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Date: 08/21/2019 04:37 PM
Subject: Waiver of fees

Good afternoon folks,

In light of the recent exchange with Mr. Chris Loreti, I wanted to share with you an excerpt from “Zoning Practice: Procedures for Obtaining Variances and Special Permits,” by Martin Healy, Esq., § 5.4 Massachusetts Basic Practice Manual 5–8 6th Edition 2017, MCLE, Inc., which discusses Special Permit Granting Authorities’ general authorities to create rules and customs, and to waive them, including the waiver of their fees, which provides in relevant part:

§ 5.4.1 Board Rules and Customs

Section 9 of the Zoning Act provides that SPGAs “shall adopt and from time to time amend rules relative to the issuance of [special] permits, and shall file a copy of said rules in the office of the city or town clerk.” The SPGA’s rules “shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.” G.L. c. 40A, § 9, ¶ 10. (Section 9A contains substantially identical language concerning special permits for adult bookstores and motion picture theaters.)

Section 12 of the Zoning Act provides that

The board of appeals shall adopt rules, not inconsistent with the provisions of the zoning ordinance or bylaw for the conduct of its business and for purposes of [G.L. c. 40A] and shall file a copy of said rules with the city or town clerk. In the event that a board of appeals has appointed a zoning administrator in accordance with [G.L. c. 40A § 13] said rules shall set forth the fact of such appointment, the identity of the persons from time to time appointed to such position, the powers and duties delegated to such individual and any limitations thereon.

Section 15 of the Zoning Act further provides that “[m]eetings of [a board of appeals] shall be held at the call of the chairman or when called in such other manner as the board shall determine in its rules.”

The requirement for filing of the rules of a PGA or an SPGA with the municipal clerk is “directory,” not mandatory, and failure to so file will not affect the validity of the rules. *Kiss v. Bd. of Appeals of Longmeadow*, 371 Mass. 147, 157–58 (1976). Failure to adopt rules altogether is not grounds for annulling zoning relief absent a showing of prejudice. *Burwick v. Zoning Bd. of Appeals of Worcester*, 1 Mass. App. Ct. 739, 742–45 (1974). Older cases have held that a zoning board was bound to give notice in accordance with its own rules. See, e.g., *Co-Ray Realty Co. v. Bd. of Zoning of Boston*, 328 Mass. 103, 107 (1951) (notice requirements); *Roman Catholic Archbishop v. Bd. of Appeal of Boston*, 268 Mass. 416, 418 (1929) (publication of notice). ***More recent cases have upheld the authority of local boards to waive rules relating to other procedural matters. See Zartarian v. Minkin, 357 Mass. 14, 18 (1970) (method of preparing written decision); see also Lynch v. Bd. of Appeal of Boston, 1 Mass. App. Ct. 353, 357 (1973) (filing fees under Boston Zoning Enabling Act).***

I have not decided whether Mr. Loreti’s correspondence warrant further correspondence from this Office, including the foregoing.

Nonetheless, while I’m satisfied with my previous analysis, this may prove useful for your future discussions.

Sincerely yours,

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