

**CITY OF NEWTON**

**RULES AND PROCEDURES OF THE ZONING  
BOARD OF APPEALS**

**Effective February 28, 2024**

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**CITY OF NEWTON**  
**ZONING BOARD OF APPEALS**  
**RULES & PROCEDURES**

**INTRODUCTION**

In accordance with the Revised Ordinances of the City of Newton and the Massachusetts General Laws, the Zoning Board of Appeals (hereinafter the “Board”) has been established and authorized to review, deliberate, make findings and determinations and grant or deny zoning appeals and petitions. This document establishes the Rules and Procedures for the Board.

The Rules and Procedures of the Board are intended to serve as a guide for the actions of the Board with respect to zoning appeals, variance petitions and comprehensive permit applications. The Rules and Procedures are designed to be a reference source to interested citizens. The Rules set forth the filing requirements and procedures for all matters before the Board and serve as instructions for the public on how to initiate such matters. The Rules and Procedures, in conjunction with the Board’s mandatory filing forms and informal filing guides, should be carefully reviewed prior to any filing with the Board to ensure compliance with all filing requirements. The Board’s filing forms are attached hereto as Exhibits A to C and may be amended from time to time. The Rules and Procedures are also intended to facilitate the orderly conduct of business by the Board, to provide for the most efficient use of Board and staff time and to facilitate the decision-making processes of the Board by specifying standard procedures to be used in its business affairs with the public.

The Rules and Procedures are established pursuant G.L. c. 40A, § 12. A copy of the Rules and Procedures shall be filed with the City Clerk. The Rules, and the Board’s filing forms, are available to the public online at <https://www.newtonma.gov/government/planning/zoning-board-of-appeals/> and paper copies are available and in the Planning Department in City Hall. The Board may amend the Rules and Procedures, from time to time, in the same manner such Rules and Procedures may be adopted.

**ARTICLE I. GENERAL**

**SECTION 1. POWERS**

The Board has the following powers:

- A. to hear and decide administrative appeals, in accordance with G.L. c. 40A, § 8;
- B. to hear and decide petitions for variances, in accordance with G.L. c. 40A, § 10;
- C. to hear and decide applications for comprehensive permits to build low and moderate-income housing, in accordance with G.L. c. 40B, § 21.

In exercising these powers, the Board may make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all powers of the officer from

whom the appeal is taken and may issue or direct the issuance of a permit.

## SECTION 2. FILING FEES

Each appeal, petition or application shall be accompanied by a filing fee, according to the fee schedule set forth below.

### A. Administrative Appeals

\$1000.00

### B. Variance Petitions

\$1000.00

### C. Comprehensive Permit Applications

For Profit – \$2,000.00 plus \$50.00 per unit

Non-Profit (7 or more units) – \$1,000.00 plus \$50.00 per unit

Non-Profit (6 or fewer units) – \$350.00

All filing fee checks must be made payable to the “City of Newton.” Any appeals, petitions or applications filed without the appropriate filing fee will not be accepted.

## ARTICLE II. ORGANIZATION

### SECTION 1. MEMBERSHIP

The Board shall consist of five regular members and five associate members.

### SECTION 2. OFFICERS

The Board shall elect from its regular members at its first meeting in January of each year, or at the earliest possible meeting thereafter, a Chairperson and a Vice Chairperson to serve for one year and until their successors are elected.

### SECTION 3. CLERK

The Board shall elect from the employees of the Planning and Development Department at its first meeting in January of each year, or at the earliest possible meeting thereafter, a Clerk to serve for one year and until his or her successor is elected.

### SECTION 4. CHAIRPERSON

The Chairperson shall preside at all meetings of the Board. He or she shall vote and be recorded on all matters coming before the Board. Subject to these rules, the Chairperson shall decide all points of order and shall be responsible for the proper conduct of all meetings and hearings, unless overruled by a majority of the members sitting. The Chairperson shall appoint such committees as may be found necessary or desirable by the Board.

In addition to the powers granted by the Massachusetts General Laws and the Ordinances of the City, and subject to these rules and further instructions of the Board, the Chairperson shall establish sitting schedules for the meetings of the Board, oversee the work of the Clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. The Chairperson shall report on official business of the Board to the Board as necessary.

The sitting schedule for each meeting shall, whenever possible, consist of the five regular members, plus one associate member as an alternate. If one or more regular members are unavailable or have a conflict, the alternate, plus any additional associate members as necessary will be seated in their place. The designated alternate is not required to attend a meeting or hearing at which five other members are sitting, except for Comprehensive Permit hearings. In instances where the designated alternate attends a hearing, such alternate may participate in all deliberations but may not vote on any matter for which there are five other members present and voting.

#### SECTION 5. VICE CHAIRPERSON

In the absence, inability to act or conflict of interest on the part of the Chairperson, the Vice Chairperson shall perform the duties of the Chairperson.

