

Commonwealth of Massachusetts

TOWN OF HUNTINGTON RULES AND REGULATIONS of the BOARD OF APPEALS

**AS PROVIDED FOR BY
SECTION 12 OF CHAPTER 40A
of the
MASSACHUSETTS GENERAL LAWS**

Adopted April 20, 2011

NOTE:

This document provides the required information for filings with the Huntington Zoning Board of Appeals. Questions regarding these rules and regulations should be directed to the Board of Appeals.

The Zoning Board of Appeals of Huntington adopts these rules and regulations under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40A, and Section 12.

These rules and regulations, as amended from time to time, become effective upon their filing with the Huntington Town Clerk and supersede any previously filed with the Clerk.

OVERVIEW

This document describes the duties and the operation of the Huntington Zoning Board of Appeals (ZBA). The activities of the ZBA often interact with other Town boards and officials, such as the Planning Board, Board of Health, Conservation Commission and Zoning Enforcement Officer (Building Inspector). Due to this interaction there is also some limited discussion of these other official representatives of the Town.

Contacting the ZBA

Huntington Zoning Board of Appeals
PO Box 430
Town Hall
Huntington, MA. 01050

Meeting times

The ZBA meets regularly on the First and the Third Wednesdays of each month at 7:00PM in Stanton Hall.

Special Meetings

Special Meetings may be called by the Chairperson, or at the request of two (2) Members of this Board. All meetings shall be open to the public in accordance with Chapter 39, Section 23, a., b., and c. of the General Laws of the Commonwealth of Massachusetts. Except in an emergency, a notice of each Board meeting shall be filed with the Town Clerk on the official bulletin board, on-line postings web site (www.huntingtonma.org) and personal notice shall be given to every Board Member at least 48 hours, including Saturdays, but not Sundays or legal holidays, prior to such meetings. Meetings, while open to the public, are not public hearings. This Board will seek information or testimony, as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairperson, be ruled out-of-order.

Purpose of the Bylaw

As stated in the Huntington By-Law, its purposes are to:

- Promote the general welfare of the Town of Huntington
- Protect the health and safety of its inhabitants
- Encourage the most pleasant physical aspects of the township
- Reduce the hazard of fire by regulating the location and use of buildings and the open spaces around them
- Protect, conserve, and increase the value of property within its bounds

Role of the ZBA

The role of the ZBA is to:

- Consider petitions for permission to change the use of non-compliant properties (typically, properties with insufficient road frontage or acreage, or properties whose owner needs permission for a use other than Residential-Agricultural, such as a business).
- Consider appeals of decisions of the Zoning Enforcement Officer (Building Inspector).

Petition Types: Variances and Special Permits

Under the By-Law, the ZBA can consider petitions for a variance or for a special permit. Because the word "variance" has a common-sense sound, it can create confusion. In fact, the need for a variance almost never comes up in Huntington. Most petitions should be for a Special Permit.

Variances

If you read the By-Law's definition of a variance, you will see that the common-sense meaning of "variance" does not apply. The By-Law states that, for a variance to be granted, the ZBA must find that "owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district within which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good without nullifying or substantially derogating from the intent or purpose of such By-Law." No variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

Special Permits

You can lawfully change the use of your property 1) without a special permit or 2) with a special permit.

- **Without a Special Permit:** If your property meets the frontage, setback and acreage requirements of the By-Law's various Zoning Districts, you do not need a Special Permit for most changes in use (for example, to build or alter a residence, garage, barn, shed, etc.). In most cases, however, you will need a Building Permit.

- **With a Special Permit:** If your property does not meet the frontage, setback or acreage requirements of the By-Law, you need to petition for and be granted a Special Permit to build or alter a structure. If the use to which you intend to put the property does not meet the district definition of Residential/Agricultural use (a business, for example), you need to petition for and be granted a Special Permit for permitted uses as specified in the By-Law.

