



City of Newburyport Zoning Board of Appeals Rules and Regulations

As required by MGL Chapter 40A Section 9 and Section 12 and Chapter 40B Section 21

Adopted April 26, 2011

**CITY OF NEWBURYPORT
ZONING BOARD OF APPEALS**

RULES AND REGULATIONS

**PART 1 – RULES AND REGULATIONS AS REQUIRED BY SECTION 9 AND
SECTION 12 OF CHAPTER 40A OF THE MASSACHUSETTS
GENERAL LAW**

ARTICLE ONE – ORGANIZATION

SECTION 1.1: MEMBERS AND OFFICERS

The Zoning Board of Appeals shall consist of five regular and two associate members appointed by the Mayor. At the second meeting in February, the regular members of the Board shall elect all officers of the Zoning Board to include a Chairperson, Vice-Chairperson, and Clerk. In the event an elected member vacates their position, an election shall be held within 60 days of receipt of written notification by the Zoning Board of Appeals of such opening.

SECTION 1.2: RULES OF ORDER

The Zoning Board of Appeals shall be governed by the Chapter 40A and all other applicable laws of the Commonwealth of Massachusetts and ordinances of the City of Newburyport. Robert's Rules of Order as revised shall serve as the parliamentary guidelines.

SECTION 1.3: THE CHAIRPERSON POWERS AND DUTIES

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules, he/she shall decide all points of order, unless overruled by a majority of the Board in session at the time. He/She shall appoint such committees as may be found necessary or desirable.

In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning Ordinance of the City of Newburyport and subject to these rules and further instructions of the Board, the Chairperson shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory authority. He/She shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

SECTION 1.4: THE VICE-CHAIRPERSON POWERS AND DUTIES

The Vice-Chairperson shall act as Chairperson in the case the Chairperson is absent, is disabled, or otherwise unable to perform his/her duties. If both the Chairperson and the Vice-Chairperson are absent, the Clerk shall act as Chairperson and appoint an Acting Clerk.

SECTION 1.5: CLERK POWERS AND DUTIES

The Clerk shall be a member of the Board, and shall with assistance from the Office of Planning and Development, subject to review by the Board and its Chairperson, supervise all of the clerical work of the Board including: all correspondence of the Board, sending of all notices required by law, preparation of rules and orders of the Board, receive and scrutinize all applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain necessary files and indices. If the Clerk is absent, the Chairperson shall appoint an Acting Clerk.

SECTION 1.6: ASSOCIATE MEMBERS

Associate members shall sit on the Board in case of the absence, inability to act, or apparent conflict of interest on the part of any Board member, or as part of a regularly scheduled alternating rotation among the regular and/or associate members. Associate members shall attend all meetings regardless of rotation.

Associate members may participate in all deliberations. However, they may not make motions or vote on any application before the Board when five (5) regular members are in attendance. The Chairperson prior to a public hearing shall indicate those associate members who shall be hearing and voting on the matter.

The Chairperson after due reference to the official voting record from the previous meeting(s) (noting the last associate to have voted) shall select the other associate member to sit as the voting member for that entire meetings agenda. In the event of a continued hearing, the associate that was present for the matter shall be required to sit through and be included in the vote. (Please note: After the adoption of this Section, the senior associate member will lead off the rotation.)

ARTICLE TWO – MEETINGS

SECTION 2.1: ORDER OF BUSINESS

The Order of Business at all regular meetings of the Board shall be as follows:

- 1) Roll Call
- 2) Business Meeting
- 3) Public Hearings
- 4) Other Business
- 5) Adjournment

SECTION 2.2: QUORUM BUSINESS MEETING

Three members shall constitute a quorum for the purposes of opening a business meeting. (See Article Five, Section 5.2 herein for Quorums for Hearings.)

