

**CITY OF NEWTON**  
**RULES OF THE ZONING BOARD OF APPEALS**

**Effective October 26, 2010**

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**CITY OF NEWTON**  
**ZONING BOARD OF APPEALS**  
**RULES**

**ARTICLE I. ORGANIZATION**

**SECTION 1. MEMBERSHIP**

The Zoning Board of Appeals shall consist of no more than five voting members.

There shall be five regular members, and there shall be five Associate Members, who shall serve in the case of a temporarily unfilled vacancy, inability to act, absence or conflict of interest on the part of a regular member, at the discretion of the Chairman.

**SECTION 2. OFFICERS**

The Board shall elect from its regular members at its first meeting in January of each year, or at the earliest possible meeting thereafter, when a majority of the Board is present, a Chairman, and a Vice Chairman from its regular or Associate Members, to serve for one year, and until their successors are elected.

**SECTION 3. CLERK**

The Board shall elect from the employees of the Inspectional Services Department of the City of Newton, at its first meeting in January of each year, or at the earliest possible meeting thereafter, when a majority of the Board is present, a Clerk to serve for one year and until his or her successor is elected.

**SECTION 4. CHAIRMAN - DUTIES AND POWERS**

The Chairman or appointee shall preside at all meetings of the Board. He or she shall vote and be recorded on all matters coming before the Board. Subject to these rules, he or she shall decide all points of order, unless overruled by a majority of the members sitting. He or she shall appoint such committees as may be found necessary or desirable by the Board.

In addition to the powers granted by the General Laws and the Ordinances of the City of Newton, and subject to these rules and further instructions of the Board, the Chairman shall oversee the work of the Clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. He or she shall establish sitting schedules for the meetings of the Board, which shall designate regular and Associate Members to sit on a rotating basis. He or she shall report on official business of the Board to the Board as necessary.

## SECTION 5. VICE CHAIRMAN - DUTIES

In the absence, inability to act or conflict of interest on the part of the Chairman, the Vice Chairman shall perform the duties of the Chairman.

## SECTION 6. CLERK - DUTIES

Subject to the direction of the Board and its Chairman, the Clerk shall supervise all of the clerical work of the Board, including:

All correspondence of the Board;

Publishing and mailing all notices required by law;

Receiving all petitions, appeals and related plans submitted to the Board, and approving same for form and information content; and

Maintaining all necessary files and indexes.

## SECTION 7. ASSOCIATE MEMBERS

The Chairman of the Board shall designate one or more Associate Members to serve in the place of a regular member in the case of a temporarily unfilled vacancy, inability to act, absence or conflict of interest on the part of a regular member, and otherwise at the discretion of the Chairman.

In the event of a temporarily unfilled vacancy on the Board, the Chairman shall designate an Associate Member to serve in such position until the appointment of a new member.

## SECTION 8. QUORUM

A quorum of the Board shall consist of four sitting members.

## SECTION 9. ORDER OF SUCCESSION

Either the Chairman, or in his or her absence, the Vice Chairman, shall chair each meeting of the Board. In the case of absence, inability to act or conflict of interest on the part of both the Chairman and the Vice Chairman, the Chairman shall designate a member or Associate Member as Acting Chairman. In the event the Chairman does not so designate, the members and Associate Members then present not exceeding five in number shall elect an Acting Chairman from their numbers who shall perform all the duties of the Chairman related to that meeting.

## SECTION 10. MEETINGS

Regular meetings of the Board shall be held at 7:00 p.m., or at the Chairman's discretion, on the fourth Tuesday of each month at City Hall with the exception of the months of July, August and December. Such meetings shall be open to the public and subject to the Open Meeting Law.

Special meetings of the Board may be called by the Chairman, or at the written request of two members of the Board. The Chairman will set the time and place of the special meetings. Notice of special meetings shall be given each member of the Board at least four days before any such meeting, unless such notice is waived by all the members of the Board.

Notices shall be posted and advertised as required by law. All meetings shall be recorded electronically.

## SECTION 11. CONFLICT OF INTEREST

Any member who disqualifies himself or herself for personal interest from participating and voting upon any matter shall notify the Chairman and Counsel to the Board of any potential conflict or appearance of conflict as soon as practicable before the hearing at which said matter is to be heard. If the member is so disqualified, the Chairman shall state the fact of disqualification for the record and shall designate another member to sit in the place of the disqualified member, who shall thereupon leave the meeting (hearing) and shall not participate in any manner in the proceedings in which the matter upon which the member has disqualified himself or herself is discussed.

