

COMMONWEALTH OF MASSACHUSETTS
TOWN OF BROOKLINE

PLANNING BOARD

Approved January 30, 2020

RULES AND REGULATIONS AND GENERAL INFORMATION

A. GENERAL

Section 1. Introduction

The Planning Board of the Town of Brookline, Massachusetts, hereby adopts the following Rules and Regulations for the conduct of its business per Massachusetts General Laws (MGL), Chapter 41, Section 81Q and all other matters within its purview. A copy of these Rules and Regulations and all amendments thereto shall be filed with the Town Clerk of said Town.

Applicants should also refer to the requirements of the Town's Zoning By-law as well as Massachusetts General Laws Chapter 40A and Chapter 41, §§ 81K through 81GG for matters not covered by these Rules and Regulations. If there are any inconsistencies between these Rules and Regulations and the Town's Zoning By-law, the Zoning By-law shall prevail. If there are any inconsistencies between these Rules and Regulations and the aforementioned Chapters 40A and 41, Massachusetts General Law shall prevail.

Section 2. Powers, Responsibilities, and Authority of the Planning Board

The Planning Board has the following powers, responsibilities, and authority:

- (a) To make recommendations and propose conditions on complete applications to the Board of Appeals for Special Permits, Variances, Time Extensions, and Modifications.
- (b) To hear and decide sign and façade applications upon which the Planning Board is empowered to act under the Brookline Zoning By-law §7.03.2; such decisions being appealable to the Board of Appeals.
- (c) To make recommendations and propose conditions on applications to build low or moderate income housing under MGL c. 40B.
- (d) To appoint Design Advisory Teams to provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain projects subject to § 5.09 of the Zoning By-law that may have a significant

impact on the character of the surrounding area.

- (e) To adopt Design Guidelines for specific areas of town, per §5.09.4.n of the Zoning By-law, after public notice and hearing, in order to promote building design compatible with the character of the town and its neighborhoods.
- (f) To make careful studies and prepare plans of the resources, possibilities and needs of the Town, per MGL c. 41 §81C.
- (g) To make and adopt a Master or Comprehensive Plan for the Town, per MGL c. 41 §81D, and update such plan periodically.
- (h) To review and endorse Approval Not Required (ANR) Plans, in accordance with MGL c. 41 §81P.
- (i) To adopt and amend, from time to time, rules and regulations relative to subdivision control in accordance with MGL c. 41 §81Q. (See Subdivision Regulations, Brookline, MA, adopted by the Planning Board, June 12, 1968, and revised March 1, 1990.)
- (j) To approve preliminary and definitive subdivision plans in accordance with MGL c. 41 §§81S and 81T and in accordance with the previously adopted and amended Subdivision Regulations for Brookline.
- (k) To make recommendations to Town Meeting in accordance with MGL c. 40A on proposed zoning amendments submitted as warrant articles.
- (l) To review and make recommendations to Department Heads, Division Heads, the Town Administrator's Office and Town Meeting on the Capital Improvement Program.
- (m) To serve on or attend other Town boards and committees as representatives or liaisons of the Planning Board.

Section 3. Conflict of Interest and Recusals

All Planning Board members shall abide by the Massachusetts Conflict of Interest and Ethics Laws and Guidelines (MGL c. 268A), and shall consult with Town Counsel and/or the State Ethics Commission for guidance. If a member should miss the testimony presented at a public meeting related to an application, that member may recuse him or herself from the discussion and any vote held at a continued meeting on that application.

Section 4. Official Opinion

No member of the Board shall purport to express the official position or opinion of the Board, except in accordance with a specific vote of the Board. Personal opinions or beliefs shall be clearly identified as such.

B. BOARD ORGANIZATION

Section 1. Appointment

The Select Board shall appoint seven members in five-year staggered terms to serve on the Planning Board in accordance with MGL c. 41 §81A.

