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TOWN OF NEEDHAM, MASSACHUSETTS

BOARD OF APPEALS

RULES

(As adopted on January 28, 2010)
Amended through September 15, 2011

ARTICLE I. GENERAL

Section 1. Purpose and Scope

These Rules are adopted by the Needham Board of Appeals (hereinafter referred to as the "Board") as authorized by Massachusetts General Laws, Chapter 40A, Section 12, for the purpose of establishing uniform procedures for conducting the business of the Board which, in general, but without limitation, shall consist of hearing all appeals, petitions and applications coming under its jurisdiction as both a permit granting authority and a special permit granting authority by virtue of the applicable provisions of Massachusetts General Laws and the Needham Zoning By-Law (hereinafter referred to as the "Zoning By-Law") and other By-Laws. Such appeals and matters of original jurisdiction, subject to conformance with these Rules, will in general consist of the following:

(a) Receive and act upon all appeals from a decision of the Building Inspector in performing the duties and responsibilities contemplated by Massachusetts General Laws and the Zoning By-Law within the Town of Needham;

(b) Receive and act upon, as a permit granting authority, all petitions for variances from compliance with applicable provisions of the Zoning By-Law;

(c) Receive and act upon, as a special permit granting authority, all applications for special permits as authorized by the Zoning By-Law;

(d) Receive and act upon all applications seeking authorization and a Comprehensive Permit to build low and moderate income housing contemplated by Massachusetts General Laws, Chapter 40B, Section 21; and

(e) Receive and act upon all matters otherwise legally coming under the jurisdiction of the Board.

An application for a Comprehensive Permit, Item (d) above, shall be further subject to the Board's Comprehensive Permit Rules, adopted on September 15, 2011, as amended from time to time.

Section 2. Petitioner or Applicant

An appeal may be taken by any person aggrieved by any decision of the Building Inspector. A petition or application for other than a Comprehensive Permit (I.1.(d)) may be brought by a property owner, a tenant, a licensee, a prospective purchaser or other applicant provided that documentation from the owner certifying the petitioner's legal interest and right to file accompanies the petition or application. An application for a Comprehensive Permit (I.1.(d)) may be made only by a public agency or by a limited dividend or nonprofit organization. In the case of an appeal, a petition for a variance or an application for a special permit the applicant shall file with the Town Clerk who shall transmit it forthwith to the Board. It is strongly recommended that all new appeals, petitions and applications be first reviewed by the Building Inspector to assure their correctness, completeness and clarity. It is also recommended that all petitions and applications be first reviewed by the clerk of the Board.

ARTICLE II. ORGANIZATION

Section 1. Elections

At the first regular meeting following the qualification of annual appointee(s), the Board shall elect a chairperson and vice-chairperson. Each shall serve until a successor is duly elected. Associate members shall not participate in this election.

Section 2. Chairperson - Powers and Duties

The chairperson shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. The chairperson shall appoint such committees as may be deemed necessary or desirable from time to time.

In addition to powers granted by Massachusetts General Laws and the Zoning By-Law, and subject to these Rules and further instructions of the Board, the chairperson shall supervise the work of the clerk, arrange for necessary help, and exercise general supervision over the Board's activities.

Section 3. Vice-Chairperson

The vice-chairperson shall preside over hearings and meetings and perform the duties of the chairperson during the absence or unavailability of the chairperson.

Section 4. Clerk

A clerk shall be appointed by the Board, and subject to the direction of the Board and its chairperson, shall undertake all of the clerical work of the Board including all correspondence of the Board, sending of all notices required by law and the rules and orders of the Board, receive and scrutinize all petitions and applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain necessary files and indices and call the roll at all Board meetings.

Section 5. Associate Members

The chairperson of the Board shall designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member. In the event of a vacancy on the Board, the chairperson shall designate an associate member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

Section 6. Quorum

A quorum for the purpose of conducting public hearings and transacting other business except voting on appeals, petitions and applications as provided in Art. V, Sec. 1, shall consist of two (2) members.

Section 7. Regular Meetings

Regular meetings of the Board shall be held as necessary at 7:30 P.M. on the third Thursday of each month, or at other times as determined by the Board at a place specified in the meeting notice.