No Member or Associate Member shall represent any party of interest in any matter pending before the Board.

Pursuant to provisions of Chapter 268A, Section 17 of the General Laws (the so-called "Conflict of Interest Law"), nothing, however, in these rules shall prevent any Member or Associate Member from appearing before the Board in favor of or in opposition to any matter in which he or she has a direct personal interest, or from acting before the Board, with or without compensation, as agent or attorney for or otherwise aiding or assisting in any such matter involving members of his or her immediate family or any person for whom he or she is serving as guardian, executor, administrator, trustee or other personal fiduciary; provided, however, that said Member has disqualified himself or herself in writing in advance of the hearing from participating and voting at said hearing.

## ARTICLE II. PETITIONS AND APPEALS.

### SECTION 1. FORM AND FEE

Copies of each petition or appeal shall be filed in such form and in such numbers as the Board may from time to time prescribe, together with such other information and plans as the Board may further prescribe. The Board shall approve, by majority vote, written sets of instructions.

Any communication purporting to be a petition or appeal shall be treated as a mere notice of intention to seek relief, until such time as a petition or appeal is filed in the manner prescribed, and is accompanied with such other information and plans as are also prescribed. No petition or appeal shall be considered complete until the petitioner has filed a draft decision with his supporting materials. A model form for use by petitioners will be provided.

No variance from the provisions of the Zoning Ordinances will be considered by the Board except those variances specifically requested.

Each petition or appeal shall be accompanied by a filing fee, according to the fee schedule set forth below:

Variance petitions:	\$500.00
Appeals:	\$400.00
Comprehensive permit petitions:	\$2,000.00 plus \$50.00 per unit
Non-profit – 7 or more units:	\$1,000.00 plus \$50.00 per unit
Non-profit – 6 or less units:	\$350.00

In the case of an appeal, a copy of the building permit refusal or the building permit as granted (if such permit is necessary) and of any other decisions or orders of the Inspectional Services Office shall be included with the appeal.

An appeal of an order or decision of the Commissioner of Inspectional Services shall be filed in the office of the City Clerk within thirty (30) days of the date of issuance of the order or decision.

## SECTION 2. FILING

Before a petition or comprehensive permit will be advertised and heard, complete copies of such petition, together with such other information and plans, as prescribed by the Board, shall have been filed in the office of the Board's Clerk. Before an appeal will be advertised and heard, a complete copy of the appeal, together with such information prescribed by the Board, shall have been filed in the Office of the City Clerk and the Board's Clerk. No petition or appeal will be advertised and heard until the petitioner or appellant has filed a draft decision with the Board's Clerk as part of the submission. Any amendment or additional materials pertaining to a petition or appeal shall be filed by the petitioner or applicant no later than twenty-one (21) days before the scheduled hearing date. In the event that additions to the petition or appeal are filed after this deadline, the Clerk of the Board and/or the Chairman may in his or her discretion, continue the hearing to a later scheduled hearing date. The Clerk's and/or the Chairman's discretion shall be exercised upon a determination of completeness of the petition or appeal and he or she shall notify the applicant of this decision.

## SECTION 3. REQUIRED PLANS

There shall be filed with each petition or appeal legible copies of a plan of the land to be affected, in such form and in such numbers as the Board may from time to time prescribe, on written instruction sheets which shall be available at the Department of Inspectional Services.

This plan shall be stamped and signed by a land surveyor lawfully registered in the Commonwealth of Massachusetts.

The required plans shall have been approved as to form and informational content by the Department of Inspectional Services before filing.

#### SECTION 4. OUTSIDE CONSULTANTS

Pursuant to G.L. c. 44, §53G and Newton Revised Ordinances 22-4. Employment of Outside Consultants, the Board, sitting as a board of appeals under G.L. c. 40A, §12 and G.L. c. 40B, §21, may hire outside consultants whenever the Board determines that the City lacks sufficient staff resources or expertise to provide timely reports or reviews of pending petitions. The Board may confer with the Director of Planning and Development and any other City officials, departments, commissions or agencies it deems appropriate in determining the need to hire an outside consultant(s) to provide reports or reviews on issues raised in connection with a pending application, including but not limited to, issues of (1) traffic, parking, and circulation, (2) noise, (3) historic preservation, (4) blasting, (5) removal of toxic or hazardous waste, (6) drainage systems capacity, (7) environmental protection, including conservation, erosion control, and watershed and floodplain protection, (8) similar issues affecting the public health, safety or welfare.

