

**FOXBOROUGH
ZONING BOARD OF APPEALS**

RULES AND REGULATIONS

ARTICLE 1

ORGANIZATION

Sec. 1.01 MEMBERS

(a) The Board consists of five members appointed by the Board of Selectmen, three of whom are regular members and two of whom are associate members. Each regular member is appointed for a term of three years, with the term of one such member to expire each year as of May 1. Each associate member is appointed for a term of one year commencing as of May 1. Vacancies shall be filled for unexpired terms in the same manner as original appointments.

(b) The regular members of the Board at the first regular meeting following the annual appointment of a regular member elect from such number a chairperson, vice chairperson and clerk.

Sec. 1.02 CHAIRPERSON

The chairperson is responsible for exercising general supervisory authority over the Board and its business and responsibilities, including, without limitation, chairing and administering all meetings and hearings of the Board, reporting to the Board on official transactions and other matters that concern and relate to the Board and its business and responsibilities, communicating for and on behalf of the Board with Town of Foxborough officials and other Town of Foxborough boards and committees, representing the Board before Town of Foxborough officials and other Town of Foxborough boards and committees, ensuring preparation of Board decisions on hearings, supervising the responsibilities of the clerk, and addressing such other matters that concern and relate to the Board and its business and responsibilities in the ordinary course or that from time-to-time may arise. The chairperson has discretion to refer to himself or herself, as the case may be, as the chairman or chairwoman.

Sec. 1.03 VICE CHAIRPERSON

The vice chairperson performs such responsibilities of the chairperson as the chairperson may delegate, and acts as the chairperson of the Board in the event of the absence, inability to act or conflict of interest on the part of the chairperson, and in such capacity is authorized to exercise all of the authority, powers and duties of the chairperson as set forth in Section 1.02. the vice chairperson has discretion to refer to himself or herself, as the case may be, as the vice chairman or vice chairwoman.

Sec. 1.04 CLERK

(a) Subject to the direction of the Board and the supervision of the chairperson, the clerk is responsible for the clerical work of the Board, including, without limitation, reviewing applications for completeness and compliance with applicable law and these Rules and Regulations, preparing hearing notices and ensuring that such notices have been advertised and mailed as provided in Section 3.01(a), maintaining dockets and minutes of the Board's proceedings, compiling and maintaining required records,

and addressing such other clerical duties and responsibilities that concern and relate to the Board and its business and responsibilities that in the ordinary course or from time-time may arise.

(b) The duties and responsibilities of the clerk as set forth in Section 1.04(a) may be exercised under the supervision of the clerk by a clerical secretary or administrative assistant who is an employee of the Town of Foxborough.

Sec. 1.05 ASSOCIATE MEMBERS

Associate members are authorized to participate in all matters that come before the Board, and may vote on all such matters except otherwise as provided by Massachusetts General Laws Chapter 40A or these Rules and Regulations. The chairperson of the Board will designate an associate member to act in place of a member of the Board in the event of the absence, inability to act or conflict of interest on the part of a member, or in the event of a vacancy on the Board of a member until such time as an appointment is made to fill the unexpired portion of the vacated term.

Sec. 1.06 QUORUM

Three members must be present for a quorum.

Sec. 1.07 REGULAR MEETINGS AND SITE VISITS

(a) Regular meetings of the Board shall be held at 7:00 p.m. on the third Thursday of each month at the Selectman’s Meeting room of the Foxboro Town Hall at 40 South Street. If a regular meeting day falls on a holiday, or Election Day, the meeting shall be held on the day following, or at such other time and place advertised.

(b) The Board may conduct a “site visit” to the property that is the subject of an application that it is considering. No formal motion or decision shall be made, considered or determined at any site visit. The decision by the Board to conduct a site visit shall be made at a public hearing concerning the pertinent application. The date and time of every site visit shall be identified at such hearing, and shall be noticed by posting in a conspicuous place in Foxborough Town Hall and on the Board’s page on the Town of Foxborough website.

Sec. 1.08 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 48 hours before the time set. Notices shall be posted publicly as required by law.

ARTICLE 2

APPLICATIONS TO THE BOARD

Sec. 2.01 AUTHORITY

(a) The Board has original and exclusive jurisdiction under the Code of the Town of Foxborough, Chapter 275: Zoning (the “Zoning Bylaw”) to hear and decide (i) appeals under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw, (ii)

applications for special permits for which the Board is the permit granting authority under the Zoning Bylaw, (iii) applications for variances, and (iv) comprehensive permits under Massachusetts General Laws Chapter 40B, Sections 20-23.

