit shall be made at a public hearing concerning the pertinent application. The date and time of every site visit shall be identified at such hearing, and shall be noticed by posting in a conspicuous place in Foxborough Town Hall and on the Board’s page on the Town of Foxborough website.

Sec. 1.08 SPECIAL MEETINGS

Special meetings of the Board may be called by the chairperson or at the request of two regular members. All special meetings shall be conducted in accordance with these Rules and Regulations and applicable law.

ARTICLE 2

APPLICATIONS TO THE BOARD

Sec. 2.01 AUTHORITY

(a) The Board has original and exclusive jurisdiction under the Code of the Town of Foxborough, Chapter 275: Zoning (the “Zoning Bylaw”) to hear and decide (i) appeals under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw, (ii)

applications for special permits for which the Board is the permit granting authority under the Zoning Bylaw, (iii) applications for variances, and (iv) comprehensive permits under Massachusetts General Laws Chapter 40B, Sections 20-23.

(b) The Board has original and exclusive jurisdiction under the Code of the Town of Foxborough, Massachusetts, Chapter 213: Signs (the “Sign Bylaw”) to hear and decide (i) applications for special sign permits and integrated sign permits in accordance with Section 213-3.E. of the Sign Bylaw, (ii) modifications of any sign for which the Board has granted a special sign permit or an integrated sign permit, or any preexisting sign or nonconforming sign, in accordance with Section 213-3.F. of the Sign Bylaw, and (iii) appeals in accordance with Section 213-3.G. of the Sign Bylaw of a decision of the Building Commissioner to approve or deny a sign permit application.

Sec. 2.02 APPLICATIONS

(a) Requests for action by the Board shall be made on such application form and in accordance with such instructions that the Board shall prescribe from time-to-time, copies of which shall be provided to a prospective applicant upon request. Eight (8) copies of each application are required, two (2) copies of which shall contain all required original signatures. An application shall not be deemed complete unless all information required by the application form shall be furnished by the applicant in the manner therein required. Any communication to the Board that purports to be an application shall be treated as a mere notice of intention to seek Board action.

(b) Appeals under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw, and appeals of a decision of the Building Commissioner to approve or deny a sign permit application, shall be filed with the Foxborough Town Clerk with a copy of such appeal provided to the Board.

(c) Applications for special permits for which the Board is the permit granting authority under the Zoning Bylaw and applications for variances shall be submitted to the clerk or to such clerical secretary or administrative assistant, if any, to whom the Board has designated such authority in accordance with Section 1.04(b). The clerk or the designated clerical secretary or administrative assistant will review the application for completeness and, if determined complete, will file the application with the Town Clerk for certification and will transmit copies of the certified filing to the Board, the Building Commissioner and the Planning Board. Applicants are not required to meet with the Building Commissioner prior to filing an application for a special permit or variance to determine whether any such relief is necessary and to ensure that the proper relief will be requested from the Board.

(d) Applications for special sign permits and integrated sign permits shall be submitted to the Building Commissioner. The Building Commissioner shall have 20 days to review the application for completeness and, if determined thereby to be complete, will provide such application to the clerk or to such clerical secretary or administrative assistant, if any, to whom the Board has designated such authority in accordance with Section 1.04(b), to be filed thereby with the Town Clerk. The Building Commissioner has no authority to approve or deny any such application.

(e) The Board will not hold a hearing on an application under the Zoning Bylaw or the Sign Bylaw unless the application therefor has been determined to be complete and has been certified by the Town Clerk, and all filing fees required for such application as provided in Section 2.04 have been paid in full.

(f) The dates by which an application for a hearing before the Board must be filed are set forth on the Board's page on the Town of Foxborough website.

Sec. 2.03 FILING PERIOD FOR ADMINISTRATIVE APPEALS

(a) Appeals to the Board under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw shall be taken within thirty (30) days of the date of the order, ruling, decision or determination of the Building Commissioner or other administrative official, officer or board of the Town of Foxborough that is the subject of such matter.

(b) Appeals to the Board under Section 213-3.G. of the Sign Bylaw shall be taken within thirty (30) days of the date on which the Building Commissioner has approved or denied a sign permit application.

Sec. 2.04 PLAN OF LAND TO ACCOMPANY APPLICATION

(a) Each application for a special permit and for a variance shall be accompanied by eight (8) copies of a certified plan prepared by a registered land surveyor or civil engineer, unless waived by the Board, that are not less than 8-½ x 11 inches drawn to scale and that set forth the size and dimensions of the subject lot, the names and locations of abutting streets, zoning easements and restrictive covenants affecting the lot, the location of wetlands, the location of all buildings and other improvements on the lot, the location of driveways and parking areas on the lot, and other items and information that are pertinent to the application.

