

**RULES OF PRACTICE AND PROCEDURE**

**Board of Zoning Appeal**

**February 17, 1983**

**Amended February 7, 1985**

**Amended September 13, 2012**

**City of Cambridge**

**Board of Zoning Appeal**

**RULES OF PRACTICE AND PROCEDURE**

These Rules of Practice and Procedure are adopted by the Board of Zoning Appeal of the City of Cambridge pursuant to Section 12 of Chapter 40A, Massachusetts General Laws, and Article 10.000, Section 10.15 of the Zoning Ordinance of the City of Cambridge.

**Section 1. Definitions**

As hereinafter used, the following words shall have the following meanings for the purpose of these rules:

“Applicant” or “Petitioner”, used interchangeably, shall mean a person or persons appealing to the Board or seeking relief therefrom pursuant to the provisions of the Zoning Ordinance.

“Associate Member” shall mean an associate member of the Board as appointed under the provisions of the Zoning Ordinance.

“Board” shall mean the Board of Zoning Appeal of the City of Cambridge as appointed under the provisions of the Zoning Ordinance.

“Chapter 40A” shall mean Massachusetts General Laws Chapter 40A as amended.

“Commissioner” shall mean the Commissioner of Inspectional Services of the City of Cambridge or such other person performing the principal duties of such position.

“Full Board” shall mean all Members and Associate Members then holding office.

“Member” shall mean a member of the Board as appointed under the provisions of the Zoning Ordinance.

“Open Meeting Law” shall mean Massachusetts General Laws Chapter 30A Sections 18-25 as amended.

“Public Hearing” shall mean a hearing of the Board on any matter held pursuant to the provisions of Massachusetts General Laws Chapter 40A including the taking of evidence and deliberations by the Board.

“Rules” shall mean the City of Cambridge Board of Zoning Appeal Rules of Practice and Procedures.

“Zoning Ordinance” shall mean the Zoning Ordinance of the City of Cambridge as amended.

## **Section 2. Adoption of Rules**

- 2.1. The Rules shall become effective upon the filing of a copy thereof with the City Clerk of Cambridge following their adoption by a majority of the Full Board at a Public Hearing.
- 2.2. Copies of the Rules as adopted, and as amended from time to time, shall be furnished to the Commissioner, the Planning Board, the City Manager and such other City Departments as the Board may from time to time decide.
- 2.3. Copies of the Rules shall be kept available by the Secretary of the Board for inspection by any person at reasonable times.

## **Section 3. Membership; Officers of the Board**

### **3.1. Membership**

The Board shall consist of five (5) Members and up to seven (7) Associate Members, appointed and serving terms pursuant to the provisions of the Zoning Ordinance.

### **3.2. Officers**

The Members of the Board shall elect at the Board's first meeting in January of each year, or at the earliest possible meeting thereafter, a Chairperson and a Vice Chairperson to serve for one year or until their successors are elected.

### **3.3. Duties of Officers**

- a) **Chairperson:** The Chairperson shall be the presiding officer of the Board and shall officiate at all Public Hearings as provided in Section 12 of Chapter 40A of the General Laws. At such Public Hearings, the Chairperson may administer oaths, summon witnesses and call for the production of papers.
- b) **Vice-Chairperson:** In the absence of the Chairperson, the Vice-Chairperson shall carry out the duties of the Chairperson and shall have all the powers of the Chairperson.
- c) **Acting Chairperson:** In the event that both the Chairperson and Vice-Chairperson are unable to attend a Public Hearing or are unable to sit on any matter to be heard at the Public Hearing, the Chairperson shall designate one of the remaining Members (or if no other Member is able or willing to serve, one of the Associate Members) to be the Acting Chairperson with all the duties and powers of the Chairperson with regard to that Public Hearing or that matter.

## **Section 4. Conduct of Members and Associate Members**

### **4.1. Attendance at Public Hearings**

- a) Members are expected to attend all Public Hearings of the Board. Associate Members are expected to attend Public Hearings if designated by the Chairperson to sit and vote in the place of any Member who is absent or otherwise unable to sit and vote on a specific matter.
- b) No Public Hearing shall be conducted with less than a total of five (5) Members and/or Associate Members present and qualified to vote, unless, if a total of five (5) Members and/or Associate Members are not present and qualified to vote, the Petitioner states at the Public Hearing that he has no objection to proceeding with only four (4) members whose vote must be unanimous. No Public Hearing shall be conducted at any time with less than a total of four (4) Members and/or Associate Members.
- c) A Member or Associate Member who will be unable to attend a Public Hearing or to hear and vote on any matter shall notify the Chairperson as soon as practicable, and the Chairperson shall designate another Member or Associate Member to sit in the absent Member or Associate Member's place. In the absence of a Member or Associate Member who heard a matter but is unable to attend the Public Hearing at which the vote is to be taken on the matter which was heard by said absent Member or Associate Member the Chairperson may designate a Member or Associate Member who was present and/or qualified at the Public Hearing to vote in place of the absent Member or Associate Member and the minutes shall so show.

