

**TOWN OF DENNIS**  
**BOARD OF APPEALS**

**RULES**

ARTICLE 1. GENERAL

1.0 Scope and Purpose

These rules are adopted by the Dennis Board of Appeals as authorized by M.G.L. c.40A §12 for the purpose of establishing rules and procedures for the conduct of its business.

1.1 Establishment

The Dennis Board of Appeals (Board) was established by the Dennis Zoning Bylaw (DZB) to act on all matters under the DZB not specifically assigned to the Planning Board in the manner authorized and prescribed by the Massachusetts General Laws (M.G.L.), as amended, and the Massachusetts Constitution (Constitution), as amended.

1.2 Applicability

To the extent applicable, these Rules shall govern proceedings before the Board pursuant to M.G.L. c.40A and M.G.L. c.40B; and shall also govern proceedings before the Board sitting as the Dennis Sign Code Board of Appeals pursuant to the Dennis Sign Code Bylaw.

### 1.3 Powers

Except as provided in the DZB, the Board shall have and shall exercise all the powers granted to it by the M.G.L. and the Constitution, including the following:

- (a) To hear and decide Appeals taken by persons aggrieved by reason of their inability to obtain a permit or enforcement action from the Building Commissioner under the DZB, or under M.G.L. c.40A, and as otherwise provided in M.G.L. c.40A §8;
- (b) To hear and decide applications for Special Permits upon which the Board is empowered to act under the DZB pursuant to M.G.L. c.40A; and to impose thereon conditions, safeguards and limitations of time or use; and
- (c) To hear and decide appeals or petitions for Variances from the regulations of the DZB, including Variances to allow uses other than those enumerated in the Use Regulation Schedule of the DZB.

In exercising any of its 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 has all the powers of the Building Commissioner including the power to issue or direct the issuance of a permit.

### 1.4 Clerical Help

Subject to appropriation, the Board may employ experts, clerical personnel and other assistants according to the following provisions:

- (a) When reviewing an application, the Board of Appeals may determine that the assistance of outside consultants is warranted due to size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town of Dennis lacks the necessary expertise

to perform the work related to the approval. The Board may require that Applicants pay a "project review fee" consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of a proposed project or inspection of an approved project.

(b) In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, 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) 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. 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 had 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 disapproving a project or rescission of an approval of a project.

(d) 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 to the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or the Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Board with documentation

establishing such succession in interest.

(e) Any Applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within twenty (20) days after the Board of Appeals 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 action 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 of Appeals shall stand.

## ARTICLE 2. ORGANIZATION

### 2.0 Members

The Board consists of five (5) regular Members appointed by the Selectmen, in accordance with M.G.L. c.40A §12 and the Dennis Zoning Bylaw (DZB).

### 2.1 Associate Members

No more than eight (8) Associate Members of the Board are appointed by the Selectmen, in accordance with M.G.L. c.40A §12 and the DZB. In case of absence, inability to act or conflict of interest on the part of any Member, or in the event of a vacancy on the Board, the

Chairperson may designate any such Associate Member as an alternate Member to complete the panel of five (5) Members.

## 2.2 Chairperson & Clerk

The Board elects a Chairperson from its regular Members and a Clerk at the first meeting in April of each year. The Chairperson presides over all meetings and hearings of the Board, administers oaths, summons witnesses, calls for the production of papers, decides all points of order, and exercises general supervision over all activities of the Board.

(a) The Chairperson appoints such committees of the Board as may be necessary or desirable from time to time, and the Chairperson is a member ex-officio of each such committee.

(b) The Chairperson appoints a regular Member of the Board as Acting Chairperson to perform any and all the duties and to exercise all the powers of the Chairperson during their absence for any reason.

(c) In the event of a vacancy in the position of Chairperson, the Board shall elect a new Chairperson from its regular Members at the next meeting when a quorum of regular Members is available to do so. In the event of a vacancy in the position of Clerk, the Board shall elect a new Clerk at the next meeting when a quorum is available to do so.

## 2.3 Clerk

The Clerk may be, but is not required to be, a Member of the Board, and shall direct or undertake the performance of all administrative and clerical functions necessary to the lawful and

efficient operation of the Board.

### ARTICLE 3. MEETINGS

#### 3.0 Regular Meetings

Regular meetings of the Board are held as necessary at 7:00 P.M. on the first and third Mondays of each month, or at other times on call of the Chairperson, at the place specified in the meeting notice. The Chairperson shall explain the procedures of the Board to those in attendance.

