

TOWN OF SUDBURY ZONING BOARD OF APPEALS RULES AND REGULATIONS
JANUARY 23, 2007

A. Meetings and Hearings

1. Meetings and hearings shall be held at the call of the Chairman or Clerk as the need arises. A quorum shall consist of four (4) members.

2. Meetings and hearings shall be conducted by the Chairman, or in the event of his or her absence, by the Clerk.

3. Appeals to the Board shall be taken within thirty (30) days of the date of the action from which the appeal is taken, according to the provisions of Massachusetts General Law, Chapter 40A, Section 15.

4. Notice of public hearings shall follow procedures in M.G.L. Chapter 40A, Section 11, and Article IX of the Sudbury Zoning Bylaws.

5. A Decision of the hearing shall be rendered according to M.G.L. Chapter 40A, Section 15, and Article IX of the Zoning Bylaw. Decisions shall be voted in a meeting which is open to the public. Except in cases of emergency, the Town Clerk shall be notified of said meeting at least 48 hours in advance in accordance with the provisions of M.G.L. 39, Section 23A.

6. A separate application, and fee, shall be required for each matter requesting a variance or special permit and must be paid before the application(s) can be accepted.

- The processing fee for a variance or use variance shall be \$100.
- The processing fee for an initial application for a special permit shall be \$100.
- The processing fee for a renewal of a special permit shall be \$50.
- The processing fee for an appeal of a decision of the Building Inspector declining to issue a building permit shall be \$100.
- The processing fee for all other administrative appeals shall be \$50.
- For all applications requiring a public hearing notice, a fee will be required based on current advertising charges
- The processing fee for an initial application for a comprehensive permit shall be \$2,000 (refundable), plus \$100.00 per unit (non-refundable). The \$2,000 refundable deposit shall be used for reimbursement of direct time charged for review by local officials. In the event the escrow is insufficient, the applicant will be required to increase the amount.
- In addition to the above fees for a comprehensive permit, an escrow of \$10,000 shall be required to pay for the employment of outside consultants to assist the Board in reviewing the application and the project, if needed. .

- For all applications, the Board may require, in addition to the above processing fees, a fee to be held in escrow, to be used for reimbursement for direct time charged by local officials, or to engage independent consultants should the Board determine this to be necessary, based on the characteristics or complexity of the issues raised by the application. Such fee shall be governed and administered in accordance with M.G.L.,c.44, § 53G or § 53E ½ . The Board may waive or modify these fees at its discretion.
- If prior to Board action on the plan the Board finds that the initial deposit is not sufficient to cover actual costs incurred by the Town during the review of the plan, the applicant shall be required to submit forthwith such additional amount as is deemed required by the Board to cover such costs. The Board shall notify the applicant of such additional amount in writing by certified mail. Failure to submit such additional amount as required by the Board within fourteen (14) days of receipt of said notice shall be deemed reason by the Board to deny said plan. If the actual cost incurred by the Town for review of said plan is less than the amount on deposit as specified above, the Board shall authorize that such excess amount be refunded to the applicant concurrently with final Board action on said plan.
- The processing fee for a significant change to a comprehensive permit requiring a public hearing shall be \$500.00.

7. Applications for refiling within two years of a decision under the provisions of M.G.L. Chapter 40A, Section 16 shall include copies of all materials and plans submitted with the original application.

Applications for reconsideration of comprehensive permit denials or revision to one or more permit conditions within two years shall be accepted only by a majority vote of the Board. The Board shall determine that the application contains specific and material changes in the characteristic of the structure or use that caused the original denial or condition.

8. The Board encourages applicants to submit engineering drawings in C-size format or smaller:

C size = 22X17 inches – 20 copies are required to be submitted

B size = 11X17 inches – 12 copies are required to be submitted

A size = 8 ½ X11 inches – 2 copies are required to be submitted

9. All applications must be filled out on an official application form. No substitutions will be accepted. Forms can be obtained from the Town Clerk's office or on the town's website and all questions must be answered fully and completely or the application shall be returned to the petitioner by the Clerk as improperly filed.

10. All public hearing materials shall be submitted six (6) days prior to a hearing continuance. Any substantial materials not submitted within that time frame will not be considered for that hearing.

11. Any Board member or Alternate shall disqualify himself/herself in any case which represents a conflict of interest.

B. Conduct of Hearing

1. The Chairman shall call the hearing to order.

2. The Clerk shall read the Notice of Public Hearing and the Chairman shall determine if all legal requirements have been complied with and the hearing is legally in session.

3. The people attending should be informed of the requirements of the law and what must be proved to substantiate the granting of a special permit or variance. Those attending should be informed that the petitioner may request that the Board accept a withdrawal of the application at any time during the individual hearing. All attending should also be informed as to their right of appeal to the Superior Court or District Court within twenty (20) days of the filing of the Board's Decision with the Town Clerk and that possible other appeals may exist under current law.