4.2. **Conflict of Interest**

- a) Any Member or Associate Member who disqualifies himself for personal interest from participating and voting upon any matter shall notify the Chairperson of his intent to so disqualify himself as soon as practicable. When said matter is reached at the Public Hearing, the Chairperson shall state the fact of disqualification for the record and shall designate another Member or Associate Member to sit in the place of the Member or Associate Member who disqualified himself who shall thereupon leave the Board table and shall not participate in any manner in the Public Hearing while the matter upon which the Member or Associate Member who disqualified himself is being discussed.
- b) No Member or Associate Member shall represent any party of interest in any matter pending before the Board, except as may be permitted by the provisions of G.L. c. 268A.

**Section 5. Public Hearing**

5.1. **Time and Place of Public Hearings:**

- a) Public Hearings shall be held by the Board generally on the second and fourth Thursday of each month, unless another date shall be set by the Chairperson. The Public Hearings shall commence at 7:00 P.M. or at such other time as may be set by the Chairperson and shall continue until all matters on the

agenda have been heard or the Public Hearing is adjourned by a vote of a majority of the Members and Associate Members sitting at the Public Hearing.

- b) The location of the Public Hearings shall be posted by the Secretary of the Board in accordance with the Open Meeting Law.

## 5.2. **Notices of Public Hearings**

- a) Notices of all Public Hearings shall be made in conformity with the Open Meeting Law and filed with the City Clerk, and, as necessary with a copy thereof filed with the Planning Board. All notices of Public Hearings shall be posted, published and mailed in such form and manner to such person(s) required by Section 11 of Chapter 40A of the Massachusetts General Laws and the Zoning Ordinance and to such other person(s) as the Board may deem to be affected.
- b) If a Petitioner requests that notice be sent to any other person(s), it shall be the responsibility of the Petitioner to furnish to the Secretary of the Board a list of names and addresses of such additional person(s), and the Secretary of the Board shall thereupon send such notices at the expense of the Petitioner.

## 5.3. **Executive Sessions**

- a) All Public Hearings of the Board shall be open to the public except to the extent the Board shall vote to go into executive session.
- b) Executive sessions shall be held by the Board in closed session in accordance with the provisions of the Open Meeting Law for the purpose of discussing, deliberating or voting upon those matters which by general or specific statute or other requirements cannot be made public.

## **Section 6. Rules of Procedure at Public Hearings**

- a) All Public Hearings shall be called to order by the Chairperson and cases shall be called in such order as the Chairperson determines. Any case not ready to be heard when reached may be dropped to the end of the Public Hearing case list. Cases, however, may be heard out of turn, but in no instance shall a case be called before its advertised time.
- b) Any person, whether entitled to notice of a petition or not, may appear in person or by agent or attorney at any Public Hearing or may submit a statement in writing to the Board. Every person appearing before the Board or submitting a statement in writing must identify himself for the record by full name and current residential address.
- c) Except as provided in subsection (i) below, the Petitioner shall first present his case either personally or through his attorney or other agent. He shall have the right to present such witnesses, experts, exhibits, documents, charts, plans, models and displays as he may feel necessary to properly present his case. The Petitioner

shall present information as required by the Board including a fully completed application and the “Checklist of Information Required with Application” and any other information contained in forms approved by the Board.

- d) Copies of written recommendations of the Planning Board or of any other city agency submitted to the Board on any matter shall be furnished to the Petitioner who shall be given an opportunity to comment thereon.
- e) All Members or Associate Members sitting at a Public Hearing shall have the right to question any Petitioner or any other person appearing before the Board and to request additional information.
- f) Except as provided in subsection (i) below, after all persons appearing in favor of a petition have been heard, the Board shall hear from all persons appearing in person or by written statements in opposition. There shall be no cross-examination of Petitioner except by Members or Associate Members. Upon completion of all testimony in opposition, the Petitioner shall, at the discretion of the Chairperson, be given an opportunity to rebut any testimony given in opposition. After such rebuttal, the Chairperson shall either allow further public testimony or submission of evidence or declare the matter closed and ready for resolution.
- g) The Chairperson shall have the power and discretion to rule any person appearing at the Public Hearing out of order and to exclude or limit any testimony. Nothing in this section, however, shall deny to any person the right to appear at a Public Hearing and to be recorded in favor of or in opposition to any petition.
- h) The Commissioner or his representative shall attend all Public Hearings and shall be available to answer any questions of the Board relative to any petition being heard.
- i) To the extent not inconsistent with law or the Rules, the Chairperson shall have the right and authority to prescribe such rules and procedures and to do all such acts as in his judgment are necessary, appropriate or convenient for the proper conduct of a Public Hearing. Public Hearings shall not be required to be held in accordance with the rules of parliamentary procedure.
- j) Except to the extent otherwise required by law, all non-dispositive decisions of the Board shall be by majority vote of the Members and Associate Members present and voting on the matter.
- k) Unless the Board otherwise permits, all material drawings, plans, specifications, surveys, photo simulations and written material relating to any matter to be considered by the Board, including any modifications or amendments to any thereof, shall be filed by the Petitioner with the Commissioner no later than 5:00 p.m. on the Monday immediately prior to the Public Hearing at which the matter to which any such drawings, plans, specifications, surveys, photo

