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The City of Waltham ZONING BOARD OF APPEALS

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2007 FEB -8 P 1:12
CITY OF WALTHAM
CITY CLERK'S OFFICE

Rules and Regulations

Members of the Board

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Mark A. Hickernell, *Clerk*
Bruce Morris
John Sergi

Associate Members

Edward T. McCarthy, Jr.
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Glenna Gelineau
Marc S. Rudnick
Michael R. Squillante


Barbara Rando, Chair

Adopted: January 23, 2007
Effective: March 1, 2007

Foreword

In the interest of promoting the health, safety, convenience, morals and welfare of the inhabitants of the City of Waltham, zoning ordinances have from time to time been established by the City Council. These ordinances contain provisions relative to the height, number of stories and size of buildings and structures, the size and width of lots, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population and the location and use of buildings, structures, and land for trade, industry, agriculture, residence and other purposes.

To provide for reasonable exceptions which may be in harmony with the general purpose and intent of the zoning ordinances of the City of Waltham and pursuant to legislation set forth in General Laws, Chapter 40A, our City Council has established by ordinance the Zoning Board of Appeals

These, the most recently adopted version of these Rules and Regulations, replace in their entirety all previous Rules and Regulations, and amendments thereto, adopted by the Zoning Board of Appeals. If any part of these Rules and Regulations are inconsistent with the applicable General Laws and/or Zoning Ordinances, the applicable General Laws and/or Zoning Ordinances shall control. Under the authority of General Laws of Massachusetts, Chapter 40A and the Zoning Ordinances of the City of Waltham, the Rules and Regulations of the Zoning Board of Appeals for the City of Waltham, are presented herewith:

Article I. ORGANIZATION

Section 1. Authority, Composition and Organization.

- 1.01 Authority.** The Zoning Board of Appeals is established under the authority of the City of Waltham General Ordinances, and pursuant to General Laws of Massachusetts, Chapter 40A.
- 1.02 Composition.** The Zoning Board of Appeals is composed as provided by the Zoning Ordinances.
- 1.03 Organization.** The Board at the first meeting of each year with all five permanent members shall elect a Chair, a Vice Chair and a Clerk.

Section 2. Officers: Powers and Duties

- 2.01 Chair.** The Chair shall preside over and transact the official business of the Board. In so doing, the Chair shall be guided by the powers given the Board from time to time by the General Laws of the Commonwealth of Massachusetts, pertinent local ordinances, and its own rules and regulations. The Chair shall conduct all meetings and public hearings, and appoint such committees as the Board may deem necessary or desirable. The Chair shall be empowered to administer the oath to witnesses. The Chair shall supervise the activities of the Clerk of the Board, engage assistance and counsel and direct the work of all subordinates. The Chair may vote and be recorded on all matters as may come before the Board when a vote is required and the Chair shall report at each meeting on all official transactions that have not otherwise been brought to the attention of the Board.
- 2.02 Vice-Chair.** The Vice-Chair shall preside over and carry on the affairs of the Board and have the same powers and duties as the Chair, in his/her absence or inability to serve for any reason. In the absence or inability to serve of both the Chair and the Vice-Chair, the Zoning Board of Appeals shall designate an Acting Chair.
- 2.03 Clerk.** The Clerk shall have control of and general supervision over the official records, minutes of hearings, correspondence, filed and clerical work of the Board under the supervision of the Chair and the members. The Clerk shall be empowered to administer the oath to witnesses. The Clerk's responsibilities shall wholly or in part be administered by the Clerk, or by such other qualified person or

persons as the Clerk or the Board may designate. In the absence or inability of the Clerk to serve for any reason, the Chair shall designate an Acting Clerk.

Section 3. Meetings

3.01 Meetings. Meetings of the Zoning Board of Appeals are usually held the first and third Tuesdays of the month or as necessary in response to the number of applications or petitions as may be filed with the Office of the Board. All meetings shall be held at 7:00 p.m. or such other time as the Board may designate and will be located at the Arthur J. Clark Government Center in the Public Meeting Room, the Auditorium or any other suitable location as the Board may designate.

3.02 Public Hearings. The hearings shall be open to the public. More than one public hearing may be held during a meeting. Notice of a Hearing shall be in accordance with the applicable state statutes.

