

TOWN OF WINCHESTER  
ZONING BOARD OF APPEALS

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Administrative Rules and Regulations TOWN CLERK  
Adopted September 19, 2016 TOWN OF WINCHESTER

**Section 1.0 General**

**1.1 Purpose and Scope**

These Rules are adopted by the Winchester Board of Appeals (hereinafter referred to as the "Board") as authorized by Massachusetts General Laws, Chapter 40A, Section 12, for the purpose of establishing uniform procedures for conducting the business of the Board which, in general, but without limitation, shall consist of hearing all appeals, petitions and applications coming under its jurisdiction as both a permit granting authority and a special permit granting authority by virtue of the applicable provisions of Massachusetts General Laws and the Winchester Zoning By-Law (hereinafter referred to as the "Zoning By-Law") and other By-Laws.<sup>1</sup> Such appeals and matters of original jurisdiction, subject to conformance with these Rules, will in general consist of the following:

- (a) Receive and act upon all appeals from a decision of the Building Commissioner/Zoning Enforcement Officer in performing the duties and responsibilities contemplated by Massachusetts General Laws and the Zoning By-Law within the Town of Winchester;
- (b) Receive and act upon, as a permit granting authority, all petitions for variances from compliance with applicable provisions of the Zoning By-Law;
- (c) Receive and act upon, as a special permit granting authority, all applications for special permits as authorized by the Zoning By-Law;
- (d) Receive and act upon all applications for site plan approval as authorized by the Zoning By-Law; and
- (d) Receive and act upon all matters otherwise legally coming under the jurisdiction of the Board.

**1.2 Petitioner or Applicant**

An appeal may be taken by any person aggrieved by any decision of the Building Commissioner/Zoning Enforcement Officer. A petition for a variance or an application for a special permit or for site plan approval may be brought by a property owner, a tenant, a licensee, a prospective purchaser or other applicant provided that documentation from the owner

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<sup>1</sup> The Board has adopted separate Rules and Regulations Governing Comprehensive Permit Applications under MGL c. 40B. That document remains in full force and effect.

certifying the petitioner's legal interest and right to file accompanies the petition or application. In the case of an appeal, a petition for a variance, or an application for a special permit, the applicant shall file with the Town Clerk who shall transmit it forthwith to the Board.

## **Section 2.0 Organization**

### **2.1 Elections**

At the first regular meeting following the qualification of annual appointee(s), the Board shall elect a chairperson and vice-chairperson. Each shall serve until a successor is duly elected. Associate members shall not participate in this election.

### **2.2 Chairperson - Powers and Duties**

The chairperson shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time.

In addition to powers granted by Massachusetts General Laws and the Zoning By-Law, and subject to these Rules and further instructions of the Board, the chairperson shall supervise the work of the clerk, arrange for necessary help, and exercise general supervision over the Board's activities.

### **2.3 Vice-Chairperson**

The vice-chairperson shall preside over hearings and meetings and perform the duties of the chairperson during the absence or unavailability of the chairperson.

### **2.4 Clerk**

The clerk shall be subject to the direction of the Board and its chairperson, shall undertake all of the clerical work of the Board including all correspondence of the Board, sending of all notices required by law and the rules and orders of the Board, receive and scrutinize all petitions and applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain necessary files.

### **2.5 Associate Members**

The chairperson of the Board shall designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member. In the event of a vacancy on the Board, the chairperson shall designate an associate member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

### **2.6 Quorum**

A quorum for the purpose of conducting public hearings and transacting other business except

voting on appeals, petitions and certain applications as provided herein, shall consist of three (3) members.

### **2.7 Regular Meetings**

Regular meetings of the Board shall be held as necessary at times determined by the Board at a place specified in the meeting notice.

### **2.8 Special Meetings**

Special meetings may be called by the chairperson or at the request of two members. Written notice thereof shall be given to each member at least forty-eight (48) hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law.

### **2.9 Absences**

Pursuant to Town Meeting's acceptance of Massachusetts General Laws, Chapter 39, Section 23D, no member of the Board shall be disqualified from voting on any matter solely due to said member's absence from no more than a single session of the hearing at which testimony or other evidence is received; provided, however, that before any such vote, said member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof, such certification to be part of the record of the hearing.

