

ON-LINE ZONING ORDINANCE DISCLAIMER

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ARTICLE 10.000 APPEALS, VARIANCES, AND SPECIAL PERMITS**10.10 BOARD OF ZONING APPEAL****10.20 APPEALS****10.30 VARIANCES****10.40 SPECIAL PERMITS****10.50 REPETITIVE PETITIONS**

Text current through Ordinance
#1382 of April 25, 2016.

10.10 THE BOARD OF ZONING APPEAL

10.11 There shall be a Board of Zoning Appeal, established in accordance with Chapter 40A of the General Laws and all amendments thereto, which shall consist of five members and up to seven associate members appointed by the City Manager. The first appointments shall be made for one-, two-, three-, four-, and five-year terms respectively, and thereafter one appointment for a five-year term shall be made on or before the first day of May in each year. No member shall be appointed for more than two successive full five-year terms. Associate members shall be appointed for two-year terms, the first appointments being for a one-year term and a two-year term. One associate member shall be designated by the Chairman of the Board to sit in the place of any member incapacitated by personal interest or absence, but not otherwise. A member appointed to fill a vacancy shall serve for the remainder of the unexpired term. The Board shall annually in the month of January elect a chairman and a vice-chairman.

10.12 Members and associate members of the Board of Zoning Appeal shall be bona fide residents of Cambridge but not City employees during their terms of office. They shall serve without compensation. No member of the Board of Zoning Appeal shall be a member of the Cambridge Planning Board, and not more than one member shall be a member of the Board of Appeal as established under the provisions of the State Building Code.

10.13 The Board of Zoning Appeal shall have the following powers and duties:

- (a) To hear and decide appeals as provided by Section 8 of Chapter 40A, G.L., and by Section 10.20 of this Article.
- (b) To hear and decide applications for special permits upon which the Board is empowered to act under Section 10.30 of this Article.
- (c) To hear and decide appeals or petitions for variances from the terms of this Ordinance, including variances for use, with respect to particular land or structures.

10.14 The Board of Zoning Appeal shall consider any appeal, application or petition at a public hearing held within sixty-five (65) days from the transmittal to the Board of such appeal, application or petition. The Board shall provide notice of such hearing in the manner specified in Section 11 of Chapter 40A, G.L.

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- 10.15** The Board may adopt from time to time such rules of practice and procedure as it may deem necessary to carry into effect the provisions of this Ordinance, and shall keep minutes of its proceedings.
- 10.16** All appeals, petitions or applications to the Board shall be made in writing on forms prescribed by the Board, shall refer to the specific provision of the Zoning Ordinance involved, and shall exactly set forth the interpretation that is claimed, the use for which the special permit is sought, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
- 10.17** Every decision of the Board of Zoning Appeal shall be by resolution adopted by the affirmative vote of at least four members of the Board. Each resolution shall be filed with the documents pertaining thereto by case number in the office of the Superintendent of Buildings under one of the following headings: Interpretations, Special Permits, or Variances. Copies of each resolution shall be filed simultaneously in the offices of the City Clerk and the Planning Board. Each decision of the Board shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition, except in regard to special permits, as provided in Section 10.42.
- 10.20** **APPEALS**
- 10.21** Any party specified in Section 8, Chapter 40A, G.L., aggrieved by reason of his inability to obtain a permit or enforcement action or by any order, requirement, decision or determination made by the Superintendent of Buildings or other permit granting authority in the enforcement of this Ordinance may appeal to the Board of Zoning Appeal. Within thirty (30) days after the decision which is being appealed, the aggrieved person may file with the City and the Board of Zoning appeal, a notice of appeal specifying the ground thereof and shall thereupon pay a fee of fifty dollars to the City of Cambridge. The Superintendent of Buildings shall forthwith transmit to the Board of Zoning Appeal all documents and papers constituting the record of the case in which the appeal is taken.
- 10.22** Any person aggrieved by a decision of the Board of Zoning Appeal, whether or not previously a party to the proceeding, or any municipal office or Board, may appeal to the Superior Court or the Land Court for Middlesex County; provided that such appeal is filed in said Court within twenty (20) days after such decision is filed with the City Clerk.
- 10.30** **VARIANCES**
- 10.31** A variance from the specific requirements of this Ordinance, including variances for use, may be authorized by the Board of Zoning Appeal with respect to particular land or structure. Such variance shall be granted only in cases where the Board finds all of the following:
- (a) a literal enforcement of the provisions of this Ordinance would involve a substantial hardship, financial or otherwise to the petitioner or appellant.
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- (b) The hardship is owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located.
 - (c) Desirable relief may be granted without either:
 - (1) substantial detriment to the public good; or
 - (2) nullifying or substantially derogating from the intent or purpose of this Ordinance.

