



TOWN OF HOPKINTON

OFFICE OF
BOARD OF APPEALS

TOWN HALL
18 MAIN STREET – THIRD FLOOR
HOPKINTON, MASSACHUSETTS 01748-3209
508-497-0012

Procedural and Administrative Rules

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Procedural and Administrative Rules

I. Authority

These Procedural and Administrative Rules are promulgated by the Board of Appeals pursuant to the authority granted to it under sections nine and twelve of chapter forty A, and section 21 of chapter forty B, of the General Laws of The Commonwealth of Massachusetts. The Board of Appeals may supplement these Procedural and Administrative Rules with additional "Comprehensive Permit Rules" that pertain only to Applications filed under chapter forty B of the Massachusetts General Laws. If there is any conflict between the Board's two set of rules, the more restrictive "Comprehensive Permit Rules" shall apply to those c. 40B filings.

II. Pleadings Filed with the Board of Appeals

A. Filing of Complete Pleadings

All Appeals, Applications for Special Permits under MGL c. 40A, Petitions for Variances, and Applications for Special Permits under MGL c. 40B, and Appeals relating to Historic Preservation decisions pursuant to Chapter 125 of the Town By-laws (hereinafter "Pleading") shall be made in writing on forms proscribed and adopted by the Board and filed with the Office of Town Clerk. All Pleadings shall be filed in accordance with all requirements of MGL c. 40A and 40B, the Town of Hopkinton By-laws and Zoning By-laws (hereinafter "by-laws"), and the herein additional requirements of the Board of Appeals (hereinafter "Board"). Each Pleading shall be completed in full, dated, contain the signature of the Appellant, Applicant, or Petitioner, and be accompanied with the appropriate filing fee as specified hereafter. Each original filing shall be accompanied with ten (10) complete copies. The Chairman of the Board of Appeals (hereafter "Chairman") shall publish and file at the Office of Town Clerk specific "Filing Instructions" for said Pleadings, and such instructions may include additional requirements, which shall be deemed to be included herein by reference.

Upon receipt of a Pleading from the Office of Town Clerk, the Clerk of the Board of Appeals (hereinafter "Clerk"), or his or her designee, shall make a determination as to whether or not such filing is complete and meets the minimum filing requirements of the Board. If the Pleading is complete, the Clerk shall take such further actions to comply with the notice requirements under MGL c. 40A s. 11. If the Pleading is deemed incomplete, the Clerk shall reject the Pleading and so notify the Appellant, Applicant, or Petitioner in writing, and provide a copy of such notification to the Chairman and the Office of Town Clerk. If the Pleading is rejected as incomplete, no notice under MGL c. 40A s. 11 shall be published.

B. Filing Fees

The filing fee for every Pleading filed under MGL c. 40A, MGL c 40B, or Chapter 125 of the Town By-laws shall be in accordance with the Fee Schedule that may be from time to time adopted by the Board and filed with the Town Clerk.