(b) Each application for a special sign permit or for an integrated sign permit shall be accompanied by eight (8) copies of a certified plan prepared by a registered land surveyor or civil engineer that sets forth the specific location on the subject lot at which the sign that is the subject of a special sign permit application is to be installed, or that sets forth the specific location on the subject lot or lots at which the signs that are the subject of an integrated permit application are to be installed, the dimensions of the proposed sign or signs, the size and dimensions of the lot or lots, the location of all buildings and other improvements on the lot or lots, and the name and location of any street or streets that the subject sign or signs will face.

Sec. 2.05 FILING AND ADVERTISING FEES

(a) A filing fee shall be made payable to the "Town of Foxborough" as follows:

Application Type	<u>Filing Fee*</u>
(i)Single and Two-Family Special Permits (including home occupations), Variances and Findings	\$150
(ii)Multi-Family Special Permits, Variances and Findings	\$200 plus \$75 for each unit in excess of 2
(iii)Non-Residential Special Permits, Variances and Findings	\$300
(iv)Signs	\$200

(v) Appeals of Building Commissioner/Zoning Enforcement Officer	\$150
(vi) Comprehensive Permits	as determined in accordance with Section 5.03 of these Rules and Regulations

* Each request within an application is subject to and requires payment of the filing fee that is applicable thereto. For example, an application requesting both a special permit and a variance for a non-residential use would require payment of a \$600 filing fee.

(b) An advertising fee shall be made payable directly to The Sun Chronicle (or such other locally-distributed newspaper in which the Board designates the required hearing notice to be advertised) in such amount as is required thereby.

Sec. 2.06 TECHNICAL REVIEW AND CONSULTANTS

(a) In the event that the Board in its discretion determines that its review of an application for a special permit or variance requires technical advice that is not available from Town of Foxborough employees in areas that may include, without limitation, civil engineering, traffic and environmental resources, it may contract with one or more outside consultants to review aspects of such application and to advise the Board thereon. The Board as a condition of permitting the applicant to proceed with such matter may require the applicant to pay a "review fee" consisting of the reasonable costs for the services to be provided by the consultant(s) that the Board has engaged. The applicant shall pay all costs, fees and expenses associated with the services provided in connection with any such review and shall, if so required by the Board, deposit a specified amount of money as the Board may determine in a specific escrow account of the Town of Foxborough Treasurer in accordance with the provisions of Massachusetts General Laws Chapter 44, Section 53G to cover the payment of such costs, fees and expenses. In event that the escrow account at any time falls below fifty percent (50%) of the amount that has been set by the Board, the applicant shall be required to deposit an additional amount to return the escrow account to the required level. Any unexpended monies in the escrow account upon completion of the permitting process and satisfaction of all technical review obligations shall be returned to the applicant. Failure by the Applicant to pay any review fee set by the Board within the stated period for payment may constitute grounds for denial of the application.

(b) An applicant may take an administrative appeal to the Foxborough Board of Selectmen from the selection of any outside consultant within twenty (20) days of such consultant's selection. The grounds for any such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three (3) or more years of practice in the field at issue or a related field. The required time limit for acting upon an application by the Board shall be extended by the duration of any such administrative appeal. In the event that no decision is made by the Board of Selectman within one month following the filing of any such appeal, the selection of the consultant that has been made by the Board shall stand.

ARTICLE 3

HEARINGS

Sec. 3.01 NOTICE AND TIME OF HEARINGS

(a) Notice of hearings shall be advertised in The Foxboro Reporter or such other newspaper of local distribution as the Board may designate at least fourteen (14) days prior to the date of the hearing. A copy of such notice shall be sent by mail, postage prepaid, to “parties in interest” as defined and required by Massachusetts General Laws Chapter 40A, Section 11, and shall be posted in a conspicuous place in Foxborough Town Hall and on the Board’s page of the Town of Foxborough website. The Board is responsible for submitting, mailing and posting the hearing notice on behalf of the applicant.

(b) Hearings shall be held by the Board on such dates as it holds its regular meetings or determines to hold a special meeting.

(c) Hearings for appeals and applications for which the Board has authority under the Zoning Bylaw shall be held within sixty-five (65) days of the date on which an application for such matter has been filed with the Town Clerk.

