

SUNDERLAND ZONING BOARD OF APPEALS

RULES & REGULATIONS

Adopted – January 2, 1979

Revised – May 1, 1985

Revised – October 17, 1990

Section 2.2 – Increased Application Fee to \$75.00

Revised – October 2, 1991

Adopted “Comprehensive Permit Rules”
(See Separate Document)

Revised – March 30, 2000

Added Section 2.3 – Outside Consultant Fee

Revised – February 7, 2006

Section 2.2 – Increased Application Fee to \$150.00

Section 3.2 – Added Four-Member Quorum Exception Option

**RULES AND REGULATIONS
OF THE
SUNDERLAND ZONING BOARD OF APPEALS**

Article 1 Organization

Section 1.1 Membership

The Board of Appeals shall consist of five members appointed by the Selectmen. The Selectmen shall also appoint three associate members of the Board of Appeals. An associate member shall act as a member of the Board in the consideration and determination of any matter in which he is requested so to act by the Chairman or Acting chairman of the Board, when and in the event that a member does not act by reason of illness, conflict of interest, absence, or other incapacity.

Section 1.2 Officers

The Board of Appeals shall elect by majority vote of the regular members present a Chairman, Vice-Chairman, a Clerk, and an Assistant Clerk at the first regularly scheduled meeting after annual Town Meeting. Upon the resignation of any officer, the board shall in like manner elect a replacement at the first meeting following said resignation.

Section 1.3 Duties of Officers

Section 1.3.1 Chairman

The Chairman shall preside at all Board meetings. (In the absence of Chairman, the Vice-Chairman shall preside as the Acting Chairman.) The Chairman or Acting Chairman may administer oaths, summon witnesses and call for production of papers.

Section 1.3.2 Clerk

Together with the Chairman, the Clerk of the Board shall have the responsibility of publishing and posting notices of meetings and hearings, and of mailing notices of hearings and of Board's decisions to persons and town agencies as provided herein or as required by law; shall keep detailed record of Board's proceedings showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for Board's decisions, and Board's other official actions; and subject to the direction of the Board and its Chairman, shall conduct all correspondence of the Board and maintain necessary files and records.

Section 1.3.3 Assistant Clerk

The Assistant Clerk shall be a regular member or associate member of the Board of Appeals, and shall be responsible for all the duties of the Clerk in the absence of the Clerk. The Assistant Clerk shall also assist the Clerk in the Clerk's normal duties.

Section 1.4 Meetings

Regular meetings of the Board of Appeals shall be held on the Board's hearing dates at such time and place as designated on the required public notice, posted 48 hours in advance for reach such meeting. Special meetings shall be held at the call of the Chairman, and such meetings shall require the posting of a notice of said meeting in the same manner as required for regular meetings. All meetings shall be held in accordance with the provisions of the Open Meeting Law.

Section 1.4.1 Quorum

The presence of five members shall constitute a quorum.

Section 1.4.2 Order of Business

The order of business at all regular meetings of the Board shall be as follows:

- A. Roll Call
- B. Amendment and/or approval of the minutes of the Previous Meeting*
- C. Communications
- D. Unfinished Business
- E. New Business

* The minutes of each meeting shall be mailed to each member of the Board previous to the subsequent Board meeting. The minutes, then, will not be read at the meeting, only amended and/or approved.

Section 1.5 Attendance

The Board will recommend to the Selectmen that any regular or associate member who misses three consecutive meetings or five in the course of one year be removed from the Board.

Section 1.5.1 Removal

Any member may be removed for cause by the appointing authority upon written charges, and after a public hearing.

Article 2 Application to the Board

Section 2.1 Application Form

Any appeal, application, or petition to the board of Appeals shall be made on the official form, which shall be furnished by the town clerk on request. Any communication, purporting to be an appeal, application, or petition shall be treated as a mere notice of intention to seek relief, until such time as it is made in proper form to the Board of Appeals.

Section 2.2 Fees

Application shall be accompanied by a check payable to the town of Sunderland in the amount of one hundred and fifty dollars (\$150.00).

Section 2.3 Consultant Fee

In accordance with the provisions of M.G.L. Chapter 44, Section 53G, the Board can employ the services of an outside consultant to obtain technical advice, unavailable from municipal employees, to review and advise the Board on the applicant's proposed project. A concurring vote of at least 4 (out of 5) members is required for the Board to hire an outside consultant. The applicant shall pay all reasonable expenses incurred by the Board for such review. The Board shall notify the applicant in writing of the estimated costs for the review. The review fees shall be paid by the applicant within ten (10) days of the receipt of the notification. The review fees shall be held by the Town Treasurer in a separate account. The Board may request additional funds if needed to cover the cost of outside review in the same manner as above. Failure by the applicant to make timely payments shall be adequate reason to deny the application.

The selection of an outside consultant may be appealed to the Sunderland Board of Selectmen. Such appeals are limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications consist of either an educational degree in the field at issue or a related field, or three (3) or more years of practice in the field at issue or a related field. The required time limits 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 (1) month following the filing of the appeal, the selection made by the Board shall stand.

Any excess amount in review fees paid by the applicant, including any accrued interest, at the completion of the project shall be repaid to the applicant or to the applicant's successor in interest and a final report on expenditures made from the fees shall be made available.