C. Consultant Review Fees

1. If after receiving one or more Applications for Special Permits, Petitions for Variances, or Appeals of Administrative Decisions, the Board determines that it requires technical advice unavailable from municipal employees, it may employ outside consultants.¹ A consultant may be required by the Board when the characteristics, size, or density of the site, or the extent or complexity of the issues raised and/or the relief requested, necessitate in the opinion of the Board consultants to provide advice and guidance. In such case, the Board may then elect to impose a Consultant Review Fee on the Applicant, Petitioner and/or Appellant. The exercise of discretion by the Board in making its determination for Consultant Review Fees shall be based upon its reasonable findings that additional information or assistance acquirable only through consultants would be necessary for the rendering of an objective decision by the Board. In such instances, the Board shall notify the Applicant, Petitioner, and/or Appellant in writing of this need and the estimated costs. Whenever possible the Board shall work cooperatively with the Applicant, Petitioner, and/or Appellant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the Applicant, Petitioner, and/or Appellant. Alternatively, the Board may, by majority vote, require that the Applicant, Petitioner, and/or Appellant pay a reasonable Consultant Review Fee for the employment of outside consultants chosen by the Board alone. Absent the filing of a timely appeal pursuant to paragraph 4 below, if the Applicant, Petitioner, and/or Appellant fails to pay the Consultant Review Fee within ten (10) days of receiving written notification of the designation of a consultant, the Board may deny the Application for Special Permit, Petition for Variance, or Appeal, with or without prejudice. If the Board employs a consultant, but elects not to impose a Consultant Review Fee on the Applicant, Petitioner and/or Appellant, the Board shall pay for such consultant employed under the section from funds in its budget as approved by Town Meeting or from funds in its account established pursuant to MGL c. 44 s. 53E½, if such funds are then available or shall be estimated to be available during the fiscal year in which the consultant's compensation shall be earned and payable. If no such funds are available, the Board shall request the necessary funds from the Board of Selectmen and/or the Appropriations Committee.

2. If the Consultant employed by the Board under this section C shall be "Town Counsel", as so designated by the Board of Selectmen pursuant to their authority under Section 28-5E of the town's By-laws, then the Board's use of said Consultant shall be subject to the supervision of the Board of Selectmen as provided for in said town By-law.²

¹ The fact that a consultant shall hold a Juris Doctor degree and/or be licensed by the Commonwealth of Massachusetts to practice law shall not disqualify said individual from serving as a consultant as herein provided.

² Except for such matters under which the Board of Appeals grants approvals of the Board of Selectmen pursuant to MGL c. 40B s. 21

3. A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, ss 1-19.³ Procurement in the amount of less than \$5,000 may be obtained through the exercise of sound business practices pursuant to M.G.L. c. 30B s. 4. Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee.
4. The Consultant Review Fee for consultants and costs associated therewith typically imposed under this section shall be Four Thousand Eight Hundred (\$4,800.00) Dollars, unless otherwise adjusted by the Board based upon the extent of anticipated services and associated costs. All fees assessed pursuant to this section shall be reasonable in light of:
 - (a) the complexity of the proposed project as a whole,
 - (b) the complexity of particular technical and legal issues,
 - (c) the number of housing units proposed (if applicable),
 - (d) the size and character of the proposed project,
 - (e) the projected construction costs, and,
 - (f) fees charged by similar consultants in the area.

As a general rule, the Board shall not assess any fee greater than the amount which might be appropriated from town funds to review a similar town project. The Board reserves the right to require the Applicant, Petitioner, and/or Appellant to pay additional amounts to cover reasonable costs and expense borne by the Board for additional services in the event that the initial estimate is insufficient.

5. Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Board of Selectmen by filing, in triplicate, its written notification of appeal with the grounds contained therein, with the Office of Town Clerk, with copies to the Board of Selectmen and the Board of Appeals, within ten (10) days of the Board of Appeals written notification of the designation of a consultant. The Board of Selectmen shall have no jurisdiction to hear an appeal that is not timely filed.
 - (a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
 - (b) The minimum qualifications shall consist either of a license or registration as required by state statute, or when none shall be required by statute, an

³ The Uniform Procurement Act does not apply, without limitation, to contracts for the advertising of required notices per MGL c. 30B s. 1(b)(6); contracts for the services of expert witnesses for use in adjudicatory proceedings or litigation or in anticipation thereof per MGL c. 30B s. 1(b)(13); and contracts with lawyers, designers or CPAs per MGL c. 30B s. 1(b)(15).

educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

- (c) The required time limits for action upon the application by the Board pursuant to M.G.L. c. 40A s. 11 or M.G.L. c. 40B s. 21 shall be extended by the duration of the appeal. The Board of Selectmen shall render a Decision on the Appeal within thirty days, and file a notice of its Decision with the Office of Town Clerk, with a copy to the Board of Appeals. In the event that no decision is filed by the Board of Selectmen with the Office of Town Clerk within thirty days following the filing of the appeal, the appeal shall be deemed to be denied and the selection by the Board of Appeals shall stand.
 - (d) If the Applicant, Petitioner, and/or Appellant fails to pay the consultant review fee within ten (10) days of the filing of the Selectmen's Decision with the Town Clerk, or within ten (10) days of the failure of the Selectmen to act on the appeal, the Board may deny the Application for Special Permit, Petition for Variance, or Appeal, with or without prejudice.
6. Each Consultant Review Fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44 s. 53G or M.G.L. c. 44 s. 53E½, as so designated by the Board of Appeals.
- (a) Funds from the special account may be expended only for the purposes described in section 1 above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, ss 1-19.
 - (b) If the Consultant Review Fee is deposited into an account established pursuant to M.G.L. c. 44 s. 53G, within 90 days of the filing of the Board's Decision with the Office of Town Clerk, or of such time as the applicant receives permission pursuant to M.G.L. c. 40A s. 16 to formerly withdraw the application, petition, or appeal, the applicant, petitioner, and/or appellant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.
 - (c) The municipal accountant shall submit annually a report of the special account to the Board of Selectmen for their review. This report shall be published in the town annual report.

D. Schedule of Public Hearings

Public Hearings for Appeals, Applications for Special Permits, and Petitions for Variances shall generally be scheduled by the Clerk on the second and fourth Wednesdays of

each month. However, Public Hearings may be scheduled on other dates and times. The Notice of Public Hearing posted at Town Hall and otherwise provided as required under law shall be the official notice to the public regarding the scheduling of Public Hearings. The Clerk shall also maintain an "Agenda" of public hearings, and periodically distribute such Agenda to the Board and post the same to the Board's web site.

E. Conduct of Public Hearings

The Chairman, or in his absence or inability, the Vice Chairman or the Chairman's designee, shall conduct all Public Hearings in accordance with the following.

1. No person shall speak until recognized by the Chairman and until that person shall stand and state his or her name and address for the record. The Clerk, or the Administrative Assistant under the supervision of the Clerk, shall make record of the proceedings, including the names and addresses of those who offer testimony or other evidence. No person shall address the Board unless and until he or she has been so identified for the record. All questions and comments shall be addressed to the Chairman. There will be no discussions between or among those in attendance, except through the Chairman.

2. All persons at the request of the Chairman shall be silent. If, after warning from the Chairman, a person persists in disorderly behavior, the Chairman may order him to withdraw from the Public Hearing. If said person does not withdraw, the Chairman may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned, as is provided for under MGL c. 39 s. 23C.

3. A maximum of five Full Members and Associate Members shall sit at the main hearing table and be entitled to vote on any matter pertaining to the public hearing. Four affirmative votes shall be necessary to grant any Special Permit or Variance, or to reverse or modify any order or decision of any administrative official. Non-voting Associate Members, the Zoning Enforcement Officer, and Town Counsel, if in attendance, may sit at a side table designated for such purpose. Non-voting Associate Members may fully participate in discussions at public hearings and otherwise.

4. If there are only four Members available to sit on a Public Hearing held pursuant to MGL c. 40A, at the commencement of the public hearing, the Chairman shall advise the Applicant, Petitioner, or Appellant for the record that a unanimous decision of the remaining four voting Members in attendance shall be necessary for any relief to be granted, and that the Appellant, Applicant, or Petitioner proceeds with the Public Hearing at his own risk. The Applicant, Petitioner, or Appellant may then request a continuance, and such shall be granted by the Chairman if so requested. If there are less than four Members available, the Public Hearing shall be continued by the Chairman.