Section 8. Special Meetings

Special meetings may be called by the chairperson or at the request of two members. Written notice thereof shall be given to each member at least forty-eight (48) hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law.

Section 9. Absences

Pursuant to Town Meeting's acceptance of Massachusetts General Laws, Chapter 39, Section 23D, no member of the Board shall be disqualified from voting on any matter solely due to said member's absence from no more than a single session of the hearing at which testimony or other evidence is received; provided, however, that before any such vote, said member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof, such certification to be part of the record of the hearing.

ARTICLE III. SUBMISSION OF PETITION OR APPLICATION

Section 1. Application Form

Every petition and application for action by the Board shall be made on an official application form, entitled "Board of Appeals - Application for Hearing," which shall be furnished by the clerk upon request. Any communication, purporting to be an appeal, a petition or an application, shall be treated as mere notice of intention to seek Board action, until such time as it is made on the official application form and payment of the applicable filing fee. To be a complete form, all information called for by the form shall be furnished by the applicant in the manner therein prescribed and in precise language identifying the applicable provisions of the Zoning By-Laws and the specific nature of the appeal, petition or application. The form to be used is hereby made a part of these Rules.

Section 2. Filing Period for Appeal

(a) In the case only of an appeal from a decision of the Building Inspector, a petition or application shall be filed with the Town Clerk within thirty (30) days from the date of issuance of a permit or refusal of a permit by, or an order, ruling, decision or determination of, the Building Inspector.

(b) All other petitions and applications may be filed at the discretion of the applicant or petitioner. Petitions and applications to be heard at a regular meeting of the Board must be filed no later than the last Thursday of the month preceding the month of the regular meeting.

Section 3. Submissions

Thirteen (13) copies of the application form shall be submitted and each application shall be accompanied by a plot plan prepared by and under the seal of a registered engineer or registered land surveyor showing current conditions and such other plans, sketches or diagrams as are needed to show clearly the nature of the specific request being made by the petitioner. The size of the document(s) shall be 8-1/2" x 11" or 11" x 17", drawn to a scale of 1" = 40' or such other size and scale as the Building Inspector might approve during the review discussion. The plans shall have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, locations of buildings on the lot, parking areas, driveways and all other information pertinent to the petition or application as required by the Zoning By-Law, other By-Laws or Rules and these Rules. All changes requested by the petitioner shall be clearly identified.

Section 4. Filing Fees and Cost of Public Notice

(a) An appeal from the action of the Building Inspector shall be accompanied by a check payable to the Town of Needham in the amount of *Two Hundred Dollars ($200).*

(b) A petition for a variance shall be accompanied by a check payable to the Town of Needham in the amount of *Two Hundred Dollars ($200).*

(c) An application for a special permit for a single family residence shall be accompanied by a check payable to the Town of Needham in the amount of *Two Hundred Dollars ($200* and for all others (including commercial) in the amount of *Five Hundred Dollars ($500).*

(d) An application for a Comprehensive Permit under G. L. Chapter 40B Section 21 shall be accompanied by an administrative fee in the amount specified in the Board's Comprehensive Permit Rules, as may be amended.

(e) An application to amend, modify or transfer a variance or special permit shall be accompanied by a check payable to the Town of Needham in the amount of *Two Hundred Dollars* ($200).

(f) All fees are established to cover the cost of and to otherwise defray reasonable expenses incurred by the Board in processing petitions and applications filed with the Board.

(g) An appeal, petition or application shall not be deemed filed until filing fee set forth above have been paid to the Town Clerk.

(h) In addition to the above stated filing fees, the applicant shall be responsible to pay the cost of publishing public notice of any hearing in a newspaper. The clerk shall prepare the notice and arrange for publication. The newspaper may send an invoice directly to the applicant or through the clerk. The applicant shall pay any such invoice promptly upon receipt and failure to make timely payment shall be grounds for the Board to withhold a decision or deny an application.

(i) The Town shall be exempt from payment of a filing fee, but shall pay the costs of publication.