The applicant filing the petition for which an outside consultant is hired pursuant to this Rule shall pay the consultant's fee to the City. The fee shall be set by the Director of Planning and Development, shall be reasonable and shall reflect the estimated cost for the type of review or report requested from the consultant. Any fee charged in excess of the actual cost of the review or report shall be repaid to the applicant in accordance with the provisions of Rev. Ord. §22-4.

Any consultant hired pursuant to this Rule shall have 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 a related field. The Director of Planning and Development shall select the consultant in accordance with all applicable ordinances and state statutes. An applicant required to pay a fee for an outside consultant pursuant to this Rule may appeal the choice of consultant by requesting that the Board of Aldermen reconsider the selection made by the Director of Planning and Development or by seeking direct judicial review, if otherwise permitted by law. The applicant's appeal shall be limited to claims that the selected outside consultant has a conflict of interest or does not possess the educational or professional qualifications required by this Rule.

The Director of Planning and Development, or his designee, shall review each petition pending before the Board and in consultation with the Chairman shall determine prior to hearing whether an outside consultant or consultants should be retained on behalf of the Board to evaluate such petition, in accordance with these Rules. If the Director of Planning and Development determines that a consultant is required, such consultant may be retained prior to hearing. Any decision by the Director of Planning and Development to waive the requirement of a consultant shall not be binding upon the Board. Any prospective applicant may, at his or her option, consult with the Director of Planning and Development prior to filing any petition before the Board in order to obtain the Director of Planning and Development's determination as to whether a consultant will be required.

## ARTICLE III. HEARINGS

### SECTION 1. QUORUM

A quorum for a hearing by the Board shall consist of four sitting members.

### SECTION 2. NOTICE

Notice of hearing shall be given to the Planning Board, and shall be posted and advertised as required by law. In addition, notice shall be delivered by mail, postage prepaid to the petitioner or appellant, and the owners of land affected, including abutters and abutters to abutters within 300 feet of such land.

### SECTION 3. HEARINGS TO BE PUBLIC

All hearings shall be open to the public and subject to the Open Meeting Law. No person shall be excluded unless he or she is considered by the Chairman to be a serious hindrance to the working of the Board. All hearings shall be recorded electronically.

### SECTION 4. REPRESENTATION AND ABSENCE

A petitioner or appellant may appear in his or her own behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of a petitioner or appellant, the Board may postpone or decide on the matter, using the information it has otherwise received.

### SECTION 5. ORDER OF BUSINESS

- (a) Call to Order
- (b) Petitioner's or appellant's presentation
- (c) Those appearing in favor of the petition or appeal
- (d) Those opposing the petition or appeal

Members of the Board hearing the case may direct appropriate questions during the hearing. Petitions and appeals will usually be heard in the order in which they are filed but may be heard in a different order upon decision by the Chairman.

The Chairman shall be responsible for the proper conduct of all meetings, and shall, subject to Section 4 of Article I, make determinations with respect to their orderly and proper conduct of the meeting.

No rebuttal on the part of any party will be allowed, without specific permission of the Chairman.

## ARTICLE IV. DISPOSITION BY THE BOARD

### SECTION 1. DELIBERATION

After the close of the public hearing on a particular matter or after all matters have been heard, at the option of the Chairman, the Board shall deliberate and vote upon each matter heard in a public meeting. Such public meeting may take place on the same evening as the hearing or may be continued to a later time subject to the discretion of the Board. At the time of the deliberations, there shall be no further testimony or comment by individuals other than Board members without specific permission of the Chairman.

### SECTION 2. VOTING REQUIREMENTS

The concurring vote of at least four members of the Board shall be necessary to reverse an order or decision of the Inspectional Services Commissioner, or to effect any variance in the application of the zoning ordinance.

The concurring vote of at least three members of the Board shall be required to approve a Comprehensive Permit application.

### SECTION 3. WITHDRAWAL

A petition or appeal may be withdrawn at any time before it is advertised. Once the petition or appeal is advertised, it may not be withdrawn unless the Board gives its consent by majority vote at a regularly scheduled meeting.