5. After opening the hearing by the Chairman, the Clerk shall read the Notice of Public Hearing and confirm for the record that all parties in interest have been notified in accordance with the law. The Clerk shall review the file, and determine whether it is complete. The Clerk shall advise the Chairman of any missing information or documentation. The Chairman shall state for the record, if he or she has such knowledge, the name of any Member who declines to participate in the public hearing on account of an actual or potential conflict of interest, or who elects to participate after notice in accordance with the law. The Chairman may then provide a brief summary of these hearing procedures for the benefit of the general public in attendance. In his discretion, the Chairman may establish a time limit for testimony so as to facilitate an orderly and expeditious public hearing process.

6. The Applicant, Petitioner, or Appellant shall then have an opportunity to present his or her case. Thereafter, the Board may make appropriate inquiry on such testimony and evidence. The Chairman may then, in his discretion, read any written comments from other Town Boards or agencies or written comments received from other interested parties.

7. The Building Inspector / Zoning Enforcement Officer and other Town administrative officials shall then have an opportunity to present testimony and evidence to the Board. Thereafter, the Board may make appropriate inquiry.

8. The abutters shall then have an opportunity to present testimony and evidence to the Board. Thereafter, the Board may make appropriate inquiry.

9. The general public shall then have an opportunity to present testimony and evidence to the Board. Thereafter, the Board may make appropriate inquiry.

10. The Applicant, Petitioner, or Appellant shall then have an opportunity to make a brief closing statement summarizing the relief requested and the rationale therefore.

11. In its discretion, the Board may at any point in the proceeding entertain a request for a Continuance of the Public Hearing or a request for Withdrawal of a Pleading.

12. When the Board determines it has sufficient testimony and evidence to come to a reasoned Decision, it may entertain a motion to close the Public Hearing. Once the Public Hearing is closed, no further testimony or evidence shall be admitted, except as provided for in the motion to close the public hearing, which shall require a simple majority. All motions to close a public hearing with an allowance for submission of additional evidence shall include an adequate description, and a date and time deadline for submission, of such items. At any time after the close of the Public Hearing, the Chairman may entertain a motion for relief.

F. Procedure for Continuance of Public Hearings

All requests for Continuance of Public Hearings must be made in writing on a form proscribed and adopted by the Board. All requests for continuance must be signed and dated by the Applicant, Petitioner, or Appellant, or its authorized agent or attorney; state the reasons therefore; contain the date and time that the hearing will be continued to; and be filed with the Clerk. Any continuance of a Public Hearing will automatically extend by the number of days requested in the continuance the time under which the Board must render and file a Decision under state statute. The Board members sitting as voting members on said public hearing shall vote to accept or reject the request, acceptance thereof shall require a simple majority. In the discretion of the Chairman, prior to a vote of the Board on the request, testimony or evidence on the merits may be accepted from any party in attendance at the Public Hearing. In making its decision, the Board shall consider and take into account the effect of acceptance or rejection on the Appellant, Applicant, or Petitioner, and the abutters and public in general. If accepted, the Clerk shall file a copy of the request for continuance with the Office of Town Clerk.

G. Procedure for Withdrawal of Pleadings

All requests for Withdrawal of Pleadings must be made in writing on a form proscribed and adopted by the Board. All requests for withdrawal must be signed and dated by the Applicant, Petitioner, or Appellant, or its authorized agent or attorney; state the reasons therefore; and be filed with the Clerk. If the request shall be made prior to issuance of notice of a Public Hearing pursuant to MGL c. 40A s. 11, the Clerk shall grant the request and so notify the Appellant, Applicant, or Petitioner, and the Chairman. If the request shall be made subsequent to issuance of notice of a Public Hearing pursuant to MGL c. 40A s. 11, the Board members sitting as voting members on said public hearing shall vote to accept or reject the request in accordance with MGL c. 40A s. 16, acceptance thereof shall require a simple majority. If accepted, the Board shall specify whether the withdrawal is with or without prejudice. In the discretion of the Chairman, prior to a vote of the Board on the request, testimony or evidence on the merits may be accepted from any party in attendance at the Public Hearing. In making its decision, the Board shall consider and take into account the effect of acceptance or rejection of the request on the Appellant, Applicant, or Petitioner, and the abutters and public in general. If the request is accepted, the Clerk shall file a copy of the request for withdrawal with the Office of Town Clerk.