Section 5. Outside Consultants and Fees

When reviewing an appeal, petition or application hereunder, the Board may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from municipal employees. The Board may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice, said fee to be deposited into a special account established pursuant to Massachusetts General Laws, Chapter 44, Section 53G. The funds from said account and any accrued interest thereon may be expended at the direction of the Board without further appropriation, with any excess amount remaining in the account upon completion of the Board's review to be repaid to the applicant or to the applicant's successor in interest. Minimum qualifications for outside consultants shall consist of either 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 in a related field. The Board's selection of an outside consultant may be appealed by an applicant or petitioner to the Board of Selectmen, which Board may disqualify such consultant only on the grounds that the he/she has a conflict of interest and/or does not possess the minimum qualifications noted above.

Section 6. Dismissal of Incomplete Filings

The Board may dismiss an appeal, petition or application if the application form is not complete or the submissions required by Section 3 are not made. Such dismissal may be made without a hearing on the merits and shall be deemed a withdrawal without prejudice to refiling when the application and submissions are complete.

Section 7. Names and Addresses of Abutters

After the petition or application is filed, the clerk of the Board shall obtain immediately a list of the names and addresses of all parties in interest including the petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred (300) feet of the property line of the petitioner, as they appear on the most recent applicable tax list, as defined by Massachusetts General Laws, Chapter 40A, Section 11, and the Zoning By-Law. The assessors shall certify to the Board that list of names and addresses of all parties in interest.

ARTICLE IV. HEARINGS

Section 1. Notice

Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A, and the Zoning By-Law. In addition, a copy of the advertised notice shall be sent by mail, at least seven (7) days prior to the date of the hearing, postage prepaid, or delivered, to all parties in interest and to the Board of Selectmen, Planning Board, Building Inspector, Superintendent of Public Works, Town Engineer, Conservation Commission and Town Clerk, and where determined appropriate by the Board, other Town boards and officials.

Section 2. Hearings to be Public

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, Massachusetts General Laws, Chapter 30A, Sections 18 through 25.

Section 3. Representation and Absence

An applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

Section 4. Continuances

A continuance may be requested by an applicant by written request submitted to the clerk in advance of a hearing or orally at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Unless notified in writing that a continuance has been granted, an applicant must appear at a scheduled hearing. Any continuance granted upon request of an applicant shall constitute an agreement by the applicant to extend the time limits for actions by the Board by the duration of the continuance and such agreement, at the request of the Board, shall be set forth in writing.

Section 5. Hearing Procedure

(a) Hearings will start at the stated time in the notice unless delayed because of prior hearings.

(b) At the hearing any party whether entitled to notice thereof or not may appear in person or by agent or by attorney.

(c) At the hearing the chairperson may administer oaths, summon witnesses and call for the production of papers. The Board shall retain any record which has been introduced in evidence, for reference in the consideration of the case.

(d) No person shall address a hearing of the Board without leave of the chairperson, and all persons shall, at the request of the chairperson, be silent. If a person, after warning from the chairperson, persists in disorderly behavior, the chairperson may order him/her to withdraw from the hearing, and, if he/she does not withdraw, may order a constable or any other person to remove him/her and confine him/her in some convenient place until the hearing is adjourned.

(e) The chairperson may close the hearing immediately if, in his/her opinion, these Rules are being violated and/or the hearing is becoming disorderly.

(f) The chairperson will open each hearing by reading, or causing to be read, the notice as advertised.

(g) The petitioner or his/her representative will then present his/her case, stating fully the reason(s) why the petition or application should be granted.

(h) When the petitioner or his/her representative has concluded the presentation, the chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak will rise, address the chairperson, give their names and addresses, then proceed.

(i) When all those in favor have spoken, the chairperson will then allow those in opposition a similar opportunity to be heard.

(j) Rebuttals may only be allowed at the discretion of the chairperson.

(k) Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Board may be allowed at its discretion.

(l) Members of the Board who are hearing the case may direct appropriate questions during the hearing.

(m) When all facts have been presented, the chairperson will close the hearing and inform the petitioner or his/her representative and others present that they will be notified of the Board's decision.

