

# *Article 11 Administration*

*Section 11.0 Purpose*

*Section 11.1 Administration of the Zoning Ordinance*

*Section 11.2 Board of Appeals*

*This page left blank on purpose.*

## **ARTICLE 11      ADMINISTRATION**

### **SECTION 11.0    PURPOSE**

The purposes of this Article are:

- To inform applicants about the application process;
- To provide an efficient procedure for granting BUILDING PERMITS;
- To provide for enforcement of this Ordinance, and
- To set forth the powers and duties of the Board of Appeals.

### **SECTION 11.1    ADMINISTRATION**

This Ordinance shall be administered and enforced by the BUILDING COMMISSIONER as defined in Article 2, including any official to whom responsibility for administering and enforcing this Ordinance has been delegated. The BUILDING COMMISSIONER shall require such plans and specifications as may be necessary to determine compliance with this Ordinance and with all pertinent laws of the Commonwealth. BUILDINGS, STRUCTURES and SIGNS may not be erected, substantially altered, moved, or changed in USE and land may not be substantially altered or changed in USE except in compliance with this Ordinance, after all necessary permits have been received under federal, state, and local law. The BUILDING COMMISSIONER shall not issue any permits under this Ordinance except in compliance with its provisions.

#### **Section 11.1.10    Building Permits and Plot Plans**

An applicant for construction of any STRUCTURE which requires a BUILDING PERMIT under the STATE BUILDING CODE shall comply with all requirements of this Ordinance in addition to the requirements of the State BUILDING CODE.

#### **11.1.11    Initial Consultation with Building Commissioner**

- A. Any person proposing to construct a STRUCTURE or alter the USE of land shall first contact the BUILDING COMMISSIONER 'S office to determine what type of approval, if any, is required for the proposed construction or land use. The BUILDING COMMISSIONER shall make an initial determination as to whether or not the proposed application is permitted in the ZONING DISTRICT, and if permitted, what type of review it requires, as provided in Section 12.1. The BUILDING COMMISSIONER shall inform the applicant of all required approvals and the procedures and submission requirements for each.

- B. If the application requires only a BUILDING PERMIT (i.e. it is a use “by-right”), the BUILDING COMMISSIONER shall instruct the applicant to file an application with the BUILDING COMMISSIONER’S office. If the application requires Site Plan Review or a Special Permit, the BUILDING COMMISSIONER shall refer the applicant to the Office of Planning and Economic Development. If the application requires approval from the Historical Commission and/or the Conservation Commission, the BUILDING COMMISSIONER shall refer the applicant to the appropriate commission.
- C. If an application requires approval of a Site Plan Review or Special Permit, once such approval is granted, the applicant shall submit an application for a BUILDING PERMIT together with a copy of such approval to the BUILDING COMMISSIONER, as provided in Section 12.1.20.

#### **11.1.12 Filing Plot Plan**

Unless otherwise ordered by the BUILDING COMMISSIONER , all applications for BUILDING PERMITS made in conformity with the provisions of the BUILDING ORDINANCE, Chapter 12.08 of the City Ordinance) shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions, radii and angles of the LOT to be built upon based upon a plot plan of the subject property, the exact size and location on the LOT of the BUILDING and ACCESSORY BUILDINGS to be erected and such other information as may be necessary to determine and provide for the enforcement of this Ordinance. One (1) copy of such plans, when approved by the BUILDING COMMISSIONER, shall be returned to the owner.

#### **11.1.13 Pending Applications for Building Permits**

Nothing herein contained shall affect any permit issued before the first notice of hearing by the Planning Board on a proposed amendment to this Ordinance, provided that construction work under any such permit is commenced within six (6) months after its issue.

#### **11.1.14 Action on Building**

The BUILDING COMMISSIONER shall grant or deny a BUILDING PERMIT as soon as practical, but in no event in more than thirty (30) days of receiving a complete application, and shall inform the applicant by sending the permit or denial by mail, or by delivering it in person to the applicant at the BUILDING COMMISSIONER’S Office, within that thirty (30) day period. The issuance of a BUILDING PERMIT does not relieve an applicant or an owner of the responsibility to obtain all required permits under this Ordinance or any other applicable local, state, or federal law or regulation.

### **11.1.15 Certificate of Occupancy**

Procedures and requirements for issuance of a certificate of occupancy shall be as prescribed by state law.

### **Section 11.1.20 Penalties and Enforcement**

The BUILDING COMMISSIONER may take any lawful action deemed necessary to prevent or remedy a violation. Violations include non-compliance with any provision of this Ordinance, any conditions under which a permit or approval is issued pursuant to this Ordinance, and any decision rendered by any City board or the City Council pursuant to this Ordinance. The following remedies are available for a violation of this Ordinance:

#### **11.1.21 Fines**

- A. A criminal fine of not more than \$100 for a first offense and \$300 for each subsequent offense. Each day such a violation continues shall constitute a separate offense.
- B. A fine imposed through a non-criminal complaint pursuant to M.G.L. Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be \$100 for a first offense and \$300 for each subsequent offense. Each day such a violation continues shall constitute a separate offense.

#### **11.1.22 Injunctive Relief**

The BUILDING COMMISSIONER or City Council may enjoin a violation by bringing an action in Superior Court pursuant to M.G.L Chapter 40A, Section 7.

