

## **PLANNING BOARD**

### **SPECIAL PERMIT RULES AND REGULATIONS**

**Adopted: January 25, 1992**

**Amended through December 15, 2008**

#### **ARTICLE 1 - GENERAL**

##### **Section 1 - Purpose and Scope:**

These rules are adopted by the Tewksbury Planning Board as authorized by Massachusetts General Laws, Chapter 40A, Section 9, for the purpose of establishing uniform rules and procedures for hearing all applications coming under its jurisdiction as a special permit granting authority (SPGA) by virtue of the applicable provisions of Massachusetts General Laws and the Tewksbury Zoning By-Laws.

##### **Section 2 - Petitioner or Applicant:**

An application for a special permit may be filed by a property owner, a tenant, a licensee, a prospective purchaser or other applicant provided that documentation from the owner certifying the applicant's legal interest in the property and right to file accompanies the application. A copy of any such application shall forthwith be given to the Town Clerk by the applicant. Prior to filing with the Planning Board, all applications shall be reviewed with the Town Planner to assure their correctness, completeness and clarity and shall be accompanied by applicable plans and such other information as the Planner may reasonably require incident to the application prior to his/her endorsement of the application.

#### **ARTICLE 2 - ORGANIZATION**

##### **Section 1 - Officers:**

When the Planning Board acts as a Special Permit Granting Authority, the SPGA shall consist of the five (5) Planning Board members and the officers of the Planning Board shall fill the same positions with the SPGA as they occupy as Planning Board members. The chairperson shall preside over all hearings subject to the rules as stated herein and shall decide all points of order unless overruled by a majority of the Planning Board in session at the time. The chairperson shall appoint such committees as may be deemed necessary or desirable from time-to-time. The chairperson shall handle all correspondence of the Planning Board, the sending of all notices required by law and the rules and orders of the Planning Board and shall receive and scrutinize all petitions and applications for compliance with the rules of the Planning Board.

## **Section 2 - Quorum:**

A quorum for the purpose of conducting public hearings and transacting other business shall consist of four (4) members.

## **Section 3 - Hearings:**

Hearings of the Planning Board shall be held at the time and place specified in the hearing notice.

## **ARTICLE 3 - SUBMISSION OF AN APPLICATION**

### **Section 1 - Application Form:**

Every application for a special permit by the Planning Board shall be made on an official application form, entitled "Planning Board Application for Hearing" which shall be furnished by the Town Planner upon request. Any communication purporting to be an application shall be treated as mere notice of intention to seek Planning Board action until such time as it is made on the official form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed and in precise language identifying the applicable provisions of the By-Laws and the specific nature of the application. The form to be used is hereby made a part of these rules.

### **Section 2 - Filing:**

All applications for the Planning Board's consideration shall be filed at a regular meeting of the Planning Board.

### **Section 3 - Submissions:**

Two (2) copies of the application form shall be submitted and shall be accompanied by ten (10) copies of plans, sketches or diagrams sufficient to show nature of the specific request being made by the petitioner. All plans and documents submitted in support of the application shall meet the requirements for a Definitive Plan set forth in the Subdivision Rules and Regulations of the Planning Board and shall contain all other information pertinent to the application as required by the Zoning By-Laws, other By-Laws and these rules. All site plans submitted to the Tewksbury Planning Board for approval in conformance with the Zoning Bylaw shall be required to utilize **X & Y** coordinates to "**NAD83 state plane**" system and **Z** coordinate to the "**1927 NGVD**" system.

### **Section 4 - Town of Tewksbury Massachusetts Digital Data Submission**

## **Requirements:**

The Town of Tewksbury Digital Data Submission Requirements apply to any site or subdivision plan and infrastructure projects (water/sewer/drainage installation or repair, road rehabilitation and other capital improvements). The applicant, person or entity performing the work shall provide the Town with a digital copy of the final approved plans no earlier than one (1) month before the work is scheduled to commence. A digital copy of the as-built drawings will also be required and these will be submitted no later than six (6) months after project completion. The digital copy of the final set of approved plans must follow the requirements listed below:

1. All plans and specifications must be submitted on electronic media. Acceptable file formats include: AutoCAD \*.dwg, AutoCAD \*.dxf, ArcView \*.shp, or ArcGIS Geodatabase. The files must be identical to the printed plan and contain all information included on the “as-built” plan. If plans and specifications are not “Tewksbury GIS Ready” data, as defined below, a \$200.00 fee per submission shall apply.