H. Appeal of Decisions – Legal Representation

In the event that any Decision of the Board of Appeals is appealed to the Housing Appeals Committee or to court of competent jurisdiction pursuant to MGL c. 40A s. 17 or M.G.L. c. 40B s. 22, the Board may by majority vote retain outside legal counsel⁴ to represent its interests in such appeal and/or litigation. The Board shall pay for such representation from funds available in its budget as approved by Town Meeting, if such funds are available. If no such funds are available, the Board shall request the necessary funds from the Appropriations

⁴ Nothing herein shall require the Board of Appeals to retain "Town Counsel" as so designated by the Board of Selectmen pursuant to their authority under Section 28-5E of the town's By-laws.

Committee or the Board of Selectmen. If such representation is for the purposes of defense of suits or claims, the Board's authority under this paragraph shall be subject to the authority of the Board of Selectmen pursuant to Section 28-5 A of the town's By-laws.⁵

As an alternative, the Board may request legal representation by Town Counsel from the Board of Selectmen. The Board's authority to retain Town Counsel under this paragraph shall be subject to the authority of the Board of Selectmen pursuant to Section 28-5 E of the town's By-laws⁶; and if such representation is for the purposes of defense of suits or claims, the Board's authority to retain Town Counsel under this paragraph shall be further subject to the authority of the Board of Selectmen pursuant to Section 28-5 A of the town's By-laws.⁷

I. Communications with Board

After the filing of any Pleading, all communications from the Appellant, Applicant, or Petitioner, or its attorney, shall be in writing and addressed to the Chairman of the Board of Appeals, Town of Hopkinton, 18 Main Street - Town Hall, Hopkinton, Massachusetts 01748, with a copy to the Clerk of the Board of Appeals at the same address.

Delivery of communications to the Board via electronic mail (e-mail) is strongly encouraged. It is recommended that correspondence be in Microsoft Word format, and attached to e-mail and delivered to the following addresses:

Chairman: ZBAChair@Hopkinton.org

Clerk: ZBAClerk@Hopkinton.org

Administrative Assistant: ZBAAA@Hopkinton.org

If possible, conversion to "pdf format" via Adobe Acrobat software is also requested prior to submission to the Board. In the discretion of the Chairman, communications to or from the Board may be posted to the Board of Appeals web site in those cases in which there is an interest by the general public.

III. Administrative Rules of the Board

A. Composition and Appointment of Board Membership

The Board of Appeals shall consist of nine members, five of which shall be "Full Members" and four of which shall be "Associate Members". Members of the Board are appointed by the Board of Selectmen to five (5) year terms. Terms of appointments should be staggered so that no more than one Full Member and one Associate Member's term expires each fiscal year.

⁵ Except for such matters under which the Board of Appeals grants approvals of the Board of Selectmen pursuant to MGL c. 40B s. 21

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Full members shall ordinarily attend and vote at all of the Board's public hearings. Associate Members shall ordinarily attend all of the Board's public hearings, and shall in the discretion of the Chairman, vote in the place of a Full Member who is absent or unable to serve. Except for voting on matters related to a Pleading, Associate Members shall enjoy all rights and privileges of Full Members and be entitled to participate at Public Hearings and participate and vote as equal members of the Board in all other matters.

B. Quorum

Except as otherwise provided by law or herein, a Quorum of the Board shall consist of any three (3) Full Members or Associate Members in attendance at a lawful meeting of the Board. Any matter may be voted and adopted by a simple majority of those Board Members sitting in attendance at a Quorum, unless a greater majority is required under statute, by-law, or these Rules.

