

Drive-Through Facilities

Part 2.B – Draft Rules and Regulations Language

Massachusetts these rules and regulations would need a properly noticed public hearing by the adopting board (Selectmen, Board of Appeals or Planning Board) and a copy of the final version to be submitted to the City or Town Clerk. Please review MGL chapter 40A, Section 9 and 11(See appendix).

1.0 GENERAL PROVISIONS

1.1 Purpose and Authority: The following rules are hereby adopted by the ___(Community/Board)_____ as provided in Chapter 40A of the Massachusetts General Laws, for the purpose of establishing uniform procedures for the granting of Special Permits for Drive -Through Facilities. For the purposes of this Special Permit, the ___(Selectmen/ Board of Appeals/ Planning Board)___ is the Special Permit Granting Authority.

1.2 Adoption and Amendment: These rules and regulations may be adopted and from time to time amended by majority vote of the board members present and voting, provided such adoption or amendment is taken after a public hearing.

1.3 Effective Date: These rules and regulations are effective when voted. A copy shall be filed with the office of the (City/Town) Clerk, with appropriate endorsements, such as:

Date of adoption

Date filed with (City/Town) Clerk

Amendments

2.0 APPLICANT (Petitioner)

An application or petition for a Special Permit may be brought by a property owner, agent, or prospective purchaser who submits certification (such as an executed purchase and sales agreement) or property interest and authority to file.

3.0 APPLICATION FOR SPECIAL PERMITS

3.1 Official Application Form: Application for Special Permits shall be made on an official form, which shall be furnished by the (City/Town) Clerk or the Clerk of the Board upon request.

3.2 Contents of An Application: The completed application form, original plan, and nine (9) copies shall be submitted to the Board with an additional copy filed forthwith with the (City/Town) Clerk by the applicant. The following information shall be furnished by the applicant:

3.2.1 A site plan drawn on a standard 24"* 36" sheet(s), at a scale of 1" - 40', unless another scale is previously requested by the applicant and found suitable by the Board;

3.2.2 A professional engineer, registered architect or registered landscape architect shall prepare the plan;

3.2.3 The plan shall be stamped by the registered land surveyor who performed the instrument boundary survey and who shall certify the accuracy of the locations of the building, setbacks and all other required dimensions, elevations and measurements and shall be signed under the penalties of perjury.

3.2.4 The scale, date and north arrow shall be shown;

3.2.5 Lot number, Dimensions of lot in feet, Size of lot in square feet, and Width of abutting streets and ways;

3.2.7 The location of existing or proposed building(s) on the lot shall be shown with the total square footage and dimensions of all buildings, all building elevations and floor plans, and perspective renderings;

3.2.8 The location of existing wetlands, water bodies, wells, one-hundred year floodplain elevation, and other natural features; streams, wetlands, vistas, slope areas, geological features, unique vegetation, historic features, and others that may be important to the site;

3.2.9 a landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings;

3.2.10 Percent of building lot coverage and percentage of paved (impervious) area used for parking, loading, and access within the property;

3.2.11 Existing and proposed topographical lines at two-foot contour intervals on the parcel to be developed and within 50' thereof. Information and location of benchmark(s) used shall also be provided.

3.2.12 The location and a description of proposed open space area(s);

3.2.13 Existing and proposed street, parking, drainage, and utility systems shall be prepared by a professional engineer registered in Massachusetts;

3.2.14 The applicant shall submit information regarding: all measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased runoff, and flooding. An erosion control plan showing method(s) and location(s) to be used shall also be submitted.

3.2.15 Existing and proposed location(s) of loading areas, driveways, access and egress points, and the location and number of parking spaces.

3.2.16 Existing and proposed on-site wells, water supply systems, storm drainage systems, utilities, sites for enclosed refuse containers and location and capacity of septic systems and estimated amounts of water consumption and sewer discharge.

3.2.17 Existing and proposed signs; noting height, size, location and manner of lighting (applicant is encouraged to include photograph(s) and /or sketch(s)).