#### 3.1 Special Meetings

Special meetings may be called by the Chairperson or at the request of two (2) Members. Written notice thereof shall be given to each Member at least forty-eight (48) hours before the time set except that announcement of a special meeting at any meeting attended by all Members shall be sufficient notice. Notices shall be posted publicly as required by applicable law.

#### 3.2 Quorum

A quorum for the purpose of electing a Chairperson shall be five regular (5) Members. A quorum for the purpose of conducting any other business of the Board at any meeting, including voting on appeals, special permits, variances and amendments to these Rules, shall be four (4) Members. A quorum for the purpose of conducting any business of the Board at any meeting pertaining to a comprehensive permit under M.G.L. c.40B shall be three (3) members.

### 3.3 Meetings Open to Public

All meetings of the Board are open to the public and conducted in accordance with M.G.L. c.39 §23A,B,C; with the exception of executive sessions held pursuant to the M.G.L., as amended.

## ARTICLE 4. HEARINGS, NOTICES & APPEARANCES

### 4.0 Public Hearing

A public hearing is required in all instances as a condition precedent to the allowance of an Appeal, issuance of a Special Permit, or grant of a Variance by the Board.

### 4.1 Notice of Hearings

Notice of all public hearings shall be published, posted and mailed as required by M.G.L. c.40A §11.

### 4.2 Appearances

An applicant/petitioner or opponent may appear in his own behalf or be represented by an agent or attorney. In the absence of any appearance, the Board may, in its discretion, decide the matter on the basis of the record and other information taken at the hearing, continue the hearing, or dismiss the application with or without prejudice.

## ARTICLE 5. HEARING PROCEDURE

5.0 Hearings will start at the time stated in the notice unless delayed because of prior hearings.

5.1 Any Member or Associate Member of the Board who is not sitting on the panel with respect to a hearing shall not participate as a panel Member in that hearing, and shall not sit with panel Members during the hearing.

5.2 No Member or Associate Member of the Board may act at any hearing as an applicant, petitioner, appellant or opponent except as a person of interest on their own behalf, and only after full public disclosure of their affiliation with the Board.

5.3 No person shall address a hearing of the Board without leave of the Chairperson, and all persons shall, at the request of the Chairperson, be silent. After warning from the Chairperson, if a person persists in disorderly behavior, the Chairperson may order them to withdraw, or may order a Constable or other person to remove them to a place of confinement until the hearing is adjourned.

5.4 The Chairperson may close the hearing immediately if, in their opinion, these Rules are being violated or the hearing becomes disorderly.

5.5 The Chairperson will open each hearing by reading, or causing to be read, the notice

as advertised.

5.6 The applicant/petitioner or representative will present the case, stating fully the reason(s) why the application/petition should be granted.

5.7 The Chairperson shall solicit from Board Members and the Town Planner questions to be addressed to the applicant/petitioner.

5.8 Upon the conclusion of the applicant's/petitioner's presentation, the Chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak shall rise, address the Chairperson, give their names and addresses, and proceed.

5.9 When all those in favor have spoken, the Chairperson will then allow those in opposition a similar opportunity to be heard.

5.10 Rebuttals by the applicant/petitioner may only be allowed at the discretion of the Chairperson.

5.11 Except for Board Members, no direct questioning among participants shall be allowed.

5.12 At the leave of the Chairperson, Members of the Board who are hearing the case may

direct additional, appropriate questions during the course of the hearing.

5.13 In all cases, materials submitted by or on behalf of the applicant/petitioner shall be filed prior to the hearing in accordance with Article 6 of these Rules; however, in exceptional cases, the Chairperson may, at their discretion, permit the submission of additional materials at the hearing.

5.14 When all facts have been presented, the Chairperson shall first solicit final comments from the Members of the Board before closing the hearing, and then shall, at their discretion, either immediately decide the matter by vote of the Board, or inform the appellant/applicant/petitioner or representative and others present that the matter will be taken under advisement, and that they will be notified of the Board's decision in due course.

## ARTICLE 6. FILING PROCEDURES

### 6.0 Filing Office

Any notice of Appeal, application for Special Permit or petition for Variance must be filed by an eligible appellant/applicant/petitioner with the Town Clerk, who shall forthwith transmit a copy thereof to the Board. All applicants are encouraged to meet with the Planning and Appeals Office prior to filing an application.

