

Board of Zoning Appeals

RULES OF PRACTICE AND PROCEDURE

TOWN OF WATERTOWN

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ZONING BOARD OF APPEALS
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- Section 1: Adoption of Rules**
- Section 2: Definitions**
- Section 3: The Zoning Board of Appeals**
- Section 4: Application Process**
- Section 5: Fees for Public Hearings**
- Section 6: Public Hearings**
- Section 7: Rules of Procedure at Hearings**
- Section 8: Adjournments, Postponements and Withdrawals**
- Section 9: Deliberation Meetings (Decisions)**
- Section 10: Decisions of the Board**
- Section 11: Reconsideration**
- Section 12: Recording of Decision**
- Section 13: Amendment and Revision of Decisions**
- Section 14: Records**
- Section 15: Conflict with General Law and Zoning Ordinance**
- Section 16: Amendment**

TOWN OF WATERTOWN

ZONING BOARD OF APPEALS

RULES OF PRACTICE AND PROCEDURE

These Rules of Practice and Procedure are adopted by the Zoning Board of Appeals of the Town of Watertown pursuant to Section 12 of Chapter 40A, Massachusetts General Laws and Article 10.00, Section 10.00 of the Zoning Ordinance of the Town of Watertown.

SECTION 1 - ADOPTION OF RULES

- 1.1 These Rules shall become effective upon adoption by a majority of the Full Board composed of the five (5) members and the two associate members at a deliberation meeting and upon the filing of a copy thereof with the Town Clerk of Watertown.
- 1.2 Copies of the Rules as adopted, and as amended from time to time, shall be furnished to the Town Building Inspector/Zoning Enforcement Officer, the Planning Board, the Town Manager and to such other Town Departments as the Board may decide .
- 1.3 Copies of these rules shall be kept available by the Clerk of the Board for inspection by any other person at reasonable times.

SECTION 2 - DEFINITIONS

As hereinafter used, the following words shall have the following meanings for the purpose of these rules:

- 2.1 BOARD shall mean the Zoning Board of Appeals of the Town of Watertown as appointed under the provisions of the Zoning Ordinance.
- 2.2A BUILDING INSPECTOR shall mean the Inspector of Buildings or Building Inspector, Town of Watertown, Department of Community Development and Planning Facilities, Inspection Division.
- 2.2B ZONING ENFORCEMENT OFFICER shall mean Zoning Enforcement Officer, Town of Watertown, Department of Community Development and Planning Facilities, Inspection Division.
- 2.3 APPLICANT OR PETITIONER, used interchangeably, shall mean a person or persons appealing to the Board or seeking relief therefrom pursuant to the provisions of the Zoning Ordinance.
- 2.4 MEMBER shall mean a member of the Board who, in conformance with Town Charter provisions, is serving a five-year term or unexpired portion thereof. ASSOCIATE MEMBER shall mean an Associate or Alternate member serving a two year term.

SECTION 3 - THE ZONING BOARD OF APPEALS

3.1 - MEMBERSHIP

The Zoning Board of Appeals shall consist of five members and two associate members, appointed and serving terms as provided in Article 10, Section 10.00 of the Zoning Ordinance and Charter of the Town of Watertown.

3.2 - OFFICERS

The Board Members and Associated Members shall elect at its first meeting in September of each year, or at the earliest possible meeting thereafter when a majority of the full Board is present, a Chairperson and Vice Chairperson/Clerk to serve for two consecutive years or until their successors are elected.

3.3 - DUTIES OF OFFICERS

(A) Chairperson:

The Chairperson shall be the presiding officer of the Board and shall officiate at all public hearings and deliberation meetings of the Board; and as provided in Section 12 of the Massachusetts General Laws Chapter 40A, may administer oaths, summon witnesses, and call for the production of papers.

(B) Vice Chairperson/Clerk:

In the absence of the Chairperson, the Vice Chairperson shall carry out the duties of Chairperson and shall have all the powers of Chairperson.

(C) Acting Chairperson: In the event that both the Chairperson and Vice Chairperson/Clerk are absent because of incapacity or disqualification because of personal interest, the member of the Board senior by date of appointment shall be designated as Acting Chairperson by the Chairperson with all the duties and powers of Chairperson. In the event said senior member shall be unable or unwilling to serve as Chairperson, the Chairperson shall name one of the other members as Acting Chairperson.

(D) It shall be the responsibility of individual Board Members to visit each site prior to participating in the hearing.

3.4 - ATTENDANCE AT MEETINGS

- (A) Members and Associate Members shall attend all public hearings and deliberation meetings. Associate Members shall be designated by the Chairperson to sit and vote in the place of any member incapacitated by personal interest or absence.
- (B) No hearing shall be conducted at any time with less than four members/associate members present and qualified to vote, but such hearing shall be adjourned to such time as four qualified members are available and present.
- (C) A member who will be incapacitated by absence or personal interest from attending any public hearing shall notify the Chairperson as soon as practicable but not later than forty-eight (48) hours before the hearing. An associate member shall then be designated by the Chairperson to sit in his/her place. In the absence of a member at a deliberation meeting at which a vote is to be taken on a matter which was heard by the said absent member, the Chairperson may designate an associate member who was present and participating in the hearing to vote in place of the absent member and the minutes shall so show.