10.32 In addition to considering the character and use of nearby buildings and land the Board, in determining its finding, shall take into account the number of persons residing or working in such buildings or upon such land, and the present and probable future traffic conditions. The Board shall also take into account the potential impact of the development to be authorized by the variance on Registered Solar Energy Systems as defined in Section 22.60 of this Zoning Ordinance.

10.33 A variance shall be granted only after a public hearing for which notice has been given by publication and posting as provided in Section 11, Chapter 40A, G.L., and by the installation of on-site notification panels as required in Section 10.42.1. In any of the following cases notice of each application to the Board of Zoning Appeal for a variance shall be transmitted forthwith to the Planning Board which shall within twenty (20) days of the receipt of such notice transmit to the Board of Zoning Appeal a report accompanied by any material, maps, or plans that will aid the latter Board in judging the applications and in determining special conditions and safeguards. The Board of Zoning Appeal shall not render any decision on an application for a variance until said report has been received and considered, or until the twenty (20) day period has expired without receipt of the report whichever is earlier.

- (a) Erection or alteration of a building to a height greater than that otherwise authorized under the provisions of this Ordinance.
- (b) A change involving a nonconforming use of land in excess of twenty thousand (20,000) square feet.
- (c) A change involving a nonconforming use of an existing building or building with a gross floor area in excess of two thousand (2,000) square feet or a floor area ratio more than fifty (50) percent greater than that permitted in the district in which it is located.
- (d) A change involving a commercial or industrial use on a lot not previously used for a commercial or industrial purpose.
- (e) Any other application for a variance with respect to which the Planning Board certified the Board of Zoning Appeal not later than the date of the public hearing that the granting of such application would materially conflict with the planning principles and policies adopted by the Planning Board.

10.34 In granting a variance the Board may attach such conditions, safeguards, and limitations of time, use and other development features, such as those listed in Section

10.44, as are determined necessary to protect the surrounding neighborhood including the continued existence of any particular structure, but excluding any conditions, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner.

10.35 If the rights authorized by a variance are not exercised within one year of the date of granting of such variance, they shall lapse and may be reestablished only after notice and new hearing pursuant to this Section 10.30.

10.40 SPECIAL PERMITS

10.41 *Granting Authority.* Special permits may be granted for the Board of Zoning Appeal or by the Planning Board as specified elsewhere in this Ordinance. Each of said boards shall be considered a “special permit granting authority”.

10.42 *Procedure.* A special permit shall only be issued following a public hearing held within sixty-five (65) days after filing of an application with the special permit granting authority, a copy of which shall be given to the City Clerk by the applicant. Notice of each application to the Board of Zoning Appeal for a special permit shall be transmitted forthwith to the Planning Board which shall, within thirty-five (35) days of the receipt of such notice transmit to the Board of Zoning Appeal a report accompanied by any material, maps, or plans that will aid the latter Board in judging the application and in determining special conditions and safeguards. The Board of Zoning Appeal shall not render any decision on an application for a special permit until said report has been received and considered or until the thirty-five (35) day period has expired without receipt of the report, whichever is earlier. Failure by a special permit granting authority to take final action upon an application for a special permit within ninety (90) days following the date of public hearing on said application shall be deemed to be a grant of the permit applied for.

10.42.1 *Additional Notification Requirements.* Any applicant for a variance or special permit shall be required to erect and maintain in legible condition one or more public notification panels at the site for which the variance or special permit relief is requested. The required panels shall be secured by the applicant from the Department of Inspectional Services for those permits issued by the Board of Zoning Appeal and shall be secured from the Community Development Department for those permits issued by the Planning Board. The location of any required panel shall be located on a site plan included in the application documents, which location or locations shall be subject to the approval of those respective departments; the mechanics of its installation shall be described in those application documents. The following requirements shall apply:

- (a) *Location and Number.* Panels shall be securely mounted on the subject lot at the street line or within the property, but in any case not more than twenty (20) feet from the street line. However, wherever located, the panel(s) shall be visible, easily identifiable, and legible to persons passing by on the public street, without the necessity of trespass onto private property. For lots having street frontage of two hundred (200) feet or less, one panel shall be installed, One additional panel
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shall be installed for each additional five hundred (500) feet of street frontage. The panels shall be exempt from any applicable limitation on accessory signs set forth in Article 7.000.

