

# **Rules and Regulations**

**for**

## **Special Permits**



**Board of Selectmen**

**Town Of Acton**

**\$15.00**

**Adopted: October 20, 2014**

Acton Planning Department  
472 Main Street  
Acton, MA 01720  
(978) 929-6631  
[www.acton-ma.gov](http://www.acton-ma.gov)

**SPECIAL PERMIT**

## TABLE OF CONTENTS

|  |  |                 |
|--|--|-----------------|
| <b>SECTION 1 - GENERAL PROVISIONS</b>          |  | <b>Page</b>     |
| 1.1  | Authority                                  | 4               |
| 1.2  | Purpose                                    | 4               |
| 1.3  | Applicability                              | 4               |
| 1.4  | Definitions                                | 4               |
| 1.5  | Coordination with Site Plan Special Permit | 5               |
| 1.6  | Waiver of RULES                            | 5               |
| 1.7  | Provision of Security                      | 5               |
| 1.8  | Advice from Town Staff                     | 5               |
| 1.9  | Amendments to the RULES                    | 5               |
| <br><b>SECTION 2 - PRELIMINARY REVIEW</b>      |  | <br><b>Page</b> |
| 2.1  | Preliminary Consultations                  | 6               |
| 2.2  | Form of Request                            | 6               |
| 2.3  | Scope of Town Staff Reviews                | 6               |
| <br><b>SECTION 3 - CONTENTS OF APPLICATION</b> |  | <br><b>Page</b> |
| 3.1  | Application Form                           | 7               |
| 3.2  | Certified Abutters List                    | 7               |
| 3.3  | Other Permits & Variances                  | 7               |
| 3.4  | Recorded Plans and Deeds                   | 8               |
| 3.5  | Plans                                      | 8               |
| 3.6  | Traffic Study                              | 10              |
| 3.7  | Additional Information                     | 11              |
| <br><b>SECTION 4 - FILING PROCEDURES</b>       |  | <br><b>Page</b> |
| 4.1  | Who may file an Application?               | 12              |
| 4.2  | Filing Fees                                | 12              |
| 4.3  | Submission to the Town Clerk and the BOARD | 12              |
| 4.4  | Review of Application                      | 13              |

**TABLE OF CONTENTS (continued)**

| <b>SECTION 5 - PUBLIC HEARING &amp; DECISION</b> |                                    | <b>Page</b>     |
|--|------------------------------------|-----------------|
| 5.1  | Public Hearing Notice              | 14              |
| 5.2  | Public Hearing Presentation        | 14              |
| 5.3  | Withdrawal of Application          | 15              |
| 5.4  | Time Period for Deliberation       | 15              |
| 5.5  | DECISION                           | 15              |
| 5.6  | Recording of DECISION              | 15              |
| 5.7  | Submission of Final Approved Plans | 16              |
| 5.8  | Appeal of DECISION                 | 16              |
| 5.9  | Time Limit for Permit              | 16              |
| 5.10   | As Built Plan                      | 16              |
| 5.11   | Limitation of the DECISION         | 17              |
| 5.12   | Repetitive Petition                | 17              |
| 5.13   | Amending a Special Permit          | 17              |
| <br><b>Section 6 - Appendix</b>                  |                                    | <br><b>Page</b> |
| A  | Filing Fees                        | 18              |
| B  | Application Form                   | 19              |
| C  | Public Hearing Notice - Form       | 21              |

## SECTION 1

### GENERAL PROVISIONS

#### 1.1 AUTHORITY

These RULES are adopted by the BOARD of Selectmen as authorized by M.G.L. Chapter 40A and the Acton Zoning BYLAW.

#### 1.2 PURPOSE

The purpose of these RULES is to establish uniform procedures for conducting the business of the BOARD of Selectmen under its jurisdiction as a Special Permit Granting Authority under the Zoning Bylaw.

#### 1.3 APPLICABILITY

Any person applying for a Special Permit under the BYLAW, whether or not governed by any other federal, state, or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these RULES.

#### 1.4 DEFINITIONS

The following defined terms are capitalized in these RULES.

|                     |  |
|---------------------|--|
| APPLICANT           | Any person or such person's authorized representative who files an APPLICATION for a PERMIT under the BYLAW.   |
| APPLICATION         | All plans, forms, reports, studies or other documents which are submitted to the BOARD under these RULES by an APPLICANT.  |
| BOARD               | The BOARD of Selectmen of the TOWN of Acton.   |
| BYLAW               | The Zoning BYLAW of the TOWN of Acton, as amended.   |
| DECISION            | Action by the BOARD on an APPLICATION.   |
| PARTIES IN INTEREST | The APPLICANT; abutters; owners of land directly opposite on any private or public street or way; and abutters to the abutters within three hundred 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 Acton Planning Board; and the Planning Board of every abutting city or town. |
| PERMIT              | A Special PERMIT under the BYLAW.  |
| RULES               | The Special PERMIT Rules and Regulations as set forth herein.  |
| TOWN                | The TOWN of Acton.   |
| Other Definitions   | Refer to the "Authority, Purpose, Definitions and Applicability"   |

and the "GROUNDWATER Protection District" provisions in the BYLAW for additional defined terms which are also capitalized when used in these RULES.