## **Section 3.0 Submission of Petition, Appeal or Application**

### **3.1 Form**

Every petition, appeal or application for action by the Board shall be made on an official form, entitled "Board of Appeals - Application for Hearing," which shall be furnished by the clerk upon request. Any communication, purporting to be an appeal, a petition or an application, shall be treated as mere notice of intention to seek Board action, until such time as it is made on the official form and payment of the applicable filing fee. To be a complete 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 Zoning By-Laws and the specific nature of the appeal, petition or application. The form to be used is hereby made a part of these Rules.

### **3.2 Filing Period for Appeal**

In the case only of an appeal from a decision of the Building Inspector, a petition or application shall be filed with the Town Clerk within thirty (30) days from the date of issuance of a permit or refusal of a permit by, or an order, ruling, decision or determination of the Building Commissioner.

### 3.3 Submittals; General

The following rules apply to all types of submittals to the Board:

- a. Eighteen (18) copies of the required form shall be submitted and each petition or application shall be accompanied by a plot plan prepared by and under the seal of a registered land surveyor showing current conditions and such other plans, sketches or diagrams as are needed to show clearly the nature of the specific request being made by the petitioner. **Note: Twenty (20) copies required to Site Plan Review.**
- b. In addition to the required form and filing fee necessary to complete an application, certain technical information is required for each category of petition or application before the Board. Whether the submittal is an architectural drawing, site plan, sketch, plot plans, photograph, landscape plan, technical drawing, or other items, all shall be dated, numbered (e.g., sheet 1 of 2), and signed by the person drafting or certifying the item.
- c. All petitions, appeals, or applications to the Board shall be accompanied by copies of Assessor maps provided by the Engineering Department.
- d. Any additional material or submissions in excess of three (3) pages must be received by the Board of Appeals no later than seven (7) days prior to the meeting.
- e. The petitioner is encouraged to submit two sets of photographs depicting areas or lines of sight that will be affected by any alteration or addition of structures.
- f. An electronic copy is to be submitted (either PDF or CD) of all materials presented in the application.

### 3.4 Appeals; Required Submittals.

For the following types of appeals, only the required form and filing fee is required:

- a. Appeal challenging the issuance of a building permit or certificate of zoning compliance;
- b. Appeal of the refusal of the zoning enforcement officer to issue a cease and desist order or to enforce the conditions of a building permit, special permit, variance, or site plan approval; and
- c. Appeal of the refusal of the zoning enforcement officer to revoke a building permit.

**3.5 Petition for Variance or Application for Special Permit; Single or Two Family Home; Required Submittals.**

In addition to the required form and filing fee, each such application and petition to the Board shall be accompanied by a plot plan which shall be 8 1/2" x 11" or 11" x 17" and shall be drawn to the scale between 1 inch equals 10 feet to 1 inch equals 40 feet;

- a. The plan shall have a north point and property lines.
- b. The plan shall have the dimensions of the lot, and the percentage of the lot covered by the principal and accessory buildings, green space and hardscape;
- c. The plan shall show the location of all buildings or uses of the property and parking areas. The distances from adjacent buildings and property lines shall be verified in the field and shown on the plan;
- d. The plan shall show entrances, exits, driveways, etc. that are pertinent to the granting of the variance or special permit;
- e. All areas of proposed expansion of the footprint of structures shall be clearly designated; and
- f. The plot plan shall be certified by a licensed land surveyor that the location of property lines, structures, and other features shown exist on the ground as shown on the plan.
- g. Where the relative location of a feature, distance, or dimension on a lot is material to the petition, the identification of that relative location, distance, or dimension on the plan and certification of the plan by a Massachusetts licensed land surveyor shall be prima facie evidence of those relative locations, distances, or dimensions.

**3.6 Petition for Variance or Application for Special Permit or Site Plan Approval for More than Two Dwelling Units or Any Nonresidential Development; Required Submittals**

The required form and filing fee shall be accompanied by plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Board. At the minimum, the plans should include the following:

- a. Existing conditions plan.
- b. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a

locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Board.