C. Elections

Annually, during the month of May, the Board shall vote and elect a Chairman, Vice Chairman, and Clerk, who shall serve at the pleasure of the Board and may be removed from office at any time, with or without cause. A Quorum of five (5) Board Members shall be required for all elections and a Quorum of seven (7) Board Members shall be required for the removal of a Chairman, Vice Chairman, or Clerk from office. Removal from office shall not constitute removal from membership on the Board, such authority being reserved by the Board of Selectmen.

D. Responsibilities

The individuals holding offices on the Board shall have the following responsibilities and duties.

1. Chairman

The Chairman shall be a Full Member of the Board. The Chairman shall be the primary contact and spokesperson on behalf of the Board in its dealings with Appellants, Applicants, and Petitioners, the various other Town Officials, the Press, and the public in general. The Chairman shall conduct and chair all public hearings and meeting by the Board, and when necessary or advisable designate Associate Members to vote at public hearings in the absence or inability of Full Members. The Chairman shall maintain communications with other town officials, including without limitation, the Zoning Enforcement Officer, the Planning Board, and the Conservation Commission, and to the greatest extent possible attempt to coordinate the town's efforts to provide efficient service to the public. The Chairman shall also represent the Board at Departmental Meetings for the Town of Hopkinton, and shall annually present the Budget for the Board to the Town's Appropriation's Committee. The Chairman shall maintain communications with Town Counsel with respect to the status of all litigation pending against the Board, and shall generally appear in litigation proceedings on behalf of the Board. The Chairman shall appoint Members as representatives of the Board to other Town Boards

and Committees as hereinafter provided. The Chairman may, in his or her discretion, delegate responsibilities and duties to the Vice Chairman, Clerk, and/or Administrative Assistant of the Board. The Chairman shall periodically report to the Board on his or her activities.

2. Vice Chairman

The Vice Chairman shall be a Full Member of the Board. The Vice Chairman shall act in the absence or inability of the Chairman. The Vice Chairman shall carry out the instructions of the Chairman and shall represent the Chairman on special assignments or projects as requested by the Chairman. The Vice Chairman shall periodically report to the Chairman on his or her activities.

3. Clerk

The Clerk shall be either a Full or Associate Member of the Board. Prior to publication of Notice of Public Hearing, the Clerk, or the Administrative Assistant under the supervision of the Clerk, shall review all Pleadings filed in the Office of Town Clerk to ensure that such Pleadings are complete and filed in accordance with state statute, the Town's zoning by-laws, and the Rules of the Board. If any Pleading is not complete, the Clerk shall reject the Pleading and so notify the Appellant, Applicant, or Petitioner in writing, and provide a copy of such notification to the Chairman and Office of Town Clerk. The Clerk shall provide the primary supervision of the Administrative Assistant of the Board and ensure that all notices pursuant to MGL c. 40A s. 11 are timely provided, that agendas for each Public Hearing and administrative meeting of the Board are prepared, that Minutes of all meetings of the Board are prepared, that all records of the Board are properly maintained in files located at Town Hall, and that all Decisions are timely filed with the Office of Town Clerk. The Clerk shall ensure that all Members timely receive copies of all Pleadings, Notices, Minutes, and Decisions. The Clerk shall also notify the Members of any educational or training sessions that may be available to increase the knowledge and expertise of the Members. The Clerk shall carry out the instructions of the Chairman, and assist with the preparation of the Board's annual budget and represent the Chairman on special assignments or projects as requested by the Chairman. The Clerk may, in his or her discretion, delegate responsibilities and duties to the Administrative Assistant of the Board. If an Assistant Clerk is appointed by the Chairman, the Clerk shall train the Assistant Clerk in the duties of Clerk. The Clerk shall periodically report to the Board on his or her activities.

4. Assistant Clerk

The Assistant Clerk shall be either a Full or Associate Member of the Board. The Assistant Clerk position is considered a temporary training position. In the event that the Clerk gives advance notice of his or her intention to resign or not seek reelection to the office of Clerk, an Assistant Clerk may be appointed by the Chairman for the purposes of training a successor for possible election to the office of Clerk.