SECTION 2.3: BUSINESS MEETINGS

Business meetings of the Board of Appeals are normally held on the second and fourth Tuesday of each month in City Hall at 7:00 P.M. If a meeting day falls on a holiday or any day of a national, state, or municipal election, caucus, or primary, the meeting shall be cancelled. Meetings shall be open to the public in accordance with Chapter 39, Section 23, a, b, c, of the Massachusetts General Laws. A notice of each Board meeting shall be filed with the City Clerk, and a notice or a copy thereof shall be publicly posted on the principal or official bulletin in the City Hall at least 48 hours, but excluding weekends and legal holidays, prior to such meetings.

Business meetings shall include site and other plan examinations and all other matters in the province of the Zoning Board except petitions for a special permit, variance, or appeals from the decision of the Codes Administrator or Building Inspector. Hearings on applications, petitions, and appeals before the Board may be held prior to or following the business meeting, as designated by the Chairperson. Business meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited comments from the public may, at the discretion of the Chairperson, be ruled out of order.

SECTION 2.4: SPECIAL MEETINGS

Special meetings may be called by the Chairperson or at the request of two members. Notice thereof shall be given to each member and associate member at least 48 hours before the time set, except that an announcement of a special meeting at any meeting attended by an official quorum of members shall be sufficient notice of such meetings. Notices shall be posted publicly as provided in Section 2.3.

ARTICLE THREE – APPLICATIONS TO THE BOARD

SECTION 3.1: APPLICATION FORM

Every application for action by the Board shall be made on the official form of the Zoning Board of Appeals which shall be furnished by the Office of Planning and Development upon the request of the Applicant. It shall be the applicant's responsibility to request the applicable forms. Any communication purporting to be an application shall be treated as merely advisory and no notice shall be deemed to have been given, until such time as it is made on the official application form and filed with the City Clerk. Information called for by the form shall be furnished by the applicant in the manner therein prescribed.

SECTION 3.2: FILING

In accordance with City Zoning Ordinance Section X-H.5.A, MGL Chapter 40A, Section 15, every application for a variance shall be filed within thirty days from the date of denial of a permit, or the date of the order or decision/determination of the Building Inspector or other applicable administrative officials.

Every appeal must be taken within thirty days from the date of denial of a permit, or the date of the order or decision/determination of the Building Inspector or other applicable administrative officials.

Every application shall be filed with the City Clerk. A stamped copy from the City Clerk's office must be filed with the Office of Planning and Development. The Office of Planning and Development shall forthwith transmit a copy of the application to the Board of Appeals. The City Clerk shall indicate the date on which the application was received. The date of receipt as indicated by the City Clerk shall be considered to be the date on which the application has been filed with the Board of Appeals.

It shall be the responsibility of the applicant to furnish all supporting documentation with the application. The dated copy of the application received by the City Clerk or Office of Planning and Development does not absolve the applicant from this responsibility.

SECTION 3.3A: PLAN OF LAND AND ELEVATIONS TO ACCOMPANY PETITION

Each application and petition to the Zoning Board shall be accompanied by the following described plan and elevations. Plans must be submitted to the City Clerk and Office of Planning and Development at least thirty days prior to the first public hearing before the Zoning Board of Appeals. Failure to comply with the requirements may result in a dismissal by the Zoning Board of an application as incomplete.

1. Major Projects:

Major projects are those which involve one of the following:

- A: Six (6) or more parking spaces whether existing or proposed;
- B: Three (3) or more dwelling units whether existing or proposed;
- C: 5,000 square feet of building area whether existing or proposed.

Those projects that are less than the above limits shall require only the information as indicated below with an asterisk (*). However, in some cases, the Zoning Board may waive certain filing requirements or request further information as listed below. Such information shall be considered as required.

2. Plan Specifications:

Plans and drawings clearly representing existing and proposed conditions. Plans shall include all measurements. An architectural scale or ruler should not be necessary to read plans. Plans shall not exceed 36" x 24" (preferred scale of 1" = 10', 1" = 20', 1" = 30 or 1" = 40').