“Tewksbury GIS Ready” data is defined as:

- Data delivered digitally in GIS shapefile or geodatabase format.
  - The data shall be in the NAD 1983 MA State Plane Coordinate System.
  - The data shall be delivered in a way that would create minimal work for the Town staff when they update the GIS system as determined by the Engineering Division.
2. All digital mapping must be delivered in the Massachusetts State Plan Coordinate System with a horizontal datum of NAD83 and a vertical datum of 1927 NGVD. Each plan must include a minimum of one (1) survey-derived (bearings and distances listed) reference to a permanent in-ground feature such as: catch basin, manholes, stone bound, municipal benchmark or other readily identifiable marker. The latitude and longitude of the in-ground feature must be provided with accuracy of plus or minus centimeter.
  3. Each feature must be organized in the CAD or GIS data structure as a separate layer. For example, there must be separate CAD layers for buildings, roads, road centerlines, surface water, wetlands, sewer, water, stormwater, etc. Having all these features in a single CAD layer or GIS file will not be accepted.
  4. All data will be topologically clean, meaning that polygons are closed (no overshoots or undershoots) and lines connect at nodes. Features that naturally connect such as driveways to roads must connect seamlessly. Features under text should not be erased or ‘broken’ in order to make text clearer.
  5. Documentation of the data format must be provided with a description of the CAD layer and list of the types of features placed in each layer. Submission of multiple files must also include a list of the files and their purpose.

The data submitted must include documentation on the method used to gather the data, the name of the person(s) responsible for preparing the data, contact information, an estimation of the horizontal and vertical accuracy, and the date of data capture. All media shall be free from any and all defects and viruses, and labeled as to their contents.

**Section 5 - Filing Deposit:**

Every Special Permit applied for from the Tewksbury Planning Board shall be accompanied by a filing fee from the most recent Planning Board Special Permit Fee Schedule. Project proponents shall be responsible for all fees related to advertising, abutter notification, and engineering reviews. These fees are mandatory and are non-refundable.

**Section 6 - Names and Address of Abutters:**

After the petition or application is filed, the chairperson shall obtain immediately a list of the names and addresses of all parties in interest which shall be certified by the Board of Assessors, parties in interest wherever herein used or referred to shall be as defined in Massachusetts General Laws, Chapter 40A, Section 11 and shall include, among others, abutters, abutters to abutters and all owners of land within three hundred (300) feet of the property lines of the premises which are the subject of the petition or application.

**ARTICLE 4 - HEARINGS**

**Section 1 - Notice:**

Notices of hearings shall be advertised as required by the provisions of Massachusetts General Laws, Chapter 40A, Section 11. In addition, copies of the advertised notice shall be sent by mail at least seven (7) days prior to the date of the hearing, postage prepaid, to all parties in interest and provided, where applicable, to Town boards and departments. In the event the Planning Board's failure to give timely notice to parties in interest, the Board may continue the hearing until such notice requirement has been satisfied.

**Section 2 - Hearings to be Public:**

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, General Laws, Chapter 39, Section 23B.

**Section 3 - Representation and Absence:**

An applicant may appear in his own behalf or be represented by an agent or attorney. In the absence of an appearance, the Planning Board may, in its discretion, decide the matter using the information it has received or dismiss the petition with or without prejudice.

**Section 4 - Hearing Procedure:**

- a. Hearings will start at the time stated in the notice unless delayed because of prior hearings.
- b. At the hearing, any party, whether entitled to notice thereof or not, may appear in person or by agent or by attorney.
- c. At the hearings, the chairperson may administer oaths, summon witnesses and call for the production of papers. The Planning Board may retain any record which has been introduced in evidence for reference in the consideration of the case.
- d. No person shall address a hearing of the Planning Board without leave of the chairperson and all persons shall, at the request of the chairperson, be silent. If a person, after warning from the chairperson, persists in disorderly behavior, the chairperson may order him to withdraw from the hearing, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the hearing is adjourned.
- e. The chairperson may close the hearing immediately, if, in the chairperson's opinion, these rules are being violated or the hearing becomes disorderly.
- f. The chairperson will open each hearing by reading, or causing to be read, the notice as advertised.
- g. The petitioner or his representative will then present his case, stating fully the reason(s) why the petition or application should be granted.
- h. When the petitioner or his representative has concluded the presentation, the chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak will rise, address the chairperson, give their names and addresses, then proceed.
- i. When all those in favor have spoken, the chairperson will then allow those in opposition a similar opportunity to be heard. Rebuttals may only be allowed at the discretion of the chairperson.
- j. Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Planning Board may be allowed at its discretion.

- k. Members of the Planning Board who are hearing the case may direct appropriate questions during the hearing.
- l. When all facts have been presented, the chairperson will close the hearing and inform the petitioner or his representative and others present that they will be notified of the Planning Board's decision.

### **Section 5 - Information to be Furnished to the Board**

Every application for a special permit shall be supported by all of the facts relied upon by an applicant. The following points, based on Massachusetts General Laws, Chapter 40A, Section 9, shall be identified and factually supported:

- a. The particular type of use proposed for the land or structure, if any;
- b. The conditions and character of operations of the proposed uses which show that it will be in harmony with the general purpose and intent of the district and the By-Law; and
- c. The nature of the proposed use in relation to both the general and specific provisions of the By-Law governing that use and the district in which it is located.