Appeals

The ZBA must hear and decide the appeal of any person who is aggrieved because of an inability to obtain a permit or an enforcement action from the Zoning Enforcement Officer (Building Inspector). The Board must also hear and decide the appeal of any interested person, such as the owner of an abutting property, who is aggrieved by a decision of the Building Inspector.

Enforcement of the By-Law

Because petitioners and appellants sometimes express their views about enforcement in ZBA hearings, it is important to state what the ZBA is not. Enforcement of the By-Law is the responsibility of the Zoning Enforcement Officer (Building Inspector). The ZBA has no enforcement authority. If you observe a violation of the By-Law, the proper reporting channel is to notify the Zoning Enforcement Officer, preferably in writing – not the Zoning Board of Appeals.

1. GENERAL

1.1 *Jurisdiction of the Board.* In accordance with MGL ch. 40A, Section 14 the Board hears appeals from anyone denied a Huntington building permit; denied zoning enforcement action by the Town of Huntington, seeking to overturn a decision by the Zoning Enforcement Officer, seeking a special permit or variance under MGL ch. 40A.

1.2 *Composition of the Board.* In accordance with MGL ch. 40A, Section 12, the Board consists of three (3) regular and three (3) alternate members. An alternate member, selected by the chair, sits as a voting member of the Board only when a regular member is absent or recused due to a conflict of interest or other inability to act. When unrecused alternate members are not sitting on the panel as a voting member, they remain at the Board table and participate in the discussion. Board members are appointed by the Selectboard to terms whose length is so arranged that the term of one member expire each year. Massachusetts's law requires a unanimous vote for three-member zoning boards to grant a variance or

special permit, or to over-rule a decision on an appeal.

1.3 *Chair and clerk of the Board; term limits.* In accordance with MGL ch. 40A, Section 12, all the members of the Board annually elect one regular member to serve as chair and a regular or alternate member to serve as clerk. No member may serve more than two consecutive one-year terms as chair. This rule can be waived for one additional year under extraordinary circumstances, such as the refusal of any other member to chair the Board. The clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board. In the clerk's absence, an acting clerk shall be appointed by the members present to ensure that the records are kept.

1.4 *Conflict between these rules and the local or state zoning laws.* It is intended that the Zoning Bylaws shall govern in all respects regarding these rules and regulations. If there is any conflict between the provisions of these rules and the Zoning Bylaws, the Bylaws prevail. If there is any conflict between these rules and the General Laws of the Commonwealth of Massachusetts pertaining to zoning, the General Laws prevails.

2. APPLICATION FOR HEARINGS.

2.1 *Form of application.* Each application for action by the Board must be made on the official form and filed with the Town Clerk in one signed original. Submitting the signed original to the Town Clerk for filing makes this filing. The applicant is responsible for ensuring that all relevant boxes on the form are completed and all required information has been filled in.

2.2 *Time for filing applications.* Any application appealing an order or decision of the Building Inspector or Zoning Enforcement Officer must be filed within 30 calendar days from the date of the order or decision being appealed. Other public hearing applications may be filed at any time.

2.3 *Authority of applicant.* Any application brought by anyone other than the record owner of the property affected must give the name of the record owner and explain the applicant's relationship to the owner (e.g., lessee, holder of an option to purchase, attorney). The applicant must submit evidence at or before the hearing of the record holder's consent to the application being filed and heard, as well as relevant documents evidencing the applicant's authority or standing to bring the application. Relevant documents include but are not limited to: deeds evidencing ownership; signed purchase-and-sale agreements, leases, options to purchase; documents evidencing the identity of any current trustees.

