



TOWN OF LAKEVILLE MEETING POSTING & AGENDA

Town Clerk's Time Stamp
received & posted:

48-hr notice effective
when time stamped

Notice of every meeting of a local public body must be filed and time-stamped with the Town Clerk's Office at least 48 hours prior to such meeting (excluding Saturdays, Sundays and legal holidays) and posted thereafter in accordance with the provisions of the Open Meeting Law, MGL 30A §18-22 (Ch. 28-2009). Such notice shall contain a listing of topics the Chair reasonably anticipates will be discussed at the meeting.

Name of Board or Committee:	Zoning Board of Appeals
Date & Time of Meeting:	Thursday, January 18, 2024 at 7:00 p.m.
Location of Meeting:	Lakeville Public Library 4 Precinct Street, Lakeville, MA 02347
Clerk/Board Member posting notice:	Cathy Murray

Cancelled/Postponed to: _____ (circle one)

Clerk/Board Member Cancelling/Postponing: _____

A G E N D A

Petition hearings (votes to be taken)

1. **Benatti hearing, continued** – Appeal from Decision of the Building Inspector/Zoning Enforcement Officer relative to business activity in the residential district at **434 Bedford Street**
2. **Approve Meeting Minutes for December 21, 2023.**
3. **Discuss updating Comprehensive Permit regulations.**
4. **Next meeting . . . Thursday, February 15, 2024 at the Lakeville Public Library.**
5. **Adjourn**

*Please be aware that this agenda is subject to change. If other issues requiring immediate attention of the **Zoning Board of Appeals** arise after the posting of this agenda, they may be addressed at this meeting*

Cathy Murray, Planning Department Clerk

From: John Benatti <jpsd1105@msn.com>
Sent: Wednesday, January 17, 2024 8:16 AM
To: Cathy Murray, Planning Department Clerk
Subject: Re: RE ZBA meeting

Hi Cathy. Can I get a continuance to next month? I have a new issue/question for Nate. Thanks and sorry for the back and forth. Regards John

2/15/24

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From: John Benatti <jpsd1105@msn.com>
Sent: Tuesday, January 16, 2024 2:00:51 PM
To: Cathy Murray, Planning Department Clerk <cmurray@lakevillema.org>
Subject: Re: RE ZBA meeting

Do I also need to do the same with the building department?

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From: Cathy Murray, Planning Department Clerk <cmurray@lakevillema.org>
Sent: Tuesday, January 16, 2024 1:54:52 PM
To: John Benatti <jpsd1105@msn.com>
Cc: John Olivieri, Advisor <JohnOlivieri@worldinsurance.com>
Subject: RE: RE ZBA meeting

If you would like to withdraw, please send a formal request to the Zoning Board asking to withdraw your petition without prejudice. That will allow you to refile, at a later date. An email request is fine.

As far as your request to speak with Town Counsel, I would have to find out more about that.

Cathy

From: John Benatti <jpsd1105@msn.com>
Sent: Tuesday, January 16, 2024 1:49 PM
To: Cathy Murray, Planning Department Clerk <cmurray@lakevillema.org>
Subject: Re: RE ZBA meeting

Hi again. So just to be clear. I can withdraw the complaint(there's been no decision) and refile later if necessary. At that point I could also file an appeal pending that decision. I would be ok with that. If thats correct tell me how to proceed. I'd still like to know about the town council question if it came to another appeal. If you don't know please redirect me thanks. Regards John B

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From: Cathy Murray, Planning Department Clerk <cmurray@lakevillema.org>
Sent: Tuesday, January 16, 2024 12:40:01 PM
To: John Benatti <jpsd1105@msn.com>

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
December 21, 2023**

On December 21, 2023, the Zoning Board held a meeting at the Lakeville Public Library. The meeting was called to order by Chairman Olivieri at 7:03 p.m. LakeCam was making a video recording. No one else was recording the meeting.

Members present:

John Olivieri, Jr., Chair; Jeff Youngquist, Vice-Chair; Gerald Noble, Clerk; Christopher Campeau, Member; Christopher Sheedy, Member; Anthony Zucco, Associate Member

Others present:

Marc Resnick, Town Planner; Nathan Darling, Building Commissioner

Benatti hearing, continued – an appeal related to 434 Bedford Street

Mr. Olivieri opened the continued Benatti hearing at 7:04. He advised the applicant had submitted an email requesting the hearing be continued.