#### SECTION 6. CLERK

Subject to the direction of the Board and its Chairperson, the Clerk shall supervise all of the clerical work of the Board, including:

- A. handling all correspondence of the Board;
- B. drafting and posting minutes;
- C. publishing, posting and mailing all notices required by law;
- D. receiving all appeals, petitions, applications and related plans submitted to the Board, and approving or rejecting all such filings based on form and information content; and
- E. maintaining all necessary files.

#### SECTION 7. ASSOCIATE MEMBERS

The Chairperson shall designate an associate member to serve in the place of a regular member in the case of a temporarily unfilled vacancy, inability to act, absence or conflict of interest on the part of the regular member. Such designation of associate members should be on a rotating basis.

## SECTION 8. QUORUM

A quorum of the Board shall consist of four members.

## SECTION 9. ORDER OF SUCCESSION

In the case of absence, inability to act or conflict of interest on the part of both the Chairperson and the Vice Chairperson, the Chairperson shall designate a regular or associate member as Acting Chairperson. In the event the Chairperson does not so designate, the regular and associate members then sitting shall elect an Acting Chairperson from their numbers who shall perform all the duties of the Chairperson related to that meeting.

## SECTION 10. MEETINGS

- A. Regular Meetings. Regular meetings of the Board shall be held at 7:00 p.m., on the **fourth Wednesday** of each month with the exception of the months of July, August and December, or at the Chairperson's discretion. Such meetings shall be open to the public and subject to the Open Meeting Law.
- B. Public Hearings. Public hearings shall be open to the public. More than one public hearing may be held during a meeting. Public hearings may also be held at times other than regular meetings. Notice of all public hearings shall be in accordance with the applicable state statutes.
- C. Emergency Meetings. Emergency meetings of the Board may be called by the Chairperson, or at the written request of two members of the Board. The Chairperson will set the time and place of the emergency meetings. Public notice shall be posted as soon as reasonably possible prior to such meeting.

## ARTICLE III. BASIC FILING PROCEDURE

### SECTION 1. INTRODUCTION

All appeals, petitions and applications, hereinafter referred to collectively as "Applications," shall be filed in the form and manner as prescribed by these Rules. The specific filing requirements for administrative appeals are set forth in Article IV; the specific filing requirements for variances are set forth in Article V and the specific filing requirements for a Comprehensive Permit are set forth in Article VI.

### SECTION 2. GENERAL FORM

All Applications submitted to the Board shall include the appropriate forms attached hereto as follows:

*EXHIBIT A – Application for Administrative Appeal and Checklist Cover Page*

EXHIBIT B – *Petition for Variance and Checklist Cover Page*

EXHIBIT C – *Cover Page for Application for Comprehensive Permit*

SECTION 3. GENERAL REQUIREMENTS

All Applications must contain the following:

- A. All Applications must sufficiently identify and describe the property in question and identify the zoning district within which the property is located.
- B. In instances where the applicant is a company, corporation or any other entity, a list of names and addresses of the principals, officers and/or managers must be disclosed as part of the Application.
- C. All applicants must grant permission for Board members and City of Newton employees to access their property for viewing in connection with the Application.
- D. The signature of the applicant is mandatory on all Applications.

SECTION 4. FILING FEE

The filing fee, in accordance with Article I, Section 3 of these Rules, must be paid at the time the Application is filed. No Application is complete, and will not be accepted by the Board's Clerk or treated as filed, without receipt of the appropriate filing fee.

SECTION 5. COMPLETENESS

No Application is complete and thus will not be accepted and/or considered filed unless all required forms, information, documents and the filing fee are filed in the office of the Board's Clerk in such form and in such numbers as required by these Rules. Any communication purporting to be an Application shall be treated as a mere notice of intention to seek relief until such time as an Application is filed in the manner prescribed. The discretion of the Clerk and/or the Chairperson shall be exercised in determining the completeness of an Application.

SECTION 6. FILING PROCEDURE

It is recommended that Applicants contact the Board Clerk at least 48 hours before filing in order to schedule a time to file their Application with the Clerk in person. It is also recommended that applicants contact the Clerk to schedule a preliminary review prior to the intended filing date to ensure an Application is complete. The Clerk may be reached at the Planning Department in City Hall, 1000 Commonwealth Avenue and by telephone at 617-769-1120.

SECTION 7. COMPLETENESS REVIEW PERIOD AND INCOMPLETE FILINGS

The Clerk of the Board, in consultation with the Chairperson and City staff from the Planning Department and the Law Department, shall review all Applications for completeness and compliance with the filing requirements within five (5) business days after receipt of an Application. If an Application is determined by the Clerk to be incomplete, the Clerk shall



immediately give written notice of an incomplete filing to the applicant that identifies all deficiencies that must be remedied. Upon receipt of such written notice, the applicant must file a complete Application within five (5) business days or the incomplete Application will be administratively rejected by the Clerk and the filing fee returned. An initially incomplete Application for Administrative Appeal that is then completed in accordance with this rule but after the thirty (30) day deadline will not be considered untimely. The Board and City staff may request additional information even after an Application is initially deemed complete.

