



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 September 10, 2019

**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 first meeting in July, 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 Massachusetts General Laws, 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 may 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/They 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/They 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/their 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, 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, and

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 meeting's 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. 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 Zoning Administrator. 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 regular members. Notice thereof shall be given to each member and associate member at least 48 hours before the time set. An announcement of a special meeting at any meeting attended by an official quorum of members shall be sufficient notice to the Board 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, M.G.L. Chapter 40A, Section 15, every application to the Zoning Board of Appeals shall include a Zoning Determination dictating the relief sought. In filing for an appeal of a decision of the Building Commissioner or the Zoning Administrator, such application shall be submitted within thirty (30) days from the date of the order or decision that is being appealed.

Every application shall be filed with the City Clerk. A stamped copy from the City Clerk's office that indicates the date on which the application was received 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 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 3.3: 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 in accordance with posted public hearing schedules and filing deadlines. Failure to comply with the requirements may result in a dismissal by the Zoning Board of an application as incomplete.

1.

1. Plan Specifications:

Plans and drawings clearly representing existing and proposed conditions. Plans shall clearly label all measurements. An architectural scale or ruler should not be necessary to read plans. Plans shall not exceed 11" x 17" (preferred scale of 1" = 10', 1" = 20', 1" = 30 or 1" = 40').

- a. Neighborhood plan: Assessors map with site centered, 8 ½" x 11".
- b. Elevations: Elevation plans showing all four sides of the existing building(s) and any proposed work to be highlighted. The size of each elevation drawing shall not exceed 11" x 17". 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 and stamped 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.

2. 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 – existing and proposed
- 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.

3. The Board or its designee may waive these specifications, or part thereof.

4. Further Requirements:

. Upon review of an application, the Board may require additional information to be submitted so as to allow a more comprehensive review of the proposal. This information may include, but is not limited to, detailed utilities, soils, and topographical information, photographs of the property, and building elevation plans when the application involves new construction/conversion and/or a proposed change in use.

5. Referrals

Applications and site plans that come to the Zoning Board of Appeals may be sent via the Office of Planning and Development, upon instruction from the Board of Appeals, to the following applicable public entities: City Council, Planning Board, Building Inspector, Zoning Administrator, Health Agent, Fire Department, Department of Public Services, Conservation Commission, Historical Commission, and Harbor Commission for an advisory opinion to the Zoning Board of Appeals.

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, created by the sign contractor and/or supplier, indicating the dimensions of the sign, mounting fixtures, lettering, graphics, illumination, and separate areas or ornamentation on the sign or fixtures.
- b. Representative colors and materials on the sign and all fixtures.
- c. Photographs:
 - 1) Existing sign, if applicable
 - 2) Location where the sign is to be placed

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 for the Board to consider the grant said application. Criteria for the variance, based on M.G.L. 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 M.G.L. 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 to be relied upon for the Board to consider the grant of said application. Such facts relied upon should support a finding that the appellant was aggrieved by reason of his/her/their 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 M.G.L. Chapter 40A Section 9 and the City Zoning Ordinance Section X-H.7 must be supported by a legibly written memorandum setting forth in detail all facts to be relied upon for the Board to consider the grant of said application. Such facts should include detailed information to support a finding for the items as listed in Section X-H.7.A items 1 through 9, inclusive. 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 M.G.L. Chapter 40A Section 6 and the City Zoning Ordinance Section IX-B, must be supported by a legibly written memorandum setting forth in detail all facts to be relied upon for the Board to consider grant of said application. Such facts relied upon should include detailed information to support a finding that the proposed extension or alteration shall not be more substantially detrimental than the existing nonconforming structure and/or 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 M.G.L. 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 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 M.G.L. Chapter 40A.

2. Application Fees

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 M.G.L. Chapter 40A and the City Zoning Ordinance.

SECTION 4.2: SITE VISITS

It is the custom of the members of the Zoning Board of Appeals to conduct their own site visits to view all properties which come before it in requests for Special Permits, Variances, Appeals, or Special Permits for Non-Conformities in advance of the public hearings. An official site visit by a quorum of the Board may be called by the Chairperson or at the request of two regular members. Said site visit must be properly noticed and posted for a minimum of 48 hours as provided in Section 2.3.

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 Tuesday preceding the public hearing. 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 Zoning Administrator.

