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## **ARTICLE 11: ADMINISTRATION AND ENFORCEMENT**

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### **SECTION 11.00 ZONING ENFORCEMENT OFFICER**

- A. The Building Commissioner shall be charged with the enforcement of these By-Laws. No permit or license shall be granted for:
1. The construction, alteration or moving of any building or structure if the buildings or structures as constructed, altered or moved would be in violation of these By-Laws;
  2. The use of a building, structure, or land which would be violation of any of these By-Laws.

### **SECTION 11.01 ZONING BOARD OF APPEALS**

- A. The Board of Appeals shall adopt rules and regulations for the conduct of its business, shall file them with the Town Clerk, and shall have the following powers:
1. To hear and decide appeals. In exercising this power the Board may, in conformity with the provisions of these By-Laws, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.
  2. To hear and decide applications for Special Use Permits and Findings (excepting those under Section 9.09) under the provisions of Section 10.01 *(Art. 18, 11/26/90 STM)*
  3. To hear and decide petitions or appeals for variances.
  4. To grant temporary Special Use Permits when the Board of Appeals finds that the general health, safety or welfare of the Town will be served by allowing as a temporary use one which is not otherwise permitted, and where such use will not be in conflict with the purposes permitted in the district, such temporary use may be permitted for a period of not more than one year, without recourse of an extension of time.
- B. All hearings of the Board of Appeals shall be open to the public. The chairman, or in his absence the acting chairman, may administer oaths, summon witnesses, and call for the production of papers. The Board shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decision and of its official actions, copies of all of which shall be filed within fourteen (14) days in the office of Town Clerk and shall be a public record; and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to this Section and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk.
- C. The concurring vote of all members of the Board of Appeals shall be necessary to reverse any order or decision of any administrative official or to grant any Special Use Permit or variance.
- D. The Board of Appeals shall consist of three regular members and two associate members to be appointed in accordance with Section 4 of Article II of the Town of Foxborough General by Laws and G.L. c.40A § 12. The chairperson of the Board of Appeals may designate any such associate member to sit on the Board in case of absence, inability to act or conflict of interest on the part of any regular member thereof, or in the event of a vacancy on the Board, until said vacancy is filled in the manner provided in said Section 4 of Article 11 of the general By-Laws and GL c.40A § 12.

**SECTION 11.02 NOTICE OF PUBLIC HEARING**

- A. In all cases where a public hearing is required to be held by the Board of Appeals, or the Planning Board when acting as the Special Permit Granting Authority, notice shall be given by publication in a newspaper of general circulation in the Town once in each two (2) successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing. Notice shall be sent by mail, postage prepaid, to all parties in interest as defined in Article 2.
- B. The Assessors maintaining any applicable tax list shall certify to the Board of Appeals or the Planning Board the names and addresses of parties in interest and such certification shall be conclusive for all purposes. The Board of Appeals and the Planning Board may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person, giving not less than five (5) nor more than ten (10) additional days to reply.
- C. Publication and notices shall contain the name of the petitioner, a description of the area or premises which is the subject of the petition, the date, time, and place of the public hearing, the subject matter of the hearing and the nature of the action or relief requested, if any. No such hearing shall be held on any day on which a State or Municipal election, caucus or primary is held in the Town of Foxborough.

**SECTION 11.03 VARIANCES**

- A. The Board of Appeals may grant upon appeal or petition, with respect to particular land or structures, a variance from the terms of these By-Laws if it is specifically found that owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of these By-Laws would involve substantial hardship, financial or otherwise to the petitioner, and that the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purposes of these By-Laws.
- B. The Board of Appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structure, but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.
- C. A variance properly granted prior to January 1, 1976 but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said date.
- D. An appeal or petition for a variance shall be filed by the petitioner with the Town Clerk, and a copy of said appeal or petition, including the date and time of filing, certified by the Town Clerk, shall be transmitted forthwith by the petitioner to the Board of Appeals.

