

TOWN OF DUXBURY  
ZONING BOARD OF APPEALS  
RULES & REGULATIONS

**ARTICLE I. GENERAL**

**Section 1. Purpose and Scope**

These Rules are adopted by the Duxbury Board of Appeals (hereinafter referred to as the “Board”) as authorized by Massachusetts General Laws, Chapter 40A, Section 12, for the purpose of establishing uniform procedures for conducting the business of the Board which, in general, but without limitation, shall consist of hearing all appeals, petitions, and applications coming under its jurisdiction as both a permit granting authority and a special permit granting authority by virtue of the applicable provisions of Massachusetts General Laws and the Duxbury Protective Bylaw (hereinafter referred to as the “Zoning Bylaw”) and other Bylaws. Such appeals and matters of original jurisdiction, subject to conformance with these Rules, will in general consist of the following:

- (a) Receive and act upon all appeals from a decision of the Building Inspector in performing the duties and responsibilities contemplated by Massachusetts General Laws and the Zoning Bylaw;
- (b) Receive and act upon, as a permit granting authority, all petitions for variances from compliance with applicable provisions of the Zoning Bylaw;
- (c) Receive and act upon, as a special permit granting authority, all applications for special permits as authorized by the Zoning Bylaw;
- (d) Receive and act upon all applications seeking authorization and a Comprehensive Permit to build low and moderate income housing contemplated by Massachusetts General Laws, Chapter 40B, Section 21; and
- (e) Receive and act upon all matters otherwise legally coming under the jurisdiction of the Board.

An application for a Comprehensive Permit, Item (d) above, shall be further subject to the Board’s Comprehensive Permit Rules, adopted on September 26, 2013, as amended from time to time.

**Section 2. Petitioner or Applicant**

An appeal may be taken by any person aggrieved by any decision of the Building Inspector. A petition or application for other than a Comprehensive Permit (I.1.(d)) may be brought by a property owner, a tenant, a licensee, a prospective purchaser or other applicant provided that documentation from the owner certifying the petitioner’s legal interest and right to file accompanies the petition or application. An application for a Comprehensive Permit (I.1.(d)) may be made only by a public agency or by a limited dividend or nonprofit organization. In the case of an appeal, a petition for a variance or

an application for a special permit the applicant shall file with the Town Clerk who shall transmit it forthwith to the Board. It is strongly recommended that all new appeals, petitions, and applications be first reviewed by the Building Inspector to assure their correctness, completeness, and clarity. It is also recommended that all petitions and applications be first reviewed by the clerk of the Board.

## **ARTICLE II. ORGANIZATION**

### **Section 1. Elections**

At the first regular meeting following the qualification of annual appointee(s), the Board shall elect a chairperson, vice-chairperson, and clerk. Each shall serve until a successor is duly elected. Associate members shall not participate in this election.

### **Section 2. Chairperson**

The chairperson shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, the chairperson shall decide all points of order, unless overruled by a majority of the Board in session at the time. The chairperson shall appoint such committees as may be deemed necessary or desirable from time to time.

In addition to powers granted by Massachusetts General Laws and the Zoning Bylaw, and subject to these Rules and further instructions of the Board, the chairperson shall supervise the work of the staff assistant, arrange for necessary help, and exercise general supervision over the Board's activities.

### **Section 3. Vice-Chairperson**

The vice-chairperson shall preside over hearings and meetings and perform the duties of the chairperson during the absence or unavailability of the chairperson.

### **Section 4. Clerk**

The clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board. If the Clerk is absent, the Chair shall appoint an acting Clerk.

### **Section 5. Staff Assistant**

An administrative assistant shall be appointed by the Board and attend all public meetings and hearings of the Board, and subject to the direction of the Board and its chairperson, shall conduct the clerical work of the Board. Specifically, the staff assistant shall receive the applications for variances, appeals, special permits, and comprehensive permits; prepare all legal advertisements for review by the Chair, prior to sending to the local newspaper, mailing out copies of applications to Board members; mailing the public hearing notices to the Board members and abutters, mailing the decisions of the Board to its members. The Clerk of the Board shall assume these duties in the absence of the Staff Assistant.