### **1.5 COORDINATION WITH SITE PLAN SPECIAL PERMIT**

In the case where the SPECIAL PERMIT also requires approval of a SITE PLAN SPECIAL PERMIT or SITE PLAN SPECIAL PERMIT amendment, the APPLICANT shall submit an APPLICATION for approval of a SITE PLAN SPECIAL PERMIT or amendment concurrently with its APPLICATION for a PERMIT hereunder.

### **1.6 WAIVER OF RULES**

Strict compliance with these RULES may be waived if the BOARD finds that the waiver is in the public interest or is irrelevant to the project, and is consistent with the intent and purpose of the BYLAW and these RULES.

1.6.1 Any request from an APPLICANT for a waiver of these RULES must be submitted, in writing, to the BOARD at the time of submission of the APPLICATION.

1.6.2 Such requests must clearly identify the provision/s of the RULES from which relief is sought and be accompanied by a statement setting forth the reasons why, in the APPLICANT'S opinion, the granting of such a waiver would be in the public interest or the specific information required is irrelevant to the project, and why a waiver would be consistent with the intent and purpose of the BYLAW and these RULES.

### **1.7 PROVISION OF SECURITY**

The BOARD may require in its DECISION that security be posted with the TOWN in such form and amount as is required by the BOARD to secure the satisfactory completion of all or any part of the work authorized under a PERMIT. The form of security shall be generally as required in the Performance Guarantee section of the Town of Acton Subdivision Rules and Regulations.

### **1.8 ADVICE FROM TOWN STAFF**

Any advice, opinion, or information given to the APPLICANT by a BOARD member, or by any agency, official, or employee of the TOWN shall be considered advisory only and not binding on the BOARD.

### **1.9 AMENDMENTS TO THE RULES**

The RULES may be amended by a majority vote of the BOARD after a public meeting.

## **SECTION 2**

### **PRELIMINARY REVIEW**

#### **2.1 PRELIMINARY CONSULTATIONS**

Consultations between a prospective APPLICANT and the professional staff of the TOWN prior to the filing of an APPLICATION with the Planning Department are strongly recommended and can prevent serious delays in the processing of the final APPLICATION.

Where significant exterior changes to a building are proposed, APPLICANTS are also advised to consult with the Acton Design Review Board (DRB) prior to the filing of an APPLICATION. The DRB reviews plans and APPLICATIONS, and advises the BOARD on Special Permit APPLICATIONS. The DRB is a TOWN committee that meets in the evenings. For an appointment send e-mail request to DRB@acton-ma.gov.

- 2.1.1 Any action or communication initiated by the APPLICANT prior to the filing of an APPLICATION with the Town Clerk and the Planning Department shall not constitute a PERMIT APPLICATION. The following RULES shall apply to preliminary consultations.

#### **2.2 FORM OF REQUEST**

All materials to be reviewed shall be provided in electronic PDF format to the Planning Department along with a letter requesting a review and including the name, address, and phone number of a person who may be contacted concerning the review. All correspondence and communication must be sent through the Planning Department.

#### **2.3 SCOPE OF TOWN STAFF REVIEWS**

TOWN staff will review preliminary materials in an attempt to avoid unnecessary technical deficiencies in the final APPLICATION and to promote efficiency in the formal review process.

- 2.3.1 Staff will limit their review of such materials to technical issues appropriate to their area of expertise and to assessments of whether the project in question adequately addresses anticipated concerns of the TOWN and the neighborhood. In general, staff will complete the preliminary review within 30 days.
- 2.3.2 The Planning Department may schedule a preliminary review meeting with other TOWN departments and the prospective APPLICANT.
- 2.3.3 Staff cannot assure the thoroughness, completeness, or correctness of any final APPLICATION. This remains the responsibility of the APPLICANT.
- 2.3.4 Through the preliminary review process staff will recommend any additional fee deposits that may be appropriate (see Section 6 Appendix A of these RULES).
- 2.3.5 If any other Special Permits are required from the BOARD for the project, then these should be discussed with the staff at this time.

## **SECTION 3**

### **CONTENTS OF AN APPLICATION**

An APPLICATION for a PERMIT which lacks information or is incomplete in any manner may be denied or seriously delayed. It is the responsibility of the APPLICANT to assure the accuracy and completeness of all information submitted to the BOARD as part of an APPLICATION. The APPLICANT shall be responsible for factually supporting all points relied upon in the APPLICATION including references for methodologies used in design calculations.