### 6.1 Required Form

Every notice/application/petition for action by the Board shall be made on an official

application form. Any communications purporting to be such an application, shall be treated as mere notice of intention to seek relief, until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed. Copies of the application and all accompanying documents are to be time and date stamped by the Town Clerk who will keep one of the original signature documents and forward the other originals to the office of the Board, along with the appropriate filing fee(s) and the list of abutters. In addition, applications for Special Permits and Variances shall include:

- Twelve (12) copies, including one original plan at a scale of 1" to 20' stamped and signed in red ink by a licensed surveyor or engineer, of an appropriate site plan illustrating existing and proposed conditions, duly certified (septic maps and mortgage plans are not acceptable). Said plan shall include:

- Locus Map
  - Perimeter dimensions, including frontage
  - Area of Lot
  - Names of streets
  - Names of abutting property owners
  - Distances of existing and proposed structures to property lines
  - Proposed additions or alterations of existing buildings with setbacks
  - Proximity of wetlands
  - Existing and proposed topography and/or other relevant land issues
  - Dimensions of existing and proposed structures
- Twelve (12) copies of existing and proposed elevations prepared by a licensed

architect, home designer or contractor with license number inscribed (if no changes to the facade are proposed photographs of the existing elevations will suffice).

- A copy of the current Deed for the Property

## 6.2 Subject of the Application/Petition

The subject of the application or petition shall be explicitly set forth on the form in two ways. The pertinent paragraph(s)/provision(s) of the Zoning Bylaw or Sign Bylaw, as appropriate, shall be identified to the lowest applicable subsection. A petition for a Variance from more than one paragraph/provision must identify all such paragraphs/provisions on the form. In addition, a short plain language description shall be provided which sets forth the essence of the Appeal, Permit or Variance being sought: what is being requested; why it is being requested; and the expected result should the appeal succeed, the permit issued or the petition granted.

## 6.3 List of Abutters

Pursuant to M.G.L. c.40A §11, every form filed as a notice of Appeal, application for Special Permit or petition for Variance shall be accompanied by a list of the "parties of interest," defined herein as:

- (a) owners of the abutting land ("the abutters")
- (b) owners of land directly opposite, on any public or private street or way; and
- (c) abutters to the abutters within 300 feet of the property line of the applicant/petitioner.

These owners/abutters shall be the owners as they appear on the most recent tax lists (even if in another town). The list of abutters must be certified by the Town Assessor and provided in duplicate

with the application/petition.

#### 6.4 Errors in Filing

When, in its opinion, the Board's ability to reach a decision on the basis of all material facts has not been substantially impaired, the Board may waive any failure to comply with the exact technical requirements for filing. Whenever a decision is rendered on an application or a petition with a filing error, any such failure to comply shall be deemed to have been waived.

#### 6.5 Filing Fees

Current applicable filing fees for an application or petition will be adopted by the Board after a Public Hearing, kept on file with the Town Clerk and posted on the bulletin board in the Planning and Appeals Office. Appeals by a Town Officer or Board on behalf of the Town require no fee. Fees may be waived or reduced, when doing so is deemed to be in the general or public interest, by action of the Chairperson with the approval of the Board.

### ARTICLE 7. APPEALS

#### 7.0 Appellant

Any person aggrieved by reason of inability to obtain enforcement action by the Building Commissioner under the DZB, or by any order or decision by him in violation of any provision of the DZB or M.G.L. c.40A may appeal to the Board.

7.1 Time for Filing

Any such Appeal must be taken within the time prescribed by M.G.L. c.40A by filing with the Town Clerk a notice of Appeal, specifying the grounds thereof.

7.2 Copies

Upon receipt of such notice of Appeal, the Town Clerk shall forthwith transmit a copy of the same both to the Board and to the Building Commissioner who then shall transmit forthwith to the Board all documents and papers constituting the record of the case.

7.3 Time for Hearing

The Board shall hold a public hearing on any such Appeal so transmitted to it by the Town Clerk within the time prescribed by M.G.L. c.40A.

ARTICLE 8. VARIANCES

8.0 Petitioner

Any eligible applicant may appeal or petition the Board to grant, with respect to particular land or structures, a Variance from the terms of the DZB, including Variances to allow a use other than provided for in the Use Regulation Schedule, in accordance with the provisions of M.G.L. c.40A.

### 8.1 Conditions

Upon any Variance granted, the Board may impose conditions, safeguards and limitations of both time and use as provided in M.G.L. c.40A.

### 8.2 Time for Hearing

The Board shall hold a public hearing on any Appeal or petition for a Variance transmitted to it by the Town Clerk within the time prescribed by M.G.L. c.40A.

### 8.3 Lapse

Rights authorized by the grant of a Variance must be exercised within one (1) year of the date of the grant of such Variance or they shall lapse and may be reestablished only after notice and a new hearing as provided by these Rules. Moreover, a landowner seeking renewal of a temporary Variance or reinstatement of a lapsed Variance must prove that the prerequisites are met currently and cannot rely upon findings in previous proceedings.