Section 2. Elections

Annually, at a meeting scheduled in the month of September, the Planning Board shall elect a Chair and a Clerk for a one-year time period.

Section 3. Powers and Duties of the Chair

The Chair shall preside over all meetings and hearings of the Board. Subject to the rules as stated herein, the Chair shall determine the procedures of the meeting and decide all points of order, unless overruled by a majority of the Board in session at the time; shall supervise the work of the Board; arrange for necessary help; and exercise general supervision over the Board's activities.

Section 4. Powers and Duties of the Clerk

The Clerk shall act as Chair in the event that the Chair is absent, disabled, does not participate in a particular matter or is otherwise unable to perform his or her duties. In the event that neither the Chair nor the Clerk is available for a meeting/hearing on a particular matter, the Chair or Clerk shall, in advance, designate a regular member to act as chair for that meeting.

C. NOTICE FOR PUBLIC MEETINGS AND PUBLIC HEARINGS

Section 1. Introduction

When matters before the Planning Board that require notice to parties in interest appear on a Planning Board agenda, the Department of Planning and Community Development shall arrange notice to such parties in interest according to the procedures set forth in this section and in conformance with statutory requirements. The following instructions are for the general information of all appellants, applicants, petitioners, and the general public.

Section 2. Parties in Interest

Depending on the nature of the application before the Planning Board, “parties in interest” may include any combination of the following:

- (a) **Parties in interest (as defined under MGL c. 40A §11).** This includes the petitioner, direct 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. In the case of Public Hearings, if the subject property is within three hundred feet of the town line, parties in interest will also include the Planning Board of all abutting municipalities.
- (b) **Town Meeting members.** This includes each elected Town Meeting member for the precinct in which a subject property or proposal is located and each elected Town Meeting member within all immediately adjoining precincts.
- (c) **Neighborhood Associations.** This includes all neighborhood associations registered with the Department of Planning and Community Development and all neighborhood associations specified on the Planning Board interoffice and distribution lists which may be amended from time to time. The Department of Planning and Community Development shall annually request email distribution lists from the Brookline Neighborhood Alliance to ensure an updated contact list.
- (d) **Interested Individuals.** Interested individuals includes all members of the public who have opted to received “Planning Board” notices through the Town’s electronic notification system. The Department of Planning and Community Development shall ensure that all agendas and other notices include a statement encouraging interested individuals to sign up for the Town’s electronic notification system in order to receive timely updates on matters before the Board.

Section 3. Types of Notice

Depending on the nature of the application before the Planning Board, one or more of the following types of notice may be provided to the public. See Section E. Applications below for the types of notice that are provided for each application type.

- (a) **Notice in Local Paper.** Notice for some public hearings will be published in a newspaper of general circulation in the town, as required, either once in the week prior to the hearing, or once in each of two successive weeks, the first publication not less than 14 days before the hearing date.
- (b) **Notice to Abutters.** Notice for some public hearings and public meetings will be sent to *Parties in interest* by mail.
- (c) **Notice to Town Meeting Members and Others.** Notice for some public hearings and public meetings will be sent by email or mail at least seven days before any Planning Board meeting on an application to all *Town Meeting members* and to all *Neighborhood Associations*.
- (d) **Notice to Interested Individuals.** *Interested Individuals* will receive notice by email when a Planning Board agenda is posted to the Town Calendar.

D. PUBLIC MEETINGS AND PUBLIC HEARINGS

Section 1. Quorum

A quorum for all of the Planning Board activities shall consist of a majority of the current active Planning Board members.

Section 2. Vote

A valid vote shall be a simple majority of the members present, as long as there is a quorum. A tie vote shall be recorded as such.

