



TOWN OF CONCORD

Zoning Board of Appeals

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Regulation and Procedure Special Municipal Account Outside Consultant Review Fees and Procedures

1. Adoption by local Board/Authority: Adoption by Zoning Board of Appeals as provided under M.G.L. Ch.44, Section 53G as it relates to the Board's permit-granting authority for special permits, variances, and any other permits authorized by the Concord Zoning Bylaw and the Zoning Act, General Laws Chapter 40A.

2. Purpose. When reviewing an application for a special permit or variance, the Board, at its sole discretion, may determine that the assistance of outside consultants is warranted due to the proposed project's size, scale, complexity, potential impact or use of the land.

The Board may require that applicants pay a "review fee" consisting of the reasonable costs incurred by the Board for the employment of a qualified independent consultant engaged by the Board to assist in the review of an application. Upon receipt of an application, the Board (or its designated staff) shall identify the need for an outside consultant and prepare a scope of services for an outside consultant.

3. Consultant Selection. In hiring outside consultants, the Board may engage engineers, planners, lawyers, or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws and regulations. An outside consultant shall assist the Board, in review and comment prior to action by the Board, in plan review, impact analysis, inspection or other technical or legal assistance necessary to ensure compliance with all relevant laws and regulations. Minimum qualifications of an outside consultant shall consist either of an educational degree in, or closely related to, the field at issue and, if the field is licensed or registered by the Commonwealth, the respondent holds such license or registration.

Outside consultants shall be selected by the Board and retained by the Board (in accordance with the Town's procurement requirements), with the actual and reasonable costs for their services to be paid by the applicant. Projects that are deemed by the Board to require review by outside consultants shall be delivered to the selected consultant(s), who shall submit a cost for the requested consultant services to the Board. To the extent possible, the Board shall select consultants that are not working for an applicant currently before the Board.

3. Submittal of funds. Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from the special account may be made at the direction of the Board without further appropriation and shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay for review fees shall be grounds for denial of the respective application or permit.

4. Definition of “Project” under 53G. For purposes of the management of consultant fees under the 53G procedure adopted herein, the term “project” shall mean the work of the designated consultant and the conclusion of the “project” shall occur when the Board approves the report submitted by the consultant.

5. Handling of Consultant Review Fees. The consultant review fee is to be deposited into a special account designated by the Town Treasurer as set forth in M.G.L. Ch.44, section 53G. The Town Treasurer shall, from time to time, issue such rules and regulations for administration of these funds and deposits as may be necessary, providing that such rules and regulations shall be consistent with best accounting practices, with the Town’s bidding and accounting procedures and in conformance with applicable state and federal laws and regulations, including Section 53G of Chapter 44.

6. Appeal from the Selection of the Consultant. The applicant shall be notified of the consultant selection prior to initiation of consultant efforts. As provided in M.G.L. Ch.44, section 53G, any applicant may take an administrative appeal from the selection of the outside consultant to the Select Board. The grounds for an administrative appeal shall be limited to claims that the consultant selected has a conflict of interest or that the proposed consultant does not possess the minimum required qualifications. Such appeals may be initiated by the applicant filing notice with the Town Clerk within seven calendar days of notice of selection. The consultant selection made by the Board shall stand if one month passes without decision by the Select Board on said appeal. The required time limits for action upon an application by the Board shall be extended by the 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.

7. Remedy. Failure of an applicant to pay the consultant review fee determined by the Board, or to replenish the special account when requested, may be grounds for denial.

8. Effective Date. This regulation was adopted by the Board on March 11, 2021, in accordance with the requirements of M.G.L. Ch.40A.