- c. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
- d. Utility plan, which shall include all facilities for refuse and sewerage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including floodplain areas.
- e. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
- f. Landscaping plan, showing the limits of work, existing tree lines, trees that are to be removed, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and numbers of each planning to be provided and including proposed erosion control measures. In addition, the plan should show all hardscape to be installed and/or removed.
- g. A written summary of the contemplated projects shall be submitted with the plans indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and a summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this by-law.
- h. The plans shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town's subdivision regulations.
- i. The Board may require narrative assessments of the on-site and off-site impacts of the proposed use and structures.

### **3.8 Sign Permit; Submittals**

An application for a sign permit shall contain the following:

- a. A plan of land showing the parcel at issue, drawn to the scale of one inch equals forty feet, showing the location of structures, driveways, entrances to structures, walkways, and the location of existing and/or proposed signs;

- b. If the proposed sign is to be attached to any existing structure on the property, a drawing, to scale, of the elevation of any side of the structure from which a proposed or existing sign would face showing each proposed and existing sign;
- c. A detailed drawing, in a scale to show the details of the face of the proposed sign(s), as well as their color and materials; and
- d. If the petitioner seeks to illuminate the proposed sign or if a free-standing sign is proposed, schematics showing all hardware, structures, and equipment relating to the proposed sign.

### 3.9 Filing Fees and Cost of Public Notice

The following administrative fees shall be provided to the Board with the submittal of the application:

- a. An appeal from the action of the Building Commissioner shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*.
- b. A petition for a variance shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*.
- c. An application for a special permit for housing shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*, and for a special permit for non-housing in the amount of *Two Hundred Dollars (\$200.00)*.
- d. An application for a sign permit shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*.
- e. An application for site plan approval shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*, except when such use or structure also requires a special permit or a variance, in which case the total amount of the fees shall be *Four Hundred Dollars (\$400.00)* non-housing and *One Thousand Dollars (\$1,000.00) plus one hundred dollars (\$100.00) per dwelling unit* for housing.
- f. An application to amend, modify or transfer a variance, special permit, or site plan approval shall be accompanied by a check payable to the Town of Winchester in the amount of *Fifty Dollars (\$50.00)*.
- g. All fees are established to cover the cost of and to otherwise defray reasonable expenses incurred by the Board in processing petitions and applications filed with the Board.

- h. An appeal, petition or application shall not be deemed filed until filing fee set forth above have been submitted to the clerk . In the event that the check does not clear, the appeal, petition or application shall be dismissed as incomplete pursuant to Section 6, below, and the materials shall be returned to the appellant, petitioner, or applicant.
- i. In addition to the above stated filing fees, the applicant shall be responsible to pay the cost of publishing public notice of any hearing in a newspaper. The clerk shall prepare the notice and arrange for publication. The newspaper will send an invoice directly to the applicant. The applicant shall pay any such invoice promptly upon receipt and failure to make timely payment shall be grounds for the Board to withhold a decision or deny an application.
- j. The Town shall be exempt from payment of a filing fee, but shall pay the costs of publication.

### **3.10 Outside Consultants and Fees**

- a. Pursuant to G.L. c. 44, s. 53G, the Board may hire outside consultants for review and analysis of any petition, appeal, or application when the Board determines it appropriate. The cost for the review by the outside consultant(s) shall be borne by the petitioner or applicant. The Board shall follow the requirements of the Uniform Procurement Act, G.L. c. 30B, §4, and the guidance documents of the Commonwealth's Office of the Inspector General in making such selections.
- b. The Board will select the consultant after reviewing both the responses and any comments received from the petitioner or applicant, but it normally will not formally award any contract until the review fee has been paid. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a reviewer, the Board may deny the petition or application.
- c. The Board will generally consider the following when making a decision to engage a peer reviewer under this Section 3.7:
  - 1. The size, scale or complexity of the proposal;
  - 2. The complexity of particular technical issues;
  - 3. The number of housing units or square feet proposed; and
  - 4. The size and character of the site,
- d. In hiring outside consultants, the Board may engage engineers, planners, traffic consultants, attorneys, housing specialists and financial analysts, and/or other appropriate



outside consultants who can assist the Board in reviewing and analyzing the proposal. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue of three or more years of practice in the field as issue or a related field.

