

# COMMONWEALTH OF MASSACHUSETTS TOWN OF BROOKLINE

## BOARD OF APPEALS

*Approved October, 2019*

### RULES AND REGULATIONS AND GENERAL INFORMATION

#### A. GENERAL

##### Section 1. Authority

Pursuant to G.L. c. 40A, §12, the Board of Appeals of the Town of Brookline, Massachusetts (“the Board”), hereby adopts the following rules for the conduct of its business and for the purposes of General Laws, Chapters 40A and 40B, § 21. A copy of these Rules and all amendments thereto, shall be filed with the Town Clerk of said town. The Board may amend these Rules and Regulations, from time to time; in the same manner such Rules may be adopted.

##### Section 2. Powers of the Board of Appeals

The Board of Appeals has the following powers:

- (a) To hear and decide **appeals**, in accordance with G.L. c. 40A, §8.
- (b) To hear and decide applications for **special permits**, upon which the Board is empowered to act under the Brookline Zoning By-Law.
- (c) To hear and decide petitions for **variances**, as set forth in G.L. c. 40A, §10.
- (d) To hear and decide **applications to build low or moderate income housing**, in accordance with G.L. c. 40B, §21.
- (e) To hear and decide applications for time extensions and modifications.
- (f) To hear and decide appeals from sign design and facade decisions.

In exercising these powers the Board may make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

### Section 3. Types of Appeals, Applications and Petitions

Appeals, applications and petitions, all hereinafter generally referred to as Applications, may be filed by the appellant, applicant or petitioner, hereinafter referred to as the Applicant, with the Town Clerk for consideration by the Board of Appeals for any one or more of the following:

(a) An **appeal** may be taken by:

- (1) Any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from the Building Commissioner, or his or her designee, or from any administrative officer under the provisions of G.L. c. 40A.
- (2) Any regional planning agency in whose area the town is situated.
- (3) Any person, including an officer or board of the town, or of an abutting city or town aggrieved by an order or decision of the Building Commissioner of said Brookline, a building inspector or other administrative official, in violation of any provisions of G.L. c. 40A or the Brookline Zoning By-Law. See G.L. c. 40A, §8. These Rules, in EXHIBIT B<sup>1</sup>, prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such appeals. See G.L. c. 40A, §9.

(b) An Application for a **special permit** may be filed when specific uses, increases in density or special or related zoning requirements are authorized in the Zoning By-Law through the special permit process. Special permits may be issued only for uses that are in harmony with the general purpose and intent of the Zoning By-Law and meet the specific requirements therefor set forth in the Zoning By-Law. All applications for special permits shall be addressed to the Board of Appeals. These Rules, in EXHIBIT A, prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits. See G.L. c. 40A, §9.

(c) A petition for a **variance** may be filed when, owing to circumstances relating to soil conditions, shape or topography of specific land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the Zoning By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and when desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law. These Rules, in EXHIBIT A, prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of variances. See G.L. c. 40A, §10.

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<sup>1</sup> All EXHIBITS referenced herein are attached hereto and made a part of these Rules and Regulations.

- (d) An Application for a **Comprehensive Permit** to build low or moderate income housing may be filed by any public agency or by a limited dividend or non-profit organization that owns or holds ownership or purchase rights in the subject property. These Rules, in Part H. and in EXHIBIT C, prescribe the size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits. See G.L. c. 40B, §21.
- (e) An Application for time extensions and modifications may be filed with the Board. Such applications should be in letter form and should state the reason(s) for the Application.

## **B. BOARD ORGANIZATION**

### **Section 1. Elections**

At the first regular meeting following the qualification of the annual appointee, the Board shall elect a Chairman. Associate members shall not participate in the election.

### **Section 2. Chairman: Power and Duties**

The Chairman shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, the Chairman shall decide all points of order, unless overruled by a majority of the Board in session at the time. The Chairman may also designate associate members to sit on the Board in case of absence, inability to act or conflict of interest on the part of any member thereof or, in the event of a vacancy on the Board until, said vacancy is filled by the appointing authority.

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

Chairman power and duties shall be passed to an appointed member from the Board in the event that the Chairman is not available or conflicted.

### **Section 3. Quorum**

A quorum shall consist of three members.

#### **Section 4. Hearings and Meetings**

Regular hearings and meetings shall be held, as necessary, on Thursdays of each week. Hearings and meetings shall commence at 7:00 P.M. at Town Hall, Sixth Floor Hearing or Conference Room or other location as set forth in the notice for the hearing. If any hearing meeting date falls on a holiday, the Board may designate an alternate date. Special hearings and meetings may be called by the Chairman or the designated Chairman in the Chairman's absence. Notice of special hearings and meetings shall be mailed, posted, and published as required by law.

### **C. PRE-APPLICATION PROCESS**

#### **Section 1. Introductory**

It is expected that prior to submitting an appeal, Application or petition, the proposed action, including all plans, specifications and supporting documents, shall be reviewed with the Brookline Building Department and the Department of Planning and Community Development.