3.03 Emergency Meetings. Emergency meetings may be called by the Chair or at the request of any two members of the Board. Written notice thereof shall be given to each member at least forty-eight (48) hours before the time set and posted. Emergency Meetings shall be held at the time and place designated in the posting for such Meetings and shall be open to the public.

Article II. APPLICATIONS TO THE BOARD

Section 1. Eligibility

All Applicants and Petitioners for Relief from the Zoning Board of Appeals are subject to the requirements of the General Laws and the Zoning Ordinances.

Section 2. Application Form

All appeals and matters to be presented for consideration by the Board shall be set forth on such application form as the Board may establish. This form will be available to the public at the Zoning Board of Appeals Office. It shall be the responsibility of each applicant or petitioner, his agent or attorney, to prepare the content of the application form, and shall provide all required information under the pains and penalties of perjury. No application

form shall be eligible for either legal publishing, or ready for presentation at a formal hearing until it complies with all the requirements in the Application Packet.

Petitioner may apply for different types of relief on one application. But, the fees will be based on each type of relief sought. A different Petition is required for each separate lot of land.

Section 3. Filing Period. All applications shall be taken as provided for under General Laws and the Zoning Ordinances.

Section 4. Fee. Filing fees shall be subject to review by the Board annually or from time to time as the Board may determine to be necessary. *See Attachment A.* Payments for all Fees shall be presented at the time of filing. Any checks should be made payable to the City of Waltham.

Article III. PUBLIC HEARINGS

Section 1. Notice for Public Hearings. Notice of Public Hearings shall be provided as required by the applicable sections of the Massachusetts General Laws and the Zoning Ordinances of the City of Waltham.

Section 2. Quorum. A quorum for public hearings by the Board shall consist of at least four (4) members.

Section 3. Representation. An applicant may appear before the board in his own behalf, or be represented by an agent or an attorney. The absence of any appearance on behalf of an applicant shall not prohibit the board from acting on any matter as may come before it.

Section 4. Order of Business. The procedure to be followed for a public hearing shall be in accordance with the General Laws and the Zoning Ordinances, and these Rules and Regulations. Where the Rules and Regulations are silent, Robert's Rules of Order (latest edition) shall control.

- The Chair will call the meeting to order.
- Each of the following shall occur at each Public Hearing:
 - a. The Chair will ask the Clerk to read or cause to be read the notice as advertised.
 - b. The Chair may administer oaths, summons witnesses and call for the production of papers.
 - c. The Chair will call on Petitioner or his representative to present the Petitioner's argument.
 1. Petitioner or his attorney shall present his case by written brief prior to the hearing and oral brief or arguments at the hearing and may call such witnesses as he deems appropriate, subject to the approval of the Chair.
 2. The Board shall retain any record, which has been introduced in evidence, for reference in consideration of the case, and otherwise as required by the General Laws.
 - d. The Chair shall ask if anyone present would like to speak to the case at hand.
 - e. Members of the Board may speak to the case at hand as they deem appropriate.
 - f. No other person may address/speak at the hearing without leave of the Chair.
 1. The Chair will recognize those who wish to speak.
 2. Those who wish to speak will rise, state their name and address and then proceed.
 3. At the Chair's discretion, the Chair may direct any individual to sit down and be silent if he fails to confine his comments to the issues before the Board, presents repetitive or otherwise inappropriate testimony, or becomes disorderly. If someone persists in disorderly behavior following a warning by the Chair to remain silent, the Chair may have the person removed from the hearing.
 - g. At the close of evidence, the Chair may close the public hearing so that the Board may take under advisement consideration of the case, or the Board may vote on the case immediately. Public hearings may also be continued or recessed as the Board deems appropriate.

- The Chair will close the meeting.

Section 5. Executive Session. (See Attachment B, for procedure of the Board for Executive Session.)

Section 6. Memorandum of Law. Every appeal, application, or other proceeding before the Board shall be supported by a Memorandum of Law setting forth in detail all facts relied upon by the parties. The Memorandum of Law shall be submitted in accordance with the procedures described in the Application Packet.

Section 7. Extensions of Time Limits. The required time limits for a public hearing and decision may be extended by written agreement between petitioner and the Board, and must be obtained prior to the expiration of the statutory time limits. A copy of such agreement shall be filed with the City Clerk.