3.5 - CONFLICT OF INTEREST

- (A) Any member who disqualifies himself/herself for personal interest from participating and voting upon any matter shall notify the Chairperson of his/her intent to so disqualify himself/herself as soon as practicable but not later than forty-eight(48) hours before the hearing at which the said matter is to be heard. When the said matter is reached for hearing, the Chairperson shall state the fact of disqualification for the record and shall designate an associate member to sit in the place of the disqualified member who shall thereupon leave the Board table and shall not participate in any manner in the hearing or at any deliberation meeting of the Board at which the matter upon which the member disqualifies himself is discussed.
- (B) No member or associate member shall represent any party of interest in any matter pending before the Board.
- (C) Pursuant to the provisions of Chapter 268A, Section 17 of the General Laws (the so-called "Conflict of Interest Law") nothing in these rules shall prevent any member or associate member from appearing before the Board in favor of or in opposition to any matter in which he/she has a direct personal interest or from acting before the Board, with or without compensation, as agent or attorney for, or otherwise aiding or assisting in any such matter, members of his immediate family or any person for whom he/she is serving as guardian, executor, administrator, trustee or other personal fiduciary; provided that said member has disqualified himself.

SECTION 4 - APPLICATION PROCESS

4.1 - APPLICATION FORM

Every application for a Special Permit or Variance shall be made on the official form included in the Appendix of this document or available from the Board of Appeals Clerk in the Zoning Office or from the Town's website: www.watertown-ma.gov. **No other application form shall be accepted or processed by the Town.** Any communication purporting to be an application shall be treated as mere notice of intention to file a petition with the Town of Watertown, Board of Appeals. All information called for by the form shall be furnished by the applicant in the manner therein prescribed.

4.2 - FILING PROCEDURE

- (A) Application for a Variance, Special Permit or Renewal of a Special Permit: Completed application shall be initially reviewed by the Board's Clerk to determine if the required documentation is included in accordance with the Board's rules. However, it shall be the responsibility of the petitioner and/or his representative to assure required documentation is both complete and of appropriate standards for Board submission as specified herein; and submission of an application shall be considered representation that the application is complete. Upon submission of the documentation, three copies of a complete application, **in accordance with the Meeting/Hearing Dates and Filing Deadlines schedule** prior to the next hearing date, shall be filed with Town Clerk with a cover form signed by the Board of Appeals Clerk, and thereupon distributed for hearing mark-up and support agency review. All material submitted to the Board of Appeals, including plan sets, shall be retained for the record, regardless of the outcome of petition filed.
- (B) Appeals from Decision of Zoning Enforcement Officer: File with Town Clerk with copies to the Board and Building Inspector.
- (C) All plans, revisions or supplemental information must be submitted to the Zoning Board of Appeals office not less than forty-eight (48) hours prior to the public hearing in order to be considered at the public hearing.
- (D) A site visit/release (Indemnification) form (Exhibit A) should be signed by Petitioner and submitted to the Clerk of the Board of Appeals by the filing deadline, to permit members of the Board of Appeals to visit a subject site during the time when the case is before the Board.
- (E) Pursuant to Mass. General Laws, Chapter 40, Sec. 8 and 15, a person aggrieved by an Order from the Zoning Enforcement Officer or Building Inspector may appeal to the Watertown Zoning Board of Appeals by filing a Notice of Appeal. Said notice shall consist of: the application to appeal the order of the Zoning Enforcement Officer completed in triplicate; a completed and certified abutter's list, a check or money order made payable to the Town of Watertown. All of the above components of the Notice of Appeal must be received by the Clerk of the Zoning Board of Appeals within 30 days of the date of the Order letter which is the subject of the appeal. Blank forms and additional information are available from the Clerk of the Zoning Board of Appeals.

4.3 - PLAN OF LAND ACCOMPANYING PETITION

- (A) Each application for a Variance or Special Permit shall be accompanied by twenty(20) copies of the following described plan set, dated, signed and bearing the seal of a registered land surveyor and, where applicable, Registered Professional Engineer, registered landscape architect, and/or registered architect. If required to do so, the petitioner(s) or representative shall, at the time of filing an application for a Special Permit, Variance or request for modification take a set of plans to the Inspector of Buildings, Fire Inspector and Planning Office (except where plans have already been submitted for Site Plan Review and remain unchanged). Additional copies may be requested for departmental review.
- (B) The size of the plan shall be no smaller than 8.5" x 11" nor larger than 24" x 36", drawn to scale. It shall have a north point, names of streets, zoning districts, names of owners of adjoining properties, property lines, and location of buildings on adjacent properties. The location of buildings and distances from adjacent buildings and property lines shall be verified in the field and shown on the plan. The dimensions of the lot, the percentage of the lot covered by the principal and accessory buildings, the required parking spaces, entrances, exits, driveways, landscaping, etc., shall be shown when pertinent to the granting of the relief requested. **The application shall not be deemed complete if the plans do not show the information required.** The Board of Appeals may seek withdrawal of any petition that is deemed incomplete.
- (C) In appropriate instances, the Board, upon written request by the applicant or their representative, with copies to the Planning Board and Inspector of Buildings, may waive or modify these plan set requirements. This request must be submitted to and formally acted upon by the Board prior to the filing of petition.
- (D) Consistent with the Zoning Ordinance, documentation submitted to the Planning Staff and accepted in satisfaction of the requirement for Site Plan Review (Section 9.03) shall be acceptable for the Board's review for special permit and/or variance wherein the above reference standards for plan documents are also met.
- (E) Where the request for special permit made to the Board is also subject to site plan review (Sec. 9.03), the applicant, to enable the Board to make a finding and determination as to the effects of traffic created by the development on adjacent streets, shall in addition to the above referenced plan documentation submit, the following information in a separate report:
1. The amount of gross floor area in square feet in the proposed building or buildings; and, if this is an addition to an existing building, the gross floor area in the existing building.
 2. The number of employees and/or occupants projected for the proposed building; and, if this is an addition to an existing building, number of employees and/or occupants in the existing building or buildings.
 3. If the proposed construction is a restaurant, the number of proposed seats; and, if the construction is an addition to an existing restaurant, the number of seats in the existing restaurant.
 4. The hours of operation of all facilities to be located in the proposed building.