(b) The Board has original and exclusive jurisdiction under the Code of the Town of Foxborough, Massachusetts, Chapter 213: Signs (the “Sign Bylaw”) to hear and decide (i) applications for special sign permits and integrated sign permits in accordance with Section 213-3.E. of the Sign Bylaw, (ii) modifications of any sign for which the Board has granted a special sign permit or an integrated sign permit, or any preexisting sign or nonconforming sign, in accordance with Section 213-3.F. of the Sign Bylaw, and (iii) appeals in accordance with Section 213-3.G. of the Sign Bylaw of a decision of the Building Commissioner to approve or deny a sign permit application.

Sec. 2.02 APPLICATIONS

(a) Requests for action by the Board shall be made on such application form and in accordance with such instructions that the Board shall prescribe from time-to-time, copies of which shall be provided to a prospective applicant upon request. Eight copies of each application shall be filed and signed by the applicant and, if different from the applicant, the owner(s) of the property that is subject to the application. An application shall not be deemed complete unless all information required by the application form shall be furnished by the applicant in the manner therein required. Any communication to the Board that purports to be an application shall be treated as a mere notice of intention to seek Board action.

(b) Appeals under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw, and appeals of a decision of the Building Commissioner to approve or deny a sign permit application, shall be filed with the Foxborough Town Clerk with a copy of such appeal provided to the Board.

(c) Applications for special permits for which the Board is the permit granting authority under the Zoning Bylaw and applications for variances shall be submitted to the clerk or to such clerical secretary or administrative assistant, if any, to whom the Board has designated such authority in accordance with Section 1.04(b). The clerk or the designated clerical secretary or administrative assistant will review the application for completeness and, if determined complete, will file the application with the Town Clerk for certification and will transmit copies of the certified filing to the Board, the Building Commissioner and the Planning Board. Applicants are not required to meet with the Building Commissioner prior to filing an application for a special permit or variance to determine whether any such relief is necessary and to ensure that the proper relief will be requested from the Board.

(d) Applications for special sign permits and integrated sign permits shall be filed with the Building Commissioner. The Building Commissioner will review the application for completeness and, if determined complete, will provide such application to the clerk or to such clerical secretary or administrative assistant, if any, to whom the Board has designated such authority in accordance with Section 1.04(b), to be submitted thereby to the Town Clerk for certification and transmittal of copies of the certified application to the Board and the Planning Board. The Building Commissioner has no authority to approve or deny any such application.

(e) The Board will not hold a hearing on an application under the Zoning Bylaw or the Sign Bylaw unless the application therefor has been determined to be complete and has been certified by the

Town Clerk, and all filing fees required for such application as provided in Section 2.04 have been paid in full.

(f) The dates by which an application for a hearing before the Board must be filed are set forth on the Board's page on the Town of Foxborough website.

Sec. 2.03 FILING PERIOD FOR ADMINISTRATIVE APPEALS

(a) Appeals to the Board under Massachusetts General Laws Chapter 40A, Section 8, and Section 10.2.2.1. of the Zoning Bylaw shall be taken within thirty (30) days of the date of the order, ruling, decision or determination of the Building Commissioner or other administrative official, officer or board of the Town of Foxborough that is the subject of such matter.

(b) Appeals to the Board under Section 213-3.G. of the Sign Bylaw shall be taken within thirty (30) days of the date on which the Building Commissioner has approved or denied a sign permit application.

Sec. 2.04 PLAN OF LAND TO ACCOMPANY APPLICATION

Each application for a special permit and each application for a variance shall be accompanied by eight copies of the following described plans:

(a) Single and two-family residential lots.

A plan shall be submitted which is not less than 8 ½ x 11" drawn to scale. It shall show the dimensions of the lot, names of abutting streets, zoning districts, names of all owners of properties within 300 feet of the subject property, property lines, easements affecting the lot, restrictive covenants affecting the lot, the location of wetlands, approximate location of all buildings and other improvements on the lot, and abutting buildings on surrounding properties (within 300 feet), the size of the lot, location of driveways, parking areas and other items that are pertinent to the granting of the petition. All proposed data shall be shown in red or otherwise conspicuously delineated.

(b) All lots other than single and two-family lots.