- e. Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the directions of the Board in connection with the hearing of a specific proposal for which a review fee has been collected from the applicant without further appropriation. Failure of an applicant to pay a review fee shall be grounds for denial of the application.
- f. Review fees may only be spent for services rendered in connection with the specific proposal from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount in this account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant 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 documentation establishing such succession in interest.
- g. Prior to paying the review fee, the petitioner or applicant may appeal the selection of an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications.
- h. The written appeal should specify the nature of the conflict of interest and detail the lack of required qualifications. A copy of the appeal shall be simultaneously provided to the Board.
- i. The time limit for the Board's action on the proposal shall be extended by the duration of any administrative appeal to the Board of Selectmen. In the event that the Board of Selectmen makes no decision regarding the appeal within thirty days following the filing of such appeal, then the selection of the Board of Appeals shall stand.

### **3.11 Denial for Incomplete Filings**

The Board may deny any appeal, petition or application if the required form is not complete or the submissions required by Section 3 are not made. Such dismissal may be made without a hearing on the merits and shall be deemed a withdrawal without prejudice to refile when the application and submissions are complete.

### **3.12 Names and Addresses of Abutters**

After the petition or application is filed, the clerk of the Board shall cause to be obtained a list of the names and addresses of all parties in interest including the petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred (300) feet of the property line of the petitioner, as they appear on the most recent applicable tax list, as defined by Massachusetts General Laws, Chapter 40A, Section 11, and the Zoning By-Law. The assessors shall certify to the Board that list of names and addresses of all parties in interest.

### **Section 4.0 Hearings**

#### **4.1 Notice**

Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A, and the Zoning By-Law. In addition, a copy of the advertised notice shall be sent by mail, at least seven (7) days prior to the date of the hearing, postage prepaid, or delivered, to all parties in interest and to the Planning Board, Board of Health, Town Engineer, Conservation Commission, Building Inspector, Director of Public Works, Police Department, Fire Department, Historical Commission and Design Review Committee and where determined appropriate by the Board, other Town boards and officials.

#### **4.2 Hearings to be Public**

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, Massachusetts General Laws, Chapter 30A, Sections 18 through 25.

#### **4.3 Representation and Absence**

A petitioner or applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

#### **4.4 Continuances**

A continuance may be requested by an applicant by written request submitted to the clerk in advance of a hearing or orally at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Unless notified in writing that a continuance has been granted, an applicant must appear at a scheduled hearing. Any continuance granted upon request of an applicant shall constitute an agreement by the applicant to extend the time limits for actions by

the Board by the duration of the continuance and such agreement, at the request of the Board, shall be set forth in writing.

#### 4.5 Hearing Procedure

- a. Hearings will start at the stated time 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 hearing the chairperson may administer oaths, summon witnesses and call for the production of papers. The Board shall 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 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/her to withdraw from the hearing, and, if he/she does not withdraw, may order a constable or any other person to remove him/her and confine him/her in some convenient place until the hearing is adjourned.
- e. The chairperson may close the hearing immediately if, in his/her opinion, these Rules are being violated and/or the hearing is becoming disorderly.
- f. The chairperson will open each hearing by reading, or causing to be read, the notice as advertised.
- g. The petitioner or applicant or his/her representative will then present his/her case, stating fully the reason(s) why the petition or application should be granted.
- h. When the petitioner or applicant or his/her 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, and then proceed.
- i. When all those in favor have spoken, the chairperson will then allow those in opposition a similar opportunity to be heard.
- j. Rebuttals may only be allowed at the discretion of the chairperson.
- k. Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Board may be allowed at its discretion.

- l. Members of the Board may direct appropriate questions during the hearing.
- m. When all facts have been presented, the chairperson, after motion, will close the hearing and inform the petitioner or his/her representative and others present that they will be notified of the Board's decision.
- n. In the event an applicant fails to appear at a scheduled hearing, the Board may continue the matter or, in its discretion, deny the matter. Unless the Board indicates otherwise in its decision, any such denial shall be deemed a withdrawal with prejudice to refileing the application.