5. An analysis within this report prepared by a traffic engineer who has certified that he/she qualifies for the position of member of the Institute of Transportation Engineers. The Applicant shall also provide:
- (i) Traffic counts on arterial streets that provide access to the site showing data on Average Daily Traffic with a.m. and p.m. peak periods (conducted for two hours divided into fifteen minute segments).
 - (ii) Intersection turning movement counts on intersections likely to be affected by the proposed development showing two hour counts for the a.m. and p.m. peak periods divided into fifteen-minute time segments.
 - (iii) An inventory of roadway characteristics showing the width of the principal approach streets, and the presence or absence of curbing and its condition.
 - (iv) Estimated trip generation showing the projected inbound and outbound vehicular trips for the a.m. and p.m. peak periods and a typical one-hour off-peak trip generation.
 - (v) The estimated distribution of new trips by approach streets.
 - (vi) The effect of additional traffic generated by the development on traffic "levels of service" on each approach street. The term "level of service" means by the Highway Capacity Manual issued by the Highway Resource Board of the U.S. Department of Transportation.
 - (vii) Estimated off-street parking and loading requirements and time of peak accumulation.

4.4 - NARRATIVE ACCOMPANYING PETITION

- (A) In addition to the above plan documentation each application shall be accompanied by a written memorandum having the following elements:
- 1. A text that includes a statement naming the applicable section of the Zoning Ordinance from which relief is being sought, a statement as to the requirements for which relief may be granted from the Zoning requirements, and a precise statement as to the extent of relief being sought.
 - 2. Arguments in response to required conditions for approval as contained within the Zoning Ordinance specific to Section 9.05(b), the four conditions for the granting of a special permit and/or Section 9.14(b), the four conditions for the granting of variance relief.
- (B) The Petitioner may also include a suggested format for decision prepared by legal counsel, at his/her option, having the following elements for Board consideration:

1. Suggested "Findings of Fact" specific to the locus identified within the petition.
2. Suggested "Findings of Law" specific to those areas of the ordinance for which relief has been granted.

4.5 - ABUTTERS

The applicant shall notify the Clerk to the Board of Appeals that a petition is forthcoming. The Clerk will prepare a list of "parties in interest" as defined by Chapter 40A, Section 11. This list shall include the petitioner; abutters; owners of land directly opposite the on any public or private street or way; abutters to the abutters within 300 feet of the property line of the petitioner, including those in other towns; the Planning Board; and the Planning Board of every abutting city or town. Where the parties in interest include a Condominium Association, the list shall include each unit/member if the association has twenty (20) or fewer units/members; otherwise, the Association's Trustees shall be listed. This list shall be prepared in the format required by the Assessor's Department and submitted no later than five (5) days prior to the ZBA filing deadline and thereafter certified by the Assessor(s) and submitted with any petition filed with the Board of Appeals. No application shall be considered without having a certified copy of abutters attached to the petition and other supporting documentation.

4.6 - REVIEW OF CONDITIONS

Where the Board of Appeals conditions an approval for either a Special Permit or Variance and seeks to review the condition(s) annually or on another regular basis, the applicant shall submit a written request to the Board, with copies to the Zoning Enforcement Officer, Planning Board, and DCD&P staff, forty-five(45) days prior to the anniversary of the effective date of the decision; and the matter will be put on the Board's next meeting agenda. If evidence is received to suggest the terms of the condition(s) may continue to be applicable or that they have been breached, the matter will be scheduled for a public hearing, subject to the provisions of these regulations. Should the Board determine that the condition or conditions no longer apply or have been satisfied, then a Certificate of Compliance will be issued.

4.7 – COMPREHENSIVE PERMITS

See addendum attached to the end of this document

SECTION 5 - FEES FOR PUBLIC HEARINGS

A. VARIANCES

- 1. USEDiscontinued
- 2. DIMENSIONAL
 - a. Residential.....\$150 + \$20 per 100 s.f. of relief requested
 - b. Commercial\$150 + \$20 per 100 s.f. of relief requested
- 3. PARKING\$ 75 per space (\$150 min)
- 4. SIGNS\$150 per sign + \$1 per s.f. of relief requested
- 5. OTHER.....\$150 or the cost of the hearing notice and notice to abutter, whichever is greater

B. SPECIAL PERMITS

- 1. Residential, new Construction\$150 + \$75 per Dwelling Unit conversion to add D.U.
- 2. Non-res. new construction or\$150 + amount from Sec. 5.1 conversion to non-res.
- 3. Accessory Uses\$150
- 4. Non-conforming Use\$150 + amount from Section 5.1
- 5. Off-site Parking\$150 + .05 per s.f.
- 6. Other\$150

C. COMPREHENSIVE PERMITS (See Section 4.7)

D. APPEAL OF ZONING ENFORCEMENT DECISION \$150

E. LEGAL NOTICE FEE

Publication of Legal Notice is required by MGL c. 40A, §11. The fee associated with the publication of the legal notice for two consecutive weeks will be billed to the petitioner directly from the newspaper in which it is published.