Mr. Youngquist made a motion, seconded by Mr. Noble, to continue the Benatti hearing until January 18, 2024. The time would be at 7:00 p.m. The **vote** was **unanimous for**.

The hearing closed at 7:05.

Sepersky hearing – 311 Pond Lane

Mr. Olivieri opened the Sepersky hearing at 7:05 and read the legal ad into the record. He then read comments from the various Town Boards. The December 19, 2023, letter from the Board of Health had no objection to the proposed addition. The Conservation Commission email of December 18, 2023, stated that the project would require a full Notice of Intent. The Planning Board had no comment on the petition.

Mr. Leo Bisio, President of Bisio & Son Construction, then submitted a letter to the Board dated December 20, 2023 for the record. It noted that it had recently come to Mr. Bisio's attention that the Sepersky Family Trust has transferred the deed for the property to Southworth Pond Realty, LLC. The ownership and the address remained the same. Mr. Olivieri said that he thought they could go forward where it is the same common ownership. Mr. Bisio said Attorney Mather advised him that it is still the same owner and same address, and all they are doing is changing the realty trust. Mr. Resnick said his opinion is this was properly advertised, and if anyone had a concern, the advertising would have been the same. It has been noted in the public hearing there has been a change in the ownership. It doesn't affect the submittal in any way, and it will be noted properly

in the approval. It is up to the applicant to move forward, but he did not see any major problem. Mr. Youngquist noted the approval goes with the land. Mr. Olivieri asked if anyone present had any comments or concerns. No one spoke.

Mr. Bisio explained the project. They wanted to build a garage with a room above. They had gone over there and shot elevations. The Board will notice that the elevations over there from Pond Lane down to the driveway drop quite a bit, so they have located it in the spot that they thought would be the best level spot. A survey had been done by Foresight Engineering which showed that they were 11 feet off of the right of way, but the Sepersky's own to the center of the right of way. He is asking for four feet. Mr. Noble asked him to explain the drawing they had, which Mr. Bisio then did. He also submitted pictures for the record.

Mr. Sheedy asked for a clarification on the 11 feet. Mr. Bisio said it is 11 feet to the right corner of the right of way. He then indicated on the plan where the right of way was. They are 16 feet off of the corner of the garage to the center. He can show them a letter where the Attorney states the Sepersky's own to the center of the right of way. Mr. Bisio also submitted the letter from the Attorney and two letters from neighbors, who supported the proposed project.

Mr. Campeau asked if there was a reason why it is jogged to the right on the diagram. Mr. Bisio replied that you would not be able to approach the garage. He then displayed some pictures of the property. Mr. Olivieri asked if anyone present would like to speak for or against the petition. No one spoke.

Mr. Noble asked for an explanation of the living space. Mr. Bisio replied it is a garage with a mudroom. The second floor above the garage would have a primary bedroom and bathroom. There will be two ways of getting out of the bedroom, but it would also be accessible to the second floor of the existing structure. Mr. Olivieri asked how far away they were from the neighbors on the side where they are seeking relief. Mr. Bisio estimated 50 feet.

Mr. Youngquist then made the motion, seconded by Mr. Campeau, to approve the Variance as applied for. The **vote was unanimous for.**

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 7:20.

Documents distributed for the hearing:

- Petition packet
- Legal ad
- Board of Health correspondence of December 19, 2023
- Conservation Commission email of December 18, 2023

Town of Lakeville hearing – 2 & 28 Precinct Street

Mr. Olivieri opened the Town of Lakeville hearing at 7:20 and read the legal ad into the record. He then read comments from the various Town Boards. The December 19, 2023, letter from the Board of Health had no objections since water or septic would not be required. The Planning

Board had no comment on the petition. The November 1, 2023, letter from the Lakeville Arts Council was supportive of the application.

Mr. Nathan Darling, Building Commissioner, was present. He advised he was present on behalf of the Lakeville Art Council, Historic Commission, and Select Board. Approximately a year and a half ago, funding was appropriated to put a pavilion over the Center Stage. When they went to install it, they hit a sixteen-inch water main. They then started looking at other options. After looking at the Site, they favored as close as they could to the Sampson Cemetery, which is what they are proposing tonight.