## ARTICLE 9. SPECIAL PERMITS

### 9.0 Applications

The Board is authorized to hear and decide applications for Special Permits for the uses specified in the "Use Regulation Schedule" of the DZB, and is also empowered to impose conditions, safeguards and limitations on time or use as provided in M.G.L. c.40A.

9.1 Time for Hearing

A Special Permit shall issue only after a public hearing which must be held within the time prescribed by M.G.L. c.40A.

9.2 Lapse

Special Permits issued by the Board shall lapse if substantial use or construction has not commenced without good cause within (1) year from the date the Special Permit was granted, excluding the time required to pursue or await the determination of an appeal.

ARTICLE 10. ACTIONS BY THE BOARD

10.0 Voting

The concurring vote of four (4) Members of the Board is necessary to reverse any order or decision of the Building Commissioner, or to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board, or to grant any Variance to the DZB; except that the approval of applications filed under M.G.L. c.40B shall require the concurring vote of only three (3) Members of the Board.

10.1 Record of Proceedings

The Board shall make a detailed record of its proceedings, showing the vote of each Member on each question or, if absent or failing to vote, indicating such fact, and setting forth

clearly the reason or reasons for its decisions and its other official actions, copies of all of which shall be filed within fourteen (14) days in the office of the Town Clerk and shall be a public record.

### 10.2 Withdrawals

An application for a Special Permit or a petition for a Variance may be withdrawn without prejudice by notice in writing to the Clerk of the Board at any time prior to the publication of notice of a public hearing thereon by the Board. Withdrawal without prejudice thereafter requires Board approval.

### 10.3 Re-application; Two Year Bar

No Appeal, application for a Special Permit or petition for a Variance which has been unfavorably and finally acted upon by the Board shall be acted upon favorably within two (2) years after the date of final unfavorable action unless:

(1) the Board finds by vote of at least four (4) Members specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and

(2) all but one of the Members of the Planning Board consents thereto, after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

## ARTICLE 11. DECISIONS

### 11.0 Time

The respective time periods stipulated below in subparagraphs (a) & (b) may be extended by written agreement between the applicant or the petitioner and the Board, and a copy of any such agreement shall be filed in the office of the Town Clerk.

(a) Decisions of the Board on Appeals and on petitions for Variances shall be made within one hundred (100) days after the date of the filing thereof with the Town Clerk. Failure of the Board to so act shall be deemed to be a grant of the relief or of the Variance sought.

(b) The Board shall act on an application for a Special Permit within ninety (90) days following a public hearing for which notice was given as required by M.G.L. c.40A §11. Failure of the Board to so act shall be deemed to be a grant of the Special Permit sought.

### 11.1 Content

Upon granting a Variance or Special Permit, or any extension, modification or renewal thereof, the Board shall issue to the owner and the petitioner or applicant, if other than the owner, a certified copy of its decision which shall contain the name and address of the owner, an identification of the land affected, a statement of compliance with statutory requirements for the issuance of the Variance or Special Permit, and a certification that copies of the decision and all plans referred therein have been filed with the Planning Board and the Town Clerk.

### 11.2 Notices

Notice of any decision of the Board shall be mailed forthwith to the petitioner, applicant or appellant, the parties in interest and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to M.G.L. c.40A §17, and be filed within twenty (20) days after the decision was filed in the office of the Town Clerk.

### 11.3 Recording and Effect

No Variance or Special Permit, or any extension, modification or renewal thereof shall take effect until a copy of the decision, certified by the Town Clerk is recorded in the Barnstable County Registry of Deeds, and/or with the Barnstable Land Court Registry District, as appropriate.

## ARTICLE 12. ADVICE AND OPINIONS

Any advice, opinion or information given to an appellant, applicant or petitioner by any member or associate member of the Board, or by the Building Commissioner or any other official or employee of the Town prior to a public hearing on a matter before the Board shall not be binding on the Board.

ARTICLE 13. AMENDMENTS AND REVIEW

These Rules may be amended at any time by vote of four (4) members of the Board at a Regular or Special meeting thereof provided that the amendment(s) shall have been submitted to the Board at a Regular meeting prior to the date on which the Board acts thereon. In any event, these Rules shall be reviewed as an agenda item at least every two years by the Board at a Regular or Special meeting.

ARTICLE 14. EFFECTIVE DATE

These Rules were adopted at a public hearing by the Board on January 5, 2004, and became effective as of that date. The rules previously in effect as amended are hereby repealed. No lawful action taken under said previous rules shall be affected by this repeal.

Town of Dennis

Zoning Board of Appeals

by the Acting Chairman:

\_\_\_\_\_  
Herbert D. Goldberg

\_\_\_\_\_  
Date