#### **Section 2. Application for Building Permit**

It is a general policy, but, not a requirement of the Town, that prior to the filing of an Application for a special permit or petition for a variance (See Part A, Section 2); the Applicant shall submit a completed Application for a building permit for the proposal. A complete application for a building permit for which a denial letter is issued must be submitted with the following materials; a certified plot plan (stamped by a registered land surveyor) or plot plan (stamped by a registered architect) if deemed appropriate, a proposed site plan, existing condition building plans, and all proposed construction design plans (signed by a registered architect/engineer) showing all construction/improvements and their relationship (proposed and existing) to lot lines. The application materials listed above may be waived or deemed appropriate at the discretion of Building Department staff. This action will result in the review of the proposed action by 3 groups: the Building Department, the Department of Planning and Community Development and the Planning Board. Any denial letter issued by the Building Commissioner or his or her designee will set forth the basis of the denial. The denial of an Application for a building permit is subject to an appeal. See Part A, Section 2(a).

## **D. APPLICATION PROCESS**

### **Section 1. Proof of Legal Interest or Control**

In order to seek a Variance, Special Permit or, Comprehensive Permit or to file an appeal, the Applicant must provide evidence of proof of direct legal interest in or control of the property that is the subject of the Application. This evidence may be in the form of a property deed, purchase option, purchase and sales agreement, lease, written statement by a duly authorized agent or other party with present legal interest or other legally sufficient documentation that establishes a property right or interest by the Applicant.

### **Section 2. Application and Supporting Documents**

The Application forms and requirements for supporting documents are set forth in the following attached exhibits, which are a part of these rules:

EXHIBIT A: Application for Special Permits and/or Variances  
*See listing of Required Supporting Documents and Plans.*

EXHIBIT B: Application for Appeal of Administrative Decision  
*See listing of Required Supporting Documents and Plans.*

EXHIBIT C: Application for Comprehensive Permit  
*See listing of Required Supporting Documents and Plans, also see the special rules and regulations concerning Comprehensive Permits in Part H. hereof.*

EXHIBIT D: Application Filing Fee Schedule

### **Section 3. Notice to Parties in Interest**

G.L. c. 40A, § 11 defines “Parties in interest” as the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list. All “parties in interest” must receive the required statutory and regulatory notice, in accordance with the applicable provisions in General Laws, Chapters 30A, 40A, 40B and 41, prior to any public hearing held by the Board. While it is common practice to have the staff for the Board of Appeals receive a list of parties in interest from the Board of Assessors and complete a mailing to those parties as soon as practicable after the receipt of an Application and the establishment of a hearing date, the responsibility for ensuring that proper notice is given to all parties in interest rests with the

Applicant. If the property line of the subject property is within three hundred feet (300') of a town line, proper notice must include notification to such abutters in any contiguous city and the Planning Board of that city, and the Planning Board of every abutting city. In such cases where the subject property is within three hundred feet (300') of the town line, the Applicant shall obtain, at the Applicant's expense, a Certified List of Abutters within a radius of three hundred feet (300') from the town line in the contiguous city, and that Certified List shall be submitted as a required component of the completed Application packet.

#### **Section 4. Filing the Application**

It is the responsibility of the Applicant to submit all completed Application forms and to provide all of the supporting and required documentation to the Zoning Coordinator in the Planning and Community Development Department. A letter addressed to the Chairman of the Brookline Board of Appeals shall accompany the Application and shall set forth: 1. the facts of the case so that there shall be no ambiguity or uncertainty concerning the intent of the Applicant in seeking approval of the requested action. The letter shall outline the reason for the Application, the background or history of events leading to the request, why the Applicant is qualified for the relief requested, including references to the relevant sections of the Zoning By-Law; and 2. the names of the owners of the property, and if the property is not owned by individuals, the name and address of all principals involved in the particular matter so that each member of the Board can determine, prior to any hearing, if a potential conflict of interest exists.

#### **Section 5. Number of Copies**

A minimum of two (2) *complete copies* of the Application and supporting and required documentation including, without limiting the foregoing, all plans (if requested electronically in pdf format), hereinafter described, are required at the time the original Application and supporting and required documents are filed with the Zoning Coordinator in the Planning and Community Development Department. Once the Zoning Coordinator deems the application *complete* he or she will transmit two (2) copies to and file with the Office of the Town Clerk. In addition sixteen (16) copies of the plans shall be submitted for use by Board members. **All plans shall be provided on paper and if requested electronically, in pdf format, via email to the Zoning Coordinator or on a USB flash drive or thumb drive (on receipt this will become the property of the Town of Brookline).**

*Additional full and complete copies may be required if the Application must be submitted to other Town Boards, Commissions or Agencies. It is the Applicant's responsibility to provide the appropriate number of additional copies as requested by the Town.*

## **Section 6. Application Filing Fees and Technical Review Escrow Funds**

In addition to the Application, the Applicant must pay the filing fee, in accordance with the *Board of Appeals Application Filing Fee Schedule, attached hereto as EXHIBIT D and made a part hereof*, at the time the Application is filed.

Any required Technical Review Escrow Funds are also due and payable to the Town of Brookline at the time the Application is filed. No Application is complete without receipt of the appropriate Application filing fee and, if necessary, the Technical Review Escrow Fee. If it is determined that a Technical Review Escrow Fee is not necessary at the time of filing, the Board reserves the right to request the Applicant provide technical review fees at a later date.