2.4 *Materials that must be filed with the application.* The materials specified in the Application must accompany every application for a variance, special permit, or appeal from a decision of the Building Inspector/Zoning Enforcement Officer. These *mandatory materials* include, but are not limited to:

2.4.1 *Plan of the site.* The site plan (in three copies) must be dated, manually signed, and drawn to the scale of 40 feet (or less) to the inch. The Board may, when necessary, require the plan to be dated and manually signed by a registered engineer or registered land surveyor. The Board may, when necessary require an instrument survey. The plan must show ALL of the following:

- (a) Boundaries and dimensions of the applicant's lot or lots
- (b) The name and, where available, the width of all abutting streets or ways
- (c) The measurement of all setbacks (i.e., from the front property line, center of the right of way, all side property lines, and the rear property line)
- (d) The location and dimensions of all existing and proposed buildings, structures, accessory structures, and driveways
- (e) To the extent material to the application, all parking spaces, service areas, and other open uses
- (f) To the extent material to the application, the location of all existing and proposed signs and exterior lighting
- (g) All principal landscape features, including fences, walls, planting areas, walks, and tree lines
- (h) Three (3) copies of Assessor's map
- (i) Three (30 copies of Building Inspector's denial, if any

2.4.2 Topographical plan. If the applicant proposes changes in the property's existing topography or if the property in question is in the flood plain in whole or in part, a separate plan must be filed showing the grade lines.

2.4.3 Building elevations. Every application for a variance or a special permit must be accompanied by elevations of all existing and proposed construction. The elevations must show the building's dimensions, including the height from grade to the roof ridge and to the highest architectural element (if higher). The elevation must also indicate the heights of any existing buildings.

2.4.4 Blueprints, schematic plans, or sketches. Every application contemplating the construction or alteration of one or more buildings must be accompanied by a floor plan showing the location, dimensions, and use of rooms within the building. This can be an architect or drafter's blueprints or schematic architectural plan; if none is available, the applicant can submit a hand-drawn plan in scale (of one/eighth or one/fourth inches equals one foot).

2.4.5 Board of Health approval. A letter must accompany every application signed by the Board of Health indicating its approval of any septic plans and a copy of the plans so approved; or a letter signed by the Board of Health indicating that it will not require any changes to the existing septic system.

2.5 Inadequate plans or forms. The Board may in its discretion reject any plan as inadequate and may dismiss, with or without prejudice, any application for the failure to file adequate plans or to complete the application form. The Board may also ask the applicant to supplement the submission with additional information.

2.6 Other materials that can be filed with applications. Applicants may provide the Board with any other pertinent materials they wish. These *voluntary materials* include letters from abutters and neighbors, photographs of the site and neighborhood, analysis of the neighborhood's character (e.g., average setback, lot size, house size), written narratives.

2.7 Mechanism for filing accompanying materials. All mandatory accompanying materials must be filed in three copies and submitted to the ZBA at the time of filing the official application. Other than photographs of the site and neighborhood, all voluntary accompanying materials must be filed in three (3) copies and submitted to the ZBA no later than seven (7) calendar days before the hearing, so they will be available for the public's review. Original photographs may be submitted to the Board during the public hearing, and additional duplicates are not required. The originals will be retained in the ZBA records. Should the applicant submit written materials, other than letters from the public, at the hearing, the Board has discretion to continue the hearing to a later date, to allow for public and Board review.

2.8 Filing fees. Each application, unless submitted by an officer, a board, or a commission of the Town. A nonrefundable filing fee must accompany each application. The fees change from time to time, and a list of the current fees is available from the ZBA.

2.9 Withdrawal of applications. The Board may, in its discretion, permit an application to be withdrawn as follows:

2.9.1. Before the day of hearing. Before the day of the public hearing, an applicant may withdraw without prejudice by submitting a letter in writing requesting the withdrawal and stating the reason. The applicant need not attend the public hearing. Such withdrawal will not constitute unfavorable action on the part of the Board within the meaning of M.G.L. ch. 40A, Section 16 (on repetitive petitions).

2.9.2. At or during the public hearing. During the public hearing, an applicant can ask the Board to permit withdrawal of the application. The Board may, in its discretion, do so with or without prejudice.

2.9.3. After the public hearing or during Board deliberations. After the close of the public hearing, any request to withdraw the application will be granted only with prejudice. Such withdrawal will constitute unfavorable action on the part of the Board within the meaning of M.G.L. ch. 40A, Section 16 (on repetitive petitions).

