



## **Town of Barnstable, Massachusetts Planning Board**

### **Rules and Regulations of the Barnstable Planning Board as Special Permit Granting Authority (SPGA)**

Adopted February 9, 2009

## **SECTION 1 GENERAL PROVISIONS**

### **1.1 Purpose and Authority**

The Planning Board is designated as the Special Permit Granting Authority (SPGA) as established by the MGL Chapter 40A, Section 9 and is governed by Chapter 40A, the Town of Barnstable Administrative Code, and the Zoning Ordinance, § 240-17 Open Space Residential Development, § 240-24.1.2 E. Hyannis Village Zoning Districts, §240-44.1.3.1.1 Wind Energy Conversion Facilities, § 240-16-1 Multi family Affordable Housing District and § 240.29.7 Senior Continuing Care Retirement Overlay District and in accordance with the Zoning Ordinance as may be amended from time to time.

### **1.2 Applicability**

A property owner of record and/or an agent or prospective purchaser who submits certification of property interest and authority to file may file an Application for a Special Permit. Without exception, the property owner(s) of record and/or agent(s) or prospective purchaser(s) shall be a signatory on the official Application Form. An application submitted without all the required signatures shall be considered failure to submit an application and shall be returned for completion and refiling. The date of such refiling shall be the official date of application.

### **1.3 Adoption and Amendment**

These Rules and Regulations may be adopted and from time to time amended by majority vote of the Board. Prior to the initial adoption of these Rules and Regulations and any subsequent revisions or amendments, the Board shall hold a public hearing.

### **1.4 Effective Date**

These Rules and Regulations become effective when voted on affirmatively by a majority of the Board and filed with the Town Clerk.

## **SECTION 2 APPLICATION**

### **2.1 Official Application Form**

An Application for a Special Permit shall be made on an official Application Form, which is attached to these Rules and Regulations. Any communication not on this official form shall be considered as a notice of intention to apply and not as an official application. It is the responsibility of the Applicant to ensure the accuracy and completeness of all information submitted to the Board.

The Applicant is also responsible for factually supporting all points relied upon in the application including references for methodologies used in design calculations. Failure to meet these requirements may constitute grounds for the disapproval of an application.

## **2.2 Request for Waivers**

Strict compliance with these Rules and Regulations may be waived if the Board finds that the waiver is in the public interest or is not germane to the development project and is consistent with the intent and purpose of these Rules and Regulations and/or Zoning Ordinance. Any request from an Applicant for a waiver of these Rules and Regulations must be submitted in writing to the Board at the time of submission of the formal application. Such requests must clearly identify the provision(s) of these Rules and Regulations that is requested to be waived and the reasons why, in the Applicant's opinion, that granting such a waiver(s) would be in the public interest, or the specific information required is irrelevant to the project, and the waiver request's consistency with the intent and purpose of these Rules and Regulations and/or Zoning Ordinance. If a majority of the Board votes to deny the waiver request, the Applicant must provide the required information a minimum of fourteen (14) days prior to the public hearing.

## **2.3 Number of Copies**

At the time of application, the Applicant shall file a minimum of fifteen (15) copies of the official Application Form and all plans, exhibits, analyses and any other information and/or attachments with the Planning Board. The Applicant shall also file one (1) full copy of the Special Permit Application with the Town Clerk.

## **2.4 Size of Plan Sheets**

Eight (8) copies of the plan sheets shall be 24" x 36" and seven (7) copies of the plan sheets shall be 11" x 17".

## **2.5 Certified Abutters List**

A list of Parties in Interest must be included as part of the official application. This list must be created and certified by the Barnstable Board of Assessors. The Parties in Interest are defined in M.G.L. Chapter 40A Section 11 as follows:

- Applicant;
- 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 subject property as they appear on the most recent applicable tax list (which includes any applicable abutters in abutting communities);
- Planning Board;
- Planning Boards of the abutting communities.