3.2.18 A lighting plan showing the parcel to be developed and within fifty (50) feet thereof. The plan shall include the following: location of all existing and proposed exterior light(s), including building ground and parking lot light(s); noting height, initial foot-candle readings on the ground and data on the types of fixtures to be used.

3.2.19 A traffic impact study prepared by a registered professional engineer experienced and qualified in traffic engineering.

3.2.20 A locus plan at 1" - 100', 200' or 400' scale showing the location, names, and present widths of the Secondary Streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership, and topography taken from assessor's plans or field survey if available, or properties there-in.

3.2.21 The application shall also furnish a narrative summary of the vital statistics of the project.

3.2.22 Any additional information which the Board may require. The Board may engage a Massachusetts Professional Engineer to review the application for completeness and correctness and shall require the applicant to pay for the cost of the review.

4.0 FEES

All applications shall include by two certified checks made payable to the order of the (City/Town) of _____ . One check shall be for Administrative fees and the second check shall establish an individual special account. Any additional payments required shall be made within 30 days of the billing date.

4.1 Administrative Fee - The filing fee shall be two hundred dollars (\$200.) for a Special Permit application.

4.2 Consultant Review Fee/Special Account

4.2.1 Every Special Permit application shall be required to file the following minimum review fee to establish an individual special account. If, in addition, this minimum amount is not sufficient to cover the entire cost of the review, the Board shall adjust said special account. The minimum fee and the adjustment schedule are as follows:

0 – 39,999 sq. ft. = \$2,000

40,000 – 79,999 sq. ft. = \$3,000

80,000 – 119,999 sq. ft. = \$4,000

120,000 sq. ft. + = \$6,000

4.2.2 Where specific conditions arising from the land or the nature of the proposal necessitate the assistance of a planning, engineering, traffic, soils, hydrologic or other consultant(s), the Board may engage such consultant services to assist in analyzing the project to ensure compliance with all relevant laws, ordinances, bylaws, regulations, good design principals, and state-of-the-art technology. The Board may require that applicants pay a "review fee" consisting of the reasonable costs to be projected to be incurred by the Board, for the employment of consultants engaged by the Board to assist in the review of the application.

4.2.3 Funds received by the Board pursuant to this section shall be deposited with the (City/Town) Treasurer who shall establish a special individual account for this purpose. Expenditures from this special account may be made at the direction of the Board, without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay all review fees shall be grounds for denial of the application or permit.

4.2.4 Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including any interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. The applicant must submit a written request for these funds. A final report for said account shall be made available to the applicant, upon request, or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with the documentation establishing such succession in interest.

4.2.5 Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen, providing that such appeal is taken within 14 days of notification of the Board's appointment of the consultant. 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 as may be set by the Board. The minimum qualifications shall consist either of a four-year college level educational degree in, or one related to, the field of knowledge at issue or three or more years of practice in the field at issue or a closely related field. Minimum qualifications may be changed at the Board's discretion depending upon the complexity and/or importance of the proposed project. The required time limit for action 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 Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

4.3 Other Costs and Expenses - The applicant is responsible for preparing notices and associated costs of mailing to abutters and any parties in interest by certified mail, return receipt requested. The prepared notice shall be reviewed by the Board or its agent

before being mailed by the applicant. Return receipts are to be addressed to the Board for further verification. The prepared notices/certified mailing shall be delivered to the Board's agent not less than ten (10) business days before the date of the public hearing.

5.0 REVIEW

5.1 Review by Other (City/Town) Agencies: Prior to its formal review, the Board shall distribute copies of the plans and supporting documents and information (within 5 business days of the receipt of the complete application) to the following town departments: Conservation Commission, Planning Board, Department of Public Works, Board of Health and Police and Fire Departments. These departments shall have thirty-five (35) days to review and submit written comments to the Board.

5.2 Report on Special Permit Decision: If a Special Permit decision does not incorporate the suggestions and/or requirements of any properly filed report(s) from other (City/Town) departments or Boards, or from other entities commissioned by the Board, or is issued contrary advisory reports, the Board, shall issue a written decision stating the reasons for not following the recommendations or requirements of said report(s).