- * A. Neighborhood plan: 10 copies, 8 ½" x 11" of Assessors map with site centered.

- * B. Elevations: Ten (10) copies of elevation plans showing the existing building (all 4 aspects) and any proposed work to be highlighted. The size of each elevation drawing shall not exceed 36" x 24". Existing and proposed structures may be combined on a single elevation or submitted separately as long as the proposed changes can be clearly seen (SEE APPENDIX A to these rules).
- * C. Site Plan prepared by a registered Professional Engineer and/or Land Surveyor.
- * D. Electronic Submission of all drawings and plans prepared in accordance with the most recent Digital Submission Requirements on file in the Office of Planning and Development.

3. Features to be indicated on plan:

- A. Site orientation
 - 1) north point
 - 2) zoning district(s)
 - 3) names of streets
 - 4) wetlands (if applicable)
 - 5) property boundaries and locations of buildings on adjacent properties
 - 6) deed restrictions, easements, and other restrictions that may affect the applicant's proposal.
- B. Legend, graphic aids
 - 1) proposed features shall be clearly differentiated from existing features
 - 2) current zoning setbacks, front, side, and rear yard dimensions shall be indicated for all structures
 - 3) graphic scale
 - 4) date of plan
 - 5) title of plan
 - 6) names, addresses, and phone numbers of applicant, owner of record (if different) and designer or surveyor.

4. Further Requirements:

A. Major projects shall require that in addition to the above mentioned features, plans must show detailed utilities, soils, and topographic information, and must bear the stamp of a registered engineer or surveyor. A set of building elevation plans may be required when the application involves new construction/conversion and/or a proposed change in use. The Zoning Board may require further information to be shown.

If at the discretion of the Office of Planning and Development, the “Further Requirements” are not applicable, they may be waived by the Zoning Board at the request of the petitioner.

5. Referrals

Applications and site plans which come to the Zoning Board of Appeals may be sent via the Office of Planning and Development to the following applicable public entities: City Council, Planning Board, Building Inspector, Health Agent, Fire Department, Department of Public Services, Conservation Commission, and Harbor Commission for an advisory opinion to the Zoning Board of Appeals. The Board shall have the authority to alter or waive these requirements as it deems necessary or appropriate in particular cases.

6. Special Requirements for Signs

The following information must be indicated on the drawings supplied at the time of application for review of signs:

- A. Drawings to scale indicating the dimensions of the sign, mounting fixtures, lettering, graphics, and separate areas or ornamentation on the sign or fixtures.
- B. Representative colors and materials on the sign and all fixtures.
- C. If applicable, a table indicating the difference between the proposed sign and any former sign and the current regulations.
- D. A list of the contractors and/or suppliers for the sign.

SECTION 3.3B: WRITTEN DOCUMENTATION TO ACCOMPANY PETITION

1. Variance

Applications for a variance must be supported by a legibly written memorandum setting forth in detail all facts relied upon. This is necessary in the case of a variance when the criteria, based on MGLA, Chapter 40A, Section 10, and the City Zoning Ordinance Section X-H.6.A Variances, should be clearly identified and factually supported.

2. Appeals

Applications for appeals under MGLA Chapter 40A, Sections 8 and 15, and the City Zoning Ordinance Section X-H.5 Appeals, must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should support a finding that the appellant was aggrieved by reason of his/her inability to obtain a permit or enforcement action from the applicable administrative officer. Such facts shall also include reference to the applicable laws, reasons why the appellant should obtain the permit or enforcement action, and what remedy the appellant is requesting from the Zoning Board.

3. Special Permits

Applications for Special Permits under MGLA Chapter 40A Section 9 and Section X-H.7 of the Ordinance must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should include detailed information to support a finding for the items as listed in Section X-H.7.A items 1 through and including 9. In addition, all conditions as set forth in the City Zoning Ordinance Section X-H.7.B must be addressed in terms of the applicant's plans for meeting any such conditions.