Section 3 Certified List of Abutters and Map

Applications are not complete until the Board of Assessors has drawn up and certified a list of names and addresses of abutters and abutters to abutters within 300 feet of the property line of the petitioner together with the most recent Tax Map, showing the parcel and all parcels within 300 feet. Oftentimes an abutter may appear multiple times on the Assessors List for an applicant's application. These individuals will be sent only one certified mailing for any given application and tabulated only once when computing fees payable to the U.S. Postal Service and the town of Huntington.

Section 4 Fees

All applications shall be accompanied by nonrefundable filing fees:

A. Filing Fee: A check made out to the **Town of Huntington**. The filing fee shall be computed as follows:

of individual abutters + 1 (Applicant) + 1 (Owner, if not the applicant) x \$0.75= _____ Plus \$50.00= _____

B. Mailing Expense: Two (2) checks made out to the **U.S. Postal Services** for a certificate of mailing to all abutters on the Assessor's certified list, the owner and the applicant if the applicant is other than the owner computed as follows:

- 1.) # of individual abutters + 1 (Applicant) + 1 (Owner, if not the Applicant) x current Return Receipt Certified Mail Charge.
- 2.) 1 (Applicant) x current Return Receipt Mailing Charge.

Section 5 Employment of Outside Consultants

5.1 Employing outside consultants. When reviewing an application for a Special Permit, a Variance, or when conducting inspections in relation to, comprehensive permits, the ZBA may determine that the assistance of outside consultants is warranted due to the size, scale, technical or scientific complexity of a proposed project, because of a project's potential impacts, or because the Town of Huntington lacks the necessary expertise to perform the work related to the permit.

5.2 Types of consultants. In hiring outside consultant(s), the Board may engage engineers, planners, lawyers, urban designers or any other appropriate professional who can assist the Board in analyzing the project and to ensure compliance with all relevant laws, ordinances/bylaws, and regulations. Such assistance may include, but is not limited to, analyzing an application, monitoring or inspecting a project or site for compliance with Board's regulations or decision, or inspecting a project during construction or implementation.

Section 6 CONSULTING FEES.

6.1 Payment of consulting fees. As provided in MGL ch. 44, Section 53G, the Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning Bylaws, to pay for the employment of an outside consultant to assist the Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these rules and regulations. If the ZBA determines that such assistance of outside consultant(s) is warranted, it may require applicant(s) to 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.

6.2 Procedure. Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant.

6.2.1 Means of appeal. The applicant may appeal the Board's selection of a consultant to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within 20 days of the applicant's receipt of the designation.

6.2.2 *Grounds for appeal.* 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 20 days after the Board has mailed, by first class mail, 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 (3) 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 the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Board shall stand.

6.2.3 *Delivery of initial deposit.* If the applicant does not file an appeal within the time period specified above, the applicant must deliver the initial deposit, in the form of a certified or bank check, to the ZBA for deposit with the Town Treasurer, within the time limits set in the designation letter. Funds received by the ZBA pursuant to these rules 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 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 for the permit.

6.2.4 *Amount of deposit.* The initial deposit amount may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board can ask the applicant for supplemental deposits, which shall be due and payable within 14 days of the request.

6.2.5 *Grounds for dismissal.* Failure to pay the initial or any supplemental deposit is grounds for the Board to deny the special permit, variance, or other zoning relief.

6.2.6 *Return of unused funds.* The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit. At the completion of the ZBA'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 (future owner). A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this rule, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

Section 7 HEARING ASSIGNMENT AND NOTICE.

7.1 *Assignment for hearing.* Once an application is complete, it is assigned for hearing at a date and time set by the Board. Hearings are usually held as needed, and applications are scheduled for 7:00 PM (or later, if the Board is hearing other applications) and every half-hour thereafter. When an individual hearing cannot be completed in one session, the chair will announce the continued date and time during the public hearing.