Except as otherwise noted, a complete APPLICATION for a PERMIT shall be made in electronic PDF format together with 2 paper copies and shall include the information listed in this Section 3 and all its subsections, and, where applicable, the information listed in Section 4.

Changes made during the course of the APPLICATION review process, and requests for amendments of previously issued PERMITS and approved SPECIAL PERMIT shall be submitted in the same manner as above with changes and amendments clearly identified.

If the SPECIAL PERMIT requires the filing of a SITE PLAN SPECIAL PERMIT submission requirements for said SITE PLAN SPECIAL PERMIT shall also be provided. Consult with the Planning Department staff during the preliminary review regarding appropriate filing arrangements.

A complete APPLICATION for a PERMIT shall include the following items.

#### **3.1 APPLICATION FORM**

Any APPLICATION for a PERMIT shall be made in writing and include the completed APPLICATION form entitled "Application for a Special Permit" – see Appendix B of these RULES.

- 3.1.1 In the case where the APPLICANT is a person other than the record owner of the property, the APPLICANT must obtain the owner's signature on this form indicating that the owner has knowledge of and consents to the APPLICATION.
- 3.1.2 If the APPLICANT is acting in the name of a trust, corporation or company, an authorizing vote shall be attached.

#### **3.2 CERTIFIED ABUTTERS LIST**

List of the PARTIES IN INTEREST as defined in these RULES, taken from the most recent tax list of the TOWN and certified by the Town Assessor. The APPLICANT shall pay any charges required by the Town Assessor for the list.

#### **3.3 OTHER PERMITS AND VARIANCES**

List and copies of variances, permits, and other special permits previously issued by other TOWN boards or State and Federal agencies, and a list of any variances or permits required to complete the proposed work. This list should include but not be limited to any permits from the Board of Health, the Conservation Commission, the Board of Appeals, the Planning Board, the State Dept. of Public Works, the Army Corp of Engineers, and

the State Dept. of Environmental Protection; and certificates issued by the Secretary of Environmental Affairs under the Massachusetts Environmental Policy Act.

NOTE: If any other special permits are required from the BOARD, the APPLICANT is hereby strongly advised to make the APPLICATIONS for such additional permits concurrently with this PERMIT APPLICATION.

### **3.4 RECORDED PLANS AND DEEDS**

A copy of the most recently recorded plan(s) and deed(s) for the LOT(s) on which the SPECIAL PERMIT is being sought, bearing the book number(s), page number(s), and date(s) of recording(s) or registration(s).

### **3.5 PLANS**

The Plan shall indicate where the proposed SPECIAL PERMIT will operate or be located on the site. Plans shall be legibly drawn to fully detail and explain the intentions of the APPLICANT. A Plan with the forms and contents as set forth below shall be submitted in electronic PDF, plus 11 copies thereof reduced to fit legibly on 11" x 17" or 8.5"x11" sheets.

The plans shall include at least the following information:

- 3.5.1 Locus Plan - A Locus Plan showing an area a minimum of one mile diameter at a scale of 1"=1200'. Major STREETS, BUILDINGS, brooks, streams, rivers and other landmarks should be shown on the locus plan with sufficient clarity to be easily discernible.
- 3.5.2 Design Certifications – Each plan sheet shall show, as far as applicable, the seal of a Registered Professional Engineer, Registered Land Surveyor, Registered Landscape Architect, Registered Professional Architect, or some combination of these as appropriate to the data on the sheet.
- 3.5.3 Floor Plans – If the SPECIAL PERMIT is for a USE proposed inside a BUILDING or STRUCTURE, the Floor Plan must identify where the proposed USE is to be conducted on the floor(s) in question. Each Floor Plan must show any proposed changes and be dimensioned to show the NET FLOOR AREA. Any change in the FLOOR AREA RATIO on the LOT shall be clearly noted as existing and proposed. The Floor Plan shall be drawn at a scale of 1/4"= 1'.
- 3.5.4 BUILDING Elevations and Architectural Renderings – If exterior BUILDING alternations are proposed, front, sides, and rear elevations showing all proposed changes at an appropriate scale generally not less than 1/8" = 1'; this should include architectural renderings (Adobe Photoshop or equivalent).
- 3.5.5 Site Characteristics –
  - 3.6.5.1 If the SPECIAL PERMIT is for a USE proposed inside an existing BUILDING without material exterior changes or alteration, a plan of the property showing in a general manner the LOT lines, the street on which the property has



FRONTAGE, existing BUILDINGS, STRUCTURES, driveways, parking lots and other improvements, Zoning District identification and boundaries including Flood Plain and Groundwater Protection Overlay Districts if applicable, and depicting clearly the location and outline of the proposed USE on the site. This can be shown a recent aerial photograph or plan view available from the Town of Acton GIS (available at [www.acton-ma.gov](http://www.acton-ma.gov)).

