

**FOXBOROUGH
ZONING BOARD OF APPEALS**

RULES AND REGULATIONS

ARTICLE 1

ORGANIZATION

Sec. 1.01 OFFICERS

At the first regular meeting following the confirmation of the annual appointee, the Board shall elect all officers of the Board to include a chairperson, vice-chairperson and clerk. Alternates do not participate in this act.

Sec. 1.02 CHAIRPERSON: POWERS AND DUTIES

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

In addition to powers granted by general laws and local ordinances, 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 work of all subordinates, and exercise general supervisory power. He shall at each meeting, report on all official transactions that have not otherwise come to the attention of the Board.

Sec. 1.03 VICE-CHAIRPERSON

The vice-chairperson shall act as chairperson in case the chairperson is absent or otherwise unable to perform his duties.

Sec. 1.04 CLERK

The clerk shall be a member of the Board, designated by the Board. Subject to the direction of the Board and its chairperson, the clerk shall supervise 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 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 indexes, and call the roll at all Board meetings.

Sec. 1.05 ALTERNATE MEMBERS

The chairperson of the Board shall designate an alternate member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member. In the event of a vacancy

on the Board, the chairperson may designate an alternative member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term.

Sec. 1.06 QUORUM

Three members must be present for a quorum.

Sec. 1.07 REGULAR MEETINGS

Regular meetings of the Board shall be held at 7:00 p.m. on the third Thursday of each month at the Selectman’s Meeting room of the Foxboro Town Hall at 40 South Street. If a regular meeting day falls on a holiday, or Election Day, the meeting shall be held on the day following, or at such other time and place advertised.

Sec. 1.08 SPECIAL MEETINGS

Special meetings may be called by the chairperson, or at the request of two (2) members. Written notice thereof shall be given to each member at least 48 hours before the time set. Notices shall be posted publicly as required by law.

ARTICLE 2

APPLICATIONS TO THE BOARD

Sec. 2.01 APPLICATION FORM

Every application for action by the Board shall be made on the official form, attached as Exhibit B. These forms together with Application Instructions, attached as Exhibit A, shall be furnished by the clerk upon request. Any communication, purporting to be an application, shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed. Ten copies of each application shall be filed and signed by all owners of the site, or if filed by an applicant other than the owner of the site, the ten copies of the application shall be accompanied by an instrument signed by all owners of the site authorizing the applicant to file the application.

Sec. 2.02 FILING PERIOD

Every application shall be filed and every appeal taken within thirty (30) days from the date of refusal of a permit by, or the date of the order, ruling decision or determination of, the Building Commissioner or other administrative official.

Sec. 2.03 PLAN OF LAND TO ACCOMPANY PETITION

Each application and petition of the Board shall be accompanied by three copies of the following described plans:

a. Single and two-family residential lots.

A plan shall be submitted which is not less than 8 ½ x 11” drawn to scale. It shall show the dimensions of the lot, names of abutting streets, zoning districts, names of all owners of properties within 300 feet of the subject property, property lines, easements affecting the lot, restrictive covenants affecting the lot, the location of wetlands, approximate location of all buildings and other improvements on the lot, and abutting buildings on surrounding properties (within 300 feet), the size of the lot, location of driveways, parking areas and other items that are pertinent to the granting of the petition. All proposed data shall be shown in red or otherwise conspicuously delineated.

b. All lots other than single and two-family lots.

A plan prepared by a registered land surveyor shall be submitted showing the dimensions of the lot, names of abutting streets, zoning districts, names of all owners of property within 300 feet of the subject property, property lines, easements affecting the lot, restrictive covenants affecting the lot, the location of wetlands, the location of all buildings and other improvements on the lot and abutting buildings on surrounding properties (within 300 feet), the size of the lot, location of driveways, parking areas and other access ways, lot coverage, height of buildings and other items that are pertinent to the granting of the petition. All proposed data shall be shown in red or otherwise conspicuously delineated.

Sec. 2.04 FILING FEES

A filing fee shall be made payable to the “Town of Foxborough”. An advertising fee shall be made payable to the “Foxboro Reporter”. The filing fee for Comprehensive Permits is determined by the formula appearing in Section 5.03 of the Rules and Regulations.