## **Section 7. Supplemental Information**

Any supplemental information **MUST** be submitted to the Board of Appeals *at least seventy two (72) hours in advance of the scheduled hearing date or the hearing may be continued to a later date at the option of the Board, because delay* in submitting any supporting or required documentation or information adversely impacts upon the ability of the Board of Appeals to act in a timely manner. The Board will **NOT** consider supplemental information submitted less than seventy two (72) hours in advance of the hearing, unless deemed appropriate at the discretion of the Chairman.

## **E. PRE-HEARING PROCESS**

### **Section 1. Introductory**

All appeals, applications and petitions to the Board of Appeals require both public and individual notice to the parties in interest, a public hearing and a written Decision, in accordance with G.L. c. 40A. *The following instructions are set forth for the general information of all appellants, applicants and petitioners, as well as the general public.*

### **Section 2. Scheduling a Public Hearing before the Board of Appeals**

It takes approximately 4 to 8 weeks to schedule a hearing following submission of the completed petition, Application or appeal and supporting plans and documentation (the

application package) to the Board. Regular meetings of the Board are scheduled on Thursday evenings, except when a religious or legal holiday occurs on a Thursday, and in August, when the Board traditionally attempts to limit its scheduled meetings. An Applicant should review the completed Application package with the Zoning Coordinator before filing and scheduling a public hearing. Incomplete applications may not be accepted by the Zoning Coordinator, Town Clerk or his or her designee or scheduled for public hearing by the Board of Appeals. *Failure to provide either all required information or a completed Application is sufficient grounds for refusal by Zoning Coordinator or Town Clerk to accept the application and/or for denial of an Application by the Board of Appeals.*

### **Section 3. Public Notice and Notification to Parties in Interest**

In accordance with provisions of G.L. c. 40A, §11, notice of a Public Hearing must be advertised by publication in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing, and by posting such notice in a conspicuous place in the Town Hall (by the Zoning Coordinator) for a period of not less than fourteen days before the day of such hearing. Notice must also be sent by mail, postage prepaid, to “parties in interest” as defined in G.L.c.40A, §11. The cost of newspaper advertising is the obligation of the Applicant who must submit a check in the appropriate amount made payable to the Town of Brookline as part of the application. All of the notice requirements set forth in G.L.c.40A, §11 must be observed by the Applicant<sup>2</sup>.

### **Section 4: Documents On-Line**

The Brookline Zoning By-Law, all Application forms, and other informational documents are available online at [www.brooklinema.gov](http://www.brooklinema.gov) .

### **Section 5: Zoning By-Law Availability**

Copies of the Zoning By-Law are available for viewing at the Brookline Public Library and online at [www.brooklinema.gov](http://www.brooklinema.gov). The Zoning By-Law may also be purchased from the Office of the Town Clerk.

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<sup>2</sup> The Planning and Community Development Department also sends a copy of the notice (via mail or electronically) to all Town Meeting Members from the precinct which the subject property is located and all adjoining precincts-



## **F. PUBLIC HEARING PROCEDURE**

### **Section 1. Hearing Procedure**

Once the Chairman or designated Chairman calls the Board of Appeals hearing to order, the first order of business shall be the presentation of motions by any party.

### **Section 2. Applicant**

The Applicant and/or the Applicant's designated representative shall, after the motion session, if any, present the matter set forth in the Application to the Board, state the relief requested and be prepared to answer questions from the Board. If the representative is **not** a member of the Massachusetts Bar or a registered professional whose stamp appears on plans filed with the Application, the applicant may designate in writing, a representative to act on his or her behalf. All drawings, plans and diagrams showing the area, distances, location and shape of structure(s) and building(s) and professionally prepared plot plans showing existing conditions and proposed changes should be drawn to Town of Brookline standards.

### **Section 3. Supporters**

At the close of the Applicant's presentation, all persons in support of the Application shall be given the opportunity to speak and introduce evidence in favor of the Application. Participation by residents of the town, who are interested in or concerned about the matter, is encouraged.

### **Section 4. Not in Support**

At the completion of the presentation in support of the Application, all persons **not** in support of the Application shall be given the opportunity to speak and introduce evidence in opposition to the Application. Participation by residents of the town, who are interested in or concerned about the matter, is encouraged.

### **Section 5. Interested and Concerned Citizens**

Participation by residents of the town that are interested in or concerned about the particular matter before the Board is encouraged. All interested or concerned persons shall, in this

segment of the hearing, be given the opportunity to speak, ask questions (through the Chairman) and introduce evidence.

## **Section 6. Reports**

Reports, comments and recommendations from the Planning Board, the Building Department and *any other Town department, commission or board as well as any Town official*, if any, will be received and considered by the Board, subject to the Board's ruling on any objection by a party in interest. The usual practice is to have representatives from the Planning and Community Development Department on behalf of both the department and the Planning Board, and the Building Department its designee at all hearings to present their reports and to questions, to present facts and, when requested, to provide professional opinions relative to the Application.

## **Section 7. Rebuttals**

At the discretion of the Chairman, those in support of and in opposition to the Application may be provided the opportunity to give rebuttals at the close of the evidence and testimony segments of the hearing, if there is any new fact or argument presented that was not previously raised.