- (b) **Schedule and Duration.** The required panels shall be installed as required in this Section 10.42.1 not less than fourteen (14) days before the date of the public hearing. They shall be maintained in legible condition until a Notice of Decision has been filed with the City Clerk by the permit or special permit granting authority. Panels that are stolen, destroyed, or rendered illegible shall be promptly replaced, and panels shall be promptly removed after the Notice of Decision has been filed.
- (c) **Contents of Panels.** The text of the panel shall generally contain the name of the petitioner; a description of the area or premises; street address or other information adequate to identify the location or area subject of the permit petition; the date, time and place of the public hearing; the subject matter of the hearing; the nature of the action or relief requested; the place where the full application may be inspected; case number of the application; the place where written comments may be directed; the phone number of the municipal agency or contact person where further information may be obtained. Reasonable modifications of the text requirements of this paragraph c shall be permitted to enable the most important information to be provided in the most legible form.
- (d) **Graphic and Construction Standards.** Panels shall not be less than eighteen (18) inches by twenty-four (24) inches in dimension; they may be larger. No text on the panel shall be smaller than 12 point type. Panels shall be made of materials adequately weather resistant and durable for the time they are required to be posted.

10.43 *Criteria.* Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:

- (a) It appears that requirements of this Ordinance cannot or will not be met, or
 - (b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or
 - (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or
 - (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or
 - (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and
 - (f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.
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- 10.44** *Conditions.* In acting upon special permits the special permit granting authority shall take into account the general purpose and intent of this Ordinance and, in order to preserve community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this Ordinance, such as, but not limited to, the following:
- (a) Front, side or rear yards greater than the minimum required by this Ordinance.
 - (b) Screening of parking areas or other parts of the premises from adjoining premises or from the street by specified walls, fences, planting, or other devices.
 - (c) Modification of the exterior features or appearance of the structure.
 - (d) Limitations of size, number of occupants, method or time or operation, or extent of facilities.
 - (e) Requirement of number, design, and location of access drives or other traffic features.
 - (f) Requirement of off street parking or other special features beyond the minimum required by this or other applicable codes or regulations.
 - (g) Control of the number, location, size and lighting of signs.
- 10.45** Any development application requiring a special permit from the Planning Board that contains elements requiring a special permit from the Board of Zoning Appeal may be allowed by the Planning Board within the scope of the Planning Board special permit and shall not require a separate application to the Board of Zoning Appeal.
- 10.46** *Expiration.* A special permit granted under this section shall lapse within two years, not including such time required to pursue or await the determination of an appeal to the Superior Court or to the Land Court as provided in Section 10.22 from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction was not begun by such date except for good cause.
- 10.47** *Procedure for Townhouses and Multifamily Dwellings.* An application for a special permit for a townhouse development or for a multifamily dwelling required by Section 4.31 shall also meet the requirements of this Subsection 10.47. Where this Subsection and Subsection 10.42 are in conflict, this Subsection shall control.
- 10.47.1** Applications for special permits shall be accompanied by three copies of a development plan containing the following graphic and written information:
- (1) An accurately scaled map showing the existing conditions on the parcel on which development is proposed and on lots abutting or directly across any street from said parcel. Said map shall indicate property lines, existing structures and all trees in excess of 3" caliper.
 - (2) Information concerning current land use of said parcels (including the number of existing dwelling units).
 - (3) Photographs showing conditions on the development parcel at the time of application and showing structures on abutting lots.
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- (4) A site plan of the development parcel, drawn to scale, showing proposed lot subdivision, if any, the location of proposed buildings, retained and proposed vegetation, location of parking spaces, driveways, proposed curb cuts and walkways, proposed treatment of the perimeter of the parcel including techniques and materials used (screens, fences, walls) and the location of required private open space.
 - (5) Front, side and rear elevations for each structure on the lot indicating building height and heights of buildings on abutting lots.
 - (6) Quantitative data on the proposed development including floor area ratio, floor area per unit, number of bedrooms and the amount of private open space allocated to each unit and reserved for common use of the residents.
 - (7) A list of any zoning violations which would customarily require variances from the requirements of this Ordinance.
 - (8) A Tree Study, certified complete by the City Arborist, as required by the Tree Protection Ordinance of the City of Cambridge, Chapter 8.66.

10.47.2 No application shall be accepted by the Planning Board until all of the information required in Subsection 10.47.1 is completed and included in the development plan. Any changes in the development plan by the applicant following submittal of the application, other than those which might be negotiated at the public hearing, shall require resubmittal of an application for a special permit.

10.47.3 Upon receipt of the application and development plans, the Planning Board shall transmit forthwith one copy of the plan to the Traffic Department. Within forty-five (45) days of receipt of the plan, the Traffic Department shall review said plan and submit a report and recommendation on the development proposal to the Planning Board. The Planning Board shall not render any decision on an application for a special permit for a townhouse development or for a multifamily dwelling subject to those requirements until said report has been received and considered or until the forty-five (45) day period has expired without the receipt of such report, which ever is earlier.

