

PROPOSED AMENDMENTS TO ZBA RULES AND REGULATIONS

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2021 APR 28 P 2:19

FOXBOROUGH, MA 02035

1. Delete Sections 1.01 through 1.05 in their entirety and replace with the following new sections:

Sec. 1.01 MEMBERS

(a) The Board consists of five members appointed by the Board of Selectmen, three of whom who 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 May 1. Each associate member is appointed for a term of one year commencing as of May 1. Vacancies shall be filled for unexpired terms in the same manner as original appointments.

(b) The members of the Board at the first regular meeting following the annual appointment of a 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 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 chairman or 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.

2. *Amend the heading of Section 1.07 to read **REGULAR MEETINGS AND SITE VISITS**, designate the current paragraph as (a) and add the following new paragraph:*

(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.

3. *Add the following new section to Article 2 as Section 2.01, and respectively renumber current Sections 2.01, 2.02, 2.03, 2.04 and 2.05 as Sections 2.02, 2.03, 2.04, 2.05 and 2.06:*

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.

4. *Revise Section 2.02 (as renumbered – formerly 2.01) as follows:*

Designate the current paragraph as (a).

Add the following new paragraphs to Section 2.02:

(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.

(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 filed with the Building Commissioner. The Building Commissioner will review the application for completeness and, if determined 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 submitted thereby to the Town Clerk for certification and transmittal of copies of the certified application to the Board and the Planning Board. 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 and advertising 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.

5. *Delete Section 2.03 (as renumbered – formerly 2.02) in its entirety and replace it with the following:*

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 forty-five (45) days of the date on which the Building Commissioner has approved or denied a sign permit application.

6. *Amend the heading of Section 2.04 (as renumbered) to read **PLAN OF LAND TO ACCOMPANY APPLICATION** and delete the first sentence of such section in its entirety and replace it with the following:*

Each application for a special permit and each application for a variance shall be accompanied by eight copies of the following described plans:

7. *Delete Section 3.01 in its entirety and replace it with the following:*

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 certified by 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 Building Commissioner, 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.

8. *Delete Section 3.03 in its entirety and replace it with the following:*

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.

9. *Delete Section 3.04 in its entirety and replace it with the following:*

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.

10. *Delete Section 3.06 in its entirety, renumber current Section 3.07 as Section 3.06, and add the following new Section 3.07:*

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.

11. *Delete Section 4.01 in its entirety and replace it with the following:*

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.

12. *Delete Section 4.02 in its entirety and replace it with the following:*

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.

13. *Add the following as new Section 4.03 and renumber current Sections 4.03 and 4.04 as Section 4.04 and 4.05, respectively:*

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.

14. *Delete the title of Article 6 in its entirety and replace it with the following:*

MISCELLANEOUS

15. *Delete the two paragraphs that currently comprise Article 6 in the entirety and replace them with the following:*

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 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.