5. Web Site Coordinator

As soon as practical following the annual election of Officers as specified above, the Chairman shall appoint a Web Site Coordinator. The Web Site Coordinator may be any Member of the Board, or a person outside the Board. The Board's Web Site Coordinator shall be responsible for maintenance and update of the Board's page on the Town's web site and shall ensure that the Board is adequately communicating important information and the Board's activities to the general public through the Board's web site page. The Web Site Coordinator shall timely post to the web site the Board's Agenda, Minutes, and Decisions, and periodically report to the Chairman on his or her activities.

6. Administrative Assistant

The Administrative Assistant is not a Member or Officer of the Board and shall have no vote. If such position is included in the budget of the Board or if sufficient funds shall be estimated to be available in the Board's account established under MGL c. 44 s. 53E½, an Administrative Assistant may be employed by the Chairman to assist with the administration of the Board. The Administrative Assistant shall be subject to the direct supervision of the Chairman and Clerk and carry out the instructions of the Chairman, Vice Chairman, and Clerk.

7. All Members - General

The Board of Appeals is a totally volunteer Board. Although Members often have competing obligations to family and employment, Members freely give of their time and efforts to the Board and serve the community without compensation. Notwithstanding, the duties and responsibilities of the Chairman and Clerk are demanding and often burdensome. Every Member is expected to share in the workload and assist the Chairman and Clerk when requested, including the taking of minutes at public hearings and the preparation of written Decisions when necessary. The Chairman and Clerk may create a schedule to facilitate this assistance.

While there are no term limits imposed under statute, by-law, or these Rules, Members should strive to share responsibilities and periodically rotate Members through the offices of Chairman, Vice Chairman, and Clerk. When more Members serve in positions of leadership, a more experienced and learned Board that is better able to serve the community will result.

The application of the state statute, the zoning by-laws, and the court's judgments to Appeals, Applications of Special Permits, and Petitions for Variances at Public Hearings pending before the Board can often be a complex process. One can not be ignorant of the zoning laws and be expected to adequately serve the community as a Member. A learning curve is natural and is expected. A certain degree of knowledge and experience is therefore necessary for appointment as a Full Member. Associates Members are considered to be "in training" for possible appointment as Full Members. Associate Members are therefore expected to attend public hearings and become informed of the various aspects of zoning administration. Associate Members are

encouraged to participate in discussions and to ask questions. Both Full Members and Associate Members are also expected to attend at least one educational seminar each fiscal year in order to maintain their level of education and knowledge of current developments and changes in the zoning laws.

All Members are expected to be knowledgeable of, and comply with, the requirements of the Conflict of Interest law, MGL c. 268A, and the Open Meeting Law, MGL c. 39 s. 23B. Any Member with an actual or potential conflict of interest shall forthwith notify the Chairman of such actual or potential conflict and shall recuse himself or herself from all matters relating to such actual or potential conflict, unless said Member shall not be required to recuse him or herself by compliance with notice requirements as provided under statute.

Members should generally refrain from discussing matters pending or potentially pending before the Board with other Town Officials, the Press, or general public. Such discussions not occurring within a public hearing can give rise to the appearance of a bias or conflict of interest. Members are expected to exercise appropriate caution to avoid the appearance of impropriety. As spokesperson for the Board, the Chairman, in his or her discretion, is generally the only Member that communicates with the Press on behalf of the Board.

E. Appointments

As soon as practical following the annual election of Officers as specified above, the Chairman shall appoint Members as representatives of the Board to the following Town Boards or Committees: 1) the Zoning Advisory Committee. The Chairman may from time to time also appoint Members as representatives of the Board to state or regional committees, or other Town Boards and Committees, as may be required or desirable. Appointees serve at the pleasure of the Chairman, and may be removed by the Chairman at any time, with or without cause. Members who represent the Board as Appointees shall on a quarterly basis provide to the Board a brief written summary of his or her activities and the progress of his or her other Town or State Board or Committee. The Board, in its discretion, may periodically provide its input and direction to Appointees as it deems necessary or advisable.