- E. The Board of Appeals shall hold a public hearing within 65 days from date of filing of the appeal or petition. The decision of the Board of Appeals shall be made within 100 days after the date of the filing of the appeal or petition. The required time limits for a public hearing and decision may be extended by written agreement between the applicant and the Board of Appeals, A copy of such agreement shall be filed in the office of the Town Clerk. Failure by the Board of Appeals to act within said 100 days or extended time, shall be deemed to be a grant of the variance.
- F. Any petition or appeal for a variance which has been transmitted to the Board of Appeals may be withdrawn without prejudice by the petitioner, prior to the publication of the notice of a public hearing thereon but thereafter be withdrawn without prejudice only with the approval of the Board of Appeals.
- G. Upon the granting of a variance, or any extension, modification of renewal thereof, the Board of Appeals shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified, containing the name and address of the owner, identifying the land affected setting forth compliance with the statutory requirements for the issuance of such variance and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning board and the Town Clerk.
- H. No variance or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed that it has been dismissed or denied, is recorded in the Norfolk County Registry of Deeds and indexed in the grantor index under the name of the owner of record. The fee for recording or registering shall be paid by the owner or applicant.
- I. If the rights authorized by a variance are not exercised within one (1) year from the date of the grant of such variance, they shall lapse, and may be re-established only after notice and a new hearing subject only to the limited right to extend provided in Section 10, Chapter 40A, MGL.

#### **SECTION 11.04 APPEALS**

- A. An appeal to the Board of Appeals may be taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of these By-Laws, by the regional planning agency (MAPC) or by any person including an officer or board of the Town, or of an abutting city or town aggrieved by an order or decision of the building Commissioner, or other administrative official, in violation of these By-Laws.
- B. Any appeal under this Section to the Board of Appeals shall be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, and a copy of said notice, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the officer or board whose order or decision is being appealed, and to the Board of Appeals. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.
- C. The Board of Appeals shall hold a public hearing within sixty-five (65) days from the date of filing of the appeal. The decision of the Board of Appeals shall be made within one hundred (100) days after the date of the filing of the appeal. The required time limits for a public hearing and decision may be

extended by written agreement between the applicant and the Board of Appeals. A copy of such agreement shall be filed in the office of the Town Clerk. Failure by the Board of Appeals to act within said 100 days or extended time, shall be deemed to be the grant of the appeal.

#### **SECTION 11.05 SPECIAL PERMITS**

- A. The Planning Board shall act as the Special Permit Granting Authority and shall adopt reasonable rules and regulations relative to the issuance of Special Permits. The Planning Board shall file said rules and regulations with the Town Clerk.
- B. Special Permits shall be issued only for uses expressly noted in Article 4 as requiring a Special Permit (SP) and for those deviations allowed by Special Permit within the Economic Development Area Overlay District pursuant to Section 9.13 of these By-Laws. In granting a Special Permit, the Planning Board shall find that the petition is in harmony with the general purposes of these By-Laws and shall be subject to general and specific provisions set forth in these By-Laws. The Planning Board may impose conditions, safeguards and limitations on time or use. *(Art. 3, 12/6/99 STM)*
- C. Among other things, the Board shall consider the adequacy and location of the access/egress to the use, its impact on the environment, the neighborhood, and on water resources.
- D. Special Permits issued by the Planning Board shall be by an affirmative vote at least four members of the Board. An associate member, pursuant to Chapter 40A, Section 9 of the Massachusetts General Laws as amended, may be designated by the Chairman to sit on the Board for the purpose of acting on a Special Permit application in the case of absence, inability to act, or conflict of interest on the part of any regular member of the Board or in the event of a vacancy on the Board. *(Art. 18, 12/9/96 STM)*

#### **SECTION 11.06 SPECIAL USE PERMITS**

- A. Special Use Permits shall only be issued by the Board of Appeals for uses which are expressly noted requiring a Special Use Permit (SUP) in Article 4 or for temporary uses pursuant to Section 11.01.
- B. In granting a Special Use Permit the Board shall place due regard to the nature and condition of all adjacent structures and uses and the district within which the same are located. The requested use shall be of general benefit to the Town and shall not impair the integrity or the character of the district; nor of adjoining zones; nor will it be detrimental to the general purposes of these By-Laws.