A plan prepared by a registered land surveyor shall be submitted showing the dimensions of the lot, names of abutting streets, zoning districts, names of all owners of property within 300 feet of the subject property, property lines, easements affecting the lot, restrictive covenants affecting the lot, the location of wetlands, the location of all buildings and other improvements on the lot and abutting buildings on surrounding properties (within 300 feet), the size of the lot, location of driveways, parking areas and other access ways, lot coverage, height of buildings and other items that are pertinent to the granting of the petition. All proposed data shall be shown in red or otherwise conspicuously delineated.

Sec. 2.05 FILING AND ADVERTISING FEES

(a) A filing fee shall be made payable to the "Town of Foxborough" as follows:

Application Type	Filing Fee*
(i) Single and Two-Family Special Permits (including home occupations), Variances and Findings	\$150
(ii) Multi-Family Special Permits, Variances and Findings	\$200 plus \$75 for each unit in excess of 2
(iii) Non-Residential Special Permits, Variances and Findings	\$300
(iv) Signs	\$200
(v) Appeals of Building Commissioner/Zoning Enforcement Officer	\$150
(vi) Comprehensive Permits	as determined in accordance with Section 5.03 of these Rules and Regulations

* Each request within an application is subject to and requires payment of the filing fee that is applicable thereto. For example, an application requesting both a special permit and a variance for a non-residential use would require payment of a \$600 filing fee.

(b) An advertising fee shall be made payable directly to The Sun Chronicle (or such other locally-distributed newspaper in which the Board designates the required hearing notice to be advertised) in such amount as is required thereby.

Sec. 2.06 REVIEW FEES

In connection with those applications involving technical, legal or other issues as to which the Board considers it necessary or desirable to engage an outside consultant or consultants, such as engineers, lawyers, planners or other appropriate professionals, to advise the Board on those issues, the Board may, as a condition of permitting the applicant to proceed with his/her application before the Board, require the applicant pay a “review fee” consisting of the reasonable costs for the employment of outside consultants engaged by the Board to assist the Board in the review of an applications. Upon the majority vote by the Board to engage an outside consultant and the determination by the Board of a reasonable review fee for the engagement of an outside consultant, the applicant shall within five (5) business days of the Board’s request deposit an amount equal to the reasonable review fee determined by the Board in a special separate account established by the Town Treasurer. The Board shall then have the right to direct the expenditure of funds, including accrued interest, from such account in connection with carrying out its responsibilities under the law. Expenditures from this special account shall be made only in connection with the review of a specific project for which a review fee has been imposed. Any excess amount in the account attributable to a specific application to the Board, including accrued interest if any, at the completion of the hearing on that application, shall be repaid to the applicant and a final report of such account shall be made available to the applicant. The failure of the applicant to deposit with the Town Treasurer the full amount of the review fee within five (5) business days of the Board’s request therefore shall constitute grounds for disapproval of the petition.

Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for acting upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that

no decision is made by the Board of Selectman within one month following the filing of the appeal, the selection made by the Board shall stand.

ARTICLE 3

HEARINGS

Sec. 3.01 NOTICE AND TIME OF HEARINGS

(a) Notice of hearings shall be advertised in The Foxboro Reporter or such other newspaper of local distribution as the Board may designate at least fourteen (14) days prior to the date of the hearing. A copy of such notice shall be sent by mail, postage prepaid, to “parties in interest” as defined and required by Massachusetts General Laws Chapter 40A, Section 11, and shall be posted in a conspicuous place in Foxborough Town Hall and on the Board’s page of the Town of Foxborough website. The Board is responsible for submitting, mailing and posting the hearing notice on behalf of the applicant.

(b) Hearings shall be held by the Board on such dates as it holds its regular meetings or determines to hold a special meeting.

(c) Hearings for appeals and applications for which the Board has authority under the Zoning Bylaw shall be held within sixty-five (65) days of the date on which an application for such matter has been certified by the Town Clerk.

(d) Hearings for applications for which the Board has authority under the Sign Bylaw shall be held within forty-five (45) days of the date on which a complete sign permit application has been filed with the Building Commissioner, and hearings for appeals of a decision of the Building Commissioner to approve or deny a sign permit application shall be held within sixty-five (65) days of the date of the filing of an appeal application with the Town Clerk.

Sec. 3.02 HEARINGS TO BE PUBLIC

All hearings shall be open to the public and held in accordance with the “Open Meeting Law.” No person shall be excluded unless they are considered by the chairperson to be a “serious hindrance” to the workings of the Board.

Sec. 3.03 REPRESENTATION AND ABSENCE

An applicant may appear before the Board at a hearing on his or her own behalf or be represented by an attorney or other agent. In the event that an applicant or his or her representative fails without due cause to appear at a scheduled hearing, the Board in its discretion may continue the matter to be heard at a later date, decide the matter on the basis of the information that has been submitted to the Board, or dismiss the matter without prejudice.

