

## Dover Amendment

**MGL Sec 40A Sec. 3: Dover Amendment - No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.** cable or the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of telecommunications and cable or the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public. For the purpose of this section, the petition of a public service corporation relating to siting of a communications or cable television facility shall be filed with the department of telecommunications and cable. All other petitions shall be filed with the department of public utilities.

TOWN CLERK  
FRAMINGHAM

## Planning Board Rules & Regulations

On September 8, 1998, pursuant to MGL Chapter 40A, Section 9, the Framingham Planning Board held a Public Hearing to solicit comments on proposed Rules and Regulations and at a meeting of September 15, 1998, the Board voted 4-1-0 to adopt the following Rules and Regulations as the official Framingham Planning Board Rules and Regulations. Following additional Public Hearings, the Planning Board voted to amend these Rules and Regulations on January 11, 2000, March 27, 2001, July 12, 2007, June 12, 2008, January 14, 2010, July 7, 2011, February 16, 2012, April 12, 2012, May 21, 2012 March 21, 2013, April 25, 2013, June 20, 2013, July 11, 2013 and July 17, 2013 as set forth herein.

- Article 1: Adoption Amendment
- Article 2: Powers and Duties of the Planning Board
- Article 3: Organization: Membership; Terms of Office; Officers; Vacancies
- Article 4: Associate Member
- Article 5: Duties of Officers
- Article 6: Minutes
- Article 7: Meetings: Time; Location; Executive Session
- Article 8: Conduct of Meetings & Public Hearings
- Article 9: Quorums; Voting
- Article 10: Agenda Management
- Article 11: Standards of Conduct for Board Members
- Article 12: Site Visits
- Article 13: Regulations Governing Fees and Fee Schedules
- Article 14: Planning Board Personnel
- Article 15: Budget and Finances
- Article 16: Consultants
- Article 17: Central Business District Design Standards
- Article 18: Landscape Design Guidelines
- Article 19: Regulations Governing Applications for Site Plan Review for Dover Amendment Uses**

- d) The Town Treasurer shall prepare a report on activity in the Consultant Review Account on an annual basis. This report shall be submitted to the Board of Selectmen and the Town Manager for their review. The final report on the Consultant Review Account shall be printed in the Annual Report of the Town of Framingham.
- e) An accounting of an applicant's funds held in the Consultant Review Account may be requested by the applicant. The Planning Board Office, through the Town Treasurer, shall respond to the request in a timely fashion.
- f) Excess consultant review fees in the Consultant Review Account, including any accumulated interest, shall be returned to the applicant, or the applicant's documented successor in interest, at the conclusion of the review process as determined by the Planning Board.

(7) Selection Appeal. The applicant shall be notified of the consultant selection prior to initiation of consultant efforts. As provided in M.G.L. Chapter 44, § 53G, the applicant may administratively appeal the selection of the consultant to the Framingham Board of Selectmen, on grounds that the proposed consultant selected has a conflict of interest or that the proposed consultant does not possess the minimum required qualifications of an educational degree or three (3) or more years of practice in, or closely related to, the field at issue. Such an appeal may be initiated by the applicant filing notice with the Town Clerk within seven (7) calendar days of notice of the selection. The consultant selection made by the Planning Board shall stand if one (1) month passes without decision by the Board of Selectmen on said appeal. The required time limits for action upon an application by the Planning Board shall be extended by duration of the administrative appeal. This appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

(8) Remedy. Failure of an applicant to pay the consultant review fee determined by the Planning Board, or to replenish the special account when requested, may be grounds for disapproval.

**Article 17: Central Business District Design Standards**

Refer to the Framingham Planning Board's Central Business District Design Standards Handbook for Central Business District Requirements.

**Article 18: Landscape Design Guidelines**

Refer to the Framingham Planning Board's Landscape Design Guideline Handbook for Landscaping Requirements.

**Article 19: Regulations Governing Applications for Site Plan Review for Dover Amendment Uses**

**19.1 Introduction**

**19.1.1. Purpose**

This Article has been adopted to provide additional explanation regarding the requirements and scope of the review of applications and the site plan review hearings by the Planning Board; and to provide guidance under Framingham Zoning By-Law Section IV.I, Site Plan Review, to those applicants and applications exempt under M.G.L. ch. 40A, § 3, the Dover Amendment (hereinafter, "Dover uses").

The Dover Amendment provides: "No zoning ordinance or by-law shall...prohibit, regulate or restrict the use of land or structures for religious uses or for educational purposes...provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements." The purpose of this Article is to ensure that the scope of site plan review applied to Dover uses under Section IV.I of the Zoning By-laws is narrowed in scope so as to comply with the requirements of the Dover Amendment.

#### **19.1.2. Applicability**

(a) This Article applies to any structure, use, alteration or improvement as to which the Dover Amendment applies, requiring limited site plan review and approval under Zoning By-Law Section IV.I.2(a)-(d). With regard to Dover uses, the provisions of this Article as amended from time to time shall govern and any other Regulations adopted by the Planning Board for Site Plan Review under Section IV.I of the Zoning By-laws are not applicable.