(d) Hearings for applications for which the Board has authority under the Sign Bylaw shall be held within forty-five (45) days of the date on which a complete sign permit application has been filed with the Town Clerk, and hearings for appeals of a decision of the Building Commissioner to approve or deny a sign permit application shall be held within sixty-five (65) days of the date of the filing of an appeal application with the Town Clerk.

Sec. 3.02 HEARINGS TO BE PUBLIC

All hearings shall be open to the public and held in accordance with the “Open Meeting Law.” No person shall be excluded unless they are considered by the chairperson to be a “serious hindrance” to the workings of the Board.

Sec. 3.03 REPRESENTATION AND ABSENCE

An applicant may appear before the Board at a hearing on his or her own behalf or be represented by an attorney or other agent. In the event that an applicant or his or her representative fails without due cause to appear at a scheduled hearing, the Board in its discretion may continue the matter to be heard at a later date, decide the matter on the basis of the information that has been submitted to the Board, or dismiss the matter without prejudice.

Sec. 3.04 ORDER OF BUSINESS

The order of business at all hearings is as follows:

- The hearing notice is read by the chairperson or the clerk if so designated by the chairperson.
- Applicant’s presentation.

- Questions by the Board to the applicant.
- If an appeal, rebuttal to the applicant's presentation by the Building Commissioner or other Town of Foxborough official or officer whose decision or determination is the subject of the appeal.
- Questions and/or comments from members of the public with respect to the application or appeal.
- Written comments received by the Board concerning the application or appeal read into the record of the hearing by the chairperson or the clerk if so designated by the chairperson.
- Rebuttal by applicant or the Building Commissioner if an appeal to comments opposed to the application or in support of the appeal.
- Vote by the members of the Board to close the public portion of the hearing.
- Discussion by the Board and vote on the application or the appeal.

Sec. 3.05 BRIEF TO THE BOARD

A brief to the Board in support of or in opposition to an appeal or an application for a special permit or variance is desired but not required unless specifically directed by the Board at the hearing. Each such brief shall set forth in detail all facts and the basis of applicable law that is relied upon by the party submitting such document, and shall be part of the Board's record of the hearing on the matter to which it pertains.

Sec. 3.06 PROCEEDINGS INVOLVING "FINDINGS"

All proceedings before the Board that involve and require a finding by the Board shall be determined and governed in the same manner and pursuant to the same requirements as proceedings for a special permit.

Sec. 3.07 CONTINUANCES

The decision of the Board for appeals and applications may be continued beyond the respective dates required therefor by Massachusetts General Laws Chapter 40A for matters arising under the Zoning Bylaw, and beyond the respective dates required therefor for matters arising under the Sign Bylaw, by vote of the members of the Board hearing and voting on such matters. All such continuances shall be designated on a form that shall be signed by the chairperson and the applicant or the representative of the applicant, which such executed form shall be filed with the Town Clerk.

ARTICLE 4

DISPOSITION BY THE BOARD

Sec. 4.01 VOTING REQUIREMENTS

(a) The concurring vote of all members of the Board hearing and voting on an appeal under the Zoning Bylaw or on an application for a special permit, variance or finding shall be required in order to uphold such appeal or grant such request.

(b) The concurring vote of all members of the Board hearing and voting on an appeal under the Sign Bylaw of a decision of the Building Commissioner to approve or deny a sign permit shall be

required in order to uphold such appeal. A majority vote of the members of the Board hearing and voting on an application for a special sign permit or an integrated sign permit shall be required in order to grant such request.

(c) The decision of the Board on each appeal and application shall show the vote of each member of the Board voting thereon and the reason and basis for such vote. In the event that any member of the Board fails to vote or dissents from any vote such individual shall be identified in the Board's decision and the reason and basis for such failure or dissent shall be set forth therein.

(d) All members of the Board and including the Board's associate members shall be authorized to vote on matters before the Board except otherwise as specifically provided in these Rules and Regulations, and except for appeals or applications for which the Board has jurisdiction to hear and determine under the Zoning Bylaw or under the Sign Bylaw. A majority vote of such members and associate members is required to approve such matters except as these Rules and Regulations otherwise may provide.

Sec. 4.02 WITHDRAWALS

An appeal or application may be withdrawn without prejudice at any time before a scheduled hearing thereon by written notice to the Board from the applicant or the applicant's representative. An appeal or application for which a hearing has been noticed may be withdrawn at the time of the hearing of such matter upon request by vote of the members of the Board hearing and voting on such matter, and at the discretion of the Board may be with or without prejudice.