Article 3 Hearings

Section 3.1 Hearing Dates

Any appeal, application, or petition filed in proper form shall be scheduled for a hearing within sixty-five (65) days of filing. No hearing shall be held on any day on which a state or municipal election, caucus, or primary is held in the town.

Section 3.2 Quorum

A quorum for hearings by the Board shall consist of five members. In the absence of a quorum at a scheduled hearing, the hearing will be immediately adjourned until a date when a quorum is available.

An exception to the five-member quorum requirement is allowed when four members of the Board are present and the applicant/petitioner voluntarily agrees at the beginning of the hearing to the following condition: The hearing can proceed with a four-member quorum with the clear understanding that a unanimous (all four members) vote will be required in order for the applicant/petitioner to be granted a Special Permit, Variance or Appeal. If the applicant/petitioner doesn't agree to this condition, the hearing must be adjourned until a date when a full five-member quorum is available.

Section 3.3 Notice

Notice of a public hearing must be published once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the town Hall for a period of not less than fourteen (14) days before the day of such hearing. Such notice must identify clearly the subject matter of the hearings, and contain the following printed in bold face type:

- A. The name of the petitioner;
- B. The location of the area or premises which are subject of the petition; and
- C. The date, time, and place of the public hearing.

A copy of the advertised notice shall be sent by mail, postage prepaid, to the applicant or petitioner, to the owners of all property deemed to be abutters, owners of land directly opposite on any public or private street or way, and owners of land within three hundred feet of the property line, all as they appear on the most recent tax lists, notwithstanding that the land of any such owner is located in another city or town, the Planning Board of the town and the Planning Board of any abutting city or town.

Section 3.4 Hearings to be Public

The applicant or any party, whether entitled to notice of the hearing or not, may appear on his own behalf or be represented by agent or attorney at said hearing. In the absence of any appearance on behalf of any applicant, the Board will proceed to dispose of the matter on record before it. All hearings are open to the public.

Section 3.5 Order of Business

- A. Reading of petition and legal notices by the Clerk, together with presentation of exhibits, if any.
- B. Applicant's presentation.
- C. Reports of Planning Board and other concerned agencies, if any.
- D. Members of the board can now raise questions as they set fit.
- E. Presentation, by other parties of interest, if any, and questions by those seeking information.
- F. Applicant's re-presentation, restricted to matters raised by opponent's presentation.
- G. The Board takes under advisement consideration of the case.

Section 3.6 Site Visits

Applicants should be prepared to meet with the board at the site. Site plan locations will be viewed if the board feels that it is necessary.

Article 4 Disposition by the Board

Section 4.1 Decisions

Variance and appeal decisions of the board shall be made within seventy-five (75) days after the date of the filing of an appeal or variance application. Failure by the Board to act within said seventy-five (75) days shall be deemed to be the grant of the relief, application or petition sought, subject to an applicable judicial appeals as provided for in chapter 40A. Special permit decisions of the board shall be made within ninety (90) days after the date of the hearing.

Section 4.2 Withdrawal

Any petition for a variance or any application for a special permit may be withdrawn without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter, may be withdrawn without prejudice only with the approval of the Board.

Section 4.3 Reconsideration

Once the matter has been voted upon and the meeting adjourned, there shall be no reconsideration of the decision of the Board.

Section 4.4 Default

Nonappearance of the petitioner will result in automatic denial of the appeal, application, or permit, unless the petitioner has requested and received a continuance prior to the time the hearing is to begin.

Section 4.5 Reapplication

In order to have an appeal, application or petition reheard within two (2) years after the date of final, unfavorable action, the Board must find specific and material changes in the conditions upon which the previous unfavorable action was based. All but one of the members of the Planning Board must consent thereto, after notice is given to the parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Section 4.6 Filing Decisions

The Board of Appeals shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, and setting forth clearly the reason or reasons for its decision and of its official actions, copies of all of which shall be filed within fourteen (14) days with the town Clerk, and shall be a public record. A Notice of the decision shall be mailed forthwith to the petitioner, to the parties in interest, and to every person present at the hearing who requests that notice be sent to him. The Notice shall specify that appeals, if any, shall be made pursuant to Section 17 of Chapter 40A, and shall be filed within twenty (20) days after the date of the filing of such Notice in the office of the Town Clerk.

Section 4.7 Recording of Variances or Special Permits

When granting variances or special permits, the Board may impose limitation both of time and use, and a continuation of the use permitted by be conditioned upon compliance with regulations to be made and amended from time to time thereafter. Upon the granting of a variance or special permit, the Board shall

issue to the owner and/or applicant (if other than the owner) a Notice, certified by the Chairman and/or the Clerk, containing the name and address of the owner, identifying the land affected, setting forth compliance with the statutory requirements, and certifying that copies of the decision and all plans referred to in the decision have been filed with the Planning Board and the Town Clerk. No such variance or special permit or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed and no appeal has been filed, is recorded at the Registry of Deeds. The fee for recording shall be paid by the owner or applicant.

Article 5 Voting Requirements

The concurring vote of four (4) members of the Board shall be necessary for any decision on any matter upon which the /board is required or authorized to pass under chapter 40A of the General Laws of the Zoning By-Law.

Article 6 Amendments

These rules may be amended by a simple majority vote of all regular members of the Board provided that such amendment shall be presented at a regular meeting.