SECTION 5.1

5.1.2b, e&f.....	Institutional				
5.1.3b.....	Commercial Office				
5.1.3c.....	Commercial Recreation				
5.1.3d.....	Commercial Parking	1 –	4,000 sf	=	\$150
5.1.3gC.....	Commercial Retail	4,001 –	10,000 sf	=	250
5.1.3.....	Personal Service	10,001 –	15,000 sf	=	500
5.1.3j.....	Restaurants	15,001 –	25,000 sf	=	750
5.1.3m.....	Gasoline Service Station	25,001 –	50,000 sf	=	1,000

5.1.4f.....	Fast Food Restaurant	50,001 – 100,000 sf	=	1,500
5.1.5a-c.....	Light Industry	over 100,000 sf	=	2,000
5.1.5e.....	Light Industry Laboratory			
5.1.5f&g.....	Auto Repair			
5.1.5h.....	Wholesale Business			
5.1.6d.....	Heavy Industry			

Projects requesting relief in more than one of the above categories shall be required to pay a total of the fees from each applicable category.

Fees are based on the magnitude of the relief requested and not that which is ultimately granted.

SECTION 5.2

The Board of Appeals may itself or at the request of the Planning Board impose additional reasonable fees on an application for the employment of outside consultants. When necessary, independent technical consultants may be contracted by the Board to assist with the further review of plans and studies, legal assistance, monitoring compliance, testing and engineering, etc.

Said fees must be deposited in a special segregated account consistent with the terms and provisions of G.L. c. 44, §53G established by the Town Treasurer. The special account, including any accrued interest, shall be expended at the direction of the Board of Appeals without further appropriation provided that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or the applicant's successor in interest.

An appeal by the applicant from the selection of said consultant may be made to the Town Council. 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 limits for action upon an application by the Board of Appeals shall be extended by the duration of the appeal. In the event that no decision is made by the Town Council within one month following the filing of the appeal, the selection made by the Board shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section.

The Board may require that the Applicant make an initial deposit of \$20,000 into a special account established to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

SECTION 5.3

Notwithstanding the above schedule of application fees, Town Agencies and non-profit Institutions established for the welfare of citizens of the Town of Watertown shall be subject to a maximum fee of \$150.00 or the actual cost of advertisement and notification of the Zoning Board of Appeals' hearing, whichever is greater. For Comprehensive Permits, See Section 4.7.

SECTION 5.4

Those structures and uses begun in advance of obtaining necessary relief from the Board shall be subject to an additional charge of ten percent of the applicable application fee for corrective hearing before the Zoning Board of Appeal.

SECTION 5.5

In each instance where re-notification and/or re-advertisement shall be required for the continuation of a case pending before the Board of Appeals; a case voluntarily or with authorization withdrawn from and later re-filed with the Board of Appeals; a hearing pursuant to Section 4.6 "Rules and Procedure"; or a hearing seeking permit/variance extension, a **\$150** fee or the actual cost of said advertisement and/or re-notification of the Boards' hearing whichever shall be greater will be required of the Petitioner. Where said Petitioner's request for re-advertisement and/or re-notification is withdrawn prior to such actual notice, said supplemental fee will be reimbursed to the Petitioner.

SECTION 5.6

In no case shall the application fee for a hearing before the Board exceed **Four Thousand Dollars (\$4,000)**.

SECTION 5.7

The foregoing application fee schedule may be waived and the fee for a given case established by the Board.

SECTION 5.8

All Board decisions predicated on the fulfillment of certain conditions assigned by the Board shall be subject to certification for compliance with those conditions on annual or other appropriate basis. The fee for such written certification shall be **\$50.00**.

SECTION 5.9

Whether a case is formally withdrawn before or after notice of the hearing, the fee shall be non-refundable.

SECTION 6 - PUBLIC HEARINGS

6.1 - TIME AND PLACE OF PUBLIC HEARINGS

- (A) Public Hearings shall be held by the Board generally on the fourth Wednesday of each month unless another date shall be set by the Chairperson. The hearings shall commence at 7:00 p.m. or at such other time as may be set by the Chairperson and shall continue until all matters on the agenda have been heard or the hearing is adjourned or tabled by a majority vote of the Board.

- (B) Hearings shall be held in the Watertown Administration Building, 149 Main Street unless another place is designated by the Chairperson.
- (C) A petitioner desiring a public hearing before the Board shall submit a completed application in accordance with the Meeting/Hearing Dates and Filing Deadlines schedule prior to the hearing date.

6.2 - CASE LOAD

It is noted that a case may consist of either or both the Special Permit or Variance petitions for a single locus.