### **Section 6. Associate Members**

The chairperson of the Board shall designate an associate member to sit on the Board in case of the absence, inability to act or interest on the part of a member. In the event of a vacancy on the Board, the chairperson shall designate an associate member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

### **Section 7. Quorum**

A quorum for the purpose of conducting public hearings and transacting other business except voting on appeals, petitions, and applications as provided in Art. V, Sec. 1, shall consist of three (3) members.

### **Section 8. Regular Meetings**

Regular meetings of the Board shall be held as necessary at 7:30 P.M. on the second and fourth Thursday of each month, or at other times as determined by the Board at a place specified in the meeting notice.

### **Section 9. Special Meetings**

Special meetings may be called by the chairperson or at the request of two members. Written notice thereof shall be given to each member at least forty-eight (48) hours before the time set, except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law.

### **Section 10. Absences**

Pursuant to Town Meeting's acceptance of Massachusetts General Laws, Chapter 39, Section 23D, no member of the Board shall be disqualified from voting on any matter solely due to said member's absence from no more than a single session of the hearing at which testimony or other evidence is received; provided, however, that before any such vote, said member shall certify in writing that he/she has examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof, such certification to be part of the record of the hearing.

## **ARTICLE III. SUBMISSION OF PETITION OR APPLICATION**

### **Section 1. Application Form**

Every petition and application for action by the Board shall be made on an official application form, which shall be furnished by the clerk upon request. Any communication purporting to be an appeal, a petition, or an application shall be treated as mere notice of intention to seek Board action, until such time as it is made on the official application form and the applicable filing fee has been paid. To be a complete application, all information called for by the form shall be furnished by the applicant in the manner therein prescribed and in precise language identifying the applicable provisions of the Zoning Bylaw and the specific nature of the appeal, petition, or application. **Such form**

shall require, at minimum, a description of the proposed project, a list of all requirements of the Zoning Bylaw that the proposed project must meet, a narrative and supporting data that show how the proposed project meets those requirements, and an analysis of why the Board should grant the relief sought by the applicant. The application form to be used is hereby made a part of these Rules.

## **Section 2. Filing Period for Appeal**

- (a) In the case only of an appeal from a decision of the Building Inspector, a petition shall be filed with the Town Clerk within thirty (30) days from the date of issuance of a permit or refusal of a permit by, or an order, ruling, decision or determination of, the Building Inspector.
- (b) All other petitions and applications may be filed at the discretion of the applicant or petitioner.

## **Section 3. Submissions**

Thirteen copies of the application form shall be submitted and each application shall be accompanied by a plot plan prepared by and under the seal of a registered engineer or registered land surveyor showing current conditions and such other plans, sketches or diagrams as are needed to show clearly the nature of the specific request being made by the petitioner. The size of the document(s) shall be 8-1/2" x 11" or 11" x 17", drawn to a scale of 1" = 40' or such other size and scale as the Building Inspector might approve during the review discussion. The plans shall have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, locations of buildings on the lot, parking areas, driveways and all other information pertinent to the petition or application as required by the Zoning Bylaw, other Bylaws or Rules and these Rules. All changes requested by the petitioner shall be clearly identified. The applicant shall provide an electronic copy of the entire submission, including the application form, plans, sketches, diagrams, and other application materials.

## **Section 4. Filing Fees and Cost of Public Notice**

- (a) An appeal from the action of the Building Inspector shall be accompanied by a check payable to the Town of Duxbury in the amount of Two Hundred Dollars (\$200).
- (b) A petition for a variance shall be accompanied by a check payable to the Town of Duxbury in the amount of Five Hundred Dollars (\$500), except that for a use variance, the filing fee shall be One Thousand Five Hundred Dollars (\$1,500).
- (c) An application for a special permit for a detached single family dwelling shall be accompanied by a check payable to the Town of Duxbury in the amount of Two Hundred Dollars (\$200).
- (d) An application for a special permit for all uses other than a single-family dwelling (including commercial) shall be accompanied by a check payable to the Town of Duxbury in the amount of Eight Hundred Dollars (\$800), except that for Planned Development applications, the filing fees shall be as follows:

Tract Size	Pre-Qualification & Site Analysis	Special Permit Development Review
<25 acre site	\$800	\$800
26-100 acre site	\$1,200	\$1,200
> 100 acre site	\$1,600	\$1,600

- (e) An application for a Comprehensive Permit under G. L. Chapter 40B Section 21 shall be accompanied by an administrative fee in the amount specified in the Board's Comprehensive Permit Rules, as may be amended.
- (f) An application to amend, modify, or transfer a variance or special permit shall be accompanied by a check payable to the Town of Duxbury in the amount of Four Hundred Dollars (\$400), except that for to amend, modify, or transfer a special permit for a detached single-family dwelling, the filing fee shall be Two Hundred Dollars (\$200).
- (g) All fees are established to cover the cost of and to otherwise defray reasonable expenses incurred by the Board in processing petitions and applications filed with the Board.
- (h) An appeal, petition or application shall not be deemed filed until filing fee set forth above have been paid to the Town Clerk.
- (i) In addition to the above stated filing fees, the applicant shall be responsible to pay the cost of publishing public notice of any hearing in a newspaper. The clerk shall prepare the notice and arrange for publication. The newspaper may send an invoice directly to the applicant or through the clerk. The applicant shall pay any such invoice promptly upon receipt and failure to make timely payment shall be grounds for the Board to withhold a decision or deny an application.

### **Section 5. Outside Consultants and Fees**

When reviewing an appeal, petition or application hereunder, the Board may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from municipal employees. The Board may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice, said fee to be deposited into a special account established pursuant to Massachusetts General Laws, Chapter 44, Section 53G. The funds from said account and any accrued interest thereon may be expended at the direction of the Board without further appropriation, with any excess amount remaining in the account upon completion of the Board's review to be repaid to the applicant or to the applicant's successor in interest. Minimum qualifications for outside consultants shall consist of either an educational degree in or related to the field at issue or three (3) or more years of practice in the field at issue or in a related field. The Board's selection of an outside consultant may be appealed by an applicant or petitioner to the Board of Selectmen, which Board may disqualify such consultant only on the grounds that the he/she has a conflict of interest and/or does not possess the minimum qualifications noted above.

## **Section 6. Dismissal of Incomplete Filings**

The Board may dismiss an appeal, petition or application if the application form is not complete or the submissions required by Section 3 are not made. Such dismissal may be made without a hearing on the merits and shall be deemed a withdrawal without prejudice to refiling when the application and submissions are complete.

## **Section 7. Names and Addresses of Abutters**

After the petition or application is filed, the clerk of the Board shall obtain immediately a list of the names and addresses of all parties in interest including the petitioner, abutters, owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred (300) feet of the property line of the petitioner, as they appear on the most recent applicable tax list, as defined by Massachusetts General Laws, Chapter 40A, Section 11, and the Zoning Bylaw. The assessors shall certify to the Board that list of names and addresses of all parties in interest.

# **ARTICLE IV. HEARINGS**

## **Section 1. Notice**

Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A, and the Zoning Bylaw. In addition, a copy of the advertised notice shall be sent by mail, at least seven (7) days prior to the date of the hearing, postage prepaid, or delivered, to all parties in interest and to the boards, commissions, and departments identified in Section 902.4 of the Zoning Bylaw, and where determined appropriate by the Board, other Town boards and officials.

## **Section 2. Hearings to be Public**

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, Massachusetts General Laws, Chapter 30A, Sections 18 through 25.

## **Section 3. Representation and Absence**

An applicant may appear in his/her own behalf or be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the applicant, the Board shall decide on the matter either using the information it has otherwise received or dismissing the petition, at its discretion, with or without prejudice.

## **Section 4. Continuances**

A continuance may be requested by an applicant by written request submitted to the clerk in advance of a hearing or orally at a hearing. The Board may, in its discretion, allow or deny any request for a continuance. Unless notified in writing that a continuance has been granted, an applicant must appear at a scheduled hearing. Any continuance granted upon request of an applicant shall constitute an agreement by the applicant to extend the time limits for actions by the Board by the duration of the continuance and such agreement, at the request of the Board, shall be set forth in writing.