Sec. 3.04 ORDER OF BUSINESS

The order of business at all hearings is as follows:

- The hearing notice is read by the chairperson or the clerk if so designated by the chairperson.

- Applicant’s presentation.
- Questions by the Board to the applicant.
- If an appeal, rebuttal to the applicant’s presentation by the Building Commissioner or other Town of Foxborough official or officer whose decision or determination is the subject of the appeal.
- Questions and/or comments from members of the public with respect to the application or appeal.
- Written comments received by the Board concerning the application or appeal read into the record of the hearing by the chairperson or the clerk if so designated by the chairperson.
- Rebuttal by applicant or the Building Commissioner if an appeal to comments opposed to the application or in support of the appeal.
- Vote by the members of the Board to close the public portion of the hearing.
- Discussion by the Board and vote on the application or the appeal.

Sec. 3.05 BRIEF TO THE BOARD

It is recommended but not required that every appeal, and every application for a variance, special permits or other matter before the Board, be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on General Laws, Ch. 40A, Sec. 10, should be clearly identified and factually supported:

- The particular use proposed for the land or building.
- The conditions especially affecting the property for which a variance is sought.
- Facts which make up the hardship to the applicant.
- Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.

Briefs may be filed at the public hearing. If requested by the Board briefs shall be filed within such time thereafter as may be fixed by the Board, but in no case later than fifteen (15) days after the public hearing.

Sec. 3.06 PROCEEDINGS INVOLVING “FINDINGS”

All proceedings before the Board that involve and require a finding by the Board shall be determined and governed in the same manner and pursuant to the same requirements as proceedings for a special permit.

Sec. 3.07 CONTINUANCES

The decision of the Board for appeals and applications may be continued beyond the respective dates required therefor by Massachusetts General Laws Chapter 40A for matters arising under the Zoning Bylaw, and beyond the respective dates required therefor for matters arising under the Sign Bylaw, by vote of the members of the Board hearing and voting on such matters. All such continuances shall be designated on a form that shall be signed by the chairperson and the applicant or the representative of the applicant, which such executed form shall be filed with the Town Clerk.

ARTICLE 4

DISPOSITION BY THE BOARD

Sec. 4.01 VOTING REQUIREMENTS

(a) The concurring vote of all members of the Board hearing and voting on an appeal under the Zoning Bylaw or on an application for a special permit, variance or finding shall be required in order to uphold such appeal or grant such request.

(b) The concurring vote of all members of the Board hearing and voting on an appeal under the Sign Bylaw of a decision of the Building Commissioner to approve or deny a sign permit shall be required in order to uphold such appeal. A majority vote of the members of the Board hearing and voting on an application for a special sign permit or an integrated sign permit shall be required in order to grant such request.

(c) The decision of the Board on each appeal and application shall show the vote of each member of the Board voting thereon and the reason and basis for such vote. In the event that any member of the Board fails to vote or dissents from any vote such individual shall be identified in the Board's decision and the reason and basis for such failure or dissent shall be set forth therein.

(d) All members of the Board and including the Board's associate members shall be authorized to vote on matters before the Board except otherwise as specifically provided in these Rules and Regulations, and except for appeals or applications for which the Board has jurisdiction to hear and determine under the Zoning Bylaw or under the Sign Bylaw. A majority vote of such members and associate members is required to approve such matters except as these Rules and Regulations otherwise may provide.

Sec. 4.02 WITHDRAWALS

An appeal or application may be withdrawn without prejudice at any time before a scheduled hearing thereon by written notice to the Board from the applicant or the applicant's representative. An appeal or application for which a hearing has been noticed may be withdrawn at the time of the hearing of such matter upon request by vote of the members of the Board hearing and voting on such matter, and at the discretion of the Board may be with or without prejudice.

Sec. 4.03 RECORD OF PROCEEDINGS

(a) A written decision and detailed record of each hearing held by the Board shall be signed by the members of the Board voting thereon and thereafter shall be filed with the Town Clerk and the Planning Board.

(b) A decision of the Board granting a special permit or variance under the Zoning Bylaw shall not take effect until such decision has been recorded in the Norfolk County Registry of Deeds after a period of twenty (20) days has elapsed from the date such decision was certified by the Town Clerk or, if an appeal of such decision has been taken, upon the dismissal or denial of such appeal. The Building Commissioner will not act upon any special permit or variance until proof of recording has been presented thereto.