Mr. Darling said it is important to note that dissimilar to the last petition which was a Variance, their Bylaw allows by Special Permit an accessory structure within the setback. He asked if there were any questions from the Board. There were none. Mr. Olivieri asked if there were any questions or from anyone present. Mr. Brian Reynolds from the Historical Commission said the Commission was supportive of the petition. It will be beneficial for holding events on the property.

Mr. Youngquist made a motion, seconded by Mr. Noble, to approve the Special Permit as applied for. The **vote** was **unanimous for**.

The hearing closed at 7:25.

Documents distributed for the hearing:

- Petition packet
- Legal ad
- Board of Health correspondence of December 19, 2023
- Conservation Commission email of December 18, 2023

Meeting minutes

Mr. Noble made a motion, seconded by Mr. Sheedy, to approve the meeting minutes from the November 16, 2023, meeting. The **vote** was **unanimous for**.

Approve 2024 meeting dates

This was inadvertently left out of the packet, but meeting dates would continue to be on the third Thursday of the month. Ms. Murray would forward these dates out to the Board and post them on the Zoning Board web page.

Next meeting

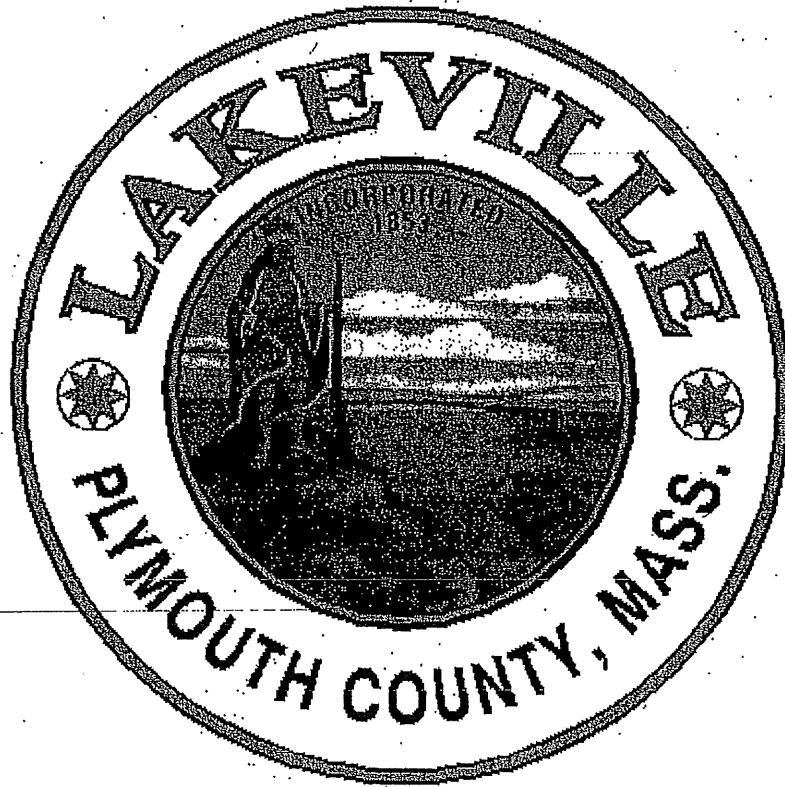
The next meeting is scheduled for January 18, 2024, at 7:00 p.m. at the Lakeville Public Library. Mr. Olivieri noted that Mr. Resnick would not be with them for that meeting, as he would be leaving the Town for another opportunity on January 5, 2024. The Board wished him luck with his new endeavor.

Adjourn

Mr. Youngquist made a motion, seconded by Mr. Sheedy, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 7:29.

**TOWN OF
LAKEVILLE**



**COMPREHENSIVE PERMIT
RULES OF THE ZONING
BOARD OF APPEALS**

As of 2/19/04

Comprehensive Permit Rules of the Zoning Board of Appeals
Amended February 19, 2004

Section

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

1.00: Purpose and Context

These Rules establish procedures for applications to the zoning board of appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 31.02. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These Rules alone are not sufficient to describe comprehensive permit procedures before the zoning board of appeals. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general Rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

2.00: Definitions

(a) *Board* means the zoning board of appeals established under M.G.L. c. 40A, § 12.