Article IV. **DISPOSITION OF CASES PRESENTED TO BOARD**

Section 1. Voting Requirements. The Board shall vote as prescribed in the General Laws and in the Zoning Ordinances. The record shall show the vote of each member upon each question, and indicate the absence or failing to vote of a member. In addition, the record shall set forth clearly the reason or reasons for the decisions of the Board.

Section 2. Decisions.

- 2.01** The decision of the Board shall be made within 100 days after the date of the filing of an appeal, application or petition, except in regard to Special Permits, in which the decision of the Board shall be made within 90 days of the close of the Public Hearing.
- 2.02** A full copy of the Notice of Decision shall be mailed to The Petitioner, Owner, and/or the Attorney, if any. All “parties in interest” as defined by statute shall receive a summary notification of the decision.
- 2.03** Appeals from a decision of the Board shall be made pursuant to the General Laws Chapter 40A, Section 17 or other applicable law.

2.04 This decision shall not take effect until all requirements of Chapter 40A, Section 11, of the General Laws have been satisfied.

Section 3. Withdrawal. An application or petition may be withdrawn without prejudice prior to the publication of the notice of hearing, or as otherwise permitted by the General Laws. Following publication of the notice of public hearing, an application or petition may be withdrawn with prejudice by the petitioner without leave of the Board, or without prejudice by leave of the Board, such leave requiring the vote of at least three members of the Board. An application or Petition may not be withdrawn without prejudice after the public hearing. If the Board does not permit withdrawal of an application or petition without prejudice, it shall proceed to hear the case and vote on the merits, including as a basis for the decision the fact that the petitioner failed to present sufficient information at the hearing, if that is the case.

Section 4. Reconsideration. Reapplication after an unfavorable final action must be in accordance with Chapter 40A, Section 16. Relief required from the Board of Survey & Planning must be obtained prior to submission to the Zoning Board of Appeals.

Section 5. Extensions. Requests for Extensions of time shall be in accordance with the applicable state statutes.

Article V. POLICIES AND ADVICE

The Board only acts officially through deliberation and vote by the Board.

Article VI. AMENDMENTS

These rules may be amended by an affirmative vote of not less than four (4) members of the Board, provided that such amendments shall be presented in writing at a regular meeting and final action taken thereon at a subsequent regular meeting.

Article VII. PARLIAMENTARY AUTHORITY

“Robert’s Rules of Order, Newly Revised” (most recent edition), shall be the authority on all questions of parliamentary law and proceedings not specifically covered by the rules of the Board.

Article VIII. APPEALS OF DECISIONS OF THE ZONING BOARD OF APPEALS

Appeals from a decision of the Board shall be made pursuant to the applicable statutory provisions of the General Laws of Massachusetts.

Fee Schedule

Advertising* On case by case basis, at current rate of publishing- (to be paid prior to publication)

Mailings* Petitioner shall cover the cost of mailings at current rates

Variances

1-2 Family Homes- \$ 100.00 for all variances presented in one application.

Other Residential
(up to 10 units)- \$ 100.00 per Variance

All Other- \$ 500.00 per Variance

Signs- \$ 250.00 per sign

Extension of Time \$ 100.00 for commencement or completion of construction

Appeals from Decisions of the Building Inspector \$ 250.00

Special Permits- (based on use and per Special Permit)

Residential \$ 200.00

Commercial/Industrial \$ 500.00

Other \$ 200.00

Comprehensive Permits

1-6 units \$ 3,000.00

7-25 units \$ 5,000.00

26-50 units \$ 7,500.00

51-75 units \$10,000.00

76 plus units \$15,000.00

*Please call Zoning Board of Appeals Office for Current Rates

PROCEDURE TO BE FOLLOWED FOR
EXECUTIVE SESSION
OF THE
ZONING BOARD OF APPEALS

1. The Board must first meet in open session at a public meeting or hearing for which notice has been given.
2. The motion to go into executive session must be for one of the bases set forth in General Laws Chapter 39, Section 23B.
3. The Chair must identify the reason for going into executive session.
4. After the vote on whether to go into executive session, a roll call vote must be specifically entered into the official minutes of the meeting.
5. Prior to going into Executive Session, the Chair shall publicly announce whether or not the Board will reconvene in public session following the close of the Executive Session.
6. The Board shall then go into Executive Session.
7. The Board shall confine itself, during the executive session, to the purpose of the executive session.
8. During the executive session, all votes taken shall be recorded by roll call vote and such votes shall become part of the official record of the executive session.