

RULES AND REGULATIONS

AS PROVIDED BY SECTION 12 OF CHAPTER 40A OF THE
MASSACHUSETTS GENERAL LAWS

ZONING BOARD OF APPEALS TOWN OF BROOKFIELD

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MASSACHUSETTS GENERAL LAWS

ARTICLE 1 ORGANIZATION

SECTION 1 MEMBERS AND OFFICERS

The Zoning Board of Appeals shall consist of five regular and three associate members appointed by the Board of Selectmen. The regular members of the Board shall elect all officers of the Zoning Board to include a Chairperson, Vice-Chairperson and Clerk.

SECTION 2 THE CHAIRPERSON: POWERS AND DUTIES

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. He/she shall appoint such committees as may be found necessary or desirable.

In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning By-law of the Town of Brookfield, and subject to these rules and further instructions of the Board, the Chairperson shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory power. He/she shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

SECTION 3 THE VICE-CHAIRPERSON: POWERS AND DUTIES

The Vice-Chairperson shall act as Chairperson in the case the Chairperson is absent, disabled or otherwise unable to perform his/her duties. If both the Chairperson and the Vice-Chairperson are absent, the Clerk shall act as Chairperson and appoint an Acting Clerk.

SECTION 4 CLERK: POWERS AND DUTIES

The Clerk shall be a member of the Board, and shall, subject to review by the Board and its Chairperson, supervise all of the

clerical work of the Board including: all correspondence of the Board, sending of all notices required by law, preparation of rules and orders of the Board, receive and scrutinize all 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. If the Clerk is absent, the Chairperson shall appoint an Acting Clerk.

SECTION 5 ASSOCIATE MEMBERS

Associate members shall sit on the Board in case of the absence, inability to act or apparent conflict of interest on the part of any Board member, or as part of a regularly scheduled rotation among the regular members.

SECTION 6 QUORUM

Four members shall constitute a quorum.

SECTION 7 REGULAR MEETINGS

Regular meetings of the Board of Appeals are normally held on the _____ of each month at the Town Hall. If a regular meeting day falls on a holiday or any day of national, state or municipal election or caucus or primary or is in conflict with a session of a Town Meeting, the meeting may be held on the succeeding _____. Regular meetings shall be open to the public in accordance with Chapter 39, Section 23, a, b, c, of the Massachusetts General Laws. Except in an emergency, a notice of each Board meeting shall be filed with the Town Clerk, and a notice or a copy thereof shall be publicly posted in the office of said Clerk or on the principal or official bulletin board in the Town Hall at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to such meetings.

Business at regular meetings shall include site and other plan examinations and all other matters in the province of the Zoning Board except petitions for special permits and variances and appeals from the decision of the Building Inspector. Hearings on petitions and appeals before the Board may be held prior to or following the regular meeting, as designated by the Chairperson. Regular meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairperson, be ruled out of order.

The agenda for public hearings shall be drawn up by the Building Inspector and shall be completed by 4:30 P.M. of the preceding _____. When the agenda is completed the Building Inspector

shall transmit copies to the Chairperson of the Planning Board, the Town Clerk, the Zoning Board of Appeals Secretary, and the members of the local media. Under the category "other business" the Board may entertain items not placed on the agenda by the deadline.

Site plans which come to the Zoning Board of Appeals may be sent to the Planning Board and the Board of Health for an advisory opinion.

Site plans need not be approved by the Zoning Board of Appeals until those Boards have had opportunity for review.

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 and associate member at least 48 hours before the time set, except that an announcement of a special meeting at any meeting attended by all members shall be sufficient notice of such meetings. Notices shall be posted publicly as provided in Section 7.

ARTICLE II

APPLICATION TO THE BOARD

SECTION 1 APPLICATION FORM

Every application for action by the Board, including appeals from decisions of the Building Inspector and petitions for variances and special permits shall be made on the official form of the Zoning Board of Appeals which shall be furnished by the Town Clerk or the Building Inspector upon request. Any communication purporting to be an application shall be treated as merely advisory and no notice shall be deemed to have been given, until such time as it is made on the official application form and filed with the Town Clerk and the Building Inspector. Information called for by the form shall be furnished by the applicant in the manner therein prescribed.

SECTION 2 FILING

Every application shall be filed with both the the Town Clerk and the Building Inspector. The Building Inspector shall forthwith transmit a copy of the application to the Board of Appeals. The Building Inspector, who acts as agent for the Board of Appeals, shall indicate the date on which the application was received and transmit a copy of the dated application to the applicant. The date of receipt as indicated by the Building Inspector shall be considered to be the date on which the application has been filed with the Board of Appeals. It shall be the responsibility of the

applicant to furnish all supporting documentation with the application, and the dated copy received from the Building Inspector does not absolve the applicant from this responsibility.