F. Administrative Sessions - Minutes and Decisions

The Board shall meet at least monthly in administration session to consider, discuss, vote, and approve or reject outstanding minutes and, when appropriate, written Decisions, and attend to other administrative matters as the Chairman shall determine. The Chairman shall timely establish and communicate a schedule for such administrative meetings, and such schedule shall appear on the Board's agenda.

The Clerk shall ensure that the Board receives for its approval copies of draft minutes of meetings and, when appropriate, draft Decisions on Appeals, Applications, and Petitions. All Members who attended a public hearing or meeting may vote on proposed minutes. Any Member not in attendance at a public hearing or meeting shall abstain when called on to approve

minutes. Only the Full Members, or Associates Members sitting in their place, who voted on the Decision may vote to accept or reject the language and wording of the written Decision as prepared by the Clerk. Upon approval of the written Decision by the Board, the Clerk shall file the original Decision with the Office of Town Clerk.

The Board may amend any written Decision at any time by vote of those Members participating in the original Decision. Amended Decisions shall be filed and distributed in the same fashion as the original Decision. All Decisions granting relief shall include the following notice in bold typeset. All Decisions denying relief need only include the last paragraph.

"Any and all plans or specifications submitted to the Board of Appeals that detail construction or improvements to be undertaken or performed in conjunction with the relief granted hereunder, are hereby made express conditions of the issuance of this Decision and are incorporated herein by reference. Unless this Decision expressly provides otherwise, the rights and privileges granted under a Variance run with the land; and the rights and privileges granted under a Special Permit and Appeal are personal to the Applicant or Appellant and do not run with the land; except for a Special Permit issued pursuant to Zoning By-law 210-119 for relief from side and rear set back requirements, which shall run with the land.

No Variance or Special 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 days have elapsed after the decision has been filed in the office of the town clerk and no appeal has been filed, shall be recorded at the Middlesex District Registry of Deeds in Cambridge, Massachusetts in accordance with MGL c. 40A s. 11. Appeal of this Decision, if any, shall be made pursuant to MGL c. 40A s. 17 and shall be filed within twenty (20) days after the date of filing of this Decision with the office of the Town Clerk. "

G. Budget of the Board

With the assistance of the Clerk, the Chairman shall prepare and present to the Board a proposed annual budget for the subsequent fiscal year. The Members shall vote to approve a budget request and the Chairman shall present such request to the Appropriations Committee in accordance with their schedule.

H. File Maintenance

The Board shall maintain its records in files located at the Town Hall in accordance with all applicable state statutes and town by-laws. All files shall contain a five digit number (such as 04-001), the first two numbers shall designate the fiscal year in which the pleading was filed with the Office of Town Clerk, and the last three numbers being the incremental number of pleadings filed during that fiscal year. The Clerk shall maintain files in three groups - Pending, Litigation, and Closed. The Board may periodically approve of disposal of closed files in accordance with the state requirements on file maintenance.

I. Electronic Mail

The Chairman, Clerk, and Administrative Assistant shall periodically communicate with the Members regarding agenda and other matters. The primary and preferred mode of communication among Members, and to and from Appellants, Applicants, Petitioners, their attorneys, consultants, other town officials, and the general public, shall be electronic mail (e-mail). Therefore, all Members are expected to have access to such technology. No Member shall utilize e-mail for the purpose of deciding on or deliberating towards a decision on any matter, except as permitted under the law. All Members are expected to comply with the requirements of the Open Meeting law, MGL c. 39 s. 23B and avoid violations of the same in communications transmitted via e-mail. In order to minimize the time and expenses related to administration of the Board, the Chairman shall take appropriate steps to encourage utilization of electronic mail as the preferred method of communication with the Board.

Adopted: November 12, 2003
Amended: January 7, 2004
Amended: September 28, 2005