4. Special Permits for Non-Conformities

Applications for Findings under MGLA Chapter 40A Section 6 and the City Zoning Ordinance Section IX-B Special Permits for Non-Conformities, must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should include detailed information to support a Special Permits for Non-Conformities that the proposed extension or alteration shall not be more substantially detrimental than the existing nonconforming use.

5. Brief to the Board

It is recommended that every appeal, and every application for a variance, special permit, or special permit for nonconformities be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on General Laws, Chapter 40A, Section 15, should be clearly identified and factually supported:

- a) The particular use proposed for the land or building.
- b) The conditions especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located.
- c) Facts which make up the substantial hardship, financial or otherwise which result from literal enforcement of the applicable zoning restrictions with respect to the land or buildings for which the variance is sought.
- d) Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- e) Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
- f) All plans to support variance requested.

SECTION 3.4: FILING AND CONSULTATION FEES

All applications to the Zoning Board of Appeals must be accompanied by a check made payable to the City of Newburyport in the following amounts. Failure to pay the following amounts shall

constitute a failure to comply with these requirements may result in the dismissal of an application as incomplete.

1. Notification and Advertisement Fees

A. A notification and advertisement fee of \$350.00 for each hearing is required at the time of filing. This fee includes the publication of a legal advertisement in the Newburyport Daily News and notification to abutters, as required by MGL Ch. 40A.

2. Application Fees

A. An administrative fee of \$200.00 per application is required at the time of filing.

3. Legal Consultation

When in the opinion of the Zoning Board of Appeals, and upon a majority vote, it is determined that the services of the City Solicitor are necessary to review legal opinions submitted by the applicant or representative in written or oral form, the applicant shall reimburse the City of Newburyport for such services. The payment must be provided prior to the filing of the decision regardless of the decision.

4. Technical Consultation

When in the opinion of the Zoning Board of Appeals, and upon a majority vote, it is determined that consulting services are necessary or appropriate, the applicant shall, prior to determination on the application, reimburse the City for the full cost of such services. All such consultants shall be selected by the Board.

ARTICLE FOUR – HEARINGS

SECTION 4.1: NOTICE

Notice of hearings shall be advertised as required by the provision of MGLA Chapter 40A and the City Zoning Ordinance.

SECTION 4.2: VIEWING

It is the custom of the Zoning Board of Appeals to view all properties which come before it in requests for Special Permits, Variances, Appeals, or Special Permits for Non-Conformities. Site plan locations will be viewed if the Board feels that it is necessary.

SECTION 4.3: AGENDA

The agenda for public hearings shall be prepared by the Office of Planning and Development and shall be completed by the preceding Tuesday. When the agenda is completed, the Office of Planning and Development shall transmit copies to the City Clerk, members of the Zoning

Board of Appeals and the Codes Administrator. Under the category “other business” the Board may entertain items not placed on the agenda by the deadline.

Hearings shall be scheduled for 7:15 PM of the meeting night. Normally not more than four (4) hearings shall be conducted on any given night. Exceptions may be allowed in cases where hearings are continued. The order of hearings shall be determined at the discretion of the Chair.

SECTION 4.4: HEARING TO BE PUBLIC

All hearings shall be open to the public. No person shall be excluded unless he/she is considered by the Chairperson to be “serious hindrance” to the workings of the Board.

SECTION 4.5: REPRESENTATION AND ABSENCE

An applicant may appear in his/her behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board may decide on the matter by using the information it has otherwise received.

SECTION 4.6: ORDER OF BUSINESS FOR HEARINGS

1. The Chairman of the Board shall recognize persons from the floor and other members of the Board before they speak. No person shall speak unless recognized by the Chair.
2. Before speaking, the person shall state their name, address, and relation to the project (i.e. – applicant, land owner, legal counsel.) Name alone is sufficient when speaking again.
3. The order of the public hearing shall be as follows:
 - A. Explanation of application and procedures by the Chairperson.
 - B. Applicant’s presentation.
 - C. The Chair shall request those in favor of the application to speak.
 - D. The Chair shall request those opposed to the application to speak.
 - E. The Chair shall recognize Board members who wish to ask questions or provide comment.

