

TOWN OF WESTPORT
ZONING BOARD OF APPEALS
RULE REGARDING IMPOSITION OF CONSULTANT FEES

The following Rule is adopted and promulgated, pursuant to Mass. Gen. Laws, Chapter 40A, Sections 9 and 12 and Mass. Gen. Laws, Chapter 44, Section 53G.

1. When considering an application for a variance, a special permit, planned development approval, comprehensive permit, or any other permit, appeal, finding or approval within the authority of the Town of Westport Zoning Board of Appeals (the "Board") under the Zoning Bylaws of the Town of Westport, Massachusetts or any other applicable federal, state or local law, rule, requirements or regulations, the Board may determine that the assistance of outside consultants is warranted due, for instance, and without limitation, to the size, scale or complexity of a proposed project, because of the project's potential impacts, or because the Board lacks the necessary expertise to perform the work related to the matter before the Board. To provide for such assistance, the Board may require that an applicant deposit a sum of money, in an amount to be determined by the Board, to retain and utilize the services of such consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

2. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist it to ensure compliance with all relevant laws, bylaws and codes, ordinances, standards and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the applicable statutes, codes, bylaws, ordinances, regulations and conditions, or inspecting a project during construction or implementation.

3. Funds received by the Board pursuant to this Rule shall be deposited with the Town Treasurer, who shall establish a special account for this purpose, consistent with the terms and provisions of Mass. Gen. Laws, Chapter 44, Section 53G. Expenditures from this special account may be 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. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the

application. Alternatively, in the discretion of the Board, approval of any such application may be conditioned upon payment of any outstanding review fees.

4. At the completion of the Board's review, 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. A final report of said account shall be made available to the applicant or applicant's successor in interest upon request. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

5. Any applicant or property owner assessed such a consultant fee may take an administrative appeal from the selection of the outside consultant to the Select Board. Such appeal must be made in writing and may be taken only within ten (10) days after the Board has provided notice to the applicant of the selection. The grounds for such an appeal shall be limited to:

(a) claims that the consultant selected has a conflict of interest; or

(b) the consultant does not possess the minimum, required qualifications. The minimum qualifications shall consist of either 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 no decision is made by the Select Board within one (1) month following the filing of the appeal, the selection made by the Board shall stand.

Adopted and promulgated on July 7, 2021.