## **Section 8. Continuances**

The Chairman, in his or her discretion, may continue the hearing to take the matter under consideration for deliberation and decision, including but not limited to scheduling a site visit for the Board. The continued hearing shall be properly noticed, provided that notice of the new date, time, and place of the continued hearing and its subject matter is announced at the hearing; and further provided that the notice is posted visibly in the Town Hall and on the meeting calendar on the Town website ([www.brooklinema.gov](http://www.brooklinema.gov)) pursuant to G.L. c. 30A. The Chairman may also require the continued hearing to be properly re-noticed pursuant to G.L. c. 40A. Any continuance of a public hearing will automatically extend by the number of days requested in the continuance, the time under which the Board must render and file a Decision under State statute.

## **Section 9. Site Visits**

The Chairman may schedule a site visit to better consider the matter before the Board. Site visits are not subject to Massachusetts General Laws, Chapters 30A and 40A.

## **Section 10. Decision**

The Board will either deliberate and decide the matter or take the matter under consideration for deliberation and decision at another properly noticed public meeting of the Board. The Board will render its decision within the time limits set forth in G.L. c. 40A. In all major impact<sup>3</sup> cases the Chairman may require that a party or parties provide a stenographic record of the hearing or hearings on the Application at the Applicant's expense. The Chairman of the Board, or his or her designee, shall write the decision for each case heard by the Board. The Board, in its sole discretion, may obtain the assistance of Town Counsel's Office, Building Department or the Planning and Community Development Department in drafting any Decision.

## **G. ACTION BY THE BOARD**

### **Section 1. Voting Requirements**

The concurring vote of three members of the Board shall be required for any affirmative action taken by the Board of Appeals. The Board shall, in addition, set forth clearly the reason(s) that form the basis for each decision.

### **Section 2. Withdrawal**

An Application for a Special Permit or Variance that has been transmitted to the Board of Appeals may be withdrawn, without prejudice, by the Applicant or Petitioner prior to the publication of the notice of a public hearing. After publication of the public hearing notice, an Application for a Special Permit or Variance may only be withdrawn without prejudice with the approval of the Board. All requests for withdrawal must be signed and dated by the Applicant, Petitioner, or Appellant, or its authorized agent or attorney; state the reasons therefore; and be filed with the Town Clerk. The Board members sitting as voting members on said public hearing shall vote to accept or reject the request in accordance with G.L. c. 40A s. 16. In the discretion of the Chairman, prior to a vote of the Board on the request, testimony or evidence on the merits of the request to withdraw without prejudice may be accepted from any party in attendance at the Public Hearing. In making its decision, the Board shall consider and take into account the effect of acceptance or rejection of the request on the Appellant, Applicant, or Petitioner, and the abutters and public in general.

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<sup>3</sup> Major impact cases are defined in the Zoning By-Law as any residential development of sixteen (16) units or more, any non-residential development containing more than 25,000 square feet of floor area and any other project with the potential for substantial environmental impact on the community.

A request for withdrawal without prejudice, by the Applicant or Petitioner, after the publication of the notice of a public hearing, shall be taken as the first order of business in the Motion Session at the hearing the application is scheduled to be heard.

#### **Section 4. False or Misleading Information**

If, during any hearing, it is determined that the Application that was submitted with false or misleading information, the Board may consider that fact in determining the credibility of the evidence submitted by the Applicant.

#### **Section 5. Judicial Review**

Any aggrieved person may appeal a decision of the Board of Appeals to the appropriate Superior Court, District Court or Land Court within twenty (20) days after the filing of that written decision with the Office of the Town Clerk. When an appeal is made to the District Court, any party shall have the right to file a claim for trial in the Superior Court within twenty-five days after service on the appeal is completed.

#### **Section 6. Recording of the Decision**

After receiving certification from the Town Clerk that no appeal has been taken within the twenty (20) day appeal period (or if an appeal was filed and then dismissed or denied), the Applicant, or his or her agent, successor or assign, shall record (or register, if registered land) a certified copy of the Board's decision, at the Applicant's expense, with the Norfolk County Registry of Deeds (or Recorder of the Land Court, if registered land). A copy of the recorded Decision, together with a copy of the recording fee receipt, shall be returned to the Building Department as part of the Building Permit Application Process and to the Zoning Coordinator. No action, including the issuance of building or other permits, authorized by the Decision shall be taken until a copy of the recorded Decision, with recordation data set forth thereon, is filed with the Building Department.

#### **Section 7. Reconsideration**

When a hearing has been closed, and an appeal, petition or Application has been finally voted upon, there shall be no reconsideration of a decision of the Board, other than Section 8, Reapplication, as set forth below.

## **Section 8. Reapplication**

In order to have an appeal, application or petition for a variance or special permit, that has been unfavorably acted upon by the Board of Appeals reconsidered within two years, the applicant must request permission for such reconsideration from the Board of Appeals or special permit granting authority, which must be by unanimous vote, and secure the consent of all but one member of the Planning Board. Once both Boards have acted pursuant to G.L. c. 40A §16, a Reapplication may be filed and the applicant must reapply to the Board of Appeals in the normal manner as set forth in these Rules and Regulations.