#### SECTION 8. SUBMISSION OF WRITTEN MATERIALS

The Board will accept written materials from applicants and petitioners up to five (5) calendar days before the scheduled hearing date. For comprehensive permit applications, twelve (12) paper copies of all such materials must be submitted to the Board. For variance petitions and administrative appeals, six (6) copies of all such materials must be submitted to the Board. All materials must also be submitted to the Board and an electronic copy must be submitted in PDF format, via email or on a USB flash drive to the Board's Clerk. Materials submitted thereafter will not be distributed before or at the hearing.

If the late-filed materials are being offered by an applicant in support of their own application for comprehensive permit, variance petition, or administrative appeal, the Chairperson may offer the applicant wishing to submit the materials the opportunity to continue the hearing to a later date so that the members of the Board shall have time to consider the materials. In the case of a hearing continued to another date under the condition of the prior paragraph or for any other reason, the Clerk will distribute the materials in question at or after the close of the evening's business. In the case of a hearing upon which a decision has been reached, the Clerk will retain a copy of all late-filed materials, appropriately marked to indicate that they were not considered in the Board's decision.

All written materials or communications to the Board in any format must contain the name and address of the individual or entity submitting the materials or communications in order to be considered by the Board and/or made a part of the official record.

#### SECTION 9. OUTSIDE CONSULTANTS

Pursuant to G.L. c. 44, §53G and Newton Revised Ordinances § 22-6, the Board may hire outside consultants whenever the Board determines that the City lacks sufficient staff resources or expertise to provide timely reports or reviews of pending matters. The applicant filing the application for which an outside consultant is hired pursuant to this Rule shall pay the consultant's fee to the City. The fee shall be set by the Director of Planning and Development, shall be reasonable and shall reflect the estimated cost for the type of review or report requested from the consultant. Any fee charged in excess of the actual cost of the review shall be repaid to the applicant in accordance with the provisions. Of Rev. Ord. §22-6.

Any consultant hired pursuant to this Rule shall have 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 Director of Planning and Development shall select the consultant in accordance with all applicable ordinances and state statutes. An applicant required to pay a fee for an outside consultant pursuant to this Rule may appeal the choice of the consultant to the City Council,

sitting as the City legislative body. The appeal shall be limited to claims that the selected consultant has a conflict of interest or does not possess the minimum required qualifications. The required time limits for action upon an application shall be extended by the duration of the administrative appeal. A decision shall be made by the City Council within thirty (30) days of the filing of the appeal or as soon as practicable. In the event no decision is made by the City Council within thirty (30) days, the selection by the Board shall stand.

## **ARTICLE IV. ADMINISTRATIVE APPEALS**

### **SECTION 1. GENERAL**

An appeal may be taken by:

- A. Any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from the Commissioner of Inspectional Services, or his or her designee, or from any administrative officer under the provisions of G.L. c. 40A.
- B. Any regional planning agency in whose area the town is situated.
- C. Any person aggrieved, including an officer or board of the City, or of an abutting city or town, by an order or decision of the Commissioner of Inspectional Services, a building inspector or other administrative official, in violation of any provisions of G.L. c. 40A or the Newton Zoning Ordinance. See G.L. c. 40A, §8.

### **SECTION 2. FORM OF APPEAL**

An appeal must contain the following:

- A. A completed *Application for Administrative Appeal* and *Checklist Cover Page*, attached hereto as EXHIBIT A.
- B. A detailed statement of the reasons for the appeal, with reference to the specific provisions of the Zoning Ordinance that are implicated and a statement of why the appellant is aggrieved by the decision being appealed.
- C. A copy of the order, permit or decision being appealed.
- D. The appeal must satisfy all of the general filing requirements set forth in Article 3 of these Rules.
- E. The appeal must be submitted in a format that clearly labels all required and supporting documentation.

### **SECTION 3. FILING THE APPEAL**

- A. The original Application for Administrative Appeal and a completed Checklist Cover Page, with all required information and materials, must first be filed with and date timestamped by the City Clerk. Six (6) copies must then be filed with the Clerk of the Board, all within thirty (30) days of the date of issuance of the order or decision which is the subject of the appeal.
- B. The filing with the Board's Clerk must be date time-stamped by the City Clerk, indicating when it was filed with the City Clerk.
- C. An electronic copy of the Appeal Application and supporting and required documentation must also be submitted the same day in PDF format, via email or on a USB flash drive to the Board's Clerk.
- D. A complete copy of the Appeal must immediately thereafter be filed with the Inspectional Services Department.
- E. An appeal filed more than thirty (30) days after the issuance of the order or decision being appealed will not be accepted by the Board's Clerk.

## **ARTICLE V. VARIANCES**

### **SECTION 1. GENERAL**

A Variance allows for the departure from provisions of the Newton Zoning Ordinance in limited circumstances where the Board finds that all three of the following conditions apply:

- A. There are special circumstances related to the soil conditions, the shape, or the topography of the land or structures on the land which affect it but do not generally affect other properties in the zoning district in which it is located.
- B. A literal enforcement of the provisions of the Zoning Ordinance would result in substantial hardship to the owner and that the variance, as it is proposed, is the minimum change that is necessary to allow the reasonable use of the building or land.
- C. The variance will be in harmony with the general purpose and intent of the Zoning Ordinance and will not be detrimental to the neighborhood or the public welfare.