**Section 5. Hearing Procedure**

- (a) Hearings will start at the stated time in the notice unless delayed because of prior hearings.
- (b) At the hearing any party whether entitled to notice thereof or not may appear in person or by agent or by attorney.
- (c) At the hearing the chairperson may administer oaths, summon witnesses, and call for the production of papers. The Board shall retain any record which has been introduced in evidence, for reference in consideration of the case.
- (d) No person shall address a hearing of the Board without leave of the chairperson, and all persons shall, at the request of the chairperson, be silent. If a person, after warning from the chairperson, persists in disorderly behavior, the chairperson may order him/her to withdraw from the hearing, and, if he/she does not withdraw, may order a constable or any other person to remove him/her and confine him/her in some convenient place until the hearing is adjourned.
- (e) The chairperson may close the hearing immediately if, in his/her opinion, these Rules are being violated and/or the hearing is becoming disorderly.
- (f) The chairperson will open each hearing by reading, or causing to be read, the notice as advertised.
- (g) The petitioner or his/her representative will then present his/her case, stating fully the reason(s) why the petition or application should be granted.
- (h) When the petitioner or petitioner's representative has concluded the presentation, the chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak will rise, address the chairperson, give their names and addresses, and proceed.
- (i) When all those in favor have spoken, the chairperson will then allow those in opposition a similar opportunity to be heard.
- (j) Rebuttals may only be allowed at the discretion of the chairperson.
- (k) Similarly, no cross-examination will be allowed, although questions seeking information and deemed relevant by the Board may be allowed at its discretion.
- (l) Members of the Board who are hearing the case may direct appropriate questions during the hearing.
- (m) When all facts have been presented, the chairperson will close the hearing and inform the petitioner or his/her representative and others present that they will be notified of the Board's decision.

- (n) In the event an applicant fails to appear at a scheduled hearing, the Board may continue the matter or, in its discretion, dismiss the matter. Unless the Board indicates otherwise in its decision, any such dismissal shall be deemed a withdrawal without prejudice to refilling the application.

### **Section 6. Information to be Furnished to the Board**

Applicant may submit written materials until five business days before the hearing. Any applicant may submit a proposed decision to the Board. All submissions shall be made to the clerk.

In the case of a variance the following points, based on Massachusetts General Laws, Chapter 40A, shall be addressed and factually supported:

- (a) The particular land or structure and /or the use proposed for the land or structure, if any;
- (b) The circumstances relating to the soil conditions, shape or topography of the land and structures and especially affecting the land or structure for which the variance is sought which do not affect generally the zoning district in which it is located;
- (c) The facts which make up the substantial hardship, financial or otherwise, which results from the literal enforcement of the applicable zoning restrictions with respect to the land or structure for which a variance is sought;
- (d) The facts to support a finding that the relief sought will be without substantial detriment to the public good; and
- (e) The facts to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Zoning Bylaw.

In the case of a special permit, the following points, based on Massachusetts General Laws, Chapter 40A, and the Zoning Bylaw should be clearly identified and factually supported:

- (a) The particular type of use proposed for the land or structure, if any;
- (b) The conditions and character of operations of the proposed uses which show that it will be in harmony with the general purpose and intent of the district and the Zoning Bylaw;
- (c) The nature of the proposed use in relation to both the general and specific provisions of the Zoning Bylaw governing that use and the district in which it is located; and
- (d) Satisfaction of the specific criteria and objectives set forth in Section 906.2 of the Zoning Bylaw, as may be amended.



## **ARTICLE V. ACTIONS BY THE BOARD**

### **Section 1. Voting Requirements**

The concurring vote of four (4) members of the Board shall be necessary to reverse any order or decision of the Building Inspector, to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board, to effect any variance in the application of the Zoning Bylaw or to grant a special permit where so authorized by the Zoning Bylaw, except that any three (3) members may approve a Comprehensive Permit under Massachusetts General Laws, Chapter 40B, Sections 20 through 23. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent, or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be immediately filed in the office of the Town Clerk and shall be a public record.