7.2 *Notice of hearing.* The Board shall cause a notice of the hearing time and place and of the general subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town of HUNTINGTON once in each of two successive weeks, with the first publication not less than 14 days before the day of the hearing; and to be posted in the five (5) legal posting places within the town (Town Hall, Post Office, Moltenbrey's Market, Knightville Package Store and Norwich Hill Fire Station) for a period of not less than 14 days before the day of hearing. Notice shall also be sent by mail, postage prepaid, to: (a) the applicant and (if different) the owner of the property affected; (b) the owners of all abutting property; (c) the owners of land directly opposite on any public or private street or way; (d) the owners of land within 300 feet of the property line, all as they appear on the most recent applicable tax list and notwithstanding that the land is located in another city or town. Notice shall also be delivered to

the Planning Board of the Town of Huntington, any other Town boards and parties deemed by the Zoning Board of Appeals to be interested in the subject matter of the hearing, and the planning boards of adjacent towns.

7.3 Contents of notice. Notices are normally prepared based on the content of the application and are often of broader scope than the application would strictly require, in order permitting flexibility. Any applicant may, by informing the Board in writing (on the application form or otherwise), suggest content for the legal notice.

7.4 Extension of time. Times for public hearing and for action may be extended by written agreement between this Board and the applicant, but a copy of the extension must be filed with the Town Clerk to be deemed valid.

Section 8 HEARINGS

8.1 Hearings open to public. All hearings conducted by the Board are open to the public and conducted in accordance with the Massachusetts Open Meeting Law, MGL ch. 268A.2

8.2 Presiding member. The chair shall preside over all Board hearings, unless the chair is absent or recused. In such an absence or recusal, the members shall appoint a regular member to serve as acting chair. The chair or acting chair may administer oaths, summon witnesses, and call for the production of papers. The chair indicates the five voting members of the panel at the start of the hearing and appoints one or more alternate members to the panel if a regular member of the Board is absent or recused.

* State law guarantees the right to attend the hearing, but the right to speak at the hearing is solely within the province of the presiding chair.

8.3 Personal appearance. An applicant must either be present at the hearing or represented by a lawyer or other authorized person. If no one appears at the hearing, the Board shall, in its discretion: (a) enter an unfavorable decision on the application; (b) continue the hearing; or (c) treat the absence as being a request for withdrawal with prejudice.

8.4 Conduct of hearings. The Board shall determine the order of presentation and all other conduct of a hearing. The chair generally will ask applicants to present their entire case, after which the Board will invite, persons opposing or favoring the application to speak or present evidence and arguments. When the Board decides that further public comment is not forthcoming or is merely repetitive, the chair will close the public portion of the hearing, and no further public comment will be allowed, except in response to a direct question put by a Board member to a particular person.

8.5 Burden of proof. The applicant carries the legal burden to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Any false statement to the Board and any failure to state a material fact give the Board legal grounds to revoke any favorable action it has taken on the application, whether or not the Board explicitly reserves the right to modify or amend its action. Opponents are under a similar legal duty to present their cases truthfully and completely. Under MGL ch. 40A, Section 15, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.

8.6 Quorum. Three (3) members, whether regular or alternate, must be present in person to constitute a quorum and hear the matters designated by state law (special permits, variances, and appeals from the Building Inspector/Zoning Enforcement Officer's decisions). If a quorum of the Board is not present at any scheduled hearing, those members present, though less than a voting quorum for purposes of special permits, variances, or appeals, constitute a sufficient quorum to vote to continue and to adjourn the hearing. Applicants can ask the Board to continue a hearing to another date when a full three-member panel is available. Votes to continue and other administrative votes require a simple majority of those present.

* See generally MGL ch. 40A and 40B. For an application to be approved or a decision overturned, three (3) members must vote in favor; therefore, when only three (3) members are eligible to vote, all three (3) must vote in favor. Applicants can ask to continue the hearing to another date when a full three-member board is available.

8.7 Continuance. The Board may continue any matter to another specified time, provided that notice of the date, time, and place of the continued hearing and its subject matter is announced at the hearing being continued; and further provided that the notice is posted visibly in the Huntington Town Building for a period of at least three (3) days prior to the specified time.