#### 4.6 Information to be furnished to the Board

An applicant may submit written materials, other than the required submissions in Section 3.4, in advance of the hearing, at the hearing or at any time prior to close of evidence at the hearing. With the Board's permission, an applicant may submit material subsequent to the close of the hearing, such as a revised plan, but only if the substance reflected in such material was presented at the public hearing and the Board does not rely on such material as evidence. Any additional material or submissions in excess of three (3) pages must be received by the Board of Appeals no later than seven (7) days prior to the meeting. Any applicant may submit a proposed decision to the Board. All submissions shall be made to the clerk.

- a. In the case of a variance the following points, based on MGL Chapter 40A, Section 10, shall be addressed and factually supported:
  1. The particular land or structure and /or the use proposed for the land or structure, if any;
  2. The circumstances relating to the soil conditions, shape or topography of the land and structures and especially affecting the land or structure for which the variance is sought which do not affect generally the zoning district in which it is located;
  3. The facts which make up the substantial hardship, financial or otherwise, which results from the literal enforcement of the applicable zoning restrictions with respect to the land or structure for which a variance is sought;
  4. The facts to support a finding that the relief sought will be without substantial detriment to the public good; and

5. The facts to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.
- b. In the case of a special permit, the following criteria set forth in Section 9.4.2 of the Zoning By-Law should be clearly identified and factually supported, in addition to any criteria set forth in any other applicable provision of the Zoning By-Law:
  1. Community needs which are served by the proposal;
  2. Traffic flow and safety, including parking and loading;
  3. Adequacy of utilities and other public services;
  4. Neighborhood character, including historic resources and social structures;
  5. Adequacy of proposed screening and buffering;
  6. Impacts on the natural environment; and
  7. Potential fiscal impact, including impact on town services, tax base, and employment.

## **Section 5.0 Actions by the Board**

### **5.1 Voting Requirements**

The concurring vote of all three (3) members of the Board shall be necessary to reverse any order or decision of the Building Commissioner, to grant a variance, or to grant a special permit where so authorized by the Zoning By-Law, except that any two (2) members may approve an application for site plan approval pursuant to Section 9.5 of the Zoning By-Law. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question 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 office of the Town Clerk and shall be a public record.

### **5.2 Withdrawal**

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After commencement of a hearing, a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refile at any time or with prejudice subjecting the applicant to the provisions of Section 5.4 below.

### 5.3 Reconsideration

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

### 5.4 Repetitive Petition

In order to have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two (2) years, the petitioner must follow the procedure outlined in G.L. c. 40A, s. 16, and the Zoning By-Law.

### 5.5 Decisions

- a. The clerk of the Board will send notices of a decision forthwith to the applicant, to parties in interest and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.
- b. The clerk of the Board will send copies of the decision of the Board to the applicant, the Planning Board and the Library and where determined appropriate by the Board, other Town boards and departments.
- c. No variance, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.
- d. A special permit or site plan approval, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit or site plan approval which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting

from the failure to act has become final, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit or site plan approval does so at risk that a court will reverse the permit or approval and that any construction performed under the permit or approval may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of G.L. c.40A, s. 6.

- e. The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds and for paying the recording fees.
- f. A certified copy of the decision and an affidavit from the Registry of Deeds stating that the decision has been recorded are necessary before a building permit dependent on the Board's decision can be issued by the Building Department.

#### **Section 6.0 Policies and Advice**

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is declared to be the policy of the Board to discourage any personal appeals or comments to members of the Board and that all communications outside a convened meeting of the Board concerning proposed or pending matters shall be submitted through the clerk.

#### **Section 7.0 Amendments**

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

#### **Section 8.0 Effective Date**

These Rules were adopted at a regular meeting of the Board on September 19, 2016 and became effective as of September 20, 2016.

#### **Section 9.0 Waiver**

The Board of Appeals has the right to waive any of the preceding rules.