#### **SECTION 11.07 SPECIAL PERMIT AND SPECIAL USE PERMIT PROCEDURE**

- A. Each application for a Special Permit or Special Use Permit shall be filed by the petitioner with the Town Clerk and a copy of said application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Planning Board when the application

is for a Special Permit and with the Board of Appeals when the application is for a Special Use Permit.

- B. Petitions for Special Permits and Special Use Permits may be submitted to and reviewed by the bodies politic in the Town and such reviews may be held jointly. Any such body politic to which petitions are referred for review may make such recommendations as they deem appropriate and shall send copies to the Board of Appeals or Planning Board, as the case may be, and to the applicant. Failure of any body politic to make recommendations within thirty-five (35) days of receipt by such body politic of the petition shall be deemed lack of opposition thereto.
- C. Special Permits and Special Use Permits shall only be issued following a public hearing within sixty-five (65) days from the date of filing of such application.
- D. The decision of the Planning Board or Board of Appeals shall be made within 90 days following the date of the closing of the public hearing. The requested time limits for a public hearing and said action, may be extended by written agreement between the Planning Board or Board of Appeals as the case may be. A copy of such agreement shall be filed in the Office of the Town Clerk. Failure by the Planning Board or Zoning Board of Appeals to take final action within said 90 days or extended time, shall be deemed to be a grant of the Special Permit or Special Use Permit.
- E. Any application for a Special Permit or Special Use Permit which has been transmitted to the Planning Board or Board of Appeals may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon but thereafter may be withdrawn without prejudice only with the approval of the Planning Board or the Board of Appeals.
- F. Upon the granting of a Special Permit or Special Use Permit, or any extension, modification or renewal thereof, the Board of Appeals or the Planning Board shall issue to the owner and to the applicant, if other than the owner, a copy of its decision, certified, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements for the issuance of such permit and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and the Town Clerk.
- G. No Special Permit or Special Use Permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Norfolk County Registry of Deeds and indexed in the grantor index under the name of the owner of record. The fee for recording or registering shall be paid by the owner or applicant.
- H. A Special Permit or Special Use Permit granted under these By-Laws shall lapse one year after the date the decision was filed with the Town Clerk excluding such time required to pursue or await the determination of an appeal from the grant, if construction or substantial use, upon which the permit was based, has not begun except for good cause. In the case of a Residential Compound or an Open Space Residential Development, the recording of the approved, definitive subdivision plan with the Registry of Deeds or Registry District of the Land Court shall be considered substantial use of the Special Permit granted under those Sections. *(Art. 21, 11/26/90 STM)*

## **SECTION 11.08 CONSTRUCTIVE GRANTS**

- A. The failure of a Board to act within the required time periods, pursuant to Chapter 40A, MGL shall be deemed to be the grant of the appeal, application or petition. The petitioner who seeks such approval by reason of the failure of a Board to act shall follow the procedures contained in Chapter 40A of the Massachusetts General Laws as amended.

#### **SECTION 11.09 REPETITIVE PETITIONS**

- A. No appeal, application or petition which has been unfavorably and finally acted upon by the Planning Board or the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless the Special Permit Granting Authority or the Board of Appeals finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

#### **SECTION 11.10 COURT APPEALS**

- A. Any person aggrieved by a decision of the Board of Appeals or any Special Permit Granting Authority shall have the rights to appeal pursuant to Chapter 40A, MGL.
- B. The Town may provide any officer or board independent legal counsel for appealing a decision of the Board of Appeals or Special Permit Granting Authority.

#### **SECTION 11.11 FINES AND FEES**

- A. Any person, firm, or corporation who violates, disobeys, or refuses to comply with any of the provisions of these By-Laws shall be fined a penalty of up to three hundred dollars (\$300) per violation or occurrence and each day such violation or occurrence continues shall constitute a separate offense.
- B. The Administrative and Enforcing Officials of these By-Laws shall set a fee schedule for procedures under these By-Laws and shall post such schedule in the Building Commissioner's Office.