(b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen.

3.00: Filing, Time Limits, and Notice

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

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

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

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

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

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

(f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

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

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

(ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and

(iii) the applicant shall control the site;

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

(i) a complete pro-forma, detailing the projected costs and revenues of the proposed project.

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

(a) for Limited Dividend Organizations - \$350.00 flat fee plus \$75.00 per unit

(b) for Non-Profit Organizations - \$350.00 flat fee plus \$25.00 per unit

(c) for Public Agencies and Local - \$350.00 flat fee plus \$75.00 per unit

3.03: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01(h), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application. In order to allow review by local officials, the Applicant shall provide the Town Clerk with 35 copies of the complete application so that the following boards, officials and departments may review the same:

Board of Selectmen (3)
Board of Health (3)
Zoning Board of Appeals (7)
Planning Board (5)
Conservation Commission (5)
Building Commissioner (1)
Fire Chief (1)
Police Chief (1)
Highway Surveyor (1)
Town Administrator (1)
Town Clerk (1)
Planning Committee (1)
Historical Commission (1)
Town Counsel (1)
File Copy (1) and
One unbound copy for copying purposes.

Additionally 11"x17" copies of all plans (with matchlines) shall be made available to the Town Clerk for copying purposes

4.00: Review Fees

4.01: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is

insufficient to fund the necessary consulting services, the Board may require additional deposits.

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

4.03: Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G.. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

4.04: At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

4.05: Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

5.00: Public Hearing and Decision

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

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

when all public testimony has been received and all information requested by the Board has been received.

5.03: The Board may dispose of the application in the following manner: (a) approve a comprehensive permit on the terms and conditions set forth in the application,

(b) deny a comprehensive permit in the event that there are valid local concerns that outweigh the regional housing need, or

(c) approve a comprehensive permit with conditions, including but not limited to height, site plan, size, shape or building materials, that do not render the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto.

5.04: With the grant of a comprehensive permit, the Board may consider the imposition of conditions including but not limited to the following:

(a) A condition on the time period required to obtain building permits;

(b) A condition requiring that all of the affordable units be restricted in perpetuity for sale to qualifying households;

(c) A condition requiring the payment of certain readily definable or negotiated sums in order to mitigate impacts posed by the proposed project;

(d) A condition requiring enhanced affordability for all or a portion of the restricted units; or alternatively, increasing the number of affordable units proposed by the development;

(e) A condition requiring that, to the extent permitted by law, the maximum percentage of the restricted affordable units be reserved for Lakeville residents or employees.

6:00 Changes in Application

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

60.2: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3:00 hereof that is deemed by the Board to be necessary to evaluate such changes.

6:03: In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 3:03 above.

7.00: Appeals

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

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

TOWN OF FREETOWN ZONING BOARD OF APPEALS

RULES AND REGULATIONS GOVERNING COMPREHENSIVE PERMITS

1.0 PURPOSE & AUTHORITY

These rules establish procedures for applications to the Freetown Zoning Board of Appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969). M.G.L.c. 40B, Sections 20-23. They are required by M.G.L. c. 40B, Section 21, as amended by Stat. 1989, c. 593, and by 760 CMR 30.01. The purpose of these rules is to facilitate the review and permitting of affordable housing in Freetown.

1.2 These rules and regulations may be adopted and from time to time amended by majority vote of the Freetown Zoning Board of Appeals members present and voting, provided such adoption or amendment is taken after a properly advertised public hearing.

1.3 These rules and regulations are effective when voted, and a copy filed with the office of the Town Clerk. Copies may be filed with the Bristol County Registry of Deeds and the Commonwealth of Massachusetts Land Court, with appropriate endorsements, such as:

Date of adoption:

Date filed with Town Clerk:

Amendments:

2.0 DEFINITIONS

2.1 *APPLICANT (or petitioner)* means the person, corporation, party, etc. who files an application or petition for a Comprehensive Permit under M.G.L. c. 40B. The applicant may include a property owner, agent, or prospective purchaser who submits certification (such as an executed purchase and sales agreement) or property interest and authority to file.