Section 9 DECISIONS.

9.1 Recommittal and rehearing. If the Board determines, at any time after the public hearing closes, that an application or the evidence submitted to support that application fails to conform in all respects with the requirements of state and local law or fails to entitle the applicant to the requested relief, it may, prior to making its decision, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials into evidence. If the revision or additional evidence involves a substantial change from the original application or from the evidence adduced at the hearing, the Board must hold a new hearing thereon, notice of which shall be given as with an original application, before making its final decision.

9.2 Required vote of the Board. The concurring vote of a supermajority (i.e., three (3) members) is necessary to approve a request for a special permit under the Zoning Bylaws; to grant a variance in the application of the Bylaws; or to reverse an order or decision of the Building Inspector/Zoning Enforcement Officer. The concurring vote of a simple majority of the members of the Board is necessary to reverse any order or decision or to grant a permit under MGL ch. 41, Sections 81Y through 81CC inclusive, or to grant a comprehensive permit under MGL ch. 40B, Sections 20 through 23. Administrative matters, votes to reconsider, votes to adjourn, and votes to continue hearings are decided by a simple majority of the members present.

9.3 Time limits. The time limits for the Board's decisions shall be in accordance with state and local law. When matters are continued, the Board will ask the applicant to sign a form extending the time limits.

9.4 Filing of decisions. The decision of the Board on each application or appeal, stating the reasons for the decision and the vote of each member upon each question, must be filed in the office of the Town Clerk, where it becomes a public record. Copies are furnished to the administrative officer whose decision is appealed (in the case of an appeal), to the Building Inspector/Zoning Enforcement Officer in each matter in which he maintains a file, to the applicant or aggrieved person, and to the owner of the land (if the owner is not the applicant). A copy is retained in the permanent records of the Board and, for a variance or special permit, a copy of the decision and all plans referred to therein are filed with the Town Clerk.

9.5 Notice of decision. Notice of each decision of the Board, setting forth the date on which the decision was filed in the office of the Town Clerk and summarizing the action of the Board; will be mailed promptly to everyone who was sent notice of the hearing and to every person present at the hearing who asks for a copy of the decision and gives an address to which the notice should be sent. Each notice shall specify those appeals, if any, must be made pursuant to MGL ch. 40A, Section 17, and must be filed within 20 days after the decision is filed in the office of the Town Clerk.

9.6 Limited or conditional variances and special permits. When the Board decides a variance or special permit may be granted if it is limited in time or use or is conditioned upon compliance with regulations to be made and amended from time to time thereafter and specially designed to safeguard the zoning district and the Town, it shall impose such limitations and conditions by setting them forth in its decision, causing them to be made a part of the building permit to be issued, and issuing the landowner a notice containing the landowner's name and address, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted as is set forth in the decision of the Board on file in the office of the Town Clerk. No variance or special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the written decision (which must bear the Town Clerk's certification that 20 days

have elapsed and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied) is duly recorded by the Town Clerk in Hampshire County Registry of Deeds and indexed in the grantor index under the name of the record owner or is registered with the District of Hampshire County and noted on the owner's certificate of title. Each such decision shall be recorded promptly after expiration of the period for appeal set by law. The owner or applicant shall pay the fee for recording or registering.

9.7 Lapse of decisions. The rights authorized by the Board's orders and decisions shall lapse as follows:

9.7.1 Lapse of variance. If the rights authorized by a variance are not exercised within one year of the date the variance was granted, they lapse and may be reestablished only after notice and a new hearing, pursuant to MGL ch. 40A, Section 10.

9.7.2 Lapse of other rights. If the rights granted by the Board, other than variances, are not used or exercised, they shall lapse in accordance with the time limits set forth in MGL ch. 40A and the Zoning Bylaws.

9.8 Amendment, modification, or correction of orders and decisions. The Board may amend, modify, or revoke its decisions as follows:

9.8.1 Before final action. At any time before its decision is filed with the Town Clerk, the Board may modify or amend that decision, provided that the statutory time limits for taking final action are met.