SECTION 3 PLAN OF LAND TO ACCOMPANY PETITION

Each application and petition to the Board shall be accompanied by three copies of the following described plan. Plans must be submitted to the office of the Building Inspector at least 72 hours before an application is to be considered in a public hearing. Failure to comply with the requirement may result in a dismissal of an applicant as incomplete.

A. Size of plan: 8 1/2" x 11" or 11" x 17" drawn to scale

Preferred scale: 1" = 40'

Note: for major projects, plan must be of a size and scale to be determined in consultation with the Planning Board or the Building Inspector.

B. Features to be indicated

1) Site orientation

- a) north point
- b) zoning district(s)
- c) names of streets
- d) wetlands (if applicable)
- e) names of owners of properties within a minimum of 300 feet as shown on the most recent tax list
- f) location of buildings on surrounding properties

C. Legend, graphic aids

- 1) Existing features are to be shown in black
 - 2) Proposed features are to be shown in color
 - 3) Setback, side and rear yard dimensions shall be indicated by dashed line
 - 4) Graphic scale
 - 5) Date of plan
 - 6) Title of plan
 - 7) Names of applicant, owner of record (if different) and designer or surveyor.
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The Board shall have the authority to alter or waive these requirements as it deems necessary or appropriate in particular cases. Plans which are submitted, at the Board's discretion, for approval subsequent to a public hearing, must be reviewed by a sitting Board composed of at least four members who initially heard the petition to which the plans are attached.

SECTION 4

All applications shall be accompanied by cash or check, payable to the Town of Brookfield in the amount of twenty dollars (\$20.00).

ARTICLE III HEARINGS

SECTION 1 NOTICE

Notice of hearings shall be advertised as required by the provision of General Laws, Chapter 40A. In addition, a copy of the advertised notice shall be sent by mail, postage prepaid, so that the postmark date is at least fourteen (14) days prior to the date of the hearing, to all parties in interest including the petitioner, abutters, owners of land within 300 feet of the property line all as they appear on the most applicable tax list, the Planning Board of Brookfield, the Planning Board of every abutting city or town, and the Building Inspector.

SECTION 2 VIEWING

It is the custom of the Zoning Board of Appeals to view all properties which come before it in requests for special permits, variances or appeals from decisions of the Building Inspector. Applicants should be prepared to meet with the Board at the site usually on the _____ preceding that public hearing. Site plan locations will be viewed if the Board feels that it is necessary.

SECTION 3 HEARING TO BE PUBLIC

All hearings shall be open to the public. No person shall be excluded unless he/she is considered by the Chairperson to be a "serious hinderance" to the workings of the Board.

SECTION 4 REPRESENTATION AND ABSENCE

An applicant may appear in his/her behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board shall decide on the matter using the information it has otherwise received, or it may declare the petition to be withdrawn without prejudice.

SECTION 5 ORDER OF BUSINESS

- A. Explanation of procedures by the Chairperson.
- B. Applicant's presentation.
- C. Comments from the public, if any, and questions by those seeking information.
- D. Applicant's response, if any.
- E. Steps B-D will be repeated for each application presented to the Board.

Members of the Board who are hearing the case may directly appropriate questions during the hearing.

SECTION 6 WRITTEN MEMORANDUM

It is recommended that appeals from rulings of the Building Inspector, and applications for a variance or special permit be supported by a legibly written memorandum setting forth in detail all facts relied upon. This is particularly desirable in the case of a variance when the following points, based on General Laws, Chapter 40A, Section 15, should be clearly identified and factually supported:

- A. The particular use proposed for the land or building.
- B. The circumstances especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located.
- C. Facts which make up the substantial hardship, financial or otherwise, which results from literal enforcement of the applicable zoning restrictions with respect of the land or building for which a variance is sought.
- D. Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- E. Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Memorandum may be filed at the public hearing or within such time thereafter as may be fixed by the Board, but in no case later than five business days after the public hearing. Other communications may not be accepted.

ARTICLE IV DISPOSITION BY THE BOARD

SECTION 1

A decision on any hearing shall be filed with the Town Clerk within the time limits established by Chapter 40A of the General Laws of Massachusetts.

SECTION 2 VOTING REQUIREMENTS

The concurring vote of at least four (4) of all members of the Board shall be necessary in any zoning action taken by the Board, including the granting of a special permit, variance, overturning, a decision of the Building Inspector, or approval of site plans, signs and other items required by conditions attached to permits.

The record shall show the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The Board shall, in addition, set forth clearly the reasons for its decision.