2.2 *BASE FLOOD ELEVATION* The "Base Flood Elevation" shall be the level of flooding having a one percent chance of being equaled or exceeded in any given year, (100 year flood) as designated on the most current Flood Insurance Rate Map (FIRM), as prepared by the Federal Emergency Management Agency (FEMA), or, in the absence of such designation, to be determined by the Planning Board based upon the best available information regarding flood hazards, including any available United States Geologic Survey, Soil Conservation Service, and Corps of Engineers studies.

2.3 *BOARD* means the Freetown Zoning Board of Appeals (Z.B.A.) established under M.G.L. c 40A Section 12.

2.4 *BRIDGE* The term "bridge" shall apply to any structure whether single or multiple span construction that spans a body of water, depression, highway or railway, and affords passage for pedestrians, or vehicles of any kind, or any combination thereof having a total length of ten feet (10') or more or a height greater than five feet.

- 2.5 *BRIDGE HEIGHT* The "height" of a bridge shall be considered from the road centerline finish grade to the finish grade below the bridge.
- 2.6 *BRIDGE LENGTH* In general, the "length" of a bridge is that distance measured horizontally along the centerline of roadway between extreme centerlines of bridge shoes or bearings, or when shoes or bearings are not used the distance between vertical faces of abutments, or spring lines of arches, or extreme ends of openings for multiple reinforced concrete boxes.
- 2.7 *CERTIFIED BY* "Certified by (or endorsed by) the Zoning Board of Appeals", as applied to a plan or other instrument required or authorized by M.G.L. c. 40B to be recorded, shall mean bearing a certification or endorsement signed by a majority of members of the Zoning Board of Appeals.
- 2.8 *CULVERT* A structure not classified as a bridge which provides an opening under the roadway.
- 2.9 *DESIGNER* Professional Civil Engineer or Land Surveyor registered to practice in Massachusetts. All work defined as professional engineering or surveying shall be done under the direct supervision of a Registered Professional Engineer or Land Surveyor.
- 2.10 *DEVELOPER* A person (as hereinafter defined) who develops a plan approved under these Rules and Regulations.
- 2.11 *EASEMENT* A right acquired by public authority or other person to use or control property for a utility or other designated purpose.
- 2.12 *LOCAL BOARD* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.
- 2.13 *LOT* An area of land in one ownership, with definite boundaries. (Section 81-L of Chapter 41, M.G.L.)
- 2.14 *MONUMENT* A permanent marker to indicate a boundary.
- 2.15 *MUNICIPAL SERVICES* Sewers, water drains, water pipes, gas pipes, electrical lines, telephone lines, cable television, fire alarm systems and their respective appurtenances.
- 2.16 *OWNER* The person holding the ultimate fee simple title to a parcel, tract or lot of land, as shown by the record in the Land Registration Office, Registry of Deeds, or Registry of Probate.
- 2.17 *PERSON* An individual, or two or more individuals, or a group or association of individuals, a partnership, trust or corporation having common or undivided interest in a tract of land.
- 2.18 *PLAN* The plan as submitted (with appropriate application) to the Board for approval, to be recorded in the Registry of Deeds or filed with the Land Court when approved by the Board, and such plan when approved and recorded.

- 2.19 *ZONING BOARD AGENT* Town employee or consultant authorized by the Zoning Board of Appeals to review applications and/or administer the regulations.
- 2.20 *RECORDED* "Recorded" shall mean recorded in the Registry of Deeds of Bristol County, except that as affecting registered land, it shall mean filed with the Recorder of the Land Court. (Section 81-L of Chapter 41, M.G.L.)
- 2.21 *RETAINING WALL* A wall built to resist lateral pressure.
- 2.22 *ROADWAY* The portion of a street intended for vehicular travel.
- 2.23 *SIGHT DISTANCE*
1. The minimum distance that can be seen in all directions when stopped at an intersection from a point nine feet (9') behind the curb line, three and one half feet (3 1/2') high, observing an object four feet and three inches (4.25') high in the center of the approaching travel lanes.
 2. Stopping sight distance as defined by the American Association of State Highway and Transportation Officials (AASHTO).
- 2.24 *STREET, DEAD-END* A segment of a street which only intersects another street at one end. For the purposes of this regulation any proposed street which intersects solely with a dead end street shall be deemed to be an extension of the dead end street.
- 2.25 *STREET, MAJOR* A street which, in the opinion of the Board, is being used or will be used as a thoroughfare within the Town of Freetown, or which will otherwise carry a heavy volume of traffic (generally, over fifteen hundred (1500) vehicles per day). In residential areas, volume per day shall be computed at the rate of ten (10) trips per dwelling day.
- 2.26 *STREET, MINOR* A street which, in the opinion of the Board, is being used or will be used primarily to provide access to abutting lots, and which will not be used for through traffic.
- 2.27 *STREET, PRIMARY* A street which connects two existing major streets.
- 2.28 *STREET, SECONDARY* A street intercepting one (1) or more minor streets and which, in the opinion of the Board, is used or will be used to carry a substantial volume of traffic (generally, over four hundred (400) vehicles per day) from such minor street(s) to a major street or community facility, and normally including a principal entrance street to a shopping center, industrial park, planned unit development, or a large subdivision or group of subdivisions, and any principal circulation street within such subdivision. In residential areas, volume per day shall be computed at the rate of ten(10) trips per dwelling day.
- 2.29 *SUBDIVISION* "Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision of the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (a) a public way or a way which the Town Clerk certifies is maintained and used as a public way. or (b) a way shown on a plan therefore approved and endorsed in accordance with the subdivision control law, or (c) a way in existence when the subdivision control law became effective in Freetown, having, in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such