(n) In the event an applicant fails to appear at a scheduled hearing, the Board may continue the matter or, in its discretion, dismiss the matter. Unless the Board indicates otherwise in its decision, any such dismissal shall be deemed a withdrawal without prejudice to refilling the application.

Section 6. Information to be Furnished to the Board

An applicant may submit written materials in advance of the hearing, at the hearing or at any time prior to close of evidence at the hearing. With the Board's permission, an applicant may submit material subsequent to the close of the hearing, such as a revised plan, but only if the substance reflected in such material was presented at the public hearing and the Board does not rely on such material as evidence. Any legal memorandum must be submitted at least forty-eight (48) hours in advance of the hearing unless the Board sets a different deadline. Any applicant may submit a proposed decision to the Board. All submissions shall be made to the clerk.

In the case of a variance the following points, based on Massachusetts General Laws, Chapter 40A, shall be addressed and factually supported:

(a) The particular land or structure and /or the use proposed for the land or structure, if any;

(b) The circumstances relating to the soil conditions, shape or topography of the land and structures and especially affecting the land or structure for which the variance is sought which do not affect generally the zoning district in which it is located;

(c) The facts which make up the substantial hardship, financial or otherwise, which results from the literal enforcement of the applicable zoning restrictions with respect to the land or structure for which a variance is sought;

(d) The facts to support a finding that the relief sought will be without substantial detriment to the public good; and

(e) The facts to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

In the case of a special permit, the following points, based on Massachusetts General Laws, Chapter 40A, and the Zoning By-Law should be clearly identified and factually supported:

(a) The particular type of use proposed for the land or structure, if any;

(b) The conditions and character of operations of the proposed uses which show that it will be in harmony with the general purpose and intent of the district and the Zoning By-Law;

(c) The nature of the proposed use in relation to both the general and specific provisions of the Zoning By-Law governing that use and the district in which it is located; and

(d) Satisfaction of the specific criteria and objectives set forth in Section 7.5.2.1 of the Zoning By-Law, as may be amended.

ARTICLE V. ACTIONS BY THE BOARD

Section 1. Voting Requirements

The concurring vote of all three (3) members of the Board shall be necessary to reverse any order or decision of the Building Inspector, to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board, to effect any variance in the application of the Zoning By-Law or to grant a special permit where so authorized by the Zoning By-Law, except that any two (2) members may approve a Comprehensive Permit under Massachusetts General Laws, Chapter 40B, Sections 20 through 23. The Board shall cause to be made a detailed record of its proceedings, showing 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 decisions, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be a public record.

Section 2. Withdrawal

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After commencement of a hearing, a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refiling at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.

Section 3. Reconsideration

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Section 4. Repetitive Petition

In order to have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two (2) years, the petitioner must follow the procedure outlined in Massachusetts General Laws, Chapter 40A, and the Zoning By-Law.

Section 5. Decisions

(a) The clerk of the Board will send notices of a decision forthwith to the applicant, to parties in interest and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.

(b) The clerk of the Board will send copies of the decision of the Board to the applicant, the Board of Selectmen, the Planning Board, the Board of Assessors, the Town Clerk, the Building Inspector, and where determined appropriate by the Board, other Town boards and departments.

(c) 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, or that if it is a variance which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, 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 or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not 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 either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the Norfolk County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of M.G.L., Ch. 40A, Section 6.

(d) The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds and for paying the recording fees.

(e) A certified copy of the decision and an affidavit from the Registry of Deeds stating that the decision has been recorded are necessary before a building permit dependent on the Board's decision can be issued by the Building Inspector.

ARTICLE VI. POLICIES AND ADVICE

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is declared to be the policy of the Board to discourage any personal appeals or comments to members of the Board and that all communications outside a convened meeting of the Board concerning proposed or pending matters shall be submitted through the clerk.

ARTICLE VII. AMENDMENTS

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

ARTICLE VIII. EFFECTIVE DATE

These Rules were adopted at a regular meeting of the Board on January 28, 2010 and became effective as of February 9, 2010. These Rules were amended September 15, 2011 The Rules previously adopted and subsequently amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.

Jon D. Schneider, Chairman

September 20, 2011