The petition or appeal may only be withdrawn in writing and by the petitioner or applicant himself or herself, or by his or her authorized representative.

### SECTION 4. RECONSIDERATION

Once a petition or appeal has been voted upon and the meeting adjourned, there shall be no reconsideration without a rehearing. Upon an appropriate motion, there may be reconsideration of a Board decision before the meeting is adjourned.

No petition or appeal, which has been finally and unfavorably acted upon, may be reheard within two years after such final unfavorable action, unless:

(a) all but one of the members of the Planning Board consents thereto after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered, and there is a vote of four members of the Board upon finding specific and

material changes in the conditions upon which the previous unfavorable action was based and a description of such changes in the Board's record of the proceedings, or

(b) where the prior denial by the Board was made "without prejudice".

#### SECTION 5. TIME LIMITS ON GRANTS

Rights authorized by a variance shall lapse within a year of its grant if not exercised. Extensions may be authorized for six months pursuant to Chapter 40A, Section 10 of the General Laws.

#### SECTION 6. STATEMENTS TO THE BOARD

Anything that the petitioner or appellant agrees to do, at the hearing, in relation to his or her petition or appeal, will be made a part of the decision and will be binding on the petitioner or appellant and his or her successors in title.

#### SECTION 7. INFORMAL OPINIONS

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

### ARTICLE V. DECISIONS BY THE BOARD

#### SECTION 1. TIME LIMIT FOR DECISIONS

Decisions of the Board on variances and appeals shall be made within 100 days of the date of filing a complete appeal or petition with the Board or such extended time as the applicant has granted.

Decisions on Comprehensive Permit applications shall be made within 40 days after termination of the public hearings.

#### SECTION 2. SIGNING OF DECISIONS

The Chairman or Acting Chairman of the Board may, unless otherwise requested by a voting Board member, sign the decisions for each member. Such requests for personal review and signing shall be made at the time of each member's deliberation and vote.

#### SECTION 3. TIME LIMIT FOR FILING DECISIONS

A record of decisions of the Board shall be filed within 14 days of the proceedings, with the City Clerk, and shall not be made public until so filed.

#### SECTION 4. NOTICES OF DECISIONS

Notices of decisions shall be mailed forthwith to all parties in interest, to the Planning Board, and to every person present at the hearing who requests that notice be sent to him or her, and states an address to which such notice is to be sent.

#### SECTION 5. RECORDING OF VARIANCES

No zoning variance or any extension, modification or renewal thereof shall take effect until the notice provided therefore by Section 11 of Chapter 40A of the General Laws is recorded in the Middlesex County South Registry of Deeds by the petitioner.

The fee for recording such notice shall be paid by the owner, and the original notice shall be returned by the Registrar of Deeds to the Clerk of the Board with the Book and Page of recording noted thereon. No Building Permit shall be issued by the Inspectional Services Department without receipt of proof of recording in the Registry of Deeds.

The Clerk shall maintain files of all recorded variances and shall transmit copies to the City Clerk.

In the event that the variance affects other land, in addition to the land originally affected by the appeal or petition, such other land shall also be identified upon the notice, which is recorded.

### ARTICLE VI. MISCELLANEOUS PROVISIONS

#### SECTION 1. CONFLICTS OF LAW

All matters upon which these Rules are silent shall be determined by the applicable provisions of Chapter 40A of the General Laws and of the Zoning Ordinances of the City of Newton.

In the event of any conflict between these rules and any provision of the Zoning Ordinance, the Zoning Ordinance shall control.

#### SECTION 2. ADOPTION OF RULES

These rules shall become effective upon adoption by a majority of the Board, and upon filing a copy thereof with the City Clerk.

Copies of these Rules as adopted, and as amended from time to time, shall be furnished to the Mayor, to the Board of Aldermen, and to the Planning Board. Copies of these rules shall be kept available by the Clerk of the Board, for inspection by any person at reasonable times.

SECTION 3. AMENDMENT OF RULES

These rules may be amended from time to time, as necessary and proper, by a majority vote of the Board.

SECTION 4. SEPARABILITY

If any provision of these rules is declared invalid, such invalidity shall have no effect on the validity of the remaining provisions of these rules not so in conflict.

AS APPROVED BY THE ZONING BOARD OF APPEALS – October 26, 2010.

ZONING BOARD OF APPEALS

By its Chairman,

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Harvey A. Creem