simulations and written material pertain shall be considered by the Board. If a Petitioner presents revised plans later than 5:00 p.m. on the Monday immediately prior to the Public Hearing which differ substantially from the plans originally submitted to the Commissioner, the Board will not consider the substantially changed plans unless the Petitioner agrees to re-notice all statutory interested parties and agrees to any necessary extensions of time. If the Petitioner will not agree to re-notice the Petition and/or to any necessary extensions of time, the Board will only consider and only vote on the plans originally filed with the Commissioner.

- l) If a Public Hearing is not completed, or if by majority vote the Board requests that a Petitioner or other interested party present further evidence, the Public Hearing shall be continued. If the Public Hearing is continued to a date certain no further notice, other than that provided in Section 5.2, shall be required. If a Public Hearing is continued without a date certain, the Chairperson shall notify the Secretary of the Board of the date on which the Public Hearing is to be resumed and notice thereof shall be mailed by the Secretary of the Board to all owners and parties who received notice of the original Public Hearing or who requested that they be given notice at the original Public Hearing.

**Section 7. Postponements and Withdrawals**

**7.1. Postponements**

At the request of a Petitioner, a scheduled hearing may be postponed to a later date by majority vote of the Board; provided, that, if the Board deems it necessary and proper, the Petition may be ordered re-advertised and all interested parties and owners re-notified and a new filing fee paid.

**7.2. Withdrawals**

A petition for a variance or a special permit may be withdrawn by the Applicant at any time after filing and before advertising without permission by the Board. After a petition has been advertised, an Applicant may withdraw the petition only by motion for leave to withdraw granted by the Board. Any interested party who is present at the Public Hearing shall have the right to be heard on the motion to withdraw. The granting by the Board of a motion to withdraw shall have the effect set forth in Section 10.51 of the Zoning Ordinance.

**Section 8. Decisions of the Board**

- 8.1. Decisions of the Board shall be rendered in writing and shall be filed with the City Clerk and the Planning Board pursuant to the provisions of Chapter 40A of the General Laws and Section 10.17 of the Zoning Ordinance.

- 8.2. Notices of a decision of the Board shall be mailed to all parties in interest, to the Planning Board, and to every person present at the Public Hearing who requests in writing that notice be sent to him and who gives the Secretary of the Board an address to which such notice shall be sent.

**Section 9. Recording of Decision**

No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty (20) days have elapsed and no appeal has been filed or, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds. The fee for recording or registering shall be paid by the Applicant. No building permit shall be issued by the Commissioner without receipt of recording from the Register of Deeds. In the event that the variance or special permit affects other land in addition to the land originally affected by the Petition, such other land shall also be identified upon the notice which is recorded.

**Section 10. Amendment and Revision of Decisions**

The Board may, in conformity with the provisions of Section 14, Chapter 40A of the General Laws and of the Zoning Ordinance, reverse or affirm, in whole or in part, or may modify any order or decision and may, within a reasonable period of time, amend a decision by adding a statement of further reasons for its decision.

**Section 11. Records**

The Board shall keep a record and minutes of all Public Hearings showing the vote of each Member or Associate Member and setting forth clearly the reason or reasons for the Board's decisions and of its other official actions.

**Section 12. Conflicts**

- a) All matters upon which the Rules are silent shall be determined by the applicable provisions of the Zoning Ordinance and the applicable provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts.
- b) In the event of any conflict between the Rules and any provision of the Zoning Ordinance, the Zoning Ordinance shall control.

**Section 13. Amendment of Rules**

The Rules may be amended from time to time as necessary or proper by a majority vote of the Full Board.

**Section 14. Fees**

The fees for Public Hearings and all matters considered by the Board or related to decisions of the Board shall be determined from time to time by the Commissioner.

**Section 15. Miscellaneous**

Words importing the masculine gender shall include the feminine gender.