6.3 - NOTICES OF HEARINGS

- (A) Notices of all hearings shall be posted, published, and mailed in such form and manner and to such owners and other parties as is required by Section 11 of the Chapter 40A Massachusetts General Laws and to such other owners or persons as the Board may deem to be affected.
- (B) If a petitioner requests that notice be sent to owners or other parties not among those enumerated in Section 11, Chapter 40A G.L. and who are not deemed by the Board to be affected, it shall be the responsibility of the petitioner to furnish to the Clerk a list of names and addresses of such additional owners or other parties; and the Clerk shall thereupon send such notices at the expense of the petitioner.
- (C) Notice of each meeting, including deliberation meetings of the Board, other than a public hearing advertised pursuant to the provisions of the Zoning Ordinance or a deliberation meeting held within twenty-four hours of such public hearing, shall be filed with the Town Clerk with a copy thereof to the Planning Board and the notice, or a copy thereof, shall, at least forty-eight hours prior to the meeting, including Saturdays but not Sundays or holidays, be publicly posted in the office of the Town Clerk or on the principal official bulletin board of the Town of Watertown.

6.4 - PUBLIC HEARINGS

- (A) All public hearings and deliberation meetings of the Board shall be open to the public and to the press unless the Board shall vote to go into Executive Session.
- (B) Executive Session shall be held by the Board in closed session only in accordance with the Open Meeting Law Chapter 39, Sec. 23B, for the purpose of discussing, deliberating, or voting upon these matters which by general or specific statute or other requirements, cannot be made public.

SECTION 7 - RULES OF PROCEDURE AT HEARINGS

All Public Hearings shall be called to order by the Chairperson and cases shall be called for hearing in numerical order. Cases, however, may be heard out of turn by majority rule of the Board for cause shown. Any case not ready for hearing when reached shall be dropped to the end of the hearing list. Requests for continuance, postponement, or withdrawal of petition must be presented to the Secretary before the hearing.

SECTION 7.2

- (A) Any person, whether entitled to notice of a petition or not, may appear in person or by agent or attorney at any hearing or may submit a statement in writing to the hearing. Every person appearing before the Board or submitting a statement in writing must identify him/herself for the record by full name and current residence address.
- (B) The Petitioner and the property owner or their duly appointed representatives must be present at the public hearing at which their case is being heard. Condominium Associations shall be represented by the President of the Trustees. Changes in representatives, change in applicant or change in the make-up of the trustees shall be brought to the attention of the Board at the start of the public hearing/meeting. In any case all who testify must take the oath.

SECTION 7.3

The petitioner shall first present his case either personally or through his attorney or other agent. He shall have the right to present such witnesses, experts, exhibits, documents, charts, plans, models, and displays as he/she may feel necessary to properly present his case. Petitioner shall present information as required by the Board contained in forms approved by the Board hereafter. The applicant shall produce at the hearing all records bearing upon the lot or lots which is the subject of the application. The Board may retain any documents or plans which have been introduced in evidence for reference in consideration of the case. Briefs may be filed at the public hearing or within such time thereafter as may be fixed by the Board, but in no event later than ten days after the public hearing. Petitioner shall have present the users, operators, lessees, or proposed future owners under agreement of the parcel. Petitioner shall make known the actual beneficiaries of any Special Permit or Variance and said person or persons shall be present.

SECTION 7.4

Copies of recommendations of any other Town agency, board, and/or Commission submitted to the Board on any matter shall be furnished at the hearing to the petitioner who shall be given an opportunity to comment thereon.

SECTION 7.5

Representatives of neighborhood associations and attorneys representing groups of owners or other interested parties, who wish to be recorded as speaking in the name of such entities wherein a formal action/expression was made and have notified the secretary before the hearing that they wish to be heard either on the petition, shall be given priority in presenting statements.

SECTION 7.6

All Board members shall have the right during a hearing to question any petitioner or any other person appearing before the Board and to request additional information.

SECTION 7.7

After all persons appearing in favor of a petition have been heard, the Board shall hear all persons appearing either in person or by written statements in opposition. There shall be no cross examination of the petitioner; any and all questions directed to the petitioner shall be directed through the Chairperson. Upon completion of all testimony in opposition, the petitioner shall, at the discretion of the Chairperson, be given an opportunity to rebut any testimony given in opposition. After such rebuttal, if there are no other persons desiring to be heard either in favor of or in opposition to a petition, the Chairperson shall declare the hearing closed and the matter taken under advisement.

SECTION 7.8

The Chairperson shall have the power and discretion to rule any person appearing at the hearing out of order and to exclude or limit any testimony which in his/her opinion is redundant, repetitive, improper, or immaterial. Nothing in this section, however, shall deny any person the right to appear at a hearing and to be recorded verbally or in writing in favor of or in opposition to any petition.

SECTION 7.9

The Board by majority vote may continue a hearing to a date certain announced prior to adjourning the hearing to enable a petitioner or any other interested person to present such further evidence, exhibits, revised plans, financial statement, or other documents which the Board may, at its discretion, request.

SECTION 7.10

If a petitioner presents at a hearing revised plans which differ substantially from the plans originally submitted with the petition at the time of application, the Board, by majority vote, may refuse to hear the petition and shall require that the petition be re-filed and re-advertised and a new filing fee paid. Substantial modification shall not be inferred to mean changes to architectural features and detailing or finish materials selection.

SECTION 8 - ADJOURNMENTS, POSTPONEMENTS AND WITHDRAWALS

SECTION 8.1

If a hearing is not completed, or if by a majority vote the Board requests that a petitioner or other interested party present further evidence, the hearing shall be adjourned either to a date certain or sine die. If the hearing is adjourned to a date certain, no further notice, other than that provided in Section 6.3(c), shall be required. If a hearing is adjourned sine die, the Chairperson shall notify the Secretary of the date on which the hearing is to be resumed and notice thereof shall be mailed by the secretary to all owners and parties who received notice at the original hearing or who requested that they be given notice at the original hearing.