Application Type	<u>Filing Fee*</u>	<u>Advertising Fee</u>
Single Family and Lot Variances (including home occupations)	\$150	\$100
Variances in non-residential zones	\$300	\$100
Special Use Permit in non-residential zones	\$300	\$100
Multi-Family	\$200 plus \$75 for each unit in excess of 2	\$100
Appeals of Zoning Enforcement Officer	\$150	\$100
Finding	\$150	\$100
Signs	\$200	\$100

*Each request within an application is subject to the applicable filing fee listed; fees for multiple requests are aggregated but a single advertising fee applies. For example, an application containing requests for both a variance and a special use permit in a non-residential zone would entail a filing fee of \$600 plus an advertising fee of \$100.

Sec. 2.05 **REVIEW FEES**

In connection with those applications involving technical, legal or other issues as to which the Board considers it necessary or desirable to engage an outside consultant or consultants, such as engineers, lawyers, planners or other appropriate professionals, to advise the Board on those issues, the Board may, as a condition of permitting the applicant to proceed with his/her application before the Board, require the applicant pay a “review fee” consisting of the reasonable costs for the employment of outside consultants engaged by the Board to assist the Board in the review of an applications. Upon the majority vote by the Board to engage an outside consultant and the determination by the Board of a reasonable review fee for the engagement of an outside consultant, the applicant shall within five (5) business days of the Board’s request deposit an amount equal to the reasonable review fee determined by the Board in a special separate account established by the Town Treasurer. The Board shall then have the right to direct the expenditure of funds, including accrued interest, from such account in connection with carrying out its responsibilities under the law. Expenditures from this special account shall be made only in connection with the review of a specific project for which a review fee has been imposed. Any excess amount in the account attributable to a specific application to the Board, including accrued interest if any, at the completion of the hearing on that application, shall be repaid to the applicant and a final report of such account shall be made available to the applicant. The failure of the applicant to deposit with the Town Treasurer the full amount of the review fee within five (5) business days of the Board’s request therefore shall constitute grounds for disapproval of the petition.

Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. 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. The minimum qualifications shall consist either of an 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. The required time limit for acting upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectman within one month following the filing of the appeal, the selection made by the Board shall stand.

ARTICLE 3**HEARINGS****Sec. 3.01** **NOTICE**

Notice of hearings shall be advertised in the *Foxboro Reporter* (or such other locally distributed newspaper as may be so designated from time to time) at least 14 days prior to the date of the hearing, as required by the provisions of Section 11 of General Laws, Chapter 40A. In addition, a copy of the advertised notice shall be sent by mail, postage prepaid, to the applicant, to the owners of all abutting property as required by law as they appear on the most recent local tax list, to the Planning Board of the Town, to the Planning Board of every abutting town, and to the Building Commissioner, and by posting in a conspicuous place in the Foxborough Town Hall as required by law.

Sec. 3.02 HEARINGS TO BE PUBLIC

All hearings shall be open to the public and held in accordance with the “Open Meeting Law.” No person shall be excluded unless they are considered by the chairperson to be a “serious hindrance” to the workings of the Board.

Sec. 3.03 REPRESENTATION AND ABSENCE

An applicant may appear in his own behalf, or be represented by an agent or attorney. In the absence of any appearance at the hearing, without due cause, on behalf of the applicant, the Board may decide on the matter using the information it has otherwise received.

Sec. 3.04 ORDER OF BUSINESS

Reading of petition and legal notices by the clerk, together with presentation of exhibits, if any.

Applicant’s presentation.

Questions or comments by interested parties in support or in opposition to the petition.

Applicant’s rebuttal, restricted to matters raised by opponent’s presentation.

Members of the Board (including any alternate members) may direct appropriate questions during the hearing.

Sec. 3.05 BRIEF TO THE BOARD

It is recommended but not required that every appeal, and every application for a variance, special use permit or other matter before the Board, be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on General Laws, Ch. 40A, Sec. 10, should be clearly identified and factually supported:

- The particular use proposed for the land or building.
- The conditions especially affecting the property for which a variance is sought.
- Facts which make up the hardship to the applicant.
- Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- 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.

Briefs may be filed at the public hearing. If requested by the Board briefs shall be filed within such time thereafter as may be fixed by the Board, but in no case later than fifteen (15) days after the public hearing.