3.6.5.2 For all SPECIAL PERMITS for proposed outdoor USES, or if site improvements or BUILDING additions or material exterior modifications are proposed that do not require a separate application for a Site Plan Special Permit or Amendment, the following information shall be shown in an accurate manner:

- All LOT lines and boundaries of the site, with ownership of abutting properties indicated.
- If applicable, indication of where the proposed USE is to be conducted on the site.
- Areas intended for open (outdoor) storage with identification label and dimensions.
- Outline of BUILDING additions and modifications, and of all other proposed site improvements with setback dimensions to LOT line shown.
- Proposed changes or additions to drainage facilities.
- Access and utility easements.
- All required setbacks for operation areas, storage areas, parking, or loading facilities shall be dimensioned on the plan to demonstrate compliance with zoning requirements.
- All zoning district boundaries, including the boundaries of the Flood Plain and Groundwater Protection Districts, if applicable, shown in their proper location.
- A zoning table with proposed and required dimensions for setbacks, OPEN SPACE, FLOOR AREAR RATIO, and all other dimensional requirements to demonstrate compliance with the BYLAW.
- Any special site features including, but not limited to stone walls, fences, wells, wastewater disposal systems, historic STRUCTURES, and historic BUILDINGS.
- Site features such as, but not limited to, flood plains, waterways, drainage courses, and ledge outcroppings.
- All wetlands and wetland buffer area boundaries. Wetlands are defined as those areas subject to the provisions of either the “Wetlands Protection Act”, M.G.L., Chapter 131, Section 40, or the “Acton Wetlands Bylaw”.

3.5.6 Parking Plan – Except for a location in a Shopping Center with two or more Retail Stores, if the SPECIAL PERMIT is proposed for a USE on the LOT the following information shall be shown in a general manner:

- A parking lot layout plan for the entire LOT with a total number of parking spaces provided.
- In tabular format, the proposed USE and, where applicable, all other USES on the LOT with their respective exact NET FLOOR AREAS, seating, capacity or other

dimensional criteria to determine parking requirements for each USE as provided in the BYLAW.

- If applicable, the location and/or number of reserved parking spaces for the proposed USE, as evident from any existing or draft lease, rental, or purchase agreement.

3.5.7 Use and Preparation of Plans and Documents - The required information will assist the BOARD and the reviewing TOWN staff to evaluate the appropriateness of the proposed SPECIAL PERMIT in the proposed location and to determine zoning compliance.

- Where information is required in a general manner, the APPLICANT may use and annotate existing plans on record, as-built plans, or other previously generated documents, rather than generating them anew. However, the APPLICANT should verify that the older information reasonably reflects current conditions.
- Where accurate or exact information is required existing plans on record, as-built plans, and other previously generated documents may also be used. However, such plans and documents must be certified by an appropriate professional as accurately reflecting existing conditions. Where proposed changes or improvements on the LOT are limited in scope and area the extent of the accurate plan and document information can, in appropriate circumstances, be limited to the area of the changes and improvements and their surroundings.
- Plans and documents in the APPLICATION do not necessarily have to follow the itemized order set forth herein. But, the required information must be presented in a manner that clear, legible, and in a logical order to facilitate the review and understanding of the information that is presented.

### **3.6 TRAFFIC STUDY**

A traffic impact study will be required in all APPLICATIONS where the proposed SPECIAL PERMIT will, in the opinion of the BOARD, be likely to produce an additional 30 trip ends per peak hour (a.m. or p.m. or weekend, whichever is higher based on average figures) or an average of 400 additional trip ends per weekday based on the most recent edition of the Institute of Transportation Engineers' publication "Trip Generation". If no such listed use is sufficiently similar, a detailed traffic generation estimate, along with the methodology used, prepared by a registered professional engineer experienced and qualified in traffic engineering, shall be submitted. To avoid lengthy delays in the processing of an APPLICATION, consultations should be made by the APPLICANT with the Planning Department during the preliminary review process to determine whether an APPLICATION is likely to require a traffic study. A traffic study shall examine the following:

- 3.6.1 EXISTING TRAFFIC CONDITIONS including roadway geometries, traffic volumes, safety, delays, and levels of service for streets and intersections (whether in Acton or another town) affected by the proposed SPECIAL PERMIT(S).
- 3.6.2 ACCURATE TRAFFIC CONDITIONS GENERATION ESTIMATES of future traffic conditions including trip generation, trip distribution, volume to capacity ratios, and levels of service for existing streets and intersections (whether in Acton or another town) affected by the proposed project at the time of anticipated completion and 5 years beyond

anticipated completion. Impacts of other previously approved projects and of projects pending approval shall be taken into consideration (consult the Planning Department for list of such projects). Approach and departure route assignments shall be based on existing traffic patterns, minimum time paths, "time to work" data, market studies, or a combination thereof. All traffic information shall include data for both A.M. and P.M. peak hours, weekend peaks, as well as average total daily data. Any anticipated reduction in trips due to special characteristics of the proposed SPECIAL PERMIT must be fully explained and documented. Sight distances for turning movements to and from the site must be analyzed using AASHO standards. The adequacy of vehicular queuing storage at the site entrances shall also be demonstrated. The impact of any planned phasing of the project shall be discussed.