SECTION 8.2

At the request of a petitioner, a scheduled hearing may be postponed to a later date by majority vote of the Board; provided that, if the Board deems it necessary and proper, the petition may be ordered re-advertised and all interested parties and owners re-notified and a new filing fee paid.

SECTION 8.3

A petition for a variance or a special permit may be withdrawn by the applicant at any time after filing and before advertising. After a petition has been advertised, an applicant may withdraw only by written motion for leave to withdraw as provided in Article 9, Section 9.18(a), of the Zoning Ordinance. Said notice must also be received by the Board at least twenty-four(24) hours prior to the scheduled hearing. Any interested party who is present at the hearing shall have the right to be heard on the motion to withdraw.

SECTION 9 - DELIBERATION MEETINGS (Decisions)

SECTION 9.1

Deliberation meetings of the Board will take place immediately prior to or following the public hearing.

SECTION 9.2

Any matter to be considered by the Board, other than at a public hearing, shall be forwarded to the Clerk at least forty-eight(48) hours prior to a meeting. The material shall be a written document clearly stating what is being sought. No item shall be considered by the Board if it has not previously been presented to the Board in writing.

SECTION 10 - DECISIONS OF THE BOARD

SECTION 10.1

The concurring vote of at least four of five members of the Board shall be necessary to the granting of requested relief and/or special permit. The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact.

SECTION 10.2

Decision of the Board on a petition for a Variance shall be made within one-hundred(100) days of the date of filing or extended time, if applicable; for a Special Permit, within ninety(90) days of the date of public hearing or extended time, if applicable. Decisions shall be filed with the Town Clerk within fourteen days of the date of the decision.

SECTION 10.3

The period within which the Board shall make a decision on a petition for a Variance or a Special Permit may be extended in accordance with Sec. 9 and 15, Chapter 40A M.G.L. A written copy of such agreement between Petitioner and Board for extension must be filed with the Town Clerk.

SECTION 10.4

Notices of decision shall be mailed to all parties in interest, to the Planning Board, and to every person

present at the hearing who requests in writing that notice be sent to them and who gives the Clerk a stamped self-addressed envelope.

SECTION 10.5

Notices of Decisions are available upon request from the Board for a fee of \$2.00 for the decision plus \$.25 for any additional copy.

SECTION 10.6

The Board in its discretion upon written application by the grantee of a Variance or Special Permit, may extend by up to six months the period within which such rights are required to be exercised; provided, that the application for such extension is filed with the Board prior to the expiration of such period. Such request shall be subject to notification of abutters and an advertisement fee of \$150 payable by the party petitioning for the extension.

SECTION 11 - RECONSIDERATION

Once a petition has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board, except in accordance with the provisions of MGL C. 40A, S. 16 and Sec. 19.8 of the Zoning Ordinance.

SECTION 12 - RECORDING OF DECISION

No variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have lapsed and no appeal has been filed or, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located. The fee for recording or registering shall be paid by the owner or applicant. No building permit shall be issued by the Building Inspector without receipt of proof of recording from the Registry of Deeds. In the event that the Variance or Special Permit affects other land, in addition to the land originally affected by the petition, such other land shall also be identified upon the notice which is recorded.

SECTION 13 - AMENDMENT AND REVISION OF DECISIONS

SECTION 13.1

The statute provides for the special permit granting authority to modify previous grantings. Permit modifications are formally treated in terms of an amendment to the original granting, requiring a public hearing (Sec. 11) and a reinstatement of the 20 day appeal period (applicable to the original granting).

To determine whether or not a proposed modification is of such an extent that the intent of the original granting and conditions thereto is altered therefore requiring a special permit amendment, the following procedure would be utilized: Proposed modifications, even of minor scale, shall be initially reviewed by the DCD&P office with three objectives in mind. Briefly stated the intent of our review is to address the following questions:

(A) Does the proposed revision(s) create conditions requiring variance relief and/or special permit

granting?

- (B) Does the proposed revision(s) violate specifically any conditions made part of the original granting?
- (C) Does the revision(s) suggest significant modifications to factual representatives or assumptions reviewed and contained under either Section 9.03 (Site Plan Review) or Section 9.05(b) (Finding of Special Permit Grant), to an extent that a re-analysis is warranted?

Wherein, a negative finding is made in all of these areas, the proposed modification(s) may be found to be fully consistent with the original granting and sufficiently limited not to require a review under a special permit amendment process.

This report would be given to the Board of Appeals for all proposed modifications to projects which have been subject to special permit granting. If the report or subsequent review by the Board finds that the proposed change does not conform to one or more of the above noted tests, the applicant would be required to submit a Special Permit amendment application.

SECTION 13.2

The Board, in conformity with the provisions of Sec. 14 Chap. 40A of the General Laws and the Zoning Ordinance, may clarify any order or decision and may, within a reasonable period of time, amend a decision by adding a statement of further reasons for its decision. The above action may only be made for the purpose of decision clarification, clerical or otherwise, and may not serve in any way to alter the findings or decision in a substantive manner.

SECTION 14 - RECORDS

The Board shall keep a detailed record and minutes of all public hearings and shall keep records of deliberation sessions showing the vote of each member upon each question and setting forth clearly the reason or reasons for its decisions and of its other official actions.