### **Section 2. Withdrawal**

An application may be withdrawn by notice in writing to the clerk at any time prior to the hearing by the Board. After commencement of a hearing, a petition or application may be withdrawn only with the consent of the Board which shall determine whether the withdrawal is without prejudice to refile at any time or with prejudice subjecting the applicant to the provisions of Section 4 below.

### **Section 3. Reconsideration**

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board.

### **Section 4. Repetitive Petition**

In order to have any petition or application which has been unfavorably acted upon by the Board reconsidered by the Board within two (2) years, the petitioner must follow the procedure outlined in Massachusetts General Laws, Chapter 40A, and the Zoning Bylaw.

### **Section 5. Decisions**

- (a) The clerk of the Board will send notices of a decision forthwith to the applicant, to parties in interest and to every person present at the hearing who requests that notice be sent to him/her and states the address to which such notice is to be sent.
- (b) The clerk of the Board will send copies of the decision of the Board to the applicant, the Board of Selectmen, the Planning Board, the Board of Assessors, the Town Clerk, the Building Inspector, and where determined appropriate by the Board, other Town boards and departments.
- (c) No variance, 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 (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been

dismissed or denied, or that if it is a variance which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the petition for the variance accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and no appeal has been filed, and that the grant of the petition resulting from such failure to act has become final, or that if such appeal has been filed, that it has been dismissed or denied, is recorded with the Plymouth County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the Board to act thereon within the time prescribed, a copy of the application for the special permit accompanied by the certification of the Town Clerk stating the fact that the Board failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded with the Plymouth County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of M.G.L., Ch. 40A, Section 6.

- (d) The applicant or petitioner is responsible for filing the certified decision with the Registry of Deeds and for paying the recording fees.
- (e) A certified copy of the decision and an affidavit from the Registry of Deeds stating that the decision has been recorded are necessary before a building permit dependent on the Board's decision can be issued by the Building Inspector.

## **ARTICLE VI. POLICIES AND ADVICE**

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is declared to be the policy of the Board to discourage any personal appeals or comments to members of the Board and that all communications outside a convened meeting of the Board concerning proposed or pending matters shall be submitted through the clerk.

## **ARTICLE VII. AMENDMENTS**

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.

**ARTICLE VIII. EFFECTIVE DATE**

These Rules were adopted at a regular meeting of the Board on September 12, 2013 and became effective immediately. The Rules previously adopted and subsequently amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.

TOWN OF DUXBURY  
ZONING BOARD OF APPEALS  
CHAPTER 40B RULES & REGULATIONS

**ARTICLE I. GENERAL**

**Section 1. Purpose and Scope**

These Comprehensive Permit Rules (the “Rules”) establish procedures for submittal and review of an application to the Duxbury Board of Appeals (the “Board”) for a comprehensive permit (an “Application”) under Massachusetts General Laws, Chapter 40B, Sections 20-23 (the “Act”) and the regulations promulgated thereunder, at 760 CMR 56.00, et seq. They are required by Massachusetts General Laws, Chapter 40B, Section 21 and by 760 CMR 56.05(1). The purpose of the Act is to facilitate the development of low- and moderate-income housing in Massachusetts.

The Rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with the Act. In addition, the Board’s general rules for the conduct of hearings under Massachusetts General Laws, Chapter 40A apply to all Applications. In the event of inconsistency or conflict between those general rules and these Rules, these Rules shall govern.

**ARTICLE II. DEFINITIONS**

- (a) Board means the Duxbury Board of Appeals, established by Massachusetts General Laws, Chapter 40A, Section 12, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.
- (b) Local Board means any local board or official, including but not limited to the Board of Health, Planning Board, Conservation Commission, Historical Commission, Department of Public Works, Fire Department, Police Department, Building Inspector and Board of Selectmen. All boards and commissions performing functions usually performed by locally elected or appointed boards and commissions shall be deemed local boards.
- (c) Limited Dividend Organization means any entity which proposes to sponsor housing under the Act, is not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.