- 3.6.3 MITIGATION MEASURES that could be taken to reduce the impacts of the proposed SPECIAL PERMIT and their estimated cost. These should include demand management strategies such as staggered employee work schedules and promotion of carpooling as well as capacity enhancements such as added turn lanes, signalization, and improvements to intersections and medians. The study should take into account those improvements that are being planned by the TOWN or the State, and any proposed improvements must be consistent with the TOWN'S Master Plan.

### **3.7 ADDITIONAL INFORMATION**

The APPLICATION may contain whatever additional information the APPLICANT feels is necessary to properly inform the BOARD about the development including legal opinions, copies of deeds, historical data, studies, and reports.

Certain SPECIAL PERMIT APPLICATIONs, specifically those related to the transfer of development rights or increases in density, require additional or specific information, plans, and documents for which APPLICANTS should consult the Planning Department.

The BOARD is empowered by the BYLAW to require information in addition to that specifically required by the BYLAW or by these RULES. The BOARD will require the APPLICANT to supply additional information if it finds that such information is necessary to properly act upon the APPLICATION in question.

## **SECTION 4**

### **FILING PROCEDURES**

#### **4.1 WHO MAY FILE AN APPLICATION?**

Anyone may file an APPLICATION for a PERMIT provided that the property owner of record has signed the APPLICATION form thereby granting his/her consent to the filing of the APPLICATION.

#### **4.2 FILING FEES**

Any APPLICATION shall be accompanied by a fee in check form and made payable to the "Town of Acton". The filing fee shall be the amount established by the BOARD of Selectmen in accordance with MGL Ch. 40, S. 22F. The fee schedule is in the Appendix of these RULES. The filing fee is not refundable.

4.2.1 Additional Review Fee Deposits - So that the BOARD may make the findings required under the BYLAW and insure that the public safety will be protected, the BOARD may select and hire legal, engineering or planning consultants to review an APPLICATION and advise the BOARD. To cover the cost of these consulting services a review fee deposit may be required of an APPLICANT at the time of submission or at any appropriate time during the review process. As the scope of study and review will vary according to the size of a particular project, the APPLICANT is hereby strongly advised to consult the Planning Department concerning the scope and cost of any such studies during the preliminary review. Failure to do so could result in serious delays in the processing of the APPLICATION. The amount of the fee deposit will reflect the anticipated consultant fee(s) plus 10%. Note that some projects may require additional fees to cover further study if significant impacts or problems are found in the initial review. In accordance with M.G.L. Ch. 44, § 53G, any amount of such deposits remaining after the issuance of building permits for the proposed construction, plus any remaining accrued interest, will be repaid to the APPLICANT or the APPLICANT'S successor in interest.

4.2.2 Appeal from the Selection of the Consultants - The APPLICANT may appeal from the selection of an outside review consultant to the BOARD. 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 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 APPLICANT must specify the specific grounds which the APPLICANT claims constitute a conflict of interest or a failure to meet minimum professional requirements.

#### **4.3 SUBMISSION TO THE TOWN CLERK AND THE BOARD**

Two complete copies of the APPLICATION shall be submitted to the office of the Acton Town Clerk. The Clerk will certify the date and time of filing on both copies, keep one of the copies, and return the other to the APPLICANT. The copy returned by the Clerk and all remaining APPLICATION copies with the required filing fee shall then be filed forthwith by the APPLICANT with the Planning Department during normal business

hours. The APPLICANT may request and shall be entitled to a written receipt for the materials submitted.

#### **4.4 REVIEW OF APPLICATION**

The Planning Department will transmit a copy of an APPLICATION to various other TOWN departments, boards, committees, agencies, or independent consultants in order to ensure full and qualified review of the APPLICATION. Thirty-five (35) days will be provided for such reviews; failure to submit comments on the APPLICATION shall be deemed an approval by the reviewing party. The Planning Department will make available to the APPLICANT upon request a copy of any comments or recommendations received.