frontage shall be of at least such distance as is then required by zoning by-law, for erection of a building on such lot. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in Freetown into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision. (Section 81-L of Chapter 41, M.G.L.)

- 2.30 *SUBDIVISION CONTROL* "Subdivision control" shall mean the power of regulating the subdivision of land granted by the Subdivision Control Law, Chapter 41, Section 81-A through GG inclusive as hereinafter amended.
- 2.31 *TOWN* Town of Freetown.
- 2.32 *WALL* See Retaining Wall.
- 2.33 *WAY* A way is synonymous with the terms road, street, highway, and avenue, and shall denote any such line or route for passage, whether public or private.

3.0 SOURCE OF INFORMATION REQUIRED

In those cases in which the land shown on the plan is abutted by land of an owner not the owner of the land as shown, the Board may require a statement from the person who prepared the plan as to the source or sources of the information about the location of boundaries. A separate form for such statement will be furnished by the Board, see Form D, Designer's Certificate, Freetown Rules and Regulations of the Planning Board governing the Subdivision of Land, as amended.

4.0 APPLICATION FOR COMPREHENSIVE PERMITS

- 4.1 Submission of an Application. Any person who submits an application to the Zoning Board of Appeals for approval under M.G.L. c. 40B shall file with the Board or the Town Clerk the following (all items required in paragraphs 4.1 and 4.2 of this section shall be submitted for an application to be "duly submitted" in accord with the General Laws of Massachusetts):
- 4.1.1 An original reproducible drawing of the Plans and twelve (12) contact prints thereof, dark line on white background. The original drawing will be returned after approval or disapproval. The Board should distribute a set of plans, Form Z, and requests of waivers to the Board of Health, Board of Selectmen, Conservation Commission, Planning Board, Highway Department, Fire Department, Police Department, Water Commission, Assessor's Office, and other Town agencies along with the notice of the Public Hearing within five (5) business days of the receipt of the application.
- 4.1.2 An original properly executed application Form Z (attached), Comprehensive Permit Application and a letter requesting waivers of all local requirements and regulations, including local code ordinances, bylaws or regulations, and twelve (12) copies of each, including the time within which the public utilities in the project shall be provided; Form D, Designer's Certificate including three (3) copies; and Form E, Certified List of Abutters including three (3) copies. Approval of all plans shall be upon the condition that all ways shown thereon and public utilities required by the Board shall be completed and installed within the time estimated by the utilities and specified by the developer. See the Freetown Subdivision Rules and Regulations, as amended, for Forms D and E. The Board shall send copies of the Forms D and E to the Board of Selectmen and Planning Board along with the plans per paragraph 4.1.1.
- 4.1.3 The applicant shall submit all required fees per Section 5.0 with the submission made to the Zoning Board of Appeals.