Section 3. Scheduling

Regular meetings on Board of Appeals cases or hearings on proposed zoning amendments shall be held on Thursday evenings as needed and shall commence no earlier than 7:00 P.M. at Town Hall or other location as set forth in the notice for the meeting/hearing. Regular meetings on Sign and Facade cases shall be held on Wednesday mornings as needed and shall commence at 8:15 A.M. at Town Hall or other location as set forth in the notice for the meeting. If any meeting/hearing date falls on a holiday or a conflict arises, the Board may designate an alternate day or time to meet. Special meetings and hearings may be called by the Chair, the Clerk in the Chair's absence, or a majority of the Board. Notice of special meetings/hearings shall be mailed, posted, and published as required by law and these Rules and Regulations.

Section 4. Open Meeting Laws and Public Access to Plans/Documents

All meetings shall be open to the public in accordance with the Open Meeting Law (MGL c. 30A §§18-25). Materials distributed to the Planning Board shall be available to the public on the Town Website and, in order to provide adequate notice about development projects that have applied for Special Permits, Variances, Time Extensions and Modifications, the Planning Board shall ensure that agendas for meetings or hearings related to such projects shall include an electronic webpage link to the latest submitted materials relevant to the proposed project as well as a recommendation that anyone interested in securing timely information from the Planning and Community Development Department relative to the proposal sign up for the Town's electronic notification system.

Section 5. Record of Meeting

Minutes of all Board meetings shall be taken, posted on the Town website in a timely manner, and made available to the public within a reasonable time upon request.

Section 6. Public Forums

On not less than a quarterly basis, Planning Board meetings will begin with a public forum to which the public is invited to comment on planning issues not on the agenda.

Section 7. Revisions

If an applicant elects to present new or revised materials at a Planning Board meeting/hearing, said applicant is strongly encouraged to email those materials to the Planning and Community Development Department at least 72 hours in advance of the meeting/hearing. The Department will notify subscribers to the Town's electronic notification system upon receipt of revised or supplemental materials. The Planning Board reserves the right to continue a meeting/hearing or recommend denial if an applicant presents materials that, per the discretion of the Planning Board, are different from the last version submitted to the Planning Board in a timely manner as set forth above.

E. APPLICATIONS

Section 1. Recommendations on Special Permits and Variances

The Planning Board is responsible for making recommendations and proposing conditions on complete applications to the Board of Appeals for Special Permits, Variances, Time Extensions and Modifications.

- (a) **Notice.** Meetings in which the Planning Board will review and make recommendations on such applications will be noticed. *Notice to Abutters, Notice to Town Meeting Members and Others* and *Notice to Interested Individuals* will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings."*
- (b) **Submittal Requirements.** Submittal requirements for Special Permits and Variances are set forth in the Zoning Board of Appeals' Rules and Regulations, which are available in the Planning and Community Development Department, and also in the Planning and Community Development Department's *Guide to Special Permit/Variance Process*.
- (c) **Conservation Commission Jurisdiction.** When an applicant requires approval of a special permit and/or variance from the Board of Appeals and also requires approval from the Conservation Commission, he or she should meet with the Planning and Community Development Director or designee to discuss the needed relief and coordination of the approval process.
- (d) **Preservation Commission Jurisdiction.** When an applicant requires approval of a special permit and/or variance from the Board of Appeals and also requires approval from the Preservation Commission or a determination by the Preservation Staff of the Department of Planning and Community Development, the applicant should meet with the Planning and Community Development Director or designee to discuss the needed relief and coordination of the approval process.

Section 2. Preliminary and Definitive Subdivisions; Approval Not Required (ANR) Plans

The Planning Board reviews and endorses Approval Not Required plans, reviews and approves preliminary and definitive subdivision plans, and adopts and amends rules and regulations relative to subdivision control.

- (a) **Subdivision Regulations.** Rules and regulations for preliminary and definitive subdivision plans have been adopted by the Planning Board on June 12, 1968, and revised March 1, 1990, and January 3, 2013, in accordance with MGL c. 41 §81Q.
- (b) **Notice.** Public hearings in which the Planning Board will review and approve subdivision plans will be noticed. *Notice in Local Paper, Notice to Abutters, and Notice to Interested*

Individuals will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings"* and as required by MGL c. 41 §81T. Meetings in which the Planning Board will review and endorse Approval Not Required plans will not be noticed.