ARTICLE FIVE – DISPOSITION BY THE BOARD

SECTION 5.1: FILING

A decision on any hearing shall be filed with the City Clerk within the time limits established by Chapter 40A of the General Laws of Massachusetts and the City Zoning Ordinance. The signature by either the Chair, Vice-Chair, or Clerk shall be sufficient for purposes of attesting to a decision of the Board.

SECTION 5.2: VOTING REQUIREMENTS

The concurring vote of four members of the Board shall be necessary to reverse any order or decision of any administrative official under Chapter 40A MGLA or to affect any Variance or Special Permit. The Chair shall make known to the applicant when the minimum requirement of members are present for a hearing and he/she shall give the applicant the option of proceeding with the hearing or continuing. The record shall show information as required by MGLA Chapter 40A and the City's Zoning Ordinance.

Pursuant to City Council adoption of G.L. c. 39, § 23D, a members of Zoning Board of Appeals may vote on an application if he/she examines all of the evidence received by the Board at the one session of its adjudicatory hearing on the matter which the member failed to attend, including an audio or video recording of the missed session, and executes a certification prior to participating in a vote on the matter.

SECTION 5.3: WITHDRAWAL

An application may be withdrawn by notice in writing to the Clerk at any time prior to the public hearing by the Board as cited in Section X-I of the City's Zoning Ordinance.

SECTION 5.4: CONTINUATION/EXTENSION OF A HEARING

Applicants may request a continuance in person during a scheduled hearing, or in writing in advance of a scheduled hearing. Any request for a continuance that would extend the hearing beyond the required time to act (100 days from date of application for variances and appeals, or 90 days from date of hearing for a special permit) shall be in writing, regardless of the applicants attendance at the hearing. If agreed to by the Board, this continuance and extension request shall be filed with the City Clerk.

SECTION 5.5 RECONSIDERATION

Decisions of the Board are final only when submitted to and filed with the City Clerk. Once a decision has been voted upon and the meeting adjourned, reconsideration may occur only during a duly constituted public meeting only upon written notice to any and all abutters or other parties previously noticed. Voting requirements for reconsideration shall be in accordance with Roberts Rules of Order.

SECTION 5.6: SPECIAL PERMITS FOR NON-CONFORMITIES PROCEDURE

The Board will make determinations on Special Permits for Non-Conformities under section IX-B.2 of the City Zoning Ordinance in the following manner:

1. The Board may find upon the concurring vote of four (4) members, at a regular meeting, without requiring a public hearing, that the proposed extensions or alterations of a structure or use are not substantially more detrimental than the existing non-conforming use, or;

2. The Board may find by a simple majority, that a public hearing is required when the extension or alteration may affect the neighborhood and input from parties in interest is deemed appropriate. Such public hearings shall require notification in accordance with MGLA Chapter 40A, Section 11, and decisions rendered within the time period as required by MGLA Chapter 40A, Section 15. The Board shall determine at the public hearing if the proposed extensions or alterations of a structure or use are or are not substantially more detrimental than the existing non-conforming use.

ARTICLE SIX – POLICIES AND ADVICE

Any advise, opinion, or information given by any Board member, or any other official or employee of the City of Newburyport, shall not be binding on the Board.

**PART 2 – COMPREHENSIVE PERMIT RULES AND REGULATIONS AS
REQUIRED BY CHAPTER 40B, SECTION 21 OF THE
MASSACHUSETTS GENERAL LAW AND BY 760 CMR 31.02**

ARTICLE ONE - PURPOSE AND CONTEXT

These Rules establish procedures for applications to the zoning board of appeals for comprehensive permits granted under M.G.L. c. 40B, §§ 20-23 and the regulations promulgated there under. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 31.02. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.