A variance may be granted with respect to particular land or structure or use. No variance will be considered by the Board except those variances specifically requested.

### **SECTION 2. PRELIMINARY REVIEW**

- A. Development Review Team Meeting. A Development Review Team ("DRT") meeting is required prior to submitting a variance petition. During a DRT meeting, City staff from several departments meet with the prospective applicant to evaluate the proposal and assist in determining the required zoning relief. No statements by the DRT are binding upon the

Board. Applicants should contact the Planning Department to schedule a DRT meeting.

- B. Zoning Review Memorandum. Applicants are required to request and receive a Zoning Review Memorandum, generated by the Chief Zoning Code Official (“CZCO”), prior to submitting a variance petition. Applicants should request a Zoning Review Memorandum well in advance of submission of their petition. The CZCO shall issue a final Zoning Review Memorandum detailing the zoning relief required for the proposed project within forty-five (45) days after receipt of all plans and information needed for such zoning review. If the final Zoning Review Memorandum is not issued within 45 days, an applicant may file a variance petition without the Zoning Review Memorandum.

### SECTION 3. FORM OF THE VARIANCE PETITION

A petition for a variance must contain the following:

- A. A completed *Petition for Variance* form and *Checklist Cover Page*, attached hereto as EXHIBIT B, and which are a part of these Rules.
- B. The name(s) and address(es) of the individual(s) seeking relief. In instances where the applicant is a company, corporation or any other entity, a list of the names and addresses of the principals, officers and/or managers must be disclosed as part of the Application.
- C. Evidence of proof of direct legal interest in or control of the property that is the subject of the petition. This evidence may be in the form of a property deed, purchase option, purchase and sales agreement, lease, written statement by a duly authorized agent or other party with present legal interest or other legally sufficient documentation that establishes a property right or interest by the applicant. If the applicant is not the owner, they must explain the relationship between the applicant and the owner.
- D. A detailed statement describing the project, the relief being requested and all facts and circumstances that support a finding of the three conditions set forth above in Section 1.
- E. A completed Zoning Review Memorandum, generated by the CZCO.
- F. The following plans: Plan of Land, Area Plan, Plot Plan and Architectural Plan. All plans must be 11 x 18 and must be signed, stamped, dated, clearly labeled, drawn to a scale where all notes and dimensions are legible and include a scale bar. The applicant must also submit two (2) sets of full-size plans, drawn to scale, as part of the petition. Please see the “*Instructions for Required Plans*” attached to the Petition for Variance form for more specific information relating to the plans required.
- G. The petition must satisfy all of the general filing requirements set forth in Article 3 of these Rules. It must be submitted in a format that clearly labels each required document set forth above and any other supporting documents.

### SECTION 4. FILING THE VARIANCE PETITION

- A. The original Petition for Variance form and Checklist Cover Page, with all required information and materials, must first be filed with and date time-stamped by the City Clerk and six (6) copies must then be filed with the Clerk of the Board.
- B. The filing with the Board's Clerk must be date time-stamped by the City Clerk, indicating when it was filed with the City Clerk.
- C. An electronic copy of the Variance Petition and supporting and required documentation must also be submitted the same day in PDF format, via email or on a USB flash drive to the Board's Clerk.

#### SECTION 5. CONDITIONS ON VARIANCES

The Board may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures but excluding any condition, safeguards or limitation based upon the continued ownership by the applicant, petitioner or any owner of the land or structures to which the variance pertains.

### ARTICLE VI. COMPREHENSIVE PERMITS

#### SECTION 1. AUTHORITY

The rules and regulations in this Part VI (the "40B Rules"), establish procedures for applications to the Board for comprehensive permits, under G.L. c. 40B, §§ 20-23 ("Chapter 40B") and 760 CMR 56 (the "Regulations"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in Chapter 40B or the Regulations. These 40B Rules must be read in conjunction with and implemented in a manner consistent with Chapter 40B. In the event of any inconsistency between these 40B Rules and Chapter 40B, the Regulations or the Guidelines prepared by the Massachusetts Department of Housing and Community Development (the "Guidelines") (together with Chapter 40B and the Regulations, the "State Law Requirements"), the State Law Requirements shall control. In addition, the Board's general Rules apply to comprehensive permit applications. In case of an inconsistency or conflict between the general Rules and these 40B Rules, these 40B Rules shall control.