## **Section 9. One Year Limitation on Approval/Extensions**

If an Application is approved by the Board, all permits necessary for the commencement of the work shall be obtained, and construction shall be commenced within one year from the effective date of the Board's decision, unless, in the case of the granting of a special permit, the Board's decision provides other limitations.

The effective date of a decision will be suspended during the pendency of an appeal to a court of competent jurisdiction.

# **H. RULES AND REGULATIONS FOR G.L. c. 40B § 21 COMPREHENSIVE PERMITS**

## **Section 1. Purpose and Context**

The rules and regulations in this part H. (the "40B Rules"), establish procedures for applications to the Board of Appeals for comprehensive permits, under G.L.c. 40B, §§20 through 23, inclusive ("40B") and 760 CMR 56 (the "Regulations"). They are required under G.L.c. 40B, §21, and 760 CMR 56.05(1). Capitalized terms not otherwise defined in these 40B Rules shall have the respective meanings ascribed to them in 40B or the Regulations.

These 40B Rules must be read in conjunction with and implemented in a manner consistent with 40B. In the event of any inconsistency between these 40B Rules and G.L.c. 40B, the Regulations or the Guidelines prepared by the Massachusetts Department of Housing and Community Development (the "Guidelines" and together with G.L.c. 40B and the Regulations, the "State Law Requirements"), the State Law Requirements shall control. In addition, the Board's general Rules and Regulations adopted under G.L.c. 40A (the "General Rules") apply to comprehensive permit applications. In case of an inconsistency or conflict between the General Rules and these 40B Rules, these 40B Rules shall control.

**Section 2. Definitions (see 760 CMR 56.02 Definitions)**

- (a) *Board* means the Board of Appeals established pursuant to G.L.c. 40A §12 and Town of Brookline General By-Laws, Article 3.6, and acting in its capacity to issue a Comprehensive Permit under the powers granted by M.G.L. c. 40B, §§ 20 through 23.
- (b) *Local Board* means any local board or official, including, but not limited to, the Planning Board, the Conservation Commission, the Preservation Commission, the Transportation Commission, the Department of Public Works, the Building Department, the Fire Department, the Police Department, the Health Department, the Climate Action Committee, the Commission for the Disabled, the Economic Development Advisory Board, the Housing Advisory Board, the Park and Recreation Commission, the Solid Waste Advisory Committee, the School Committee and the 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.
- (c) *Limited Dividend Organization* means any entity which proposes to sponsor a project under the M.G.L. c. 40B, §§ 20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the project.

**Section 3 Filing, Time Limits, and Notice**

- (a) The Application for a comprehensive permit shall consist of:
  - (i) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; the proposed landscaping improvements and open areas within the site. An Applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3(a)(i), and 3(a)(iii), which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;
  - (ii) 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. This submission may be combined with that required in section 3(a)(i) above;

- (iii) preliminary, scaled, architectural drawings. For each building the drawings shall be prepared by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finishes;
  - (iv) 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;
  - (v) where a subdivision of land is involved, a preliminary subdivision plan;
  - (vi) a preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate compliance by the Town's Stormwater Management By-Laws. If a waiver from full compliance is requested, the nature and reasons for the waiver shall be specified in detail;
  - (vii) the written determination of Project Eligibility issued by the Subsidizing Agency;
  - (viii) a list of requested Waivers to local requirements and regulations, including local codes, ordinances, by-laws or regulations;
  - (ix) a complete copy of any and all materials and applications submitted by the Applicant to any prospective subsidizing agency or source, including, but not limited to, applications for site approval;
  - (x) a list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of Application. The Applicant shall also be required to disclose its relationship to all such entities; and
  - (xi) a list of all prior development projects completed by the Applicant, along with a brief description of each project.
- (b)** The Application shall be accompanied by a filing fee approved by the Board and set forth in the Application Filing Fee Schedule, attached hereto as "EXHIBIT D."
- (c)** Within seven days of receiving a complete Application, the Board shall notify each Local Board of the Application by sending such Local Board a copy of the Application materials required by Section 3(a) above, as well as any other information that will enable such Local Board to assess the proposed project. Based upon that information, the Board shall also within the same seven days invite the participation of each Local Board as is deemed necessary or which has a substantial interest in the Application by providing such Local Board with a copy of the entire Application. In order to allow review by Local Boards, the Applicant shall provide the Town Clerk with thirty (30) copies of the complete Application so that all Local Boards may review the same, and one unbound copy for copying purposes. Additionally, 11" x 17" or smaller sized copies of all plans (with match lines) shall be made available to the Town Clerk for copying purposes.