## **ARTICLE III. FILING, FEES & NOTICE**

### **Section 1. Submittal Materials**

The Rules identify plans and other reports required to be submitted to the Board in support of an Application. The materials listed below shall be submitted to the Board simultaneously with the Application. The Board recognizes that for many proposed projects, plans may not be at a definitive stage of development when the Application is filed. However, the Board needs to receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing information and materials promptly with the Application will result in a quicker process and enable the Board to become better informed.

- (a) Required Materials. Thirteen (13) copies of the following materials shall be submitted simultaneously with an Application to the Board:
  - (i) Preliminary Site Development Plans: A set of preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; open areas within the site; and other improvements. The plans shall also have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, rights of way and easements and names of abutting property owners. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the foregoing, which need not bear an architect's signature and seal. All projects of five (5) or more units must have site development plans signed and sealed by a registered architect or engineer.
  - (ii) Report on Existing Site Conditions: A report on and summary of existing conditions on the site and in the surrounding area.
  - (iii) Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building, which shall be prepared by a registered architect and, for projects of five (5) or more units, sealed by said architect. Said drawings shall include typical floor plans, typical elevations and sections, and shall identify construction type and exterior finishes.
  - (iv) Tabulation of Proposed Buildings: A tabulation of proposed buildings by type, size (e.g. number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the site to be occupied by buildings, by parking and other paved vehicular areas, by open areas and by other improvements.
  - (v) Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under Massachusetts General Laws, Chapter 41, Section 81K.
  - (vi) Utilities Plan: A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants.

- (vii) Application for Project Eligibility & Project Eligibility Letter: A copy of the application for project eligibility submitted to the subsidizing agency, as well as the written determination of project eligibility by said subsidizing agency containing all of the findings required by 760 CMR 56.04(4).
  - (viii) List of Requested Exceptions to Local Requirements & Regulations: A detailed list of requested exceptions to local requirements and regulations, which shall include an analysis of each requirement or regulation for which an exception is sought, the location on the plans for which the exception is sought (if applicable), and an explanation of why the project will not be economic unless the Board grants the requested exception.
- (b) Additional Materials. The following materials may be required by the Board:
- (i) Environmental Impact Analysis: An “Environmental Impact Analysis” prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Environmental Impact Analysis shall assess the impact of the development on the environment within the development and adjacent thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts. Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Environmental Impact Analysis.
  - (ii) Traffic Impact Report: A Traffic Impact Report prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project’s impact on the congestion, safety and overall convenience of the roadway system providing access to the proposed project. Impacts on both vehicular and pedestrian travel shall be addressed. Road intersections to be studied shall be mutually agreed upon by the Board, its consultants, and the applicant.
  - (iii) Long-Term Monitoring: A long-term monitoring plan identifying the governmental agency or other entity which shall be responsible for project monitoring for the duration of the project’s affordability. A cost estimate to implement the long-term monitoring plan shall be submitted.
  - (iv) Tenant/Owner Selection: A plan identifying the governmental agency or other entity that will be responsible for marketing the project and selecting tenants or owners.
  - (v) Landscape: A preliminary plan of proposed landscaping of the project site. The Board will normally include a condition in a comprehensive permit requiring approval of a definite landscaping plan prior to issuance of a

building permit and maintenance of the landscaping by the owner(s) of the project.

- (c) Pro Forma. A complete pro forma detailing the projected costs and revenues of the proposed project may be required if, following consultant review of the project, the Board proposes modification of the project or imposition of a condition that the applicant contends renders the proposed project uneconomic. The pro forma shall itemize all development costs, including hard costs, soft costs and site development costs, and all profits and distributions, in accordance with the Department of Housing and Community Development's (DHCD) "Comprehensive Permit Guidelines," (the "Guidelines") dated February 22, 2008, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

## **Section 2. Fees**

- (a) Administrative Fee. An Application shall be accompanied by an administrative fee in the amount of Two Thousand Dollars (\$2,000.00) plus One Hundred Dollars (\$100.00) per unit proposed. Said fee shall be paid by check made payable to the Town of Duxbury.
- (b) Consultant Fee. In addition to the administrative fee above, an applicant may be required to pay an amount into an escrow account established pursuant to G.L. c. 44, § 53G (the "Escrow Account"), said amount to be determined by the Board in its sole discretion and to be used for consultant review of the Application in accordance with 760 CMR 56.05(5) and Article IV, below. If necessary, the Board may require that the Escrow Account be replenished during the Board's review of the Application.