Sec. 4.03 RECORD OF PROCEEDINGS

(a) A written decision and detailed record of each hearing held by the Board shall be signed by the members of the Board voting thereon and thereafter shall be filed with the Town Clerk and the Planning Board.

(b) A decision of the Board granting a special permit or variance under the Zoning Bylaw shall not take effect until such decision has been recorded in the Norfolk County Registry of Deeds after a period of twenty (20) days has elapsed from the date such decision was certified by the Town Clerk or, if an appeal of such decision has been taken, upon the dismissal or denial of such appeal. The Building Commissioner will not act upon any special permit or variance until proof of recording has been presented thereto.

(c) A decision of the Board granting a special sign permit or an integrated sign permit under the Sign Bylaw shall take effect within thirty (30) days after it has been filed with the Town Clerk or, if an appeal of such decision has been taken, upon the dismissal or denial of such appeal. In the event that a special sign permit or integrated sign permit requires a permit or license from the Director of Outdoor Advertising within the Massachusetts Department of Transportation, the Building Commissioner will not act upon such permit until proof of the required state permit or license has been presented thereto. There is no requirement under the Sign Bylaw that any such decision be filed in the Norfolk County Registry of Deeds.

Sec. 4.04 RECONSIDERATION

Once a final decision of the Board on an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Sec. 4.05 REAPPLICATION

In order to have an application reheard within two (2) years of any unfavorable action, the applicant must request permission from the Planning Board and the Board, showing new evidence that substantially alters the conditions of the previous application. All but one of the members of the Planning Board must consent to such reapplication. The Board must also unanimously find that material and specific changes have been made in the conditions upon which the previous unfavorable action was taken.

ARTICLE 5**COMPREHENSIVE PERMITS****Sec. 5.01 PURPOSE AND CONTEXT**

(a) The purpose of this Article 5 is to set forth the procedures and requirements for (i) Comprehensive Permit applications to the Board under and in accordance with Massachusetts General Laws, Chapter 40B Sections 20-23 and the regulations that are set forth at 760 CMR 56.00, and (ii) Local Initiative Projects that are eligible for Comprehensive Permits. To the extent that any provision in this Article 5 is in conflict with the referenced statutory or regulatory provisions, then the pertinent statutory or regulatory provision shall take precedence and the provision in this Article 5 shall be invalidated.

(b) Capitalized words used in this Article 5 (except for those capitalized words that are defined in any other article of these Rules and Regulations) shall have the respective meanings thereof that are set forth in 760 CMR 56.02.

Sec. 5.02 COMPREHENSIVE PERMIT APPLICATION

(a) The Applicant shall file ten (10) copies of the application, two (2) copies of which shall contain all required original signatures.

(b) A complete application shall consist of each of the following:

- Preliminary site development plans signed and stamped by a professional engineer, showing general dimensions, the locations of proposed buildings, streets, drives, parking areas, walks and paved areas, proposed landscaping improvements and open areas within the site, existing and proposed topography all wetland resource areas and any significant natural resource or wildlife habitat areas identified by the state;
- Existing site conditions report on the proposed Project site and its surrounding areas conforming at a minimum with Section 3.01 E. of the Foxborough Subdivision Regulations and showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood.

- Preliminary, scaled, architectural drawings prepared by a registered architect, with typical floor plans, elevations and sections, and showing construction type and exterior finishes;
- Tabulation of proposed buildings by type, size (number of bedrooms, floor area), footprint, impervious coverage and open space, including percentage of the tract to be occupied by buildings, parking and other paved vehicular areas;
- Preliminary subdivision plan if the Project involves a subdivision;
- Preliminary utilities plan showing the proposed location and types of water, sewage and drainage facilities, including hydrants;
- Project Eligibility Letter issued by the Subsidizing Agency and other documents demonstrating compliance by the Applicant with the requirements of 760 CMR 56.04(1);
- List of requested Waivers from Town of Foxborough bylaws, rules or regulations, including, a written explanation demonstrating that failure to grant such exceptions or waivers would render the Project Uneconomic, and where relevant, a financial analysis and cost projection for each exception or waiver,
- Certified Abutters List from the Foxborough Assessor's Office.