## **Section 4. Review Fees**

- (a) When reviewing an Application for, or when conducting inspections in relation to, a comprehensive permit Application, the Board may determine that it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site due to the size, scale or complexity of a proposed project; because of a project's potential impacts; or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit Application. Whenever possible, the Board shall work cooperatively with the Applicant to identify appropriate consultants and scopes of work and to negotiate payment of the consultant fees by the Applicant. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone in accordance with 760 CMR 56.05(5)(b). The Board may also require that an Applicant deposit a lump sum in order to retain said consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits. If the Applicant fails to pay any review fee within twenty-one (21) days of request by the Board, the Board may deny the Comprehensive Permit.
- (b) In hiring outside consultants, the Board may engage engineers, scientists, financial analysts (as provided in subparagraph (h) below), planners, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, by-laws, and regulations. Such assistance may include, but not be limited to, analyzing an Application, and, to the extent permissible under the State Law Requirements, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.
- (c) The procedures for inviting proposals by qualified outside consultants are as follows:
- (i.) For services exempt from G.L. c. 30B, the Board shall issue a Request for Quotations to a minimum of three (3) qualified consultants.
  - (ii.) For services subject to G.L. c. 30B, the Board shall follow the procedures of G.L. c. 30B.
  - (iii.) A quote or proposal shall include, at a minimum, the following:
    - (1.) the name of each person performing the work,
    - (2.) the educational and professional credentials of each person performing the work,
    - (3.) a description of the work to be performed,
    - (4.) the hourly rate charged by each person performing the work, and
    - (5.) all other expenses to be billed.
- (d) The Board may, in its sole discretion, require the Applicant to provide and pay for a stenographer to create a transcript of the public hearing.
- (e) Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L.c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for



which a project review fee has been or will be collected from the Applicant. Accrued interest may also be spent for this purpose. Failure of an Applicant to pay a review fee shall be grounds for denial of the comprehensive permit Application.

- (f) At the completion of the Board's review of a project, any excess amount in the 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 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) Any Applicant may make an administrative appeal from the selection of an outside consultant to the Board of Selectmen. Such appeal must be made in writing within twenty days after the Board has mailed or hand-delivered notice to the Applicant of the selection. 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 Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.]
- (h) If the Applicant asserts that a condition imposed by the Board will render the Project Uneconomic and the pre-conditions set forth in 760 CMR 56.05(6)(a) have been satisfied, the Applicant shall submit a complete pro-forma, detailing the projected costs and revenues of the proposed project and an explanation of the basis and sources for the projections, and otherwise in compliance with 760 CMR 56.05(6)(b). An additional fee or fees may be imposed pursuant to 760 CMR 56.05(6)(b) for the retention of a financial expert and engineers or other consultants to assist the Board in its analysis of this claim. Alternatively, the Applicant may opt to pay for the Board's financial consultant or peer review in the manner prescribed by G.L. c. 44, §53G and this Section 4. The Board, in its sole and unfettered discretion, may waive any or all of the additional fees if it is determined that a financial review or other review is not necessary.

## **Section 5. Public Hearing and Decision**

- (a) The Board shall hold a public hearing within thirty days (30) of its receipt of a complete Application. A hearing shall not extend beyond one hundred eighty days (180) from the date a complete Application is filed, presuming that the Applicant has made timely submissions of materials in response to reasonable requests of the Board, except with the written consent of the Applicant. The Board may request the appearance at the hearing of such representatives of Local Boards as it considers necessary or helpful in reviewing the Application. In making its decision, the Board shall take into consideration the recommendation of Local Boards.

(b) The Board shall render a decision, based on a majority vote of the Board, within forty days (40) 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.

(c) The Board may dispose of the Application, by majority vote, in the following manner:

- (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 if the Board finds that there are no conditions that will adequately address Local Concerns; or
- (iii) approve a comprehensive permit with conditions, with respect to, height, site plan, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing Uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised *pro-forma* during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. Determination as to whether a condition renders a Project Uneconomic shall be made consistent with the definition of "Uneconomic" in 760 CMR 56.02 and otherwise in accordance with the State Law Requirements.

## **Section 6. Changes in Application**

(a) In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans which would affect the project eligibility requirements set forth in 760 CMR 56.04(1), the Applicant shall comply with 760 CMR 56.04(5).

(b) In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3 hereof that is deemed by the Board to be necessary to evaluate such changes.

(c) In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the Local Boards identified in Section 3, above.

(d) If the Applicant submits a revised plan for the Board's consideration, and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised to reflect such revised plans, subject to the foregoing provisions.

**Section 7. Appeals**

- (a) If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in G.L.c. 40A, §17.
- (b) If the Board denies the Comprehensive Permit or approves the permit with conditions or requirements considered by the Applicant to be unacceptable, the Applicant may appeal to the Housing Appeals Committee as provided in G.L.c. 40B, §22.

## **EXHIBITS**

**EXHIBIT A**

**TOWN OF BROOKLINE BOARD OF APPEALS**  
**APPLICATION FOR SPECIAL PERMITS AND/OR VARIANCES**

(See MGL c. 40A s. 9 &10, BOA Rules and Regulations, and Zoning By-laws § 9)

**Date:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**Address of Premises:** \_\_\_\_\_ **Brookline, MA**

**Applicant(s):** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Owner(s) of Record:** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Deed recorded in Registry of Deeds, Book** \_\_\_\_\_ **Page** \_\_\_\_\_

**or registered in the Land Registration Office under Certificate No.** \_\_\_\_\_

**Tax Assessor's Property ID No.:** \_\_\_\_\_ **Map:** \_\_\_\_\_ **Block:** \_\_\_\_\_ **Lot:** \_\_\_\_\_

1. Is the applicant applying for special permits \_\_\_ and/or variances \_\_\_? Please list Zoning By-law sections under which special permits and/or variances are requested. (Refer to Denial Letter.) *Review listed sections of By-law to ensure that you are providing any supplemental information they require.*

\_\_\_\_\_  
\_\_\_\_\_

2. Provide a description of your proposal including proposed use, size, location on the site, etc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Present use of property (No. of dwelling units, if any).