## **2.6 Other Variances, Permits and Special Permits**

The Applicant shall provide a list and copies of variances, permits and other special permits previously issued by other Town boards and commissions or State and Federal agencies applicable to the subject property, and a list of any variances, permits or special permits required to complete the proposed work. This list should include, but not be limited to, a summary of any permits from the Board of Health, Conservation Commission, Zoning Board of Appeals, Planning Board, Cape Cod Commission, Massachusetts Department of Highways, Massachusetts Department of Environmental Protection, Army Corp. of Engineers, certificates issued by the Secretary of Environmental Affairs under Massachusetts Environmental Policy Act, etc.

## **SECTION 3    HIRING OF OUTSIDE CONSULTANTS**

After the public hearing is opened should the Planning Board determine that additional professional review of technical materials is required the Planning Board may hire an outside consultant as described in § 3.1. Timely notice of this decision will be provided to the developer/applicant.

### **3.1 Hiring of Outside Consultants**

As provided by section 53G of chapter 44 of the Massachusetts General Laws and as previously adopted by the Planning Board, the planning board is hereby authorized to impose on applicants reasonable fees for the employment of outside consultants for the purposes of reaching a final decision on an application submitted for subdivision approvals, special permits and regulatory agreement pursuant to the requirements of Chapter 168 of the Town of Barnstable Code, or any other state or municipal statute, ordinance or regulation, as they may be amended from time to time.

Said fees shall be deposited in a separate account, established by the Town of Barnstable Treasurer or his/her designee, and designed specifically for the planning board. Funds deposited in this account shall only be used as allowed by this section and for the review of a specific project for which the fee has been collected from the applicant. Any excess amounts, if any, shall be refunded to the applicant, or the applicant's successor in interest.

The consultant shall be chosen by, and report only to, the Planning Board and/or its agent. The Planning Board shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is sent by certified mail or hand delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.

The fee must be received in its entirety prior to the initiation of consulting services. The Board may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to determine the application is administratively incomplete. The Board shall state such in a letter to the applicant. No additional review or action shall be taken on the permit request until the applicant has paid the requested fee. Failure by the applicant to pay the consultant fee specified by the Board within ten business days of the request for payment shall be cause for the Board to deny the permit application.

The applicant may appeal the selection of the outside consultant to the Barnstable Town Council, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of an educational degree and three or more years of practice in the field at issue or related field. Such an appeal must be in writing and received by the Town Council and a copy received by the Planning Board, so as to be received within 10 days of the date consultant fees were requested by the Planning Board. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

## **SECTION 4 ADDITIONAL INFORMATION**

The Applicant may submit whatever additional information that the Applicant feels is relevant to properly inform the Board about the proposed development, which may include legal opinions, deeds, historical data, studies and reports. The Board is empowered to require information in addition to that specifically required by the Zoning Ordinance or these Rules and Regulations if it finds that this information is necessary to properly act upon the application.

## **SECTION 5 SITE VISIT**

In some cases, the Planning Board may request a site visit to the proposed development site. The date and time for such visit shall be satisfactory to both the Planning Board and Applicant. The Planning Board may request that any work subject to these Rules and Regulations be clearly flagged or otherwise delineated prior to the scheduled site visit.

## **SECTION 6 FORMAL REVIEW**

### **6.1 Public Hearings**

A public hearing shall be held in accordance with the provisions of NGL Chapter 4-A, § 9

### **6.2 Rules of Procedure for Public Hearings**

An Applicant may appear on his own behalf or may be represented by an authorized agent or attorney. In the absence of an appearance on behalf of an Applicant, without cause, the Board may make a decision on the basis of available information otherwise received.

The Board Chair shall preside at all public hearings and meetings. The Vice Chair of the Board shall preside as Acting Chair and perform the duties of the Chair in his absence. The Applicant or his duly authorized representative shall present evidence, testimony or other information in support of the application. After the Applicant's presentation, the Board may question the Applicant regarding the evidence, testimony or other information presented. Any persons in attendance will then be given the opportunity to speak or provide testimony. No person shall speak until recognized by the Chair and has provided his name and address for the record. All written communication shall be submitted into the record if delivered at the public hearing or postmarked or delivered to the Board or Growth Management Staff prior to the close of the public hearing. No further evidence, testimony or information shall be presented or entered into the record after the close of the public hearing.