If significant information that was not included in the APPLICATION is presented at a later time or at the public hearing, the hearing may be continued to allow for staff review of the new material. Additional materials shall be submitted to the Planning Department in the same manner and form as the original APPLICATION

## **SECTION 5**

### **PUBLIC HEARING & DECISION**

#### **5.1 PUBLIC HEARING NOTICE**

The BOARD will hold a public hearing within 65 days of the APPLICATION filing date. Pursuant to M.G.L. ch. 40A, s. 11, the BOARD will give notice of the time and place of the public hearing and its subject matter, sufficient for identification, as follows:

- 5.1.1 By publication of the notice in a newspaper of general circulation in the Town of Acton once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the public hearing. The newspaper will send the bill for the advertisement directly to the Applicant and the Applicant shall pay the bill directly to the newspaper.
- 5.1.2 By posting the notice in a conspicuous place in the Acton Town Hall or on the official Town of Acton website for a period of not less than fourteen days before the day of the public hearing.
- 5.1.3 By mailing the notice with Accountable Mail (United States Post Office PS Form 3887-Firm Mailing Book for Accountable Mail) or other proof of mailing to all PARTIES IN INTEREST.
  - 5.1.3.1 At least 21 days before the day of the public hearing, the APPLICANT shall submit to the Planning Department the Accountable Mail letters containing the notice, addressed to each PARTY IN INTEREST, sender shown as the Town of Acton Board of Selectmen, 472 Main Street, Acton, MA 01720. The envelopes are to be sealed, ready to be mailed, accompanied by one copy of the notice for the BOARD record, and payment to the Town of Acton for the cost of the Accountable Mailings. In addition, submit a duplicate set of empty, open envelopes, standard postage prepaid, addressed to each PARTY IN INTEREST, sender as above, for the mailing of the DECISION notice.
- 5.1.4 Failure to properly notify PARTIES IN INTEREST and to publish a notice of the hearing could render the public hearing invalid and could cause serious delays in the processing of the APPLICATION.

#### **5.2 Public Hearing Presentation**

An APPLICANT may appear on his/her own behalf or be represented by an agent or attorney. It is the responsibility of the APPLICANT or his/her/its agent to present the APPLICATION to the BOARD and to the public. In the absence of an appearance, the BOARD may decide the matter using the information it has received. Failure to appear at a public hearing could seriously jeopardize the success of an APPLICATION.

- 5.2.1 Presentation of the APPLICATION by the APPLICANT should not exceed 10 minutes in duration except for good reason. The APPLICANT may be requested to answer questions raised by the BOARD or the public. The BOARD will retain any evidence which has been introduced at the hearing for reference in its deliberations on the case.

- 5.2.2 In no case will the BOARD allow new evidence to be admitted after the close of the public hearing unless this evidence was specifically requested by the BOARD prior to the close of the public hearing.

### **5.3 Withdrawal of APPLICATION**

Any APPLICATION for a PERMIT submitted hereunder may be withdrawn without prejudice by notice in writing to the BOARD prior to the notice of a public hearing being posted or mailed pursuant to Sect. 5.1 above. Withdrawal of any APPLICATION thereafter requires BOARD approval. No refund of fees will be provided if an APPLICATION is withdrawn.

### **5.4 Time Period for Deliberation**

The BOARD will act on each APPLICATION for a PERMIT within ninety (90) days after the public hearing, unless such APPLICATION has been withdrawn from consideration as set forth in Section 5.3 above.

- 5.4.1 Continuation & Extension - The period within which final action shall be taken may be extended for a defined period by written agreement between the BOARD and the APPLICANT. In the event that the BOARD determines that the APPLICATION is inadequate for the BOARD to make a finding, the BOARD may, at its discretion, continue the hearing to a later date to permit the APPLICANT to submit a revised APPLICATION. Such a continuation may not automatically extend the 90-day period within which final action shall be taken by the BOARD unless the extension is agreed upon by both the BOARD and the APPLICANT.

### **5.5 DECISION**

The concurring vote of four (4) of the five (5) members of the BOARD shall be necessary to decide in favor of granting a PERMIT. Only those members of the BOARD who were in attendance at the public hearing may vote on the APPLICATION in question.

- 5.5.1 The BOARD will file its DECISION with the Town Clerk and send a copy to the APPLICANT by certified mail. The BOARD shall also send a notice of its DECISION to the property owner, to other TOWN boards and departments, to PARTIES IN INTEREST, and to those who have requested such notice at the public hearing.

### **5.6 Recording of DECISION**

The recording of a DECISION is required by THE ZONING ACT and the BYLAW.

The APPLICANT shall be responsible for recording a full copy of the DECISION in the Middlesex South District Registry of Deeds in Cambridge or the Land Court and for paying any required recording fees. Verification of the recording including the document number or book/page number, must be submitted to the Zoning Enforcement Officer prior to issuance of a Building Permit or the start of any work. The PERMIT is not effective unless recorded with the deed to the property.

## **5.7 Submission of Final Approved Plans**

Where physical changes or improvements on the LOT are approved, the approved plan as amended by the BOARD in its DECISION of approval shall be submitted, prior to the issuance of a BUILDING permit, to the Planning Department for endorsement by the Zoning Enforcement Officer, in electronic PDF and scalable CAD formats and registered to the Massachusetts State Plane Coordinate System, plus 1 full size plan printed on 24" x 36" sheets. No BUILDING Permit will be issued until the plan is found to be in compliance with the BOARD'S DECISION and such endorsement has occurred.