9.8.2 After final action but before the appeal period has run. At any time prior to the expiration of 20 days after the decision is filed with the Town Clerk, the Board may modify or amend its decision, provided that notice of the modification or amendment is given to all persons to whom notice of the hearing was sent.

9.8.3 At any time, to correct inadvertent clerical errors. At any time that the Board discovers an error or omission in a decision, the Board may correct an inadvertent or clerical error, provided the correction does not constitute a reversal of a conscious decision or grant different relief.

Section 10 COMMUNICATIONS WITH THE BOARD.

10.1 Written communications only. Other than at a hearing or as e-mail, all communications to the Board must be in writing and in three (3) copies, submitted to the ZBA for distribution to the Board members and filing in the permanent files.

10.2 No ex parte communications. No applicant or interested party may hold an ex parte discussion (i.e., a discussion outside the forum of the public hearing) of any adjudicatory matter pending before the Board. Board members prior to the hearing or before a continued hearing may make site visits to the property and the neighborhood in question.

*The ex parte communication rules apply to *ad judicatory decisions*, which are those that relate to the zoning on a particular site, and not to *legislative decisions*, which are those that have a broader or more general application in the community. For example, amending the zoning bylaws is a legislative decision; granting a variance for a particular site is an *ad judicatory* decision.

10.3 Legal submissions. Arguments and briefs may be submitted, as well as requests for particular findings, orders, or decisions, which the Board in its discretion may adopt or reject. All arguments and briefs as well as requests for particular findings, orders, or decisions must be furnished in sufficient quantity to permit distribution to all members of the Board, to all other interested persons, and to the file.

Section 11. EFFECT OF RULES

11.1 Waiver by the Board. The Board may, for any particular application, waive compliance with any portion of these rules and regulations, but only if it finds that doing so is in the public interest, is not

inconsistent with the intent and purpose of the Zoning Bylaws and does not impair its ability to reach a fair decision and would be fair to both the applicant seeking the waiver and the other applicants who did not or will not seek waivers.

11.2 *Waiver by applicants and other parties.* The failure of the Board or any applicant or other person to comply with these rules and regulations shall be deemed waived unless someone objects *at the hearing* with regard to any matter arising before or during the hearing; or *within the statutory period for appeal from the decisions of this Board* as to any matter arising after the hearing.

Section 12 AMENDMENTS.

This Board may at any time amend or modify these Rules and Regulations with the concurring vote of a simple majority of the members present, and the amendment or modification shall take effect when a copy is filed with the Town Clerk.

Section 13 POLICIES AND ADVICE

13.1 Any advice or information given by any Board Member, or any other Official or Employee of the Town of Huntington shall not be binding on this Board.

Section 14 ADOPTION

The adoption of the foregoing rules and regulations by the Huntington Zoning Board of Appeals repeals all former rules of the Board.

Adopted this Twentieth of April, 2011

_____ George Webb, Chairman

_____ Marylou Spaulding, Clerk

_____ Ronald Craig, Member

Any party aggrieved because of their inability to obtain a permit or enforcement action or by any decision or order of the Building Inspector or other permit granting authority in the enforcement of this bylaw may appeal to the Board of Appeals, as provided in Section 8 of the Zoning Act. Any such appeal shall be taken within thirty (30) days of the decision or order which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the Town Clerk, who shall forthwith transmit copies thereof to the Board of Appeals and to the officer or board whose decision or order is being appealed. Such officer or board shall forthwith transmit to the Board of Appeals all documents and papers constituting the record of the case in which the appeal is taken.

Any person aggrieved by a decision of the Board of Appeals, whether or not previously a party to the proceeding, or any municipal officer, board or commission, may appeal to the Superior Court for Hampshire County or to the Land Court under Section 14A of Massachusetts General Laws, Chapter 240 within twenty (20) days after the decision has been filed in the office of the Town Clerk, as provided in Section 17 of the Zoning Act.