Sec. 3.06 RECORD OF PROCEEDINGS

A decision and detailed record of proceedings must be filed with the Town Clerk pursuant to Massachusetts General Laws, Chapter 40A, and shall be a public record. Notices of the decision shall be mailed to the applicant, to the parties in interest, and to every person present at the hearing requesting such notice.

Sec. 3.07 PROCEEDINGS INVOLVING “FINDINGS”

All proceedings before the Board under the provision of Section 10.01 of the Foxborough Zoning By-Laws or M.G.L. c.40A, §6, involving “findings” concerning the extension or alteration of pre-existing nonconforming structures or uses shall be governed by the procedural laws and by-laws applicable to special use permit proceedings.

ARTICLE 4

DISPOSITION BY THE BOARD

Sec. 4.01 VOTING REQUIREMENT

The concurring vote of at least three (3) members of the Board shall be necessary in any action taken by the Board with respect to the granting of variances, special use permits, appeals under the provisions of M.G. L. c.40A, §8 and “findings” under the provisions of Section 10.01 of the Foxborough Zoning By-Laws and M.G. L. c. 40A, §6. On all other matters, to the extent permitted by applicable law, the concurring vote of a majority of the Board shall be necessary to take action.

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

Sec. 4.02 WITHDRAWAL

An application may be withdrawn by notice in writing to the clerk at any time before an advertisement has been made. After an advertisement, withdrawal will be allowed only by Board approval.

Sec. 4.03 RECONSIDERATION

Once a final decision of the Board on an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Sec. 4.04 REAPPLICATION

In order to have an application reheard within two (2) years of any unfavorable action, the applicant must request permission from the Planning Board and the Board, showing new evidence that substantially alters the conditions of the previous application. All but one of the members of the Planning

Board must consent to such reapplication. The Board must also unanimously find that material and specific changes have been made in the conditions upon which the previous unfavorable action was taken.

ARTICLE 5

COMPREHENSIVE PERMITS

Sec. 5.01 PURPOSE AND CONTEXT

These rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

Sec. 5.02 DEFINITIONS

(a) *Board* means the Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

(b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

Sec. 5.03 FILING TIME, LIMITS AND NOTICE

The application for a comprehensive permit shall consist of:

(a) Preliminary site development plans signed and stamped by a Professional Engineer, showing the locations of proposed buildings, streets, drives, parking areas, walks and paved areas, and proposed landscaping improvements and open areas within the site. The existing and proposed topography shall also be shown. The plans shall show all wetland resource areas under the jurisdiction of the state wetland protection laws, and any significant natural resource or wildlife habitat areas identified by the state;

(b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. At a minimum this plan shall conform to Section 3.01 E. of the Foxborough Subdivision Regulations.

(c) Preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;

(d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) Where a subdivision of land is involved, a preliminary subdivision plan;

(f) A preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

(g) Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

(i) The applicant shall be a public agency, a non-profit organization, or a limited dividend organization,

(ii) The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program (see footnote 3), and

(iii) The applicant shall control the site;

(h) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations. This list where relevant, shall include a financial analysis and cost projection for each of the items on the list. There shall be a written explanation demonstrating that failure to grant these exceptions or waivers would render the project uneconomical.

(i) An analysis, assessment, and evaluation of the surrounding areas that details the following information: location and nature of existing buildings, existing streetscape and elevations, traffic patterns (including site distances, traffic counts, and level of service of streets), character of open space and playgrounds, if any. Analysis should include a neighborhood plan showing abutting lots and listing the owners of those properties.

(j) A financial statement from the applicant clearly articulating all costs, expenses and profits associated with the development plans. At the Boards discretion this information may be required to be reviewed for the Board by a qualified financial analyst.

(k) A certified Abutters List from the Assessor's Office.

(l) The applicant shall file fifteen copies of the completed application package with the Town Clerk. One copy shall remain with the Clerk and the remaining shall be filed with the Planning Office.

Fees shall be submitted according to the following schedule.

- \$200.00 Administrative fee
- \$200.00 per market rate unit
- \$ 50.00 per “Affordable” unit

The Board may waive the filing fee for the “affordable” units to be constructed by a public agency, provided the request is made prior to the submission of the application.

(m) Within 14 days of the filing of the application the Board shall distribute copies of the completed application to the following Town departments for their review and comment.