(b) Nothing in this Article relieves the applicant of its obligation to comply with and satisfy all relevant sections and requirements under the Zoning By-Law.

### **19.2. Application and Review Procedure**

#### **19.2.1. Determination of Status under M.G.L. ch. 40A, § 3**

Pursuant to Zoning By-Law Section IV.I.4(a), prior to filing an application for site plan review with the Planning Board, an applicant must submit a request to the Building Commissioner for a written determination of whether the provisions of M.G.L. ch. 40A, § 3 are applicable. This determination as to whether the Dover Amendment applies to a particular proposed use will be made solely by the Building Commissioner.

#### **19.2.2. Submission of Applications**

Following a written determination from the Building Commissioner, an applicant shall submit the application for site plan review approval to the Planning Board in accordance with Zoning By-Law Section IV.I(4)(b)-(f) and (h), together with a copy of the Building Commissioner's written determination.

#### **19.2.3. Contents and Scope of Application**

The Planning Board has identified specific subsections of Zoning By-Law Section IV.I(5) not applicable to Dover use applicants. Specifically, a Dover use applicant:

(a) is not required to provide information under Zoning By-Law Section IV.1(5)(a) (8), (10), (15), (16) and (17); and (5)(b), (c), (d) and the type and color of materials to be used on all facades under (e);

(b) is not required to provide the Traffic Impact Assessment referenced in By-Law Section IV.1(5)(g)(1);

(c) is not required to provide the Environmental Impact Assessment referenced in By-Law Section IV.1(5)(g)(2);

(d) is not required to provide the Fiscal Impact Assessment referenced in By-Law Section IV.1(5)(g)(3);

(e) is not required to provide the Community Impact Assessment referenced in By-Law Section IV.1(5)(g)(4); and

(f) is not required to address the Traffic Impact Standards, the Environmental Impact Standards, the Fiscal Impact Standards, or the Community Impact Standards under IV.1(6).

### 19.3. Public Hearing

#### 19.3.1. Opening of Public Hearing

At the outset of the public hearing on a Dover use application, the Chairperson will:

(a) identify those Sections of Section IV.1 that are relevant to the application to be reviewed by the Planning Board; and

(b) inform the public of the Building Commissioner's written determination of the applicability of M.G.L. ch. 40A, § 3 including making available at that hearing a copy of such determination;

(c) Review for the public the provisions of Article 8 of the Planning Board's Rules and Regulation regarding conduct of meetings and public hearings.

#### 19.3.2. Public Comment

A public hearing is also an opportunity for members of the public to ask questions or make comments about the proposed development project. The Planning Board through its Chair will entertain comments from residents about the Application under consideration that are within the scope of the Planning Board's jurisdiction. At the outset of public comment, the Chair will direct the public to frame their questions and comments to issues raised by the Application that are within the Planning Board's jurisdiction.

### 19.4. Decision

A decision on a Dover use application will be made in accordance with Zoning By-Law Section IV.1(7)(a)-(b). Subject to administrative or other municipal requirements beyond its control, the Planning Board will work diligently to complete its limited site plan review within 60 days of the filing of a complete application.

Approval of a Dover use application will not require off-site improvements as a condition of approval.

#### 19.4.1. Approval

The Planning Board shall approve a Dover use application in accordance with Section 7.b. of the Zoning By-law, but the Planning Board's review shall be limited to those provisions imposing reasonable regulations upon the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking and building coverage requirements as provided in M.G.L. ch. 40A, §3.

#### 19.4.2. Conditions, Limitations and Safeguards

In granting approval of a Dover use application the Planning Board may impose reasonable conditions, limitations and safeguards upon the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking and building coverage requirements as provided in M.G.L. ch. 40A, §3, which conditions shall be in writing and shall be a part of such approval. Except as such conditions specifically relate to the bulk and height of structures and determining yard sizes, lot areas, setbacks, open space, parking and building coverage requirements, such conditions will not include matters and subjects contained in:

- (a) By-Law Section IV.I(8)(a),(b), (c), (d), (e), (f), (g) and (i);
- (b) By-Law Section IV.I(8) as to mitigation measures.

#### 19.4.3. Applicability of By-Law Section IV.I(9)

In accordance with Zoning By-Law Section IV.I(9)(c), the Planning Board, in consultation with Town Counsel, shall be responsible for deciding the meaning or intent of any provision of By-Law Section IV.I which may be unclear or in dispute.

### Article 20: Adoption of M.G.L. 39, §23D, "Mullin Rule"

#### 20.1.1 Language from MGL 39, §23D

*Section 23D. (a) Notwithstanding any general or special law to the contrary, upon municipal acceptance of this section for 1 or more types of adjudicatory hearings, a member of any municipal board, committee or commission when holding an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. Before any such missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothin in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.*

#### 20.1.2 Adoption of MGL 39, §23D, the "Mullin Rule"