- (c) **Submittal Requirements.** Submittal requirements for subdivision plans are set forth in the Town's subdivision rules and regulations, which are available in the Planning and Community Development Department. The following is required for Planning Board endorsement of an Approval Not Required (ANR) plan in accordance with MGL c. 41 §81T: submission to the Planning and Community Development Department, with written notice to the Town Clerk that such plan has been submitted; an application and fee; a mylar plan and three copies; and an electronic plan (in PDF format).
- (d) **Endorsements for ANR plans.** Within 21 days of filing, the Planning Board at a public meeting shall determine whether or not it should endorse the plan as a plan not requiring approval under Subdivision Control Law.

Section 3. Signs and Façades

The Planning Board hears and decides on sign and façade applications.

- (a) **Submittal Requirements.** The applicant shall submit a sign/façade application to the Planning and Community Development Department using the online permitting system which shall include property information, a required fee and a sign package with dimensioned plans of the proposed sign and/or facade alterations, photographs showing the existing building or site, and any other material as may be required by the Planning Board.
- (b) **Notice.** Meetings where the Planning Board will review and approve sign and façade review applications will be noticed. *Notice to Town Meeting Members and Others* and *Notice to Interested Individuals* will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings."*
- (c) **Planning Board.** Upon receipt of a sign/façade application, the Planning Department staff shall refer the application along with its recommendations and accompanying material to the Planning Board for review at the next available public sign/façade meeting. The Planning Board shall review each application at the public meeting and issue its recommendations. The recommendations shall be based on the provisions of Article VII of the Zoning By-law, the Community and Environmental Impact and Design Standards in § 5.09 and any such design guidelines as the Planning Board may adopt.
- (d) **Administrative Approval.** Within ten working days of receipt of an application, the Planning Department staff may administratively approve an application only if it solely relates to either an in-kind or substantially similar replacement of an existing sign following the guidelines of the Planning Board with respect to size, color, number, style, location and illumination. The address and a description of all administratively approved signs shall be noticed in the next Planning Board sign/façade review agenda. Upon receipt

of the notice of administrative approval, the Building Commissioner may issue a permit for a sign which conforms to the administrative approval; regulations of the Zoning By-law and such other technical requirements as are within the Building Commissioner's jurisdiction.

- (e) **Building Permit.** Following a recommendation of approval by the Planning Board or an administrative approval, Planning Department staff shall issue a final stamped version of the sign package to the applicant. The applicant shall use these stamped plans to apply for a sign installation permit and/or building permit from the Building Commissioner using the online permitting system.

If the Planning and Community Development Department fails to issue final stamped plans within thirty days of a Planning Board meeting, the Building Commissioner may issue a permit for a sign installation permit and/or building permit which conforms to the Planning Board's recommendations, the regulations in the Zoning By-law, and such other technical requirements as are within the Building Commissioner's jurisdiction.

- (f) **Appeals of Planning Board Decision or Administrative Approval.** If the applicant or any other interested party or any citizen of the Town of Brookline does not agree with the decisions of the Planning Board, the Planning Department staff or other requirements imposed by the Building Commissioner, he or she may appeal to the Board of Appeals within 30 days through the special permit procedure in Article IX of the Zoning By-law.

Section 4. Zoning Article Submitted to Warrant for Town Meeting

The Planning Board makes recommendations to Town Meeting on proposed zoning amendments.

- (a) **Notice.** Public hearings in which the Planning Board will discuss zoning articles and solicit public comment will be noticed. *Notice in Local Paper* and *Notice to Interested Individuals* will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings"* and as required by MGL c. 40A §5, when a proposed zoning article would amend the Town's Zoning By-law. *Notice in Local Paper, Notice to Abutters, and Notice to Interested Individuals* will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings"* and as required by MGL c. 40A §5, where a proposed zoning article would amend the Town's Zoning Map.