These Rules alone are not sufficient to describe comprehensive permit procedures before the zoning board of appeals. They must be read in conjunction with and implemented in a manner consistent with G.L. c. 40B, §§20-23. In addition, the Board's general Rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

ARTICLE TWO - DEFINITIONS

- (a) *Board* means the zoning board of appeals established under M.G.L. c. 40A, § 12.
- (b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board; City Council.
- (c) *Limited Dividend Organization* means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 3.01(i)).

ARTICLE THREE - FILING, TIME LIMITS, AND NOTICE

3.01: The application for a comprehensive permit shall consist of:

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c), below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;

(b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in section 3.01(a), above;

(c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;

(d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) where a subdivision of land is involved, a preliminary subdivision plan;

(f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;

(g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

(i) the applicant shall be a public agency, a non-profit organization, or a limited dividend organization.

(ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 31.01.

(iii) the applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application.

(h) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.

(i) a complete *pro-forma*, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall limit its costs to actual investment in the property. Acquisition costs shown in the *pro-forma* shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm's length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally, the Applicant shall fully disclose

any costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs.

(j) a complete copy of any and all materials and applications submitted by the applicant to any prospect subsidizing agency or source, including, but not limited to applications for site approval.

3.02: The application shall be accompanied by a filing fee based upon the number of proposed housing units of:

(a) for Limited Dividend Organizations - \$200 flat fee plus \$50 per unit

(b) for Non-Profit Organizations - \$200 flat fee plus \$25 per unit

(c) for Public Agencies and Local - \$0

Additionally, the application fee shall include \$5,000.00 to pay for the services of legal counsel for assistance in any project of 25 units or less, and \$7,500.00 for any project in excess of 25 units but not exceeding 75 units and \$10,000.00 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the c. 40B process. The Board, in its sole and unfettered discretion may waive any or all of this fee. Alternatively, the applicant may opt to pay for the Board's legal counsel in the manner prescribed by G.L. c. 44, §53G or Section 4.00 hereof.

3.03: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01(h), above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, it shall also invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application. In order to allow review by local officials, the Applicant shall provide the City Clerk with 20 copies of the complete application so that the following boards, officials and departments may review the same: Zoning Board of Appeals, Planning Office, Conservation Commission, Police Department, Fire Department, Department of Public Works, Sewer Department, Water Department, Building Department, Health Department, Mayor's Office; and one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with matchlines) shall be made available to the City Clerk for copying purposes

ARTICLE FOUR - REVIEW FEES

4.01: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the City lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a

reasonable “project review fee” of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

4.02: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 3.00 hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board’s decision or regulations, or inspecting a project during construction or implementation.

4.03: Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G.. Expenditures from this special account may be made 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 from the applicant. 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 comprehensive permit application.

4.04: At the completion of the Board’s review of a project, 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. 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.

4.05: Any applicant may take an administrative appeal from the selection of the outside consultant to the City Council. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three 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 City Council within one month following the filing of the appeal, the selection made by the Board shall stand.

ARTICLE FIVE - PUBLIC HEARING AND DECISION

5.01: The Board shall hold a public hearing on the application within thirty days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

5.02: The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement

of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

5.03: The Board may dispose of the application in the following manner:

(a) approve a comprehensive permit on the terms and conditions set forth in the application,

(b) deny a comprehensive permit in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or

(c) approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.

5.04: It shall be the applicant's burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, ordinance or regulation will adversely affect local concerns.

ARTICLE SIX - CHANGES IN APPLICATION

6.01: In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated subsidizing agency.

6.02: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.00 hereof that is deemed by the Board to be necessary to evaluate such changes.

6.03: In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 3.03, above.

6.04: If the Applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions.