(c) A decision of the Board granting a special sign permit or an integrated sign permit under the Sign Bylaw shall take effect within thirty (30) days after it has been filed with the Town Clerk or, if an appeal of such decision has been taken, upon the dismissal or denial of such appeal. In the event that a special sign permit or integrated sign permit requires a permit or license from the Director of Outdoor Advertising within the Massachusetts Department of Transportation, the Building Commissioner will not act upon such permit until proof of the required state permit or license has been presented thereto. There is no requirement under the Sign Bylaw that any such decision be filed in the Norfolk County Registry of Deeds.

Sec. 4.04 RECONSIDERATION

Once a final decision of the Board on an application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

Sec. 4.05 REAPPLICATION

In order to have an application reheard within two (2) years of any unfavorable action, the applicant must request permission from the Planning Board and the Board, showing new evidence that substantially alters the conditions of the previous application. All but one of the members of the Planning Board must consent to such reapplication. The Board must also unanimously find that material and specific changes have been made in the conditions upon which the previous unfavorable action was taken.

ARTICLE 5

COMPREHENSIVE PERMITS

Sec. 5.01 PURPOSE AND CONTEXT

These rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

Sec. 5.02 DEFINITIONS

(a) *Board* means the Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

(b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer,

or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

Sec. 5.03 FILING TIME, LIMITS AND NOTICE

The application for a comprehensive permit shall consist of:

(a) Preliminary site development plans signed and stamped by a Professional Engineer, showing the locations of proposed buildings, streets, drives, parking areas, walks and paved areas, and proposed landscaping improvements and open areas within the site. The existing and proposed topography shall also be shown. The plans shall show all wetland resource areas under the jurisdiction of the state wetland protection laws, and any significant natural resource or wildlife habitat areas identified by the state;

(b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. At a minimum this plan shall conform to Section 3.01 E. of the Foxborough Subdivision Regulations.

(c) Preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;

(d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) Where a subdivision of land is involved, a preliminary subdivision plan;

(f) A preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

(g) Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

(i) The applicant shall be a public agency, a non-profit organization, or a limited dividend organization,

(ii) The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program (see footnote 3), and

(iii) The applicant shall control the site;

(h) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations. This list where relevant, shall include a financial analysis and cost projection for each of the items on the list. There shall be a written explanation demonstrating that failure to grant these exceptions or waivers would render the project uneconomical.

(i) An analysis, assessment, and evaluation of the surrounding areas that details the following information: location and nature of existing buildings, existing streetscape and elevations, traffic patterns (including site distances, traffic counts, and level of service of streets), character of open space and playgrounds, if any. Analysis should include a neighborhood plan showing abutting lots and listing the owners of those properties.

(j) A financial statement from the applicant clearly articulating all costs, expenses and profits associated with the development plans. At the Boards discretion this information may be required to be reviewed for the Board by a qualified financial analyst.

(k) A certified Abutters List from the Assessor’s Office.

(l) The applicant shall file fifteen copies of the completed application package with the Town Clerk. One copy shall remain with the Clerk and the remaining shall be filed with the Planning Office.

Fees shall be submitted according to the following schedule.

\$200.00	Administrative fee
\$200.00	per market rate unit
\$50.00	per “Affordable” unit

The applicant for a Comprehensive Permit shall pay directly to The Sun Chronicle (or such other locally-distributed newspaper in which the Board designates the required hearing notice to be advertised) the fee for the advertisement for such application.

The Board may waive the filing fee for the “affordable” units to be constructed by a public agency, provided the request is made prior to the submission of the application.

(m) Within 14 days of the filing of the application the Board shall distribute copies of the completed application to the following Town departments for their review and comment.

Board of Selectmen	Conservation Commission
Building Department	Planning Board
Board of Health	Highway Department
Board of Water and Sewer	School Department
Commissioners	Housing Authority
Police Department	Town Counsel
Fire Department	

The Board may require additional copies of the full application package if they are necessary for distribution to additional town boards or for consulting engineers.

Sec. 5.04 REVIEW FEES

(a) If, after receiving an application, the Board determines that in order to review such application it requires technical advice, it may employ one or more outside consultants, including but not limited to engineers, landscape architects, architects, legal counsel, financial professionals, real estate professionals, demography experts and/or other professionals to review aspects of the project. The applicant shall pay all costs, fees and expenses associated with such review and the Board may require the

applicant to deposit a specified amount of money in a special escrow account to cover the Town's costs, fees and expenses. The initial escrow amount can vary according to the size and complexity of the project, subject to a minimum of \$1,500. If the escrow account falls below 50% of the requirement set by the Board, the applicant must deposit an additional amount to return the account to the required level. Any unexpended monies in the escrow account upon completion of the permitting process shall be returned to the applicant after all obligations are satisfied. Failure to fulfill escrow requirements may constitute an incomplete applicant and be considered sufficient grounds for denial of said application.