## **Section 3. Notice**

Upon receipt of a complete Application, the Board shall provide notification and a copy of the same to each Local Board as required by 760 CMR 56.05(3), as may be amended.

# **ARTICLE IV. USE OF OUTSIDE CONSULTANTS**

## **Section 1. Assistance of Consultants**

When reviewing an Application for, or when conducting inspections in relation to, a comprehensive permit, the Board may determine that the assistance of outside consultants is warranted because the necessary expertise is unavailable from town employees. The Board may, in its sole discretion, require that the applicant pay a reasonable review fee sufficient to enable the Board to retain consultants of its choice. All payments by the applicant toward consultants' fees shall be deposited into the Escrow Account, referenced above.

## **Section 2. Consultant Selection**

- (a) Technical Consultants. The Board may engage, as outside consultants, engineers, scientists, architects, environmental consultants, planners, urban designers and/or other appropriate professionals to assist the Board in analyzing a proposed project and

- the effect(s) on the project of all applicable laws, bylaws and rules and regulations. Such assistance may include, but not be limited to, reviewing an application, monitoring or inspecting a project or site for compliance with the Board's decision or applicable laws, bylaws and rules and regulations or inspecting a project during construction or implementation. Additionally, the Board may engage legal counsel to provide non-general representation including, but not limited to, review of legal documents and opinions submitted by the applicant.
- (b) Financial Analyst. Where a pro forma is required by the Board, it may engage a financial analyst to perform the same consultant review permitted in connection with other technical information submitted to the Board.
- (c) Notification to the Applicant. Upon selection of consultants as aforesaid, the Board shall provide notice thereof to the applicant, by hand or via first-class mail.

### **Section 3. Special Account**

Funds received by the Board for consultant review shall be deposited with the Town Treasurer, who shall establish the Escrow Account. Expenditures from the Escrow Account may be made at the direction of the Board without further appropriation, but only for services rendered in connection with the specific project or projects for which the consultant 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 any review fee requested by the Board within thirty (30) days of such request shall be grounds for denial of the Application.

### **Section 4. Remaining Funds**

At the completion of the Board's review of a proposed project, any remaining funds in the Escrow Account attributable to said project, including any accrued interest, shall be repaid to the applicant or the applicant's successor in interest. A final accounting shall be made available to the applicant or applicant's successor in interest. For the purpose of this Section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with all reasonably-requested documentation establishing the same.

### **Section 5. Appeals**

An applicant may appeal the selection of any outside consultant by the Board to the Board of Selectmen. Such appeal must be made in writing within twenty (20) days from the date the Board mailed or hand-delivered notice to the applicant of the selection of the consultant. 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 (3) 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 shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one (1) month from the date of filing of the appeal, the selection made by the Board shall stand.



## **ARTICLE V. PUBLIC HEARING & DECISION**

### **Section 1. Conduct & Scope of Public Hearing**

The Board shall hold a public hearing on the Application, conducting the same in accordance with 760 CMR 56.05(3)-(4), as may be amended. The deadlines for Board action, as therein established, shall be applicable only to the extent that the applicant has made timely submittal of all materials required by these Rules and/or reasonably requested by the Board hereunder.

### **Section 2. Decision**

The Board shall render a decision, by majority vote, in the manner and within the time specified by 760 CMR 56.05(8), as may be amended. The Board may vote to approve, approve with conditions or deny a comprehensive permit to the applicant.