#### SECTION 2. PRELIMINARY REVIEW

- A. Development Review Team Meeting. A Development Review Team ("DRT") meeting is required prior to submitting a comprehensive permit application. During a DRT meeting, City staff from several departments meet with the prospective applicant to evaluate the proposal and assist in determining the required zoning relief. No statements by the DRT are binding upon the Board. Applicants should contact the Planning Department to schedule a DRT meeting.
- B. Zoning Review Memorandum. Applicants are required to request and receive a Zoning Review Memorandum, generated by the Chief Zoning Code Official ("CZCO"), prior to submitting a comprehensive permit application. Applicants should request a Zoning

Review Memorandum well in advance of submission of the application. The CZCO shall issue a final Zoning Review Memorandum detailing the zoning relief required for the proposed project within forty-five (45) days after receipt of all plans and information needed for such zoning review. If the final Zoning Review Memorandum is not issued within 45 days, an applicant may file a comprehensive permit application without the Zoning Review Memorandum.

- C. Further Review. In addition to the required DRT meeting, applicants are encouraged to meet with neighbors prior to submission and to keep neighbors apprised of all proceedings. Applicant should also inform and contact the following City officials prior to submission: local City Councilors; City Engineer to review the adequacy of utilities and roadways in the area; Fire Department to review safety, including emergency access and applicable fire codes; Public Works Department to review traffic, trash removal and approve necessary curb cuts; and the Environmental Planner to review wetlands and environmental issues.

### SECTION 3. FORM OF APPLICATION

The application for a comprehensive permit shall consist of:

- A. A completed *Cover Page for Application for Comprehensive Permit*, attached hereto as EXHIBIT C.
- B. A narrative description of the project. The narrative shall include a description of the proposed building massing, style and exterior materials, site layout and the relationship of the project to adjacent properties, rights of way and existing development patterns. It shall also include a summary of existing conditions in the surrounding areas, the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas in the neighborhood.
- C. Identification of Owners and Principals. All Applications shall contain the name(s) and address(es) of the individual(s) seeking the comprehensive permit relief. In instances where the applicant is a company, corporation or any other entity, a list of the names and addresses of the principals, officers and/or managers must be disclosed.
- D. A list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of filing the application. The applicant shall also be required to disclose its relationship to all such entities.

A list of recently completed development projects by the applicant, along with a brief description of each project.

- E. The written determination of Project Eligibility, issued by the Subsidizing Agency, showing that the applicant fulfills the requirements of 760 CMR 56.04(1).
- F. A list of requested waivers to local requirements and regulations, including local codes, ordinances or regulations.

- G. A completed Zoning Review Memorandum generated by the CZCO.
- H. Zoning analysis in tabular form comparing existing zoning requirements to the waivers that are being requested for the proposed project, showing required and proposed dimensional requirements including lot area, frontage, front, side and rear setbacks, maximum building coverage, maximum lot coverage, total FAR, height, number of stories, maximum gross floor area ratio, units per acre, units per buildable acre, number of parking spaces per unit/square foot and total number of parking spaces (proposed and required).
- I. Preliminary site development plans showing the locations and outlines of proposed buildings and the dimensions for all setbacks; property lines; proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; location and dimensions for all parking stalls, parking aisles, handicap parking, snow storage, dumpsters, bike racks and signs; proposed topography, including all landscaping improvements and open areas within the site. All projects of five or more units must have site development plans signed by a registered engineer or architect. An Applicant proposing to construct or rehabilitate four or fewer units may submit a site plan in sketch form, which need not have an engineer or architect's signature.
- J. A landscape plan, showing fences, walls, planting areas, trees with type and size and trees to be removed, with caliper inches.
- K. A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities including hydrants. Adequate supporting information shall be provided to demonstrate compliance with the City's Stormwater Management ordinance. If a waiver from full compliance is requested, the nature and reasons for the waiver shall be specified in detail.
- L. A plan showing existing conditions.
- M. Preliminary, scaled, architectural drawing. For each building, the drawings shall be prepared by a registered architect, and shall include typical floor plans, all elevations, and typical sections, and shall identify construction type and exterior finishes.
- N. Where a subdivision of land is involved, a preliminary subdivision plan.
- O. One or more aerial photographs of the site (such as those available online) showing the immediate surrounding area. Site boundaries and existing site entrance and access points must be clearly marked.
- P. Photographs of the site and surrounding physical and neighborhood context, including nearby buildings, significant natural features and land uses. Please identify the subject, location and viewpoint of all photographs.
- Q. It is recommended, but not required, that a traffic study be submitted as part of the initial application for large projects. The submission of a traffic study may be required by the

Board, in consultation with City staff, during the public hearing if such a study has not been provided. Additional studies or analysis may also be requested, at the expense of the applicant, if determined necessary by the Board.

#### SECTION 4. FILING THE APPLICATION

- A. Filing Fee. The application shall be accompanied by a filing fee in accordance with Article I, Section 3 of the Board's Rules.
- B. Filing with Board Clerk. Twelve (12) copies of the complete application, with all required information and materials, shall be filed with the Clerk of the Board. An electronic copy must also be submitted the same day in PDF format, via email or on a USB flash drive to the Board's Clerk.
- C. Format. The application must be submitted in a format that clearly labels each required document set forth above in Section 3 and any other supporting documents, in the same order as listed in Section 3. All applications must, at a minimum, include a table of contents or index, with tabs or consecutively numbered pages.
- D. Plans. Copies of all plans shall be 11 x 17 inches and must include a scale bar. The applicant must also submit two (2) sets of full-size plans, drawn to scale, as part of the application.
- E. Completeness. If significant information or documentation is missing from the application, the Board may delay opening the public hearing until a complete application is filed. If an application is accepted by the Board's Clerk, but is later determined to be incomplete for failure to comply with the filing requirements, the Clerk shall give written notice of an incomplete filing to the applicant that identifies all deficiencies that must be remedied.