- (b) A review fee may be imposed only if:
 - (i) The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board,
 - (ii) The work is in connection with the applicant's specific project, and
 - (iii) All written results and reports are made part of the record before the board.

A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19.

(c) Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a bidder or offeror, the Board may deny the comprehensive permit. (See footnote 2)

(d) Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44, § 53G.

(ii) Funds from the special account may be expended only for the purposes described in above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19.

(ii) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.

(iii) The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review.

Sec. 5.05 PUBLIC HEARING AND DECISION

(a) The Board shall hold a public hearing on the application within thirty days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

(b) The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received and all information requested by the Board has been received.

- (c) The Board may dispose of the application in the following manner: (see footnote 3)
- (i) Approve a comprehensive permit on the terms and conditions set forth in the application,
 - (ii) Deny a comprehensive permit as not consistent with local needs, or
- (d) Approve a comprehensive permit with conditions.

(e) If a plan is approved whereby the submitted plans are preliminary in nature then the applicant shall submit final plans for review prior to the issuance of a building permit. This review shall be administrative and shall concern technical items such as drainage calculations, construction materials, and other items necessary to ensure compliance with applicable state regulations. The Zoning Board can require that the definitive plans be reviewed by an outside consultant in conformance with section 5.04 of these Rules and Regulations.

Sec. 5.06 PERFORMANCE GUARANTEE

The Board may require that site improvements, conditions of approval, and the site construction inspection fee be secured by a deposit of money or an Irrevocable Letter of Credit in the Town's favor. This performance guarantee shall be in an amount as the Board deems appropriate to ensure completion of the work being secured. The performance guarantee shall be in place prior to the issuance of building permits.

Sec. 5.07 SITE CONSTRUCTION INSPECTION FEE

The Zoning Board requires a site inspection fee be paid prior to the start of any construction at the site. The applicant shall submit a fee in an amount equivalent to the estimated cost of the inspector's fee. The applicant shall submit an estimate of the site construction costs to the Zoning Board for review.

Sec. 5.08 APPEALS

If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

FOOTNOTE SECTION:

1. Local Initiative proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.
2. The Board will select the consultant after reviewing both the bid and proposal and any comments received from the applicant and will not formally award the contract until the review fee has been paid.
3. Boards of Appeals have found that it is most useful to enter into the hearing and decision drafting process assuming that a comprehensive permit will be approved. In that case, if there is significant local health, safety, environmental, or planning concerns, it can focus its attention on drafting conditions to address those concerns. Only if it ultimately finds that there are no conditions which will adequately address the concerns should it deny the permit.

ARTICLE 6

MISCELLANEOUS

Sec. 6.01 AMENDMENTS

These Rules and Regulations may be amended from time-to-time by a majority vote of the Board at any meeting thereof, provided that the newspaper advertisement for such meeting shall notice that an amendment or amendments to these Rules and Regulations is or are to be considered, and that the proposed amendment or amendments shall be posted on the Town of Foxborough website at least fourteen (14) days prior to such meeting.

Sec. 6.02 CONSTRUCTION

These Rules and Regulations are intended for the convenience of the Board, to assist it in the conduct of its duties and responsibilities, and to inform those who appear before the Board of the Board's practices, procedures and requirements. No substantive rights are created hereunder.

Sec. 6.03 INVALIDATION AND SEVERABILITY

In the event that any provision set forth herein conflicts in any manner with any provision of Massachusetts General Laws Chapter 40A, the Zoning Bylaw or the Sign Bylaw, then the provision of such statute or bylaw shall take precedence and the rule or regulation that is set forth herein shall be invalidated. Notwithstanding any such invalidation, the remainder of these Rules and Regulations shall remain in force and effect to the extent operable.

Sec. 6.04 WAIVER AND NONCOMPLIANCE

The Board in the conduct of its duties and responsibilities with respect to a specific appeal or application may by the concurring vote of the members hearing and voting on such matter waive any provision of these Rules and Regulations. Any failure of the Board to comply with any provision of these Rules and Regulations shall not invalidate or negate a decision of the Board with respect to a specific appeal or application.