(c) Copies of the application shall be distributed to each of the following Town of Foxborough boards and departments for review and comment not later than seven (7) days from the date on which the application has been received by the Board:

- Board of Health
- Board of Selectmen
- Board of Water and Sewer Commissioners
- Conservation Commission
- Design Review Board (if applicable)
- Fire Department
- Highway Department
- Historical Commission/Historical District Commission (if applicable)
- Inspections Department
- Planning Department and Planning Board
- Police Department
- School Department

Sec. 5.03 APPLICATION AND ADVERTISING FEES

(a) Application fees in accordance with the following schedule shall be submitted to the Board at such time as the application has been filed:

- \$200.00 administrative fee
- \$200.00 per market rate residential unit
- \$50.00 per "affordable" residential unit

(b) The required fee for advertising the public hearing notice shall be made payable directly to The Sun Chronicle (or such other locally-distributed newspaper that the Board directs) in such amount as is required thereby.

Sec. 5.04 HEARING PROCESS

(a) The public hearing on a Comprehensive Permit application shall commence not later than thirty (30) days after the Board has received the application unless the Applicant and the Board agree in writing to a later date. Notice of the hearing shall be advertised and provided in accordance with Section 3.01(a) of these Rules and Regulations.

(b) In the event that the Board intends to deny a Comprehensive Permit as being Consistent with Local Needs in accordance with one or more of the grounds set forth in 760 CMR 56.03(1), it shall provide written notice to the Applicant and to the Massachusetts Department of Housing and Community Development (the "DHCD") not later than fifteen (15) days from the opening of the public hearing, which such notice shall include the factual basis for such position and supporting documentation. Written notice and supporting documentation challenging the Board's position shall be provided by the Applicant to the Board and DHCD not later than fifteen (15) days from the date of the Board's written notice.

(c) The Board shall close the public hearing within one hundred eighty (180) days from the date on which it commenced, unless the Board and the Applicant agree in writing to a later date. The hearing is deemed complete when all relevant public testimony has been received and all information requested by the Board that it is entitled to receive has been submitted.

Sec. 5.05 TECHNICAL REVIEW AND CONSULTANTS

(a) In the event that the Board determines subsequent to its receipt of an application that its review of such application requires technical advice that is not available from Town of Foxborough employees in such areas as civil engineering, traffic, environmental resources, design review of buildings and site, and, in accordance with 760 CMR 56.05(6), review of financial statements, it may in accordance with 760 CMR 56.05 contract with one or more outside consultants that may include, but are not limited to, architects, engineers, landscape architects, legal counsel, financial professionals, real estate professionals, demography experts and/or other professionals to review aspects of the Project.

(b) An Applicant may take an administrative appeal to the Foxborough Board of Selectmen from the selection of any outside consultant within twenty (20) days of such consultant's selection. The grounds for any such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three (3) or more years of practice in the field at issue or a related field. The required time limit for acting upon an Application by the Board shall be extended by the duration of any such administrative appeal. In the event that no decision is made by the Board of Selectman within one month following the filing of any such appeal, the selection of the consultant that has been made by the Board shall stand.

(c) The Applicant shall pay all costs, fees and expenses associated with the services provided in connection with any such review (other than legal fees for the general representation of the Board or other Town boards and departments), which such amounts shall be reasonable in light of the factors described in 750 CMR 56.05(5)(c). The Board may require the Applicant to deposit a specified amount of money as the Board may determine in a specific escrow account of the Town of Foxborough in accordance with the provisions of Massachusetts General Laws Chapter 44, Section 53G to cover such costs, fees and expenses. In event that the escrow account at any time falls below fifty percent (50%) of the amount that has been set by the Board, the Applicant shall be required to deposit an additional amount

to return the escrow account to the required level. Funds from such account may be expended only for the purposes described above. Any unexpended monies in the escrow account upon completion of the permitting process and satisfaction of all technical review obligations or upon withdrawal of the application shall be returned to the Applicant.

(d) A review fee may be imposed only if (i) the work of the consultant consists of review of studies prepared on behalf of the Applicant, and not of independent studies on behalf of the Board, (ii) the work is in connection with the Applicant's specific project, (iii) all written results and reports are made part of the record before the Board, and (iv) in compliance with Massachusetts General Laws Chapter 30B, Sections 1-19 (the "Uniform Procurement Act") and these Rules and Regulations. Selection of a consultant will be made after the Board has reviewed the consultant's bid and proposal and any comments received from the Applicant. The Board will not formally award a contract until the required review fee has been paid by the Applicant. Failure by the Applicant to pay any review fee set by the Board within the stated period for payment may constitute grounds for denial of the application.