Such information, together with any relevant data required by the Zoning By-Law, shall be indicated on the application form and presented verbally or in writing at the public hearing.

## **ARTICLE 5 - ACTIONS BY THE PLANNING BOARD**

### **Section 1 - Voting Requirements:**

The concurring vote of 4 and 5 members of the Planning Board shall be necessary to decide in favor of an application. The Planning Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be filed in the offices of the Town Clerk and the Planning Board.

### **Section 2 - Withdrawal:**

An application may be withdrawn without prejudice by notice in writing to the chairperson at any time prior to the publication of notice of a public hearing by the Planning Board. Withdrawal of application thereafter with or without prejudice requires Planning Board approval and there shall be no return of any fee paid with such application.

### **Section 3 - Repetitive Petition:**

No appeal, application or petition which has been unfavorably and finally acted upon by the Planning Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless (1) all but one of the members of the Planning Board consent to a re-petition after notice is given to parties in interest of the time and place of the proceedings to consider such consent; and (2) the Planning Board finds specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its records prior to scheduling a new hearing.

#### **Section 4 - Limitation on Approval/Extensions:**

If an application for a special permit is approved by the Planning Board, all permits necessary for the prosecution of the work shall be obtained and substantial use thereof shall be commenced except for good cause or construction begun except for good cause within 2 years from the date of filing of the Planning Board's decision in the office of the Town Clerk, unless the Planning Board otherwise provides for a lesser period of time in the decision. A reasonable extension of said time shall be granted by the Planning Board in the case of an appeal to the Superior Court under Massachusetts General Laws, Chapter 40A, Section 17 or for other good cause shown.

#### **Section 5 - Decisions:**

- a. The chairperson will send a copy of the Planning Board's decision forthwith to the owner, the applicant if other than the owner, the Town Clerk and, where applicable, other Town Boards and departments and will send notices of its decision to every person present at the hearing who requests that notice be sent and states the address to which such notice is to be sent.
- b. A special permit does not become effective until the Town Clerk certifies that no appeal of the decision has been filed in Superior Court within the 20-day statutory appeal period or that if an appeal has been filed, it has been dismissed or denied and a certified copy of the decisions recorded in the Middlesex Registry of Deeds and indexed in the grantor in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.
- c. A copy of the recorded decision certified by the Registry is necessary before a building permit dependent on the Planning Board's decision can be issued by the Building Inspector.

### **ARTICLE 6 - POLICIES AND ADVICE**

- a) **Policy on Employment of Outside Consultants** (M.G.L. c. 44, Section 53G)  
The applicant will be required to provide sufficient fees to cover the cost of consultant review and site inspections. The estimated amount will be established by the Planning Board's consultant upon submittal of an application. Failure of

the applicant to submit sufficient funds prior to the public hearing on the application, shall be considered failure to file a complete application.

The applicant has the right to an administrative appeal of the selected consultant. The appeal is to the Board of Selectmen and is limited to claims that the consultant has a conflict of interest or does not possess the minimum required qualifications. The required time limits for action upon an application by the Planning 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 Planning Board shall stand.

The fee will be placed in an account, to be drawn upon, to cover the costs of engineering review and site inspections. The special account, including accrued interest, if any, shall be expended at the direction of the Planning Board through the Director of Community Development, without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Should the amount not cover the actual costs, the applicant will be advised that an additional deposit will be required to fund the account.

Any excess amount in the account attributable to the project, including any accrued interest, at the completion of said project shall be repaid to the applicant or the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest.

The Town Auditor shall submit annually a report of said special account to the Board of Selectmen and Town Manager of the Town for their review. Said report shall be published in the Town Annual Report. The Town Auditor shall submit annually a copy of said report to the Director of the Bureau of Accounts.

**b) Performance Guarantees**

The Board may require performance guarantees for the completion of outstanding work prior to the sign-off of a certificate of occupancy. The Board will allow for a deposit of money with the Town of Tewksbury sufficient in the opinion of the Board's consultant to secure performance of the remaining items in the Special Permit. Any other type of performance guarantee instruments must have the expressed approval of the Planning Board.

**c) Advice**

Any advice, opinion or information given to an applicant by any Planning Board member, the Town Planner or any other official or employee of the Town prior to a public hearing shall not be binding on the Planning Board. Individuals are discouraged from appealing personally to members of the Planning Board prior to a public hearing.



## **ARTICLE 7 - AMENDMENTS**

These rules may be amended by a majority vote of the members of the Planning Board provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

**THESE RULES AND REGULATIONS FOR SPECIAL PERMITS WERE ADOPTED BY THE TEWKSBURY PLANNING BOARD ON JANUARY 25, 1982 AND ARE RECORDED AT THE NORTHERN MIDDLESEX REGISTRY OF DEEDS IN BOOK 2524 PAGE 51.**