\_\_\_\_\_  
\_\_\_\_\_

4. Proposed use of property (description of all buildings and facilities, hours of operation, number of employees, visits by clients or pupils, amount of off-street parking, square footage of proposed additions or structures, etc.)

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5. Why does the applicant believe that the proposed use or building will meet the conditions for a **special permit** under **§9.05** of the Brookline Zoning By-Law and will be in harmony with the purpose and intent of the Bylaw?

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6. (IF APPLICABLE) Why does the applicant believe that the proposed use or building will meet the conditions for a **variance** under **MGL c. 40A, Sec. 10**, i.e. what are the special circumstances relating to soil conditions, shape, or topography of such land or structures, which do not generally affect other land or structures in the same zoning district, so that a literal enforcement of the by-law would involve substantial hardship, financial or otherwise, and that relief may be granted without substantial detriment to the public good and without substantially derogating from the intent or purpose of the By-law?

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**Certification and Signatures**

**Until your application package is deemed complete by the Zoning Coordinator per §9.04.4 of the Zoning By-law, no hearings will be scheduled.** You will be notified by email when the application has been deemed complete. After all necessary information has been submitted a Board of Appeals hearing date will be set. Once the Board of Appeals hearing is set, the Planning Board will hold a meeting prior to the Board of Appeals hearing to consider the case and make a recommendation to the Board of Appeals. Contact

the Planning and Community Development Department (617-730-2130) with any questions about the approval process and/or meeting schedules.

Checklist for Application Package:

- An original completed application (2 paper copies; 1 PDF)
- Denial Letter issued by the Building Department (2 paper copies; 1 PDF)
- A certified plot plan or site plan showing **existing** and **proposed** conditions (13 paper copies; 1 PDF)
- 11x17 sized plans including floor plans and elevations which indicate **all existing** and **all proposed** conditions with legible and accurate labels (13 paper copies; 1 PDF)
- Set of scaled drawings for all submitted plans (1 copy; *not required if 11x17 plans are scaled*)
- Any supplemental info required by By-law sections cited in Denial Letter (*if applicable*; 2 copies)
- Application fee (\$350 base fee + \$21 newspaper fee + \$50 per 1,000 net sq. ft. rounded to the nearest thousand)
- Copy of any previous relief granted by the Board of Appeals for the lot (*if applicable*; 2 copies)

*(Signatures of Appellant(s) and Owner(s) of Record are required.)*

I (We) hereby certify that the statements within my (our) Appeal and attachments are true and accurate to the best of my (our) knowledge and belief.

Signature(s) of Appellant	Date	Daytime Telephone Number and/or Cell
		E-Mail Address
Signature(s) of Owner of Record	Date	Daytime Telephone Number and/or Cell
		E-Mail Address
<i>If Applicable:</i>		
Name of Attorney for Applicant		Phone Number of Attorney
Address of Attorney		E-Mail Address
Name of Architect or Designer		Phone Number
		E-Mail Address

**EXHIBIT B**

**TOWN OF BROOKLINE BOARD OF APPEALS**  
**APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION**

(See M.G.L. c. 40A §8, BOA Rules and Regulations, and Zoning By-laws §7.03.2.e)

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Applicant(s):** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Owner(s) of Record:** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Address of Premises:** \_\_\_\_\_ **Brookline, MA**

**Deed recorded in Registry of Deeds, Book** \_\_\_\_\_ **Page** \_\_\_\_\_

**or registered in the Land Registration Office under Certificate No.** \_\_\_\_\_

**Tax Assessor's Property ID No.:** \_\_\_\_\_ **Map:** \_\_\_\_\_ **Block:** \_\_\_\_\_ **Lot:** \_\_\_\_\_

1. What are you appealing and why? Is it an inability to obtain a building permit, enforcement action, order or decision of the Building Commissioner/Building Official? (Please attach copy)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Are you within the 30-day appeal period (M.G.L. c. 40A, §15)? Yes\_\_\_ No \_\_\_

3. Provide the grounds for the appeal and legal reasons why you assert that the order or decision is legally not valid. (Please attach copy)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. What outcome do you request if your appeal is upheld?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





**EXHIBIT C**

**TOWN OF BROOKLINE BOARD OF APPEALS**  
**APPLICATION FOR COMPREHENSIVE PERMIT**

(Under M.G.L. c. 40B §21 and BOA Rules and Regulations)

**Date:** \_\_\_\_/\_\_\_\_/\_\_\_\_

**Applicant(s):** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Owner(s) of Record:** \_\_\_\_\_ **Address:** \_\_\_\_\_