SECTION 3 WITHDRAWAL

An application may be withdrawn by notice in writing to the Clerk at any time prior to the publication of the notice of the public hearing by the Board. Refer to Article III, Section 4. Requests to withdraw at other times may be granted by a unanimous vote of the Board upon formal, written request.

SECTION 4 RECONSIDERATION

Decisions of the Board are final only when submitted to and filed with the Town Clerk. Once a decision has been voted upon and the meeting adjourned, reconsideration may occur only during a duly constituted public meeting.

SECTION 5 LIMITATIONS ON GRANTS: EXTENSIONS

If a variance is granted by the Board, all permits necessary for the prosecution of the work shall be obtained and construction

shall be commenced within one year from the date of the granting of a variance. In the case of special permits or appeals from a decision of the Building Inspector, a two year deadline from the date of granting the permit or appeal shall apply. These deadlines can be altered as a condition of the permit or variance. Reasonable extension of said time may be granted by the Board in the case of an appeal to the Supperior Court under General Laws, Chapter 40A, Section 17, or for other good cause shown.

ARTICLE V POLICIES AND ADVICE

Any advice, opinion, or information given by any Board member, or any other official or employee of the Town of Brookfield shall not be binding on the the Board.

Members of the Board sitting in town meeting shall not vote on or indicate personal preferences concerning matters pertaining to zoning. Information concerning technical or procedural questions may be provided as necessary and appropriate.

ARTICLE VI ADOPTION

The foregoing rules and regulations are hereby adopted this _____ day of _____, 19____ by the Zoning Board of Appeals; all former rules of this Board including those adopted _____, 19____, are hereby repealed.

ZONING

40A § 15

consisting of five members, shall be necessary to reverse any order or decision of any administrative official under this chapter or to effect any variance in the application of any ordinance or by-law.

All hearings of the board of appeals shall be open to the public. The decision of the board shall be made within seventy-five days after the date of the filing of an appeal, application or petition except in regard to special permits, as provided for in section nine of this chapter. Failure by the board to act within said seventy-five days shall be deemed to be the grant of the relief, application or petition sought, subject to an applicable judicial appeal as provided for in this chapter. 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 days in the office of the city or 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 designated in section eleven, 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 section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of city or town clerk.

Added by St.1975, c. 808, § 3.

Historical Note

Prior Laws:

St.1920, c. 601, § 9.
St.1922, c. 40.
St.1926, c. 59.
St.1926, c. 216.
St.1929, c. 39.
G.L.1932 (Ter.Ed.) c. 40, § 30.
St.1933, c. 269, § 1.
St.1935, c. 388, §§ 1, 2.
St.1941, c. 198, §§ 1, 2.
St.1945, c. 167.
St.1951, c. 205.
St.1953, c. 102.
G.L. c. 40A, §§ 13, 16 to 19, as added
by St.1954, c. 368, § 2.

St.1955, c. 325, § 1.
St.1955, c. 349.
St.1959, c. 317, § 2.
St.1960, c. 326.
St.1962, c. 201.
St.1962, c. 203.
St.1962, c. 212.
St.1962, c. 387.
St.1963, c. 207, §§ 1, 2.
St.1968, c. 336.
St.1969, c. 870, § 1.
St.1970, c. 271.
St.1971, c. 569.
St.1971, c. 1018.
St.1973, c. 296, § 2.

Law Review Commentaries

Administrative discretion in zoning.
(1969) 82 Harvard L.Rev. 668.

Detailed record of proceedings. Richard G. Huber, 17 Annual Survey of Mass. Law, Boston College, p. 474 (1970).

Modification of findings. John P. Clair, 9 Annual Survey of Mass. Law, Boston College, p. 138 (1962).

Participation of members as requisite for valid decision. Richard G. Huber, 5 Annual Survey of Mass. Law, Boston College, p. 148 (1958).

Proceedings before boards of appeals. Kenneth B. Bond (1959) 3 Boston Bar J. No. 5, p. 25.

Review in Massachusetts zoning and subdivision control cases. William E.

"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture of residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the ordinance or by-law.

Zoning ordinances or by-laws shall provide that special permits shall only be issued following public hearings held within sixty-five days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the city or town clerk by the applicant; and may provide that certain classes of special permits shall be issued by one special permit-granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits. Special permit granting authorities shall act within ninety days following a public hearing for which notice has been given by publication or posting as provided in section eleven, and by mailing to all parties in interest, provided, however, a city council having more than five members designated to act upon such a permit may appoint a committee of such council to hold the public hearing. Failure by a special permit granting authority to take final action upon an application for a special permit within said ninety days following the date of public hearing shall be deemed to be a grant of the permit applied for. Special permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board.

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, and including such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of