- (a) Approval. The Board may approve a comprehensive permit on the terms and conditions set forth in the Application.
- (b) Approval with Conditions. The Board may approve a comprehensive permit subject to conditions and limitations, including but not limited to those necessary to protect the health or safety of the occupants of the proposed project or of the residents of the Town, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning and to preserve open spaces (the "Local Concerns"). A comprehensive permit issued by the Board may be subject to the grant of a subsidy by the applicant's subsidizing agency, the issuance of final approval by said subsidizing agency, the receipt of permit(s) or approval(s) required from any state or federal agency and/or the receipt of any waiver(s) ordered by the Board from fees normally imposed by Local Boards.
- (c) Denial. The Board may deny a comprehensive permit if it finds that there are no conditions that will adequately address Local Concerns, or for any other reason which may be provided for by the Act or the Regulations, as amended from time to time. Additionally, an Application may be denied if any of the grounds set forth in 760 CMR 56.03(1), as may be amended, have been met, in which event it shall provide notice of the same to the applicant in accordance with 760 CMR 56.03(8), as may be amended.

## **ARTICLE VI. PROJECT MODIFICATIONS**

### **Section 1. Changes to an Application**

- (a) Project Eligibility. Should an applicant propose any change(s) to its Application or any other aspect of its proposal that may affect the project eligibility requirements of 760 CMR 56.04(1), as may be amended, it shall immediately notify its subsidizing agency of said change(s). In the event the Board finds that the change(s) may be substantial, the Board may request that the subsidizing agency review said change(s) and reaffirm, amend or deny its determination of project eligibility.

- (b) Additional Information. In the event that an applicant proposes change(s) to a project while review of its Application is pending before the Board, the Board may require submittal of revised version(s) of the materials specified in the Article III, above, to the extent said materials are pertinent to the proposed change(s). For the purpose of determining deadlines for Board action, a substantial change to a project shall constitute a new Application to the Board.

## **Section 2. Changes After the Issuance of a Comprehensive Permit**

If an applicant desires to change the details of a project approved by the Board, it shall promptly notify the Board, in writing, of the details of said change(s). Within twenty (20) days, the Board shall determine and notify the applicant as to whether the change(s) are insubstantial or substantial.

- (a) Insubstantial Changes. If, in the opinion of the Board, the change(s) are insubstantial, or if the Board fails to respond within twenty (20) days following notification by the applicant of said change(s), the comprehensive permit granted by the Board shall be deemed modified to incorporate said change(s). Matters generally characterized as insubstantial changes are set forth in 760 CMR 56.07(4)(d), as may be amended.
- (b) Substantial Changes. If, in the opinion of the Board, the change(s) are substantial, the Board shall hold a public hearing on said change(s) and review the same all in accordance with 760 CMR 56.05(11)(c), as may be amended. For the purpose of said review, the Board may require submittal of any of the materials specified in the Article III, above, to the extent said materials are pertinent to the proposed change(s), and payment of the fee(s) specified in said Article III. Matters generally characterized as substantial changes are set forth in 760 CMR 56.07(4)(c), as may be amended.

## **ARTICLE VII. APPEALS**

If the Board approves an Application and issues a comprehensive permit to the applicant, appeals shall be taken pursuant to 760 CMR 56.05(9), as may be amended.

## **ARTICLE VIII. VIOLATIONS**

Either the Building Inspector or the Board may issue a “stop work order,” so-called, in the event that there is any violation of the comprehensive permit conditions, noncompliance with the plan(s) of record or serious environmental damage due to erosion, sedimentation or other site conditions. Said order shall remain in effect until such time as the violation(s) or damage(s) are corrected.

## **ARTICLE IX. MISCELLANEOUS**

### **Section 1. Policies and Advice**

Any advice, opinion or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is the declared policy of the

Board to discourage any personal communication with Board members. All communications to the Board outside of a convened meeting, whether concerning proposed or pending matters, shall be submitted through the Board's clerk.

## **Section 2. Amendments**

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting of the Board and action thereafter taken on the amendment at a subsequent, regular meeting.

## **Section 3. Effective Date**

These Rules were adopted at a regular meeting of the Board on September 12, 2013, and became effective upon filing a copy of the same with the Town Clerk. All Rules previously adopted, inconsistent herewith and not expressly incorporated herein by reference are hereby repealed; provided, however, that no action taken under said Rules shall be affected by said repeal.