ARTICLE SEVEN - APPEALS

7.01: If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

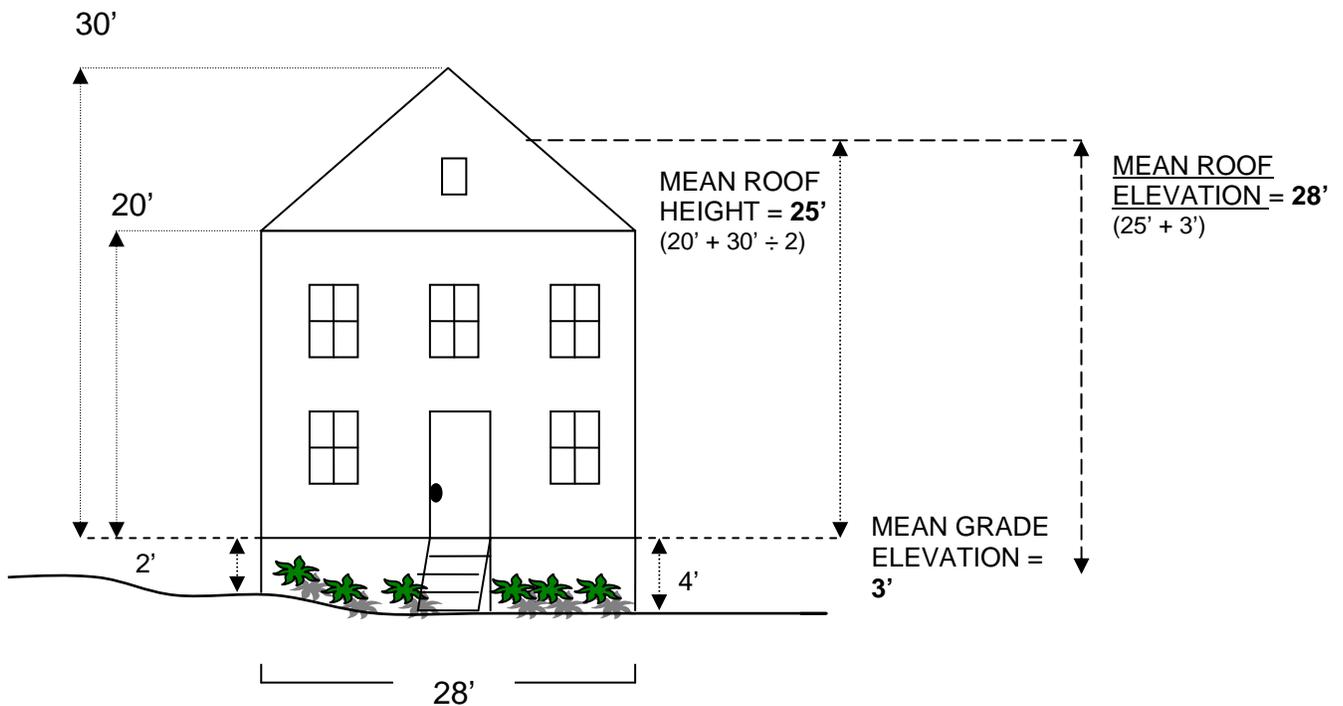
7.02: If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to be unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

ADOPTION

The foregoing rules and regulations are hereby adopted this April 26, 2011 by the Zoning Board of Appeals. All former rules of this Board are hereby repealed.

(Please see original in the Planning Office for City Clerk's stamp.)

Appendix A Sample Elevation Plan



Roof height (or mean roof elevation) is measured from the **mean grade elevation** (average grade around the perimeter of the building, or in this example, $2' + 4' \div 2 = 3'$) to the **mean roof height** (one-half the vertical distance from the eave to ridge, or in this example, $30' + 20' \div 2 = 25'$).

* - This illustration is intended only to indicate where various required measurements should be taken on a structure and how they should be displayed on the elevation plan. The submitted elevation plan should have an accurate representation of the structure being considered that reflects the structure's design including size, shape and massing including details as to placement of windows, doors etc., as these relate to potential impacts upon the neighborhood and community in general.

Appendix B
Applications

Official forms and instructions of the Zoning Board of Appeals