- 4.1.4 The applicant shall file by delivery or registered mail a complete submittal (per Section 4.0) with the Town Clerk stating the date of submission to the Board for such approval.
- 4.1.5 The applicant shall file with the Zoning Board of Appeals clerk a Municipal Lien Certificate.
- 4.1.6 The applicant shall file an original and two (2) copies of the covenant (See Form F of Subdivision Rules and Regulations, as amended) if a covenant is the method chosen by the applicant to secure the project. The ZBA shall send a copy of the covenant to Town Counsel and the Planning Board with the plans per paragraph 4.1.1.
- 4.1.7 The applicant shall file an original and four (4) copies of the Maintenance Association Agreement. The ZBA shall send a copy of the Maintenance Association Agreement to the Board of Selectmen, Town Counsel and the Planning Board with the plans per paragraph 4.1.1.
- 4.1.8 Where appropriate, the Zoning Board of Appeals may require at the expense of the applicant soil surveys and percolation tests utilizing the Department of Environmental Protection's Soil Evaluation Procedures under Title V to establish the suitability of the land for the proposed storm drainage and septic installations, and proposed street construction. Such soil surveys and tests must be filed with all of the plans.
- 4.1.9 All financial disclosure information for the project. Include all Federal, State and private funding sources.
- 4.2 Contents. The Plan shall be prepared by a professional engineer and land surveyor registered in Massachusetts and shall be clearly and legibly drawn in black India ink upon linen or mylar. The plan shall be at a scale of one inch (1") equals forty feet (40'), or such other scale as the Zoning Board of Appeals may accept to show details clearly and adequately, and shall include plans and profiles of each individual street at a scale of one inch (1") equals forty feet (40') horizontal and one inch (1") equals four feet (4') vertical. All elevations shall refer to the U.S.G.S. Datum. Sheet sizes shall be twenty-four by thirty-six inches (24" x 36") including a three quarter inch (3/4") border. All plans shall be accompanied by a sheet showing the entire project and adjacent streets and dimensions of the lots and streets and lot numbers. The Plan shall contain the following information:
- 4.2.1 A title on each sheet, appearing in the lower right-hand corner of the plan, showing the name of the project, if any; the date; scale; the names and addresses of the applicant; and the names of the designer, engineer and surveyor who made the plan.
- 4.2.2 North point on all appropriate sheets, benchmark at U.S.G.S. datum, and boundaries of the subdivision.
- 4.2.3 Location and ownership of abutting property as it appears on Form E, Certified List of Abutters unless the applicant shall have more recent knowledge of such abutters, including all abutting land owned by the applicant, and all other land within three hundred feet (300') of the boundaries of the land shown on the plan including across an existing street. A Certified List of Abutters (Form E) is required from an abutting Town if the proposed project is within three hundred feet (300') of a Town line.
- 4.2.4 Intersecting boundary lines of abutting lands.
- 4.2.5 Major features of the land, such as existing waterways, all wetlands and water bodies (per the Wetland Protection Act), rivers and riparian zones (per 310 CMR10.0), natural drainage courses, walls, fences, structures, underground structures, utilities, historic markers, milestones, bridges,

clearly defined trails, large trees, wooded areas, outcroppings and ditches which exist on or are contiguous and relevant to the site at the time of survey.

- 4.2.6 Lines of existing and proposed streets, ways, buildings, lots, lot numbers or other designation of each lot, easements (including purposes), and public or common areas within the project. (The proposed names and numbers of proposed streets and lots shall be shown in pencil until they have been approved by the Board.)
- 4.2.7 Sufficient data to determine the location, direction and length of every street and way line, lot line, boundary line, easement line, and to establish these lines on the ground. This shall include the lengths and bearings of plan and boundary lines of all project lot lines including lot frontage on the streets, of the boundary lines of all streets, easements etc., and the lengths, radii, tangents, and central angles of all curves in lot lines, street lines, easements etc. All angle points, or intersections of tangents along the street lines, shall be shown, areas of lots with sequential lot numbers and the area and frontage on public ways as set forth in Section 81-L of Chapter 41, M.G.L. of adjoining lands of the applicant not included in the project will be shown.
- 4.2.8 Location of all permanent monuments properly identified as to whether existing or proposed.
- 4.2.9 Location, names, status (public or private) and present widths of public ways or private ways bounding, approaching or within reasonable proximity (within 300') of the project, showing both roadway widths and rights-of-way widths.
- 4.2.10 Indication of all easements, covenants or restrictions applying to the land and their purposes.
- 4.2.11