#### SECTION 5. CONSULTANT REVIEW

- A. Outside Consultants. If, after receiving an application, the Board determines that in order to review the application it requires technical advice that is unavailable from City staff in such areas as civil engineering, transportation, environmental resources, design review of buildings and site, scale or complexity of proposed project, potential impacts and review of financial statements, it may employ outside consultants at the expense of the applicant. The Board shall work cooperatively with the applicant to identify appropriate consultants and scopes of work and to negotiate payment of the consultant fees by the applicant.
- B. Project Review Fee. 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 in accordance with 760 CMR 56.05(5)(b). The Board will not employ any consultants until after the review fee has been paid by the applicant. Any delay in payment of the fee may delay completion of the public hearing process. In the event that the review fee is insufficient to fund the necessary consulting services, the Board may require additional deposits. Any unspent excess, including accrued



interest, shall be reimbursed to the applicant upon issuance of the Board's decision or withdrawal of the application.

- C. Failure to Pay. If the applicant fails to pay any review fee within twenty-one (21) days of request by the Board, the Board may deny the comprehensive permit application.
- D. Selection. The procedures for inviting proposals by qualified outside consultants are as follows:
1. For services exempt from G.L. c. 30B, the Board shall issue a Request for Quotations to a minimum of three (3) qualified consultants.
  2. For services subject to G.L. c. 30B, the Board shall follow the G.L. c. 30B procedures.
  3. A quote or proposal shall include, at a minimum, the following: (i) the name of each person performing the work; (ii) the educational and professional credentials of each person performing the work; (iii) a description of the work to be performed; (iv) the hourly rate charged by each person performing the work; and (v) all other expenses to be billed.
- E. Deposit of Review Fees. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been collected from the Applicant.
- F. Administrative Appeal. An applicant may make an administrative appeal from the selection of an outside consultant, within 20 days of the consultant's selection, to the City 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 shall be extended by the duration of the administrative appeal. In the event that no decision on the appeal is made by the city council within one month following the filing of the appeal, the selection made by the Board shall stand.

## SECTION 6. REVIEW OF FINANCIAL STATEMENTS

If the applicant asserts that a condition imposed by the Board will render the project Uneconomic and the pre-conditions set forth in 760 CMR 56.05(6)(a) have been satisfied, the applicant shall submit a complete pro-forma, detailing the projected costs and revenues of the proposed project and an explanation of the basis and sources for the projections, and otherwise in compliance with

760 CMR 56.05(6)(b). An additional fee or fees may be imposed pursuant to 760 CMR 56.05 for the retention of an outside consultant to assist the Board in its analysis of this claim. Alternatively, the Applicant may opt to pay for the Board's financial consultant or peer review in the manner prescribed by G.L. c. 44, § 53G and the above Section 5.

#### SECTION 7. PUBLIC HEARING & DECISION

- A. Notice to Local Boards. Within seven days of receiving a complete application, the Board Clerk shall send an electronic notification to all applicable Local Boards that includes a copy of the complete application, a request for written comments and recommendations, and an invitation to attend the public hearing.
- B. Planning Report. The Planning Department shall submit a report to the Board providing a technical and planning analysis of the application.
- C. Public Hearing. The Board shall open a public hearing within 30 days of its receipt of a complete application, unless such time period is extended by mutual agreement between the Board and applicant. A public hearing shall not extend beyond 180 days from the date of the opening of the hearing, presuming that the applicant has made timely submissions of materials in response to reasonable requests of the Board, except with the written consent of the applicant.
- D. Decision. The Board shall render a decision, based upon a majority vote of the Board, within 40 days after the termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. Absent a vote to close the public hearing, the hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.
- E. Disposition. The Board may dispose of an application in the following manner:
  - 1. approve a comprehensive permit on the terms and conditions set forth in the application;
  - 2. deny a comprehensive permit, if the Board determines that the denial is Consistent with Local Needs and that there are no conditions that will adequately address Local Concerns; or
  - 3. approve a comprehensive permit with conditions that address matters of Local Concerns;
- F. Filing Decision. The Board's written decision shall be filed with the City Clerk within 14 days after the Board renders a decision.

#### SECTION 8. APPEALS FROM BOARD DECISIONS

- A. If the Board approves the comprehensive permit, any person aggrieved may appeal within

the 20-day time period and to the court as provided in G.L. c. 40A, § 17.

- B. If the Board denies the comprehensive permit or approves the permit with conditions, the applicant may appeal to the Housing Appeals Committee within the 20-day time period as provided in G.L. c. 40B, § 22.