4. The Board shall hear the petitioner or authorized representative.

5. The Board shall hear those in favor and those against each petition.

6. The Board shall hear from Associate members of the Board who may be in attendance and wish to speak.

7. Speakers shall address the Chair. The Chair shall keep order and may have an objectionable person removed from the hearing by the police.

8. The Chairman may hear testimony from non-residents at his or her discretion.

9. The Board may collect information itself which should be introduced as evidence at the hearing if pertinent to the Board's decision.

10. A hearing is public and is opened and closed by the Chairman of the Board and not by any motion from the floor.

11. The Chairman may administer oaths, summon witnesses, and call for submission of legal briefs and other documents.

12. Continuances may be granted at the discretion of the Board upon request of the applicant or by motion from any member of the Board. All requests from applicants will be documented in writing.

C. Deliberation After the Public Hearing is Completed

1. A motion is made and seconded to approve or deny the petition. Such motion shall not restrict the scope of discussion except where agreed to by the entire Board.

2. The motion is then discussed by the Board.

3. A vote is taken by the Board, said vote to be recorded as to the number voting in favor and/or opposition to the petition. At least four (4) favorable votes are necessary to grant a petition for a special permit or variance (M.G.L. Chapter 40A, Section 15), and a majority vote is necessary to grant a petition under M.G.L., Chapter 40B.

4. Reasons for the Decision must be provided based on facts as developed during the hearing. The Decision and/or Reasons shall specify the district in which the property is situated, including a reference to the requirements of that district and to what respect the variance requested would be in contravention of the Bylaw requirements.

5. The Decision shall conform to M.G.L. Chapter 40A, Section 14, dealing with the powers of the Board.

6. The Decision may reference the plan submitted by the applicant.

7. Any distances or areas involved in the Decision shall be accurately stated in the Minutes and also in the Notice of Decision.

8. The Board may employ the following guidelines for the period of special permits in use:

- one year for initial applications
- six months for renewals when one or more conditions are unmet
- two years for all other renewals, except that the Board may in its discretion set up to a five-year expiration term if there have been no issues/problems for two consecutive two-year renewal applications.

For the purpose of this section, application for the same use by a different party shall be considered initial applications.

9. The Notice of Decision shall state that any action of the Board is concerned only with the Zoning Bylaw and the applicant must satisfy other town, state and federal regulations which may apply.

10. Participation in the deliberation of the Board after the completion of the public hearing shall be limited to those persons constituting the Board unless, at the discretion of the Board, additional clarification or information is required.

11. Other attendees of the hearing may remain in the hall during deliberation, but may not participate.

12. Whenever practicable, all deliberations shall terminate no later than 10:30PM.

D. Restrictions the Board May Consider

1. Time limits (for the construction of work requested or to ensure adherence to restrictions imposed)

2. Non-transferability

3. Parking facilities

4. Easements

5. Revocability if permitted use becomes a nuisance

6. Other considerations as appropriate including, but not limited to, the requirement of a performance bond at the discretion of the Board.

E. Minutes and Notices

1. All Board members sitting at a hearing shall approve the Minutes whether they voted for or against a motion within 48 hours after being notified of their completion by the Secretary.

2. The Minutes shall be filed with the Town Clerk, with copies sent to the Planning Board, Building Inspector, Town Engineer, Board of Appeals members and Associates.

3. The Notice of Decision shall be mailed to the applicant, together with a cover letter requesting a recording fee so that the Board can record the Decision at the South Middlesex County Registry of Deeds, Cambridge, MA 02141.

4. The Notice of Decision shall be mailed postage prepaid to those deemed by the Board to be interested parties

F. Miscellaneous

1. The Board is governed particularly by:

A. Bylaws of the Town, particularly Article IX

B. The Zoning Enabling Act (M.G.L. Chapter 40A)

2. The Board shall prepare an Annual Report to be printed in the Town Annual Report.

3. These Rules shall be brought before the Board at each annual business meeting for the purpose of possible revision.

4. One copy of the Board's Rules shall be filed annually with the Town Clerk, one copy given to Town Counsel, Board members and Associates, and one copy filed as record in the Board's file.

5. Applications will not be accepted as filed until each question thereon has been fully completed, the requested documentation provided, the application signed and filing fee paid in accordance with the application instructions and Rules of the Board. The Clerk of the Board is deemed as agent to determine whether the application has satisfied the requirements for acceptance.

6. Each member is encouraged to visit the locus of each application prior to the public hearing.

7. The Board, plus the Associate members, may amend or modify, in part or in whole, these Rules at any duly constituted business meeting. Amendments or modifications to these Rules shall be determined by a majority vote of the Board plus the Associate members. Copies of the revised Rules shall be sent to those listed in Item 4 previously.

8. The Board shall hold an annual business meeting in January after one (1) week's notice at which meeting the Chairman and Clerk for the forthcoming year shall be elected by majority vote of the Board and Associate members. The Chairman and the Clerk shall be members of the Board. Additional business meetings, properly posted, shall be called as needed.

BOARD OF APPEALS

ALTERNATES TO BOARD OF APPEALS