\_\_\_\_\_

**Address of Premises:** \_\_\_\_\_ **Brookline, MA**

**Deed recorded in Registry of Deeds, Book** \_\_\_\_\_ **Page** \_\_\_\_\_

**or registered in the Land Registration Office under Certificate No.** \_\_\_\_\_

**Tax Assessor's Property ID No.:** \_\_\_\_\_ **Map:** \_\_\_\_\_ **Block:** \_\_\_\_\_ **Lot:** \_\_\_\_\_

*This application shall be submitted in accordance with Part H (Rules and Regulations for M.G.L. c. 40B § 21) of the Brookline Board of Appeals Rules and Regulations. **All applications must include material required in Part H Sections 3(a) and (b) - Filing, Time Limits and Notice.***

1. Filing fee and peer review deposit included? Yes  No

2. Fee for retention of financial expert and/or engineers or consultants included?  
Yes  No

3. Thirty (30) complete copies of application including an 11" x 17" or smaller sized copy of the plans.  
Yes  No

## **Certification and Required Signatures**

*(Signatures of Appellant(s) and Owner(s) of Record (if different than appellant) are required)*

*The original Application with thirty (30) complete copies of the application and supporting documentation to include: Application materials required pursuant to M.G.L. c.40B §21, Elements of Submission consistent with 760 CMR Section 56.05(2), Filing Fee, all materials required in the Board's Rules and Regulations Part H Sections 3(a)& (b) and a copy of any previous relief granted by the Board of Appeals for the subject premises. Once the submission is reviewed and the appropriate fee is paid, the Zoning Coordinator will transmit to and file with the Office of the Town Clerk four (4) copies of said application. One extra copy of the plan(s) reduced to 11" x 17" must be submitted with the application. Note: You are encouraged to discuss your application with Building and Planning Department Staff and thoroughly familiarize yourself with the Board of Appeals Rules and Regulations before submittal to insure the thoroughness of your application. Copies of the Rules and Regulations are available at the Office of the Town Clerk and also on-line at both the Town Clerk and Board of Appeals links on the town website. Contact the Planning and Community Development Department (617-730-2130) with any questions about the approval process and/or meeting schedules. Also see meeting calendar on Town website at: [www.brooklinema.gov](http://www.brooklinema.gov).*

**I (We) hereby certify that I (we) have read the Board of Appeals Rules and Regulations and that the statements within my (our) Comprehensive Permit Application and attachments are true and accurate to the best of my (our) knowledge and belief.**

<hr/> <p>Signature(s) of Appellant</p>	<hr/> <p>Date</p>	<hr/> <p>Daytime Telephone Number and/or Cell</p>
<hr/> <p>Fax Number</p>		<hr/> <p>E-Mail Address</p>
<hr/> <p>Signature(s) of Owner of Record</p>	<hr/> <p>Date</p>	<hr/> <p>Daytime Telephone Number and/or Cell</p>
<hr/> <p>Fax Number</p>		<hr/> <p>E-Mail Address</p>
<p><b><i>If Applicable:</i></b></p>		
<hr/> <p>Name of Attorney for Appellant</p>		<hr/> <p>Address of Attorney</p>
<hr/> <p>Phone Number of Attorney</p>		<hr/> <p>E-Mail Address and Fax # of Attorney</p>

**SUBMIT THIS FORM (original) WITH THIRTY (30) COPIES OF THE APPLICATION, FILING FEE, SUPPORTING DOCUMENTATION TO THE ZONING COORDINATOR**

## **EXHIBIT D**

### TOWN OF BROOKLINE BOARD OF APPEALS

#### APPLICATION FILING FEE SCHEDULE

(See BOA Rules and Regulations Part D §7 and Part H §4)

1. Application for Residential, Commercial or Institutional project:
  - a. Special Permit “A” \$350.00, plus \$50.00 per 1,000 s.f. of additional gfa\*
  - b. Variance “A” \$350.00, plus \$50.00 per 1,000 s.f. of additional gfa\*
2. Application for Comprehensive Permit:  
Comprehensive Permit “C” \$350.00, plus \$50.00 per 1,000 s.f. of additional gfa\*
3. Application for Wireless Telecommunication, or modification:  
\$1,500.00, plus additional \$1,500.00 inventory fee at time of bldg. permit issuance
4. Application for Time Extension/Minor Modification: \$500.00
5. Application for Appeal of Administrative Decision “B”: \$500.00
6. Other, anything not covered above (e.g. sign, parking, ): \$500.00
7. Consultant fees may be required in accordance with Section 4 of H. Rules and Regulations for M.G.L. c. 40B § 21 Comprehensive Permits of the Board of Appeals Rules and Regulations.
8. Additional fees may be required in accordance with Section 4 of H. Rules and Regulations for M.G.L. c. 40B § 21 Comprehensive Permits of the Board of Appeals Rules and Regulations.
9. Plan Review Filing Fees for Board of Appeals Cases – see Building Department Fee Schedule.
10. **A separate fee of \$21.00 payable to the Brookline TAB** for publication of notice shall be included with application for relief.

**All filing fee checks must be payable to the “Town of Brookline”** Applications without the appropriate filing fee will not be accepted.

At the discretion of the Board of Appeals, applicants may be asked to provide a stenographic copy of Public Hearing(s). Cost of this service shall be borne by the applicant including a copy for each member of the Board of Appeals.

\*Gross Floor Area (gfa) as defined in Article II section 2.07 of the Brookline Zoning By-Law (rounded to the nearest 1,000 s.f.)