## **ARTICLE VII. PUBLIC HEARINGS**

### **SECTION 1. TIME LIMIT FOR HEARINGS**

The Board shall hold a public hearing for administrative appeals and variance petitions within 65 days from the date of the filing of a complete application with the Board Clerk. This required time limit may be extended by written agreement between the applicant and the Board. A copy of such agreement shall be filed with the City Clerk.

The Board shall open a public hearing for Comprehensive Permit applications within 30 days from the date of the filing of a complete application with the Board Clerk. This required time limit may be extended by mutual agreement between the Board and the applicant.

### **SECTION 2. NOTICE**

Notice of all Board public hearings shall be posted and advertised as required by law. Notice will also be sent by mail, postage prepaid, to the applicant and to all “Parties in Interest” entitled to notice under G.L. c. 40A, § 11. Notice of all other Board meetings shall be posted in accordance with the Open Meeting Law.

### **SECTION 3. MEETINGS & HEARINGS TO BE PUBLIC**

All meetings and public hearings shall be open to the public and subject to the Open Meeting Law. No person shall be excluded unless he or she is considered by the Chairperson to be a serious hindrance to the working of the Board. All meetings and hearings shall be recorded electronically.

### **SECTION 4. WRITTEN PUBLIC TESTIMONY**

The Board will accept written public testimony up to forty-eight (48) hours before the start of the scheduled hearing. All written public testimony submitted to the Board in any format must contain the name and address of the individual or entity submitting the materials in order to be considered by the Board and/or made a part of the official record. In the case of a hearing continued to another date, the Clerk will distribute any late-filed written public testimony at or after the close of the evening’s business. In the case of a hearing upon which a decision has been reached, the Clerk will retain a copy of all late-filed written public testimony, appropriately marked to indicate that it was not considered in the Board’s decision.

### **SECTION 5. REPRESENTATION AND ABSENCE**

An applicant may appear in his or her own behalf or be represented by an agent or attorney. In the absence of an appearance, the Board may postpone or decide the matter, using the information it has available.

#### SECTION 6. ORDER OF BUSINESS

The following steps will be the usual conduct of business at a public hearing:

- A. Call to order;
- B. Applicant's presentation;
- C. Presentation from Planning and/or ISD Staff;
- D. Public Testimony in favor of the Application;
- E. Public Testimony in opposition of the Application;
- F. Closing of public hearing, followed by deliberation/discussion by the Board;
- G. Motion and vote.

The order of business may change at the discretion of the Chairperson. Members of the Board hearing the case may direct appropriate questions during any portion of the hearing. No rebuttal on the part of any party will be allowed without specific permission of the Chairperson. Petitions and appeals will usually be heard in the order in which they are filed but may be heard in a different order upon decision by the Chairperson.

#### SECTION 7. CONTINUANCES

The Chairperson, in his or her discretion, may continue a public hearing to take the matter under consideration for deliberation and decision, including but not limited to scheduling a site visit for the Board. Notice of the new date, time and place of the continued hearing and its subject matter shall be announced at the hearing and the continued hearing shall be properly noticed in accordance with the Open Meeting Law. The Chairperson, at his or her discretion, may also require the continued hearing to be properly re-noticed pursuant to G.L. c. 40A. By requesting a continuance of a public hearing, the applicant agrees to extend (by the number of days requested in the continuance) the time under which the Board must render and file its decision under state law.

#### SECTION 8. DELIBERATION

After the close of the public hearing on a particular matter or after all matters have been heard, at the option of the Chairperson, the Board shall deliberate and vote upon each matter it has heard. Such action may take place on the same evening as the hearing or may be continued to a later time subject to the discretion of the Board. At the time of the deliberations, there shall be no further testimony or comment by individuals other than Board members without specific permission of the Chairperson.

#### SECTION 9. VOTING REQUIREMENTS

The concurring vote of at least four members of the Board is required to grant any variance and to reverse an order or decision of the Commissioner of Inspectional Services on appeal. The concurring vote of at least three members of the Board shall be required to approve a Comprehensive Permit application.

#### SECTION 10. RECONSIDERATION

Upon an appropriate motion, there may be reconsideration of a decision of the Board before the public hearing or meeting is adjourned. When a hearing has been closed and an Application has been finally voted upon, there shall be no reconsideration of the Board's decision.

#### SECTION 11. WITHDRAWAL

An Application may be withdrawn, without prejudice, at any time prior to the publication of the notice of a public hearing on the matter. After publication of the public hearing notice, an Application may only be withdrawn without prejudice with approval of the Board by majority vote at a regularly scheduled meeting. A request to withdraw must be submitted in writing and by the applicant himself or herself, or by his or her authorized representative.

#### SECTION 12. REAPPLICATION

No petition or appeal which has been finally and unfavorably acted upon may be favorably acted upon by the Board within two years after such final unfavorable action unless the Board finds, by a vote of four Board members, that there are specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its written decision. Consent of all but one of the members of the Planning Board is also required prior to the Board's action on a reapplication. Notice shall be given to parties in interest of the time and place of the proceedings when the question of such consent will be considered by the Planning Board.