SECTION 15 - CONFLICT WITH GENERAL LAW AND ZONING ORDINANCE

SECTION 15.1

All matters upon which these Rules of Practice and Procedure are silent shall be determined by the applicable provisions of Chapter 40A of the General Laws and of the Zoning Ordinance.

SECTION 15.2

In the event of any conflict between these rules and any provision of the Zoning Ordinance, the Zoning Ordinance shall control.

SECTION 16 - AMENDMENT

These Rules of Practice and Procedure may be amended from time to time as necessary or proper by a majority vote of the Board.

The above rules were unanimously adopted by the Board at a Deliberation Meeting held on December 27, 1984. The following members present: Chairman Joseph C. Leah, Member Anthony Furia, Associate Member Alex Della Paolera, Associate Member Anthony Cristello.

The rules were unanimously adopted as amended by the Board at a meeting on April 5, 1988. The following members were present: Chairman Joseph Leah, Members Anthony D. Furia, Stephen E. Neel, Jenny Netzer, Anthony Cristello and Alternate members Albert Nichols and Peter Lauriat.

The rules were unanimously adopted as amended by the Board of Appeals at their meeting of October 26, 1988.

The following sections were amended: 4.2(d), 5.5, 5.9 and 10.5. The following members were present: Chairman Joseph C. Leah, Members Anthony Cristello, Anthony Furia, Stephen Neel, Jenny Netzer and Alternate Members Peter Lauriat and Randall Imai.

The rules were unanimously adopted as amended by the Board of Appeals at their December 27, 1989 Business Meeting. The following sections were amended: 5.2, 5.5, 5.6, 5.8 and new section 10.6. The following members were present: Chairman Joseph C. Leah, Clerk Anthony J. Cristello, Members Stephen E. Neel, Anthony D. Furia and Randall Imai.

The rules were unanimously adopted as amended by the Board of Appeals at their meeting of January 31, 1990. The following sections were amended: 4.1, 10.5 and New Section 5.2(b).

The following members were present: Joseph C. Leah, Anthony J. Cristello, Anthony D. Furia, Jenny Netzer and Randall Imai.

The rules were unanimously adopted as amended by the Board of Appeals at their meeting of March 6, 1990. The following section was added: 4.2(b)

The following Members were present: Joseph C. Leah, Anthony J. Cristello, Stephen E. Neel, Anthony D. Furia and Jenny Netzer.

The rules were amended by the Board of Appeals at their business meeting of June 24, 1992. The following section was amended: 4.5.

The following were present: Mr. Leah, Mr. Imai, Mr. Cristello, Mr. Furia and Mr. Matthews.

The rules were unanimously adopted as amended by the Board of Appeals at their meeting of December 30, 1992. The following sections were amended: 3.3(d)(new), 4.5 (correction), 6.1 (revised), 6.4 (revised), 9.1 (revised) 9.2 (deleted in entirety), present 9.3 replaces 9.2.

The rules were amended by the Board of Appeals at their business meeting of June 29, 1994. Section 3.2 was amended to include "and Associated Members."

The rules were amended by the Board of Appeals at their business meeting of September 24, 1997. Section 3.2 was amended to delete "June" and replace it with "September".

The following Members were present: Chairwoman Elaine V. Grey, Members Anthony J. Cristello, Anthony D. Furia, John J. McCarthy, Jr., and Alternate Members John W. Marshall and Harry J. Vlachos.

These rules were amended by the Board of Appeals at their meeting of November 13, 2002. Section 3.2 was changed from 'one year' to 'two consecutive years'. The unanimous vote of 5-0 included: Elaine V. Grey, Chairperson; Anthony D. Furia, Acting Clerk; John W. Marshall, Member; John J. McCarthy, Jr.,

Member; John G. Gannon, Associate Member. Absent: Harry J. Vlachos, Clerk.

These rules were amended by the Board of Appeals at their meeting on September 24, 2003. Adopt new Section 4.7, Comprehensive Permits, and further amend Section 5C, Fees-Comprehensive Permit, by deleting "\$150" and adding "See Section 4.7" and further amend Section 5.3, by inserting at the end of the paragraph, "For Comprehensive Permit Fees, See Section 4.7." The unanimous vote of 5-0 included: John W. Marshall, Acting Chair; Anthony D. Furia, Acting Clerk; Harry J. Vlachos, Member; John G. Gannon, Associate Member; Melissa M. Santucci, Associate Member. Absent: Elaine V. Grey, Chairperson; John J. McCarthy, Clerk.

These rules were amended by the Board of Appeals at their meeting on September 24, 2003. Amend Section 5.2(B) by deleting the last sentence of second paragraph and deleting fourth/last paragraph in its entirety and replace with (refer to meeting notes) and further amend Section 5.6, by deleting after the word exceed "Two Thousand Dollars (\$2,000.)" and replace with "Four Thousand Dollars (\$4,000)." The unanimous vote of 5-0 included: John W. Marshall, Acting Chair; Anthony D. Furia, Acting Clerk; Harry J. Vlachos, Member; John G. Gannon, Associate Member; Melissa M. Santucci, Associate Member. Absent: Elaine V. Grey, Chairperson; John J. McCarthy, Clerk.