10.47.4 Criteria for approval of Townhouses and Multifamily Dwellings. In reviewing applications for townhouse developments and multifamily dwelling, the special permit granting authority shall consider and address the following site plan criteria as applicable:

- (1) Key features of the natural landscape should be preserved to the maximum extent feasible. Tree removal should be minimized and other natural features of the site, such as slopes, should be maintained.
 - (2) New buildings should be related sensitively to the existing built environment. The location, orientation and massing of structures in the development should avoid overwhelming the existing buildings in the vicinity of the development. Visual and functional disruptions should be avoided.
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- (3) The location, arrangement, and landscaping of open space should provide some visual benefits to abutters and passersby as well as functional benefits to occupants of the development.
 - (4) Parking areas, internal roadways and access/egress points should be safe and convenient.
 - (5) Parking area landscaping should minimize the intrusion of onsite parking so that it does not substantially detract from the use and enjoyment of either the proposed development or neighboring properties.
 - (6) Service facilities such as trash collection apparatus and utility boxes should be located so that they are convenient for resident, yet unobtrusive.

10.47.41 Additional Criteria for Townhouses and Multifamily Dwellings in Industry A and A-2 districts, Industry B, B-1 and B-2 districts, and the Industry C district. In addition to the criteria set forth in Section 11.47.4 above, the following shall be considered by the Planning Board in these industrial districts:

- (1) On balance the location is appropriate for the proposed residential uses, because:
 - (a) Residential use at the proposed location will not preempt space particularly suitable for nonresidential uses; and
 - (b) Existing or anticipated uses on nearby premises will not make residential use inappropriate because of external impacts such as noise, glare, odors or safety concerns; and
 - (c) The proximity of the proposal to other residential development or reasonably anticipated residential development in the future, helps to establish an amount of housing sufficient to ensure a viable, supportive and healthy residential environment; or
 - (d) The proposal will act as a transition to neighboring residential districts and uses; or
 - (e) The proposal is of sufficient scale to create its own supportive residential environment.
- (2) The proposed design includes amenities appropriate to provide a supportive service environment for the anticipated residential uses.
- (3) Other potential benefits can be identified, including:
 - (a) The proposed residential use may make feasible the preservation of an historic structure;
 - (b) The proposed residential use and nearby commercial uses are linked through work/live arrangements or in other ways.

10.48 As expressly authorized in Section 9 of the Zoning Act M.G.L., Ch 40A, the following Special Permits, which authorize increases in the permissible density of population or

intensity of a particular use in the proposed development, shall be subject to the provisions of Section 11.200 of this Ordinance.

Section 6.35	Reduction in required parking for nonresidential development
Section 20.108	Divergence from dimensional requirements, North Massachusetts Avenue Overlay District
Section 20.54.2(2)	Additional height, Harvard Square Overlay District
Section 20.54.4(2)	Waiver of parking and loading requirements, Harvard Square Overlay District
Section 20.54.5(b)	Exemption from yard requirements, Harvard Square Overlay District
Section 20.63.5	Parkway Overlay District
Section 20.63.7	Divergence from dimensional requirements, Parkway Overlay District
Section 20.95.1	Maximum Floor Area Ratio
Section 20.95.2	Maximum Permitted Height
Section 20.95.34	Waiver of Yard Requirements
Section 20.95.4	Dwelling Unit Density
Section 20.304.2(b),(c)	Additional height, Central Square Overlay District
Section 20.304.4	Waiver of setback requirements, Central Square Overlay District
Section 20.304.6	Waiver of parking requirements, Central Square Overlay District
Section 17.13.1(b)	Additional FAR, Special District I
Section 17.17	Transfer of Development Rights, Special District I
Article 13.000	PUD Districts, all permits.

10.49 Any special permit authorizing new construction or substantial rehabilitation of a building totaling 25,000 square feet or more shall be subject to the provisions of Section 22.20 of the Zoning Ordinance.

10.50 REPETITIVE PETITIONS

10.51 No appeal, application or petition which has been unfavorably acted upon by the Board of Zoning Appeal or Planning Board shall be acted favorably upon within two years after the date of final unfavorable action unless:

- (a) Four members of the Board of Appeal or five members of the Planning Board, depending upon which board took the original action, vote that there are specific and material changes in the conditions upon which the previous unfavorable action was based, and describe such changes in the record of its proceedings;
- (b) All but one of the members of the Planning Board consents thereto; and
- (c) Notice is given to parties in interest of time and place for the proceedings on such reconsideration findings.

The granting of "leave to withdraw" after application for a variance or special permit has been advertised shall be considered unfavorable action.