### ARTICLE VIII. DECISIONS BY THE BOARD

#### SECTION 1. TIME LIMIT FOR ACTION

- A. Appeals and Variances. Decisions on administrative appeals and variance petitions shall be made within 100 days of the date of filing a completed application with the Board. This required time limit may be extended by written agreement between the applicant and the Board. A copy of such agreement shall be filed with the City Clerk.
- B. Comprehensive Permit Applications. Decisions on Comprehensive Permit applications shall be made within 40 days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant.

## SECTION 2. DETAILED RECORD OF DECISION

The Board shall cause to be made a detailed written record of its decision and proceedings, indicating the vote of each member upon each question and setting forth clearly the reason for its decision or its official actions. The Chairperson or Acting Chairperson of the Board may, unless otherwise requested by a voting Board member, sign the written decisions for each member. Such requests for personal review shall be made at the time of each member's deliberation and vote.

## SECTION 3. TIME LIMIT FOR FILING WRITTEN DECISIONS

- A. Appeals and Variances. The Board's written decision shall be filed with the City Clerk within 14 days after the end of the 100 day time period from the date of filing a completed appeal or variance petition with the Board. This required time limit may be extended by written agreement between the Applicant and the Board. A copy of such agreement shall be filed with the City Clerk.
- B. Comprehensive Permit Applications. The Board's written decision shall be filed with the City Clerk within 14 days after the Board renders a decision.

## SECTION 4. NOTICES OF DECISIONS

The Board shall issue a copy of its written decision on variance petitions and administrative appeals to the owner and to the applicant, if other than the owner. Notice of the decision shall also be mailed to all parties in interest and to every person present at the hearing who requests notice and provides in writing an address to which such notice is to be sent.

## SECTION 5. RECORDING OF VARIANCES

No variance or any extension, modification or renewal thereof shall take effect until a certified copy of the Board's decision, bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed with the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County South Registry of Deeds by the applicant.

After recording the Board's decision, the applicant must then return a copy of the recorded decision, with the Book and Page of recording noted thereon, to the Clerk of the Board. No Building Permit shall be issued by the Inspectional Services Department without receipt of proof of recording in the Registry of Deeds.

## SECTION 6. TIME LIMITS ON EXERCISE OF VARIANCES AND COMPREHENSIVE PERMITS

Rights authorized by a variance shall lapse if not exercised within one year of being granted. The Board, in its discretion and upon written application by the grantee of the variance, may extend the time to exercise such rights up to six months. Where construction authorized by a comprehensive permit has not commenced within three years of the date on which the comprehensive permit becomes final, the comprehensive permit shall lapse.

## **ARTICLE IX. EXECUTIVE SESSION**

### **SECTION 1. GENERAL**

While all meetings of the Board are open to the public, certain topics may be discussed in executive, or closed, session in accordance with the Open Meeting Law and these Rules.

### **SECTION 2. PROCEDURE**

- A. The Board must first convene in open session at a public meeting or hearing for which notice has been given.
- B. Any member of the Board may, by motion, call for an executive session for one of the ten specific purposes set forth by the Open Meeting Law.
- C. The Chairperson of the Board must identify the reason for the executive session, stating all subjects that may be discussed without compromising the purpose for which the executive session was called.
- D. The Board must take a roll call vote to enter executive session.
- E. Prior to going into executive session, the Chairperson shall state whether the Board will reconvene in open session at the end of the executive session.
- F. The Board shall then go into executive session. While in executive session, the Board shall keep accurate records, all votes taken must be recorded by roll call and the Board may only discuss matters for which the executive session was called.

## **ARTICLE X. MISCELLANEOUS PROVISIONS**

### **SECTION 1. CONFLICTS OF LAW**

All matters upon which these rules are silent shall be determined by the applicable provisions of the Massachusetts General Laws and of the Ordinances of the City.

In the event of any conflict between these rules and any provision of the General Laws or City ordinances, the Laws and City ordinances shall control.

### **SECTION 2. ADOPTION OF RULES**

These rules shall become effective upon adoption by a majority of the Board and upon filing a copy thereof with the City Clerk.

Copies of these rules as adopted, and as amended from time to time, shall be furnished to the Mayor, the City Council and the Planning Board. Copies of these rules shall be kept available by the Clerk of the Board for inspection by any person at reasonable times.

SECTION 3. AMENDMENT OF RULES

These rules may be amended from time to time, as necessary and proper, by a majority vote of the Board.

SECTION 4. SEPARABILITY

If any provision of these rules is declared invalid, such invalidity shall have no effect on the validity of the remaining provisions of these rules not so in conflict.

AS APPROVED BY THE ZONING BOARD OF APPEALS –  
FEBRUARY 28, 2024, TO BE EFFECTIVE FEBRUARY 29, 2024.

ZONING BOARD OF APPEALS,

By its Chairperson,



Michael Rossi