5.3 Procedural Report: The Board, acting as the Special Permit Granting Authority, shall follow all procedural requirements of Chapter 40A, Section 9 of Massachusetts General Law. All applicants are advised to review this chapter in order to understand the Special Permit granting process.

Public Hearing: The Board shall schedule a public hearing within sixty five (65) days of receipt of an application. Notice of said hearing shall be advertised in newspapers of general circulation in the (City/Town) of _____ and mailed to parties of interest as required.

Action by the Board: Within ninety (90) days of the close of the public hearing, the Board shall file a decision with the (City/Town) Clerk, indicating approval, conditional approval, or denial of the Special Permit.

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision for that application by the Board.

6.0 DISPOSITION OF APPLICATION

6.01 Withdrawal of Application: An application may be withdrawn without prejudice by an applicant by notice in writing to the Clerk of the Board, which notice the applicant shall also deliver to the (City/Town) Clerk, at any time prior to the first publication of the notice of the public hearing.

After such notice, withdrawal of an application shall be permitted only by Board vote, which shall consist of a majority present and voting.

6.02 Reconsideration: No vote on an application may be reconsidered after the meeting has adjourned.

6.3 Appeals: Any person aggrieved by a decision of the Board as Special Permit Granting Authority may appeal such decision as provided in M.G.L. 40A Section 17 within twenty (20) days after such decision has been filed in the office of the (City/Town) Clerk.

6.4 Reapplication: No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a Special Permit within two (2) years after the date of the said final unfavorable action, unless the Board finds, by vote of four members, specific and material changes in the condition upon which the previous unfavorable action was based and such changes are described in the record of the Board's proceedings, and after notice is hereby given to parties in interest of the time and place of the proceedings to reconsider in the same manner as provided for in Section 6.3 of these rules and regulations.

6.5 Lapse of Special Permit: No Special Permit shall be authorized by the Board without the express condition that it will lapse if substantial use under the permit is not commenced within two (2) years from the date of final action by the Board, except for good cause or the final determination of an appeal.

6.6 Extension of Special Permit: Approval in all cases is granted for a two (2) year period from the date of the filing of such approval with the (City/Town) Clerk. If a development is not completed in its entirety in that time, the applicant must again petition the Board for re-approval. The applicant shall apply for re-approval sixty days prior to the lapse of the Special Permit. All applications under this section must comply with the bylaw and its rules and regulations in force at the time of application.

6.7 Recording: No Special Permit shall take effect until a copy of the decision, bearing the certification of the (City/Town) Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeal has been filed, is recorded in the Registry of Deeds and is indexed under the name of the record owner of the land.

7.0 PERFORMANCE GUARANTEE

As a condition of the Special Permit, the applicant shall post a bond, or other form of surety, as a safeguard for performance, and/or a penal sum in a form and amount acceptable to the Board, prior to the expiration of the twenty (20) day appeal period, unless the Board shall specify otherwise. If the applicant is not the owner and must purchase the property in question in order to assume such obligations, or if another form of ownership or control is in force, such person or entity shall comply with the provisions of this subsection within twenty (20) days following the date of such purchase or control. If said performance guarantee shall lapse before completion and certification of final inspection by the Board, a new guarantee shall be filed expeditiously by the application/controller of the land and/or project.

8.0 SEVERABILITY OF PROVISIONS

The provisions of these rules and regulations are severable. If any provision of these Rules and Regulation is held invalid, the other provisions shall not be affected thereby. If the application of these rules and regulations, or any of its provisions to any person or circumstances is held invalid, the application of these rules and regulations and their provisions to other persons and circumstances shall not be affected thereby.

9.0 WAIVER OF FULL COMPLIANCE

Full compliance with these rules and regulations may be waived by the Board, provided such waivers are deemed to serve the public interest and are not conflicting with Chapter 40A M.G.L. Requested waivers shall be submitted in writing at the time of the application.

10.0 VIOLATIONS

Written notice of any violation of this bylaw shall be provided by the Building Inspector to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than 30 days be allowed for either compliance or revitalization of a plan for longer-term compliance. In the enforcement of this bylaw, the Building Inspector shall notify the Health Inspector of any violations and seek the Health Inspector's and/or Agent's assistance.