- Board of Selectmen
- Building Department
- Board of Health
- Board of Water and Sewer Commissioners
- Police Department
- Fire Department
- Conservation Commission
- Planning Board
- Highway Department
- School Department
- Housing Authority
- Town Counsel

The Board may require additional copies of the full application package if they are necessary for distribution to additional town boards or for consulting engineers.

Sec. 5.04 REVIEW FEES

(a) If, after receiving an application, the Board determines that in order to review such application it requires technical advice, it may employ one or more outside consultants, including but not limited to engineers, landscape architects, architects, legal counsel, financial professionals, real estate professionals, demography experts and/or other professionals to review aspects of the project. The applicant shall pay all costs, fees and expenses associated with such review and the Board may require the applicant to deposit a specified amount of money in a special escrow account to cover the Town’s costs, fees and expenses. The initial escrow amount can vary according to the size and complexity of the project, subject to a minimum of \$1,500. If the escrow account falls below 50% of the requirement set by the Board, the applicant must deposit an additional amount to return the account to the required level. Any unexpended monies in the escrow account upon completion of the permitting process shall be returned to the applicant after all obligations are satisfied. Failure to fulfill escrow requirements may constitute an incomplete applicant and be considered sufficient grounds for denial of said application.

- (b) A review fee may be imposed only if:
 - (i) The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board,
 - (ii) The work is in connection with the applicant’s specific project, and
 - (iii) All written results and reports are made part of the record before the board.

A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19.

(c) Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a bidder or offeror, the Board may deny the comprehensive permit. (See footnote 2)

(d) Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44, § 53G.

(ii) Funds from the special account may be expended only for the purposes described in above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19.

(ii) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.

(iii) The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review.

Sec. 5.05 PUBLIC HEARING AND DECISION

(a) The Board shall hold a public hearing on the application within thirty days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

(b) The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received and all information requested by the Board has been received.

(c) The Board may dispose of the application in the following manner: (see footnote 3)
(i) approve a comprehensive permit on the terms and conditions set forth in the application,
(ii) deny a comprehensive permit as not consistent with local needs, or

(d) Approve a comprehensive permit with conditions.

(e) If a plan is approved whereby the submitted plans are preliminary in nature then the applicant shall submit final plans for review prior to the issuance of a building permit. This review shall be administrative and shall concern technical items such as drainage calculations, construction materials, and other items necessary to ensure compliance with applicable state regulations. The

Zoning Board can require that the definitive plans be reviewed by an outside consultant in conformance with section 5.04 of these Rules and Regulations.

Sec. 5.06 PERFORMANCE GUARANTEE

The Board may require that site improvements, conditions of approval, and the site construction inspection fee be secured by a deposit of money or an Irrevocable Letter of Credit in the Town's favor. This performance guarantee shall be in an amount as the Board deems appropriate to ensure completion of the work being secured. The performance guarantee shall be in place prior to the issuance of building permits.

Sec. 5.07 SITE CONSTRUCTION INSPECTION FEE

The Zoning Board requires a site inspection fee be paid prior to the start of any construction at the site. The applicant shall submit a fee in an amount equivalent to the estimated cost of the inspector's fee. The applicant shall submit an estimate of the site construction costs to the Zoning Board for review.

Sec. 5.08 APPEALS

If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

FOOTNOTE SECTION:

1. Local Initiative proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.
2. The Board will select the consultant after reviewing both the bid or proposal and any comments received from the applicant will not formally award the contract until the review fee has been paid.
3. Boards of Appeals have found that it is most useful to enter into the hearing and decision drafting process assuming that a comprehensive permit will be approved. In that case, if there is significant local health, safety, environmental, or planning concerns, it can focus its attention on drafting conditions to address those concerns. Only if it ultimately finds that there are no conditions which will adequately address the concerns should it deny the permit.

ARTICLE 6

AMENDMENTS TO RULES AND REGULATIONS

These regulations may be amended by majority vote of the Board at any public meeting of the Board, provided that the proposed amendment is posted with notice of the meeting at least seven (7) days in advance. Any requirement of these regulations may be waived by a majority vote of the Board with respect to any particular application if there is good cause to do so.

These regulations are intended for the convenience of the Board and to assist it in the conduct of its duties and are not intended to create substantive rights. Failure of the Board to comply with any of these rules and regulations shall not act to invalidate any decision made by the Board with respect to any application or appeal.