(e) All review fees imposed by the Board shall be reasonable in view of (i) the complexity of the Project as a whole, (ii) the complexity of particular technical issues, (iii) the number of the Project's proposed housing units, (iv) the size and character of the Project's site, (v) projected construction costs, and (vi) fees charged by similar consultants and scopes of work in the geographical area in which Foxborough is situated.

Sec. 5.06 BOARD DECISION

(a) The Board shall render a decision based on a majority vote of its regular members not later than forty (40) days from the date on which the public hearing is terminated, unless such period is extended by written agreement of the Board and the Applicant. The Board shall file its written decision with the Town Clerk not later than fourteen (14) days from the date on which such decision is rendered.

(b) An application may be decided and disposed of in the following manner:

- The Board may grant a Comprehensive Permit on the terms and conditions that are set forth in the application;
- The Board may grant a Comprehensive Permit with conditions that address matters of Local Concern; or
- The Board may deny a Comprehensive Permit as not being Consistent with Local Needs if it determines that there are no conditions that will adequately address Local Concerns.

(c) The Board is prohibited from imposing any condition to a Comprehensive Permit that would cause the Project to be Uneconomic.

(d) The Board has discretion to require that (i) site improvements and conditions of approval be secured by a performance guarantee in an amount that the Board deems appropriate to ensure completion of the Project, and (ii) a site construction inspection fee be paid to the Town concerning the Project in an amount that is equivalent to the estimated cost of the inspector's fee. No building permits shall issue until the submission of any such performance guarantee and/or site construction fee.

Sec. 5.07 APPEALS

(a) In the event that the Board denies an application for a Comprehensive Permit or approves a permit that the Applicant alleges includes unacceptable conditions or requirements, the Applicant may appeal to the Housing Appeals Committee not later than twenty (20) days from the date on which the Board's decision is filed with the Town Clerk.

(b) In the event that the Board approves a Comprehensive Permit, any person alleging to have been aggrieved by such decision may appeal to the Land Court or the Superior Court as provided in Massachusetts General Laws Chapter 40A, Section 17, not later than twenty (20) days from the date on which the Board's decision is filed with the Town Clerk.

Sec. 5.08 MODIFICATIONS OF COMPREHENSIVE PERMITS

In the event that an Applicant desires to change, modify or revise any detail of a Project after the Board has granted a Comprehensive Permit, the Applicant shall inform the Board in writing and describe the change, modification or revision proposed. The Board shall within twenty (20) days of its receipt of such notice determine and inform the Applicant whether it deems the proposed change, modification or revision to be substantial or insubstantial in accordance with the factors that are set forth in 760 CMR 56.07(4), as follows:

- If the proposed change, modification or revision is determined by the Board to be insubstantial, or if the Board fails to notify the Applicant of its determination by the end of such twenty (20)-day period, the Comprehensive Permit is deemed to be modified and to incorporate such change.
- If the proposed change, modification or revision is determined by the Board to be substantial, the Board shall hold a public hearing on the request within thirty (30) days of its determination, and shall issue a decision within forty (40) days of the termination of such hearing.

ARTICLE 6**MISCELLANEOUS****Sec. 6.01 AMENDMENTS**

These Rules and Regulations may be amended from time-to-time by a majority vote of the Board at any meeting thereof, provided that the newspaper advertisement for such meeting shall notice that an amendment or amendments to these Rules and Regulations is or are to be considered, and that the proposed amendment or amendments shall be posted on the Town of Foxborough website at least fourteen (14) days prior to such meeting.

Sec. 6.02 CONSTRUCTION

These Rules and Regulations are intended for the convenience of the Board, to assist it in the conduct of its duties and responsibilities, and to inform those who appear before the Board of the Board's practices, procedures and requirements. No substantive rights are created hereunder.

Sec. 6.03 INVALIDATION AND SEVERABILITY

In the event that any provision set forth herein conflicts in any manner with any provision of Massachusetts General Laws Chapter 40A, the Zoning Bylaw or the Sign Bylaw, then the provision of such statute or bylaw shall take precedence and the rule or regulation that is set forth herein shall be invalidated. Notwithstanding any such invalidation, the remainder of these Rules and Regulations shall remain in force and effect to the extent operable.

Sec. 6.04 WAIVER AND NONCOMPLIANCE

The Board in the conduct of its duties and responsibilities with respect to a specific appeal or application may by the concurring vote of the members hearing and voting on such matter waive any provision of these Rules and Regulations. Any failure of the Board to comply with any provision of these Rules and Regulations shall not invalidate or negate a decision of the Board with respect to a specific appeal or application.