## **SECTION 7 DISPOSITION OF APPLICATION**

### **7.1 Vote**

The affirmative vote of a minimum of five (5) members of the seven (7)-member Board shall be required to authorize and issue a Special Permit. The record shall show the vote of each member or indicate if absent or failing to vote. The decision shall state clearly the reasons for the action, and shall include specific findings as required by M.G.L. Chapter 40A. The decision may also impose conditions, safeguards and limitations which shall be included as part of the Special Permit

decision.

## **7.2 Decision**

The decision of the Board shall be made and filed with the Office of the Town Clerk in accordance with the provisions of MGL Chapter 40A, § 9

## **7.3 Notification of Decision**

A notice of the decision shall be mailed, postage prepaid, to the Applicant, Parties in Interest and to persons present at the public hearing requesting such notice. The notice shall specify that appeals, if any, shall be made pursuant to M.G.L. Chapter 40A, Section 17 and shall be filed with twenty (20) days after the date the decision was filed with the Office of the Town Clerk.

## **7.4 Recording**

The Applicant shall file the decision, as certified by the Town Clerk that the twenty (20) day appeal period has expired, in the Barnstable County Registry of Deeds. The certified copy of the decision and evidence that the decision has been recorded in the Barnstable County Registry of Deeds must be provided to the Planning Board, Town Clerk and Building Inspector.

## **7.5 Withdrawal of Application**

An Applicant may withdraw an application without prejudice by written notice to the Board at any time prior to the first publication of the notice of the public hearing. After such public notice, withdrawal of an application without prejudice shall be permitted only by majority vote of the Board.

## **7.6 Appeals**

Any person aggrieved by a decision of the Board may appeal such decision as provided in M.G.L. Chapter 40A, Chapter 17 within twenty (20) days after the date the decision was filed with the Office of the Town Clerk.

## **7.7 Repetitive Applications**

No application which has been unfavorably and finally acted upon by the Board shall be reconsidered for a Special Permit within two (2) years after the date of the said final unfavorable action unless the Board finds by vote of five (5) members, specific and material changes in the conditions upon which the previous unfavorable action was based and such changes are described in the record of the Board's proceedings to reconsider in the same manner as provided for these Rules and Regulations. Submission and notice requirements for requests to amend a Special Permit are the same as for an original Special Permit application.

## **7.8 Lapse of Special Permit**

If not otherwise conditioned a Special Permit shall lapse within one (1) year from the date of the final action by the Board unless it has been recorded at the Barnstable County Registry of Deeds and substantial construction or use thereof has commenced within this time period.

## **7.9 Extension of Special Permit**

Prior to the expiration of a Special Permit, the Applicant may apply for an extension of the Special Permit for a period not to exceed one (1) year. Requests for extension may be made on an annual basis in such form as the Planning Board shall require. The Applicant may only apply for an extension if substantial construction or use thereof has not commenced for good cause.

### **7.10 Effective Date of Special Permit**

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

## **SECTION 8 EVIDENCE OF SATISFACTORY PERFORMANCE**

The Applicant shall provide one (1) original and three (3) certified copies of the Site Development Plan. Two copies of these plan sheets shall be 24" x 36" and one sheet shall be 11" x 17". Certification shall be by a Registered Professional Engineer and/or Land Surveyor, as required, and shall indicate that all structures, site improvements, streets, sidewalks, storm drains, sewer mains and water mains and their appurtenances have been constructed in accordance with the lines and grades of said Plans and are accurately located as shown thereon. Where variations of the approved lines, grades and/or locations have been authorized by the Board in the course of construction, said variation shall be depicted upon the required certified copy so that said copy will constitute an "as built" plan. This "as built" plan shall be delivered to the Board in a digital format compatible with the Town's current Geographic Information System (GIS), unless otherwise waived by the Board.