## **5.8 Appeal of DECISION**

Any person aggrieved by a DECISION of the BOARD, whether or not previously a party to the proceeding, may appeal such DECISION in accordance with M.G.L., Chapter 40A, Section 17 within 20 days after the filing of the DECISION with the Office of the Town Clerk.

## **5.9 Time Limit for PERMIT**

Any PERMIT granted by the BOARD shall lapse within two years from the date of filing of the BOARD'S DECISION with the Office of the Town Clerk unless substantial use or construction under the PERMIT has begun, except for good cause, or if the BOARD has specified a shorter time period in the DECISION.

- 5.9.1 A reasonable extension of said time may be granted by the BOARD where good cause is shown. Any request to the BOARD for an extension of the specified time limitation set forth in the DECISION shall be made in writing to the BOARD at least thirty days prior to the expiration date. The BOARD reserves its rights to grant or to deny such extension if good cause for such extension is not shown. Failure to submit such a request as prescribed above shall be due cause for the BOARD to deny the requested time extension.

## **5.10 As Built Plan**

Upon project completion, where applicable, the APPLICANT shall provide two copies of the As Built Plan of the approved physical changes or improvements on the LOT, plus electronic copies in PDF and scalable CADD formats, registered to the Massachusetts State Plan Coordinate System. The As Built Plan shall show:

- 5.10.1 The entire site in outline, and in detail the area where changes or improvements were made including but not limited to the drainage, irrigation, and wastewater disposal systems; final grading and limits of clearing; all driveways and sidewalks; parking LOTS; public and private utilities (above and below grade) including all outdoor lighting; landscaping and BUILDINGS and STRUCTURES as they exist.
- 5.10.2 All elevations shall refer to the National Geodetic Vertical Datum (NGVD) of 1929.



### **5.11 Limitation of the DECISION**

The granting of a PERMIT constitutes approval only under the pertinent sections of the BYLAW. Other permits or approvals required by other governmental boards, agencies, or bodies having jurisdiction such as the Board of Health, Acton Water District, and Conservation Commission shall not be assumed or implied. The BOARD may condition any PERMIT hereunder on satisfactory demonstration of compliance with the requirements of other governmental bodies having jurisdiction prior to the start of any work on the site, the issuance of a Building Permit, or any other appropriate step in the development process. The APPLICANT is hereby encouraged to seek approvals and certificates of compliance from such other governmental bodies prior to or concurrently with the APPLICATION to the BOARD.

### **5.12 Repetitive Petition**

Pursuant to M.G.L., Chapter 40, Sect. 16, no APPLICATION which has been unfavorably and finally acted upon by the BOARD shall be acted favorably upon within two years after the date of final unfavorable action unless four members of the BOARD vote to find that specific and material changes in the conditions upon which the previous unfavorable action was based have occurred and describe such changes in the records of the BOARD'S proceedings, and all but one member of the BOARD consents to the consideration of the matter. Notice to PARTIES IN INTEREST shall be given of the time and place of the proceedings at which the question of consent will be considered.

### **5.13 Amending a Special PERMIT**

A previously granted PERMIT may be amended by written request to the BOARD or on the BOARD'S own motion. The BOARD shall determine whether any request for changes to the SPECIAL PERMIT constitutes a minor amendment or if such request should be considered a new APPLICATION requiring a public hearing. The BOARD may amend a PERMIT without a new public hearing provided it finds that the amendment is not significant to the public interest and is consistent with the purpose and intent of the BYLAW. Consultation with the Planning Department is recommended prior to the filing of any request to amend a PERMIT.

**SECTION 6**

**APPENDIX**

**Appendix A**

| <b><u>SPECIAL PERMITS - FEE SCHEDULE</u></b>   |                               |
|--|-------------------------------|
| <b>Application Filing Fees</b>   |                               |
| Special Permits or Special Permit Amendments   | \$250.00                      |
| Special Permits filed with a Site Plan Special Permit Application or Site Plan Amendment Application | \$100.00<br>(+ site plan fee) |
| Minor Amendment (per Section 5.13)   | \$100.00                      |
| <b>Additional Fees</b>   |                               |
| Drive-Up Bank Window   | \$100.00                      |
| Service Station  | \$100.00                      |

**Appendix B**  
**TOWN OF ACTON**  
**APPLICATION FOR SPECIAL PERMIT**  
**(ZONING BYLAW)**

Indicate the type of Special Permit Requested: \_\_\_\_\_

Under Zoning Bylaw Section: \_\_\_\_\_

Refer to the "Rules and Regulations for Special Permits" available from the Planning Department for details on the information and fees required for this application. Contact the Planning Department at 978-929-6631 with any questions concerning the Rules. Incomplete applications may be denied.