#### **11.1.23 Refusal to Grant Other Permits or Approvals**

Municipal officials shall refuse to issue any type of permit, license, or certificate of occupancy for a new use of land where there is violation of this Ordinance, except where necessary to remedy such violation.

## **SECTION 11.2 BOARD OF APPEALS**

### **SECTION 11.2.10 POWERS OF ZONING BOARD OF APPEALS, PERMIT GRANTING AUTHORITY**

The Board of Appeals designated as the permit granting authority as defined in M.G.L. Chapter 40A, Section 1A, shall have the following powers.

### 11.2.11 Appeals

An appeal to the Zoning Board of Appeals, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this Ordinance. Such an appeal may also be taken by the Pioneer Valley Planning Commission, an abutting city or town, or any person, including an officer or board of the City who is aggrieved by an order or decision of the BUILDING COMMISSIONER or of any other administrative official where such an order or decision is alleged to be in violation of any provision of this Ordinance or of M.G.L Chapter 40A.

### 11.2.12 Special Permits

The Board of Appeals has the power to hear and decide applications for those Special Permits for which the board is expressly empowered to act under this Ordinance. In such cases, the Board of Appeals shall follow the procedures and apply the criteria contained in Section 12.4 of this Ordinance.

### 11.2.13 Variances

The Board of Appeals has the power to hear and grant petitions for variances, where it finds:

- A. That owing to circumstances relating to soil conditions, shape or topography of land or STRUCTURES and especially affecting such land or STRUCTURES, but not affecting generally the ZONING DISTRICT in which it is located, a literal enforcement of the provisions of this Ordinance would involve substantial hardship, financial or otherwise, to the petitioner;
- B. That desirable relief may be granted without substantial detriment to the public good; and
- C. That granting such relief would not nullify nor substantially derogate from the intent or purpose of this Ordinance.

### 11.2.14 Section 6 Findings

The Board of Appeals has the power to make findings relative to the extension or enlargement of NONCONFORMING USES and STRUCTURES under M.G.L, Ch. 40A, Section 6, as provided in Section 10.1 of this Ordinance.

## **Section 11.2.20 Procedure for Application**

Applications shall be made within thirty (30) days, as provided by M.G.L. Chapter 40A, or as otherwise provided in the rules of the Board of Appeals, by filing with the BUILDING COMMISSIONER and with the Board of Appeals, an application or a notice of appeal specifying the grounds thereof. In the case of an appeal, the BUILDING COMMISSIONER shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action

appealed from was taken. If the application does not involve an appeal, the applicant shall file an application as otherwise required by the Board of Appeals for a Section 6 finding or variance, or as required in Article 12 for a Special Permit.

### **Section 11.2.30 Public Hearings**

**11.2.31** Public hearings shall be required for all appeals, variances and Special Permits.

The Board of Appeals shall require notice to be given by publication in a newspaper of general circulation in the city once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days before the hearing, and by posting such notice in a conspicuous place in City Hall for a period of not less than fourteen (14) days before the date of the hearing.

**11.2.32** In all cases notice of public hearing shall be given by the City Clerk by publication in a newspaper of general circulation in the City once in each of two (2) 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 City Hall and Office of Planning and Economic Development for a period of not less than fourteen (14) days before the day of such hearing. Notice to “Parties of interest” shall be sent, postage prepaid. “Parties of interest” as used herein shall mean the applicant, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred (300) feet of the property line of the applicant as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town, the Building Commissioner, the City Law Department, the Department of Public Works, the Department of Parks and Recreation, the Planning Board if the hearing is not a hearing of the Planning Board, and the Planning Board of every abutting city or town. The required publications and notices shall contain the name of the applicant, a description of the area or premises, street address, or other adequate identification of the location of the premises, the date and place of the public hearing, the subject matter of the hearing, and the nature of action or relief requested.

### **Section 11.2.40 Decisions, Notice, and Appeal**

**11.2.41** Vote

A concurring vote of three (3) members of the Board shall be required to grant a finding, and a concurring vote of four (4) members of the Board shall be required to grant a variance, Special Permit, or appeal.

#### 11.2.42 Decision Timeframe

The decision of the Board of Appeals shall be made within one hundred (100) days after the filing of an appeal application or petition **except** in regard to a Special Permit when such decision shall be made within ninety (90) days. Failure of the Board of Appeals to act within the allowed time shall be deemed to be an approval of the appeal, application, or petition.

#### 11.2.43 Record

The Board of Appeals shall file a detailed record of its proceedings, indicating the vote of each member, the reason for its decision, and official actions, within fourteen (14) days in the office of the City Clerk. The decision of the Board of Appeals shall be a public record.

#### 11.2.44 Record of Decision

No 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 City Clerk that twenty (20) days have elapsed, and that no appeal has been filed, or denied, is recorded in the Registry of Deeds.

#### 11.2.45 Notice of Decision

Notice of the decision shall be issued to the owner and to the applicant. Each notice of a decision shall specify that appeals from the order or decision may be made to the Superior Court, Land Court, or the Hampden County Housing Court, and by filing a copy of the complaint with the City Clerk within twenty (20) days of the filing order or decision with the City Clerk.