Section 5. Major Impact Projects

- (a) **Notice.** Meetings in which the Planning Board will review and make recommendations on such applications will be noticed. *Notice to Abutters, Notice to Town Meeting Members and Others, and Notice to Interested Individuals* will be provided, as detailed in *Section C, "Notice for Public Meetings and Public Hearings."*

- (b) **Pre-application Meetings.** Pursuant to § 5.09.3.a.and b. of the Zoning By-law, an applicant of a Major Impact Project, prior to a formal submission to the Building Commissioner, shall consult with the Building Commissioner and Planning and Community Development Director or designee for technical advice relative to the community and environmental impact and design review standards of this section and to determine if the Planning Board has adopted design guidelines which pertain to the proposed project. Further, the applicant shall meet with the Director of Engineering and Transportation and the Planning and Community Development Director or their respective designees for advice on the preparation of any required transportation studies.

- (c) **Neighborhood Meetings.** The applicant shall schedule and hold at least one neighborhood meeting and make a good faith effort to notify abutters, tenants of abutters, Town Meeting Members, neighborhood associations and other interested citizen groups to review the project plans; and actively promote citizen involvement throughout the review process. For Major Impact Projects, the meeting shall be convened prior to the Planning Board's preliminary meeting as required by § 5.09.3.a.2.b.

F. PROJECT REVIEW FEES

Section 1. Employment of Consultants

In accordance with MGL c. 44 §53G, the Planning Board, acting by and through the Director of Planning and Community Development, may require that applicants pay the reasonable cost for employment of outside consultants to review a proposed project. The Planning Board may use the Project Review Fee to engage experts, other than attorneys, as outside consultants to assist the Planning Board in its review process.

Section 2. Establishment of Special Account

The Project Review Fee shall be deposited with the Town's Comptroller who shall establish a special account in accordance with MGL c. 44 §53G. Expenditures from this special account may be made at the direction of the Director of Planning & Community Development, under the overall guidance of the Planning 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. The consultant's review will not commence until the Director of Planning & Community Development verifies receipt of the project review fee. Failure of an applicant to pay a required Project Review Fee shall be grounds for finding the application incomplete.

Section 3. Reimbursement of Excess Amount

At the completion of the Planning 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. The Planning Board shall provide the applicant or the applicant's successor in interest with a final report of said account. An applicant's successor in interest shall provide the Planning Board with documentation establishing such succession in interest.

Section 4. Administrative Appeal

Any applicant may make a written administrative appeal from the selection of the outside consultant to the Select Board within twenty (20) days after the Planning Board has mailed or hand delivered notice of the selection to the applicant. 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 action upon an application by the Planning Board shall be extended by the duration of the administrative appeal. In the event that

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

G. DESIGN ADVISORY TEAMS

Section 1. Appointment

Pursuant to §5.09.3.d. of the Zoning By-law, appointment of a Design Advisory Team (DAT) shall be made at a regularly scheduled board meeting for which public notice has been provided pursuant to §9.08.

Section 2. Composition

A Design Advisory Team (DAT) shall consist of the following: one or more Planning Board member(s), professional architect(s), landscape architect(s) or other related design professional(s); and one or more neighborhood representatives. The Planning Board may, in its discretion, also appoint representatives from other appropriate Town boards and commissions to serve on a DAT, if deemed necessary to insure coordinated project review.

Section 3. Role

The DAT will provide professional design review assistance to the Planning Board and the Planning and Community Development Department in the review of certain §5.09 projects, which may have a significant impact on the character of the area. The applicant may be required by the Planning Board to meet with the DAT to discuss resolution of design concerns and to include a response to the Planning Board on issues raised by the DAT. The DAT may submit a written or verbal report to the Planning Board and Board of Appeals.