**Please type or print your application.**

1. Location and Street Address of proposed SPECIAL PERMIT \_\_\_\_\_

2. Applicant's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Email \_\_\_\_\_

3. Record Owner's Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Email \_\_\_\_\_

4. Surveyor \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Email \_\_\_\_\_

5. Engineer \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Email \_\_\_\_\_

6. Town Atlas Map(s)/Parcel Number(s) \_\_\_\_\_

7. Zoning District (s) of Parcel(s) \_\_\_\_\_

8. Detailed description of the proposed SPECIAL PERMIT:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. If applying for a USE SPECIAL PERMIT, declare all hazardous materials or wastes that are expected to be generated, stored, used, or disposed of by the proposed USE. The USE must comply with the TOWN'S Hazardous Materials Control Bylaw:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. If there was a change in USE, please describe the previous USE on the site: \_\_\_\_\_  
\_\_\_\_\_
11. If any SPECIAL PERMITS have been filed previously for this site give file numbers:  
\_\_\_\_\_
12. Please indicate expected number of employees, occupants and/or residents: \_\_\_\_\_
13. If a restaurant is proposed, please indicate number of proposed seats: \_\_\_\_\_
14. Hours of operation: \_\_\_\_\_
15. Please indicate the following:  
Total NET FLOOR AREA (existing): \_\_\_\_\_  
Total NET FLOOR AREA (proposed): \_\_\_\_\_
16. Describe any proposed modifications to the exterior features or appearances of the STRUCTURE: \_\_\_\_\_  
\_\_\_\_\_
17. If the proposed SPECIAL PERMIT is located on a developed site, please provide the site conditions for the following characteristics:  
LOT size: \_\_\_\_\_  
Total LOT coverage (existing): \_\_\_\_\_  
Total LOT coverage (proposed): \_\_\_\_\_  
Total OPEN SPACE (existing): \_\_\_\_\_  
Total OPEN SPACE (proposed): \_\_\_\_\_  
Total parking spaces provided on the site: \_\_\_\_\_  
Total parking spaces dedicated to proposed use (existing): \_\_\_\_\_  
Total parking spaces dedicated to proposed use (proposed): \_\_\_\_\_

The undersigned hereby apply to the Board of Selectmen for a public hearing and a special permit under Section 10.3 of the Zoning Bylaw approving the attached use form.

The undersigned hereby certify that the information on this application and plans submitted herewith is correct, and that all applicable provisions of Statutes, Regulations, and Bylaws will be complied with. The above is subscribed to and executed by the undersigned under the penalties of perjury in accordance with Section 1-A of Chapter 268, General Laws of the Commonwealth of Massachusetts.

\_\_\_\_\_  
Date                                      Signature of Petitioner(s)                                      Signature of Petitioner(s)

**RECORD OWNER'S KNOWLEDGE AND CONSENT**

I hereby assert that I have knowledge of and give my consent to the application presented above.

\_\_\_\_\_  
Date                                      Signature of Record Owner(s)                                      Signature of Record Owner(s)

**Appendix C**  
**ACTON BOARD OF SELECTMEN**  
**NOTICE OF PUBLIC HEARING**

In accordance with the provisions of Massachusetts General Laws, Chapter 40 A, Section 9, the Acton Board of Selectmen will hold a public hearing on the petition of:

for a SPECIAL PERMIT on a parcel located at:

on \_\_\_\_\_ at \_\_\_\_\_ P.M.,

at the Town Hall, 472 Main Street, Acton, Massachusetts.

Such permits may be granted by the Board of Selectmen under Massachusetts General Law, Chapter 40A and the Acton Zoning Bylaw in accordance with the "Rules and Regulations for Special Permits" all of which are available for review or purchase at the offices of the Board of Selectmen, the Planning Department, Building Department and the Town Clerk. A copy of the application is also available for review at these offices in Town Hall between 8:00 a.m. and 5:00 p.m., Monday through Friday.

The applicant or his/her representative will be at the hearing to present the reason(s) why the permit should be granted.

When the applicant or his/her representative has concluded their presentation, the Chairman of the Board will allow the Board members to speak to the matter under consideration or to raise questions and concerns. Subsequently, the Chairman will give the public the same opportunity to speak to the matter under consideration or to raise questions and concerns.

The Chairman will not allow any member of the public to interrupt anyone else while they are speaking. Each person wishing to speak at the hearing should be as brief as possible and should wait his/her turn. Each person speaking should avoid repeating the comments of those who preceded them. Each person speaking should state their name and address before they make their statement or ask questions.

Any party may appear in person, by agent, or by attorney at any hearing.

When all of the facts have been presented and all persons wishing to speak on the petition have been heard, the Chairman will close the hearing. In no case will the Board allow new evidence to be admitted after the close of the public hearing unless this evidence was requested by the Board prior to the close of the public hearing.