These rules were amended by the Board of Appeals at their meeting on March 29, 2006. Amend Section 5B2 and 5B4 - replace incorrect reference to Section 5.2 to correctly reference 5.1. Add Section 5E: "Legal Notice Fee: Publication of Legal Notice is required by MGL c. 40A, §11. The fee associated with the publication of the legal notice for two consecutive weeks will be billed to the petitioner directly from the newspaper in which it is published." Replace the incorrect section numbered 5.2 (with the subsections of 5.1.2b, e&f listed below it) to the correct section 5.1. Correct the section numbered 5.2B to 5.2. The unanimous vote of 3-0 included Harry J. Vlachos, Chairman, Anthony D. Furia, Member and Melissa M. Santucci, Associate Member. Absent: John J. McCarthy, Jr., Clerk.

These rules were amended by the Board of Appeals at their meeting on December 28, 2011. Amend Section 4.2(A), in middle of paragraph, replace "...no less than 21 days..." with "...in accordance with the Meeting/Hearing Dates and Filing Deadlines schedule...". Section 4.2(B), delete "and Town Attorney". Section 4.3(D), replace "Planning Board" with "Planning Staff". Section 6.01(A), replace "...last Wednesday..." with "...fourth Wednesday..." and replace "...at 7:30 p.m." with "...at 7:00 p.m.". Section 6.01(B) add "149 Main Street". Section 6.01(C), replace "...no less than twenty-one (21) days..." with "...in accordance with the Meeting/Hearing Dates and Filing Deadlines schedule...". Section 6.02 deleted after the word 'locus': "The number of cases to be heard at each meeting shall not be more than three. In the event of an emergency, at the request of the petitioner and upon a showing that a delay in hearing will cause hardship, the Chairperson may order the Secretary to schedule cases in excess of three for hearing, provided that there is sufficient time to issue all notices required by the Zoning Ordinance an applicable state law." Section 9.01, replace "...on the last Wednesday of each month..." with "...prior to or...". Replace all references to 'secretary' with 'clerk'.

The unanimous vote of 5-0 included Melissa M. Santucci Rossi, Chairman; Deborah Elliott, Clerk; David Ferris, Member; Suneeth John, Member and Christopher Heep, Associate Member.

Chairperson

Effective 12/27/84
Amended 04/05/88
Amended 10/26/88
Amended 12/27/89
Amended 01/31/90
Amended 03/06/90
Amended 06/24/92
Amended 12/30/92
Amended 06/29/94
Amended 09/24/97
Amended 11/13/02
Amended 9/24/03
Amended 3/29/06
Amended 12/28/11

Addendum

Board of Zoning Appeals

COMPREHENSIVE PERMIT RULES OF PRACTICE AND PROCEDURE

(Section 4.7)

Adopted September 24, 2003

Comprehensive Permit Rules of Practice and Procedure Adopted September 24, 2003

Section 4.7

- 1.00 Purpose and Context
- 2.00 Definitions
- 3.00 Filing, Time Limits, and Notice
- 4.00 Review of Applications and Review Fee
- 5.00 Public Hearing and Decision
- 6.00 Changes in Application
- 7.00 Appeals

1.00: Purpose and Context

These Rules establish procedures for applications to the zoning board of appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. 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. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

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 the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. 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.

2.00: 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 or district; fire, police, traffic, public works or other department; building inspector, zoning enforcement officer or similar official or board; town council. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) may be deemed local boards if they perform functions usually performed by locally created boards.

3.00: Filing, Time Limits, and Notice

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

(a) preliminary site development plans, stamped and signed by a professional engineer, scaled at 1"= 20' or 1"=40' showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area surface and structured, 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 stamped and signed by a registered architect;

(b) an existing condition site plan scaled at 1"=20' or 1"=40' showing existing buildings, on-site infrastructure and utilities, wetlands and buffer delineation, if applicable, 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. However, must be shown as a distinguishable different overlay.

(c) preliminary, scaled architectural drawings at ¼"=1' or 1/8"=1'. 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 preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

(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, and

(iii) the applicant shall control the site;

(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.

(j) a preliminary traffic report/study.

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 - \$ 600. flat fee plus \$9.00 per unit

(b) for Non-Profit Organizations - \$ 600. flat fee plus \$ 3.00 per unit

(c) for Public Agencies and Local – Cost of Legal Notice and Postage for Notification to abutters.

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. Based upon that list, it shall also, within the same seven days, 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 the Board of Appeals 30 copies with one copy to the Town Clerk of the complete application so that the following boards, officials and departments may review the same:

Board of Appeals; Planning Board; Conservation Commission, Fire Inspector, Police/Traffic, Inspection Department, Department of Public Works, Town Engineer, Assessor, Health Department, Disabilities Commission, Bicycle Committee; and one unbound copy for copying purposes.

Additionally, (5) 11"x17" copies of all plans (with matchlines) with one unbound copy shall be made available to the Board of Appeals for copying purposes.

4.00: **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 Town 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 the Applicant make an initial deposit of \$20,000 into a special account established 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, financial analysts, planners, lawyers, 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 Town 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 Chairman, Board of Appeals 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 Town Manager. 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 Town Manager within one month following the filing of the appeal, the selection made by the Board shall stand.

5.00: 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 as not consistent with local needs, or

(c) approve a comprehensive permit with conditions, including but not limited to height, site plan, size, shape or building materials, that do not render the construction or operation of such housing uneconomic.

6.00 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.

7.00: **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.