Hearings shall be scheduled for 7:00 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/they is/are 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/their 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 Chairperson of the Board shall recognize persons from the floor and other members of the Board before he/she/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. Reading of the legal notice (only required for the opening of a public hearing)
 - B. Applicant's presentation.
 - C. The Chairperson shall request those in favor of the application to speak.
 - D. The Chairperson shall request those opposed to the application to speak.
 - E. The Chairperson 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 M.G.L. Chapter 40A and the City Zoning Ordinance. The signature by the Chairperson, 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 M.G.L. Chapter 40A or to affect any Variance or Special Permit. The Chairperson shall make known to the applicant when the required minimum number of members is present for a hearing. The record shall show information as required by M.G.L. Chapter 40A and the City's Zoning Ordinance.

Pursuant to City Council adoption of M.G.L. chapter 39, section 23D, a member of the Zoning Board of Appeals may vote on an application if he/she/they 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 Board's 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 applicant's 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 and 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: PROCEDURE FOR MODIFICATIONS TO SPECIAL PERMITS

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 M.G.L. Chapter 40A, Section 11, and decisions rendered within the time period as required by M.G.L. 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 advice, 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* – The zoning board of appeals established under M.G.L. chapter 40A, section 12.
- (b) *Department of Housing and Community Development (DHCD)* – This state department, through its community and business partners, provides affordable housing options, financial assistance, and other support to Massachusetts communities. DHCD oversees different types of assistance and funding for consumers, business, and non-profit partners.
- (c) *Housing Appeals Committee (HAC)* – The HAC provides, within the parameters of the comprehensive permit process established by G.L. c. 40B, §§ 20-23, an impartial forum to resolve conflicts arising from the siting of new affordable housing.
- (d) *Limited Dividend Organization* – Any applicant that proposes to sponsor housing under M.G.L. chapter 40B that 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)).
- (e) *Local board* – 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.

ARTICLE THREE - FILING, TIME LIMITS, AND NOTICE

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

- (a) Preliminary site development plans showing:
1. Locations and outlines of proposed buildings;
 2. Proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and
 3. 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:
1. Location and nature of existing buildings,
 2. Existing street elevations,
 3. Traffic patterns, and
 4. 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.

- (e) A summary showing the percentage of the project area to be occupied by buildings, by parking and other paved vehicular areas, and by open areas.

- (f) Where a subdivision of land is involved, a preliminary subdivision plan.

- (g) 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;

- (h) Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

1. The applicant shall be a public agency, a non-profit organization, or a limited dividend organization.

2.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.

3. 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.

- (i) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.
- (j) 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.
- (k) 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 as follows:

- (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:

- (a) \$5,000.00 to pay for the services of legal counsel for assistance in any project of 25 units or less, and
- (b) \$7,500.00 for any project in excess of 25 units but not exceeding 75 units, and
- (c) \$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 a portion or the entire fee. Alternatively,

the applicant may opt to pay for the Board's legal counsel in the manner prescribed by M.G.L. chapter 44, section 53G or Section 4.00 hereof.

3.03: Within seven (7) days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the application and plans required by section 3.01, 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 Office of Planning and Development with 20 copies of the complete application so that the following boards, officials and departments may review the same: City Clerk, Zoning Board of Appeals, 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 Office of Planning and Development 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. Upon the Board's selection of an outside consultant(s), the Board shall notify the applicant of such selection via a mailed notice.

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 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: Upon 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 process 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

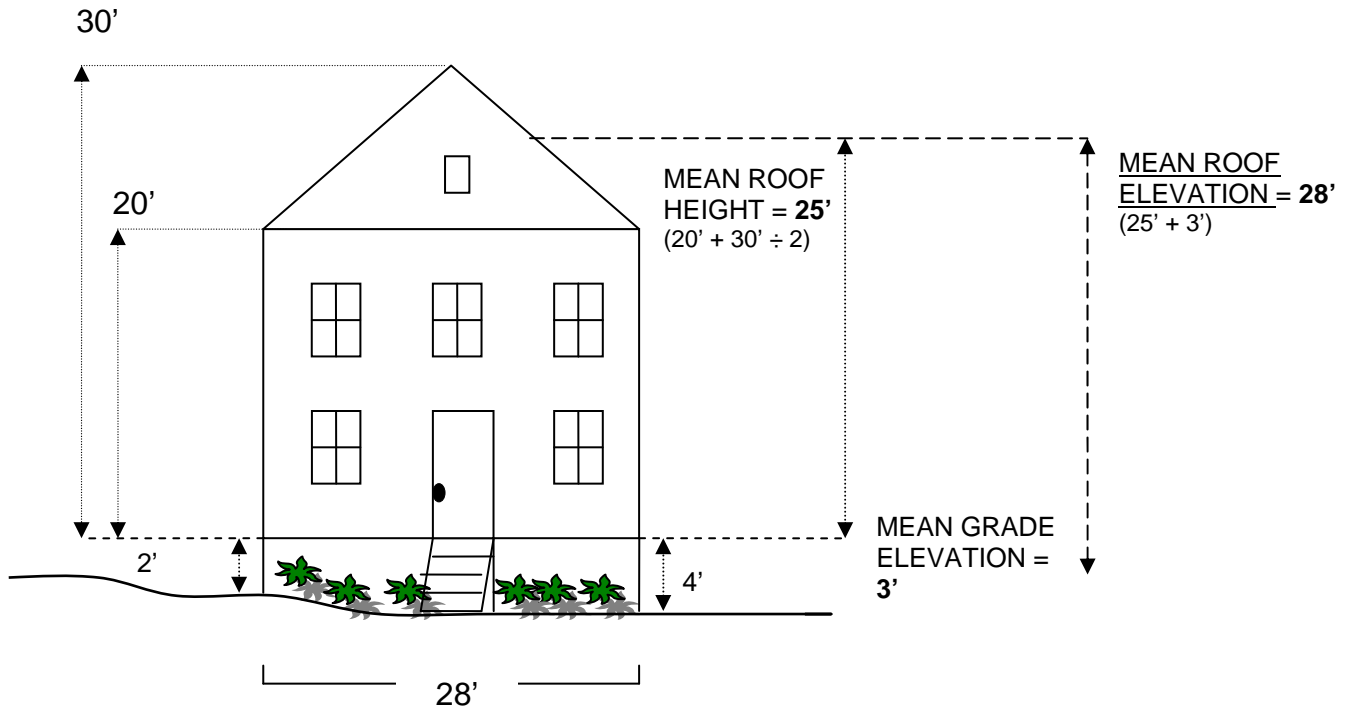
The foregoing rules and regulations are hereby adopted this DATE by the Zoning Board of Appeals. All former rules of this Board are hereby repealed.

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

Appendix A: Critical Deadlines for Chapter 40B Comprehensive Permits

Days	Deadline	Action Required	Authority
7	No later than 7 days from the date on which the comprehensive permit application is received by the Board	Distribute the application to other boards and municipal departments and request their comments	G.L. c. 40B, § 21 760 CMR 56.05(3)
14	14 days before the public hearing date	Publish notice of the public hearing (publish twice; the second during the week following the first notice)	G.L. c. 40A, § 11
30	No later than 30 days from the date on which the comprehensive permit application is received by the Board	Open the public hearing	G.L. c. 40B, § 21 760 CMR 56.05(3)
15	No later than 15 days from the opening of the public hearing	If applicable, give written notice to the developer and DHCD that the Board believes it can deny the permit on one or more of the “Safe Harbor” grounds along with the factual basis and documentation for its position	760 CMR 56.03(3) 760 CMR 56.03(8)
15	No later than 15 days from the date of the Board’s written notice	If applicable the applicant must challenge the Board’s “Safe Harbor” by providing written notice to DHCD and the Board, along with any supporting documentation	760 CMR 56.03(8)
30	No later than 30 days from receipt of the applicant’s appeal	DHCD must make a determination after reviewing the materials provided by the applicant and the Board	760 CMR 56.03(8)
20	No later than 20 days from the date of DHCD’s decision on a “Safe Harbor” appeal	The applicant or Board may appeal DHCD’s decision by filing an interlocutory appeal with the HAC and the Board’s public hearing must be stayed until the conclusion of the appeal	760 CMR 56.03(8) 760 CMR 56.05(9)(c)
180	Within 180 days from the opening of the public hearing	The Board must close the public hearing unless the applicant has agreed in writing to an extension	760 CMR 56.05(3)
40	No later than 40 days from the close of the public hearing	The Board must render a decision based on a majority vote of the Board and file its written decision with the City Clerk	G.L. c. 40B, § 21 760 CMR 56.05(8)(a)
20	No later than 20 days from the date of the decision is filed with the City Clerk	If the Board denies a comprehensive permit or approves it with conditions unacceptable to the applicant, the applicant must file an appeal with the HAC; other aggrieved persons must appeal to either the Land Court or Superior Court	G.L. c. 40B, § 22 G.L. c. 40A, §17 760 CMR 56.05(9)

Appendix B 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 C

Applications

Official forms and instructions of the Zoning Board of Appeals

(see Office of Planning and Development)