

PEPPERELL PLANNING BOARD
RULES FOR DEPOSIT OF PERFORMANCE SECURITY PURSUANT TO SECTION
53G1/2 OF CHAPTER 44 OF THE GENERAL LAWS

For the purpose of providing for the receipt and disposition of security in the form of cash, bonds, negotiable securities, sureties or other financial guarantees in connection with the securing of performance of any obligation by an applicant to the Planning Board for a permit, special permit or any other approval or authorization, and in accordance with the provisions of section 53G1/2 of Chapter 44 of the General Laws, the Planning Board adopts these rules.

Section 1. Purpose

The purpose of these rules is to provide a mechanism for the Planning Board to receive, administer, and expend, as necessary, financial security posted by applicants in connection with applications for, and the Planning Board's grant of, permits, special permits, and any other approval or authorization ("approvals") for which the Planning Board determines that performance of an obligation under such approval should be secured by the deposit of financial security.

Section 2. Scope

It is the intent of these rules to govern as broad a range of situations as possible in which the Planning Board requires some form of security from applicants for approvals, provided only that these rules shall not apply to deposits or other financial surety received under the Subdivision Control Law, including G.L. c. 41, § 81U.

Section 3. Form and Handling of Security

- (a) Subject to any restrictions set forth in any general or special law or Town bylaw, the Planning Board may require, accept, hold and apply financial security in any reasonable form, including, but not limited to, a deposit of money or negotiable securities, a bond issued by a bonding or surety company authorized to do business in the Commonwealth of Massachusetts, and other financial guarantees, excluding however a letter of credit.
- (b) Any deposit of financial security received under these rules shall be held by the Tax Collector/Treasurer in a special account established specifically for such purpose, separate and apart from other funds. Financial security which may, by its terms, earn interest shall be deposited in an interest-bearing account with a Massachusetts bank. All interest accruing on each such account shall be added to the principal of such account for disposition as set forth herein. Investment or other earnings which may accrue on other forms of financial security shall also be credited to the principal amount deposited.

Section 4. Performance Standards

- (a) The Planning Board shall be responsible for determining, in the exercise of its reasonable discretion and in good faith, the extent, quality and adequacy of any work done by or on behalf of such applicant or performance by such applicant of the obligation for which such financial security was given. The Planning Board may, but need not, reduce the amount of financial security held upon proof of satisfactory partial work or performance by such applicant, provided that nothing herein shall require that any such reduction be in any particular proportion to the extent of such performance.
- (b) If and when the Planning Board determines that such applicant has fully and satisfactorily completed all work and performed all obligations for which such financial security was given, such security shall be released and returned to the applicant, including any accrued interest or other earnings, as the case may be.

Section 5. Default

- (a) If the Planning Board determines at any time that the applicant who posted such financial security is in default of his, her or its obligations, whether because of a failure to complete such work or performance by a designated deadline or the unsatisfactory quality of such applicant's work or performance, or otherwise, the Planning Board may declare such applicant to be in default.
- (b) Upon a declaration of default, the Planning Board shall be entitled to apply any and all financial security posted by such applicant, including any interest or other earnings received thereon, to the completion of the work or the performance of the obligations for which such financial security was given. Without limitation, the Planning Board may take any and all actions necessary or appropriate to enforce any bond and demand payment under any other form of security, and any money received as a result thereof shall be deposited in an account held by the Tax Collector/Treasurer under Section 3. Monies in such account may be expended by the Planning Board, without further appropriation, to complete the work or perform the obligations which the applicant was obliged to do or perform. Any monies remaining in such account after all work has been done and all obligations performed to the full satisfaction of the Planning Board shall be returned to the applicant, including any accrued interest or other earnings.

Section 6. Procedure for Return of Financial Security

- (a) At any time, and from time to time, an applicant whose financial security is being held by the Tax Collector/Treasurer may give written notice to the Planning Board that in such applicant's opinion the work or performance that such financial security was intended to secure has been fully and satisfactorily completed. Such notice shall contain a demand for the return of the financial security and the full name and address of the applicant. If the Planning Board determines that such work or performance has been fully

and satisfactorily completed, then it shall release the financial security, or so much of it as may then remain, including any accrued interest or other earnings, as set forth in Section 5. If the Planning Board determines that such work or performance has not been fully and satisfactorily completed, it shall, within forty-five (45) days after receipt of the applicant's notice and demand, specify in a written notice to the applicant the work or performance which remains incomplete or unsatisfactory. If such 45-day period expires without such specification, then the applicant shall be entitled to the return of all of the financial security then remaining, including any accrued interest or other earnings. Any notice under these rules by an applicant to the Planning Board shall be given by certified mail, return receipt requested, or by delivery to the Town Clerk, and shall not otherwise be effective.

- (b) If any applicant appeals from an act or omission of the Planning Board under these rules, whether by means of an action in the nature of mandamus or certiorari or otherwise, and such action results in a judgment in favor of the Planning Board, then the Planning Board's reasonable attorneys' fees and expenses incurred in defense against such action may be reimbursed from the financial security given by such applicant.

Section 7. Severability

If any term, condition or provision of these rules should be found by a court of competent jurisdiction to be illegal, invalid or unenforceable as applied under particular circumstances, such term, condition or provision shall not be deemed stricken from these rules but shall, to the greatest extent possible, be deemed applicable only to such particular circumstances. The illegality, invalidity or unenforceability of any term, condition or provision of these rules shall not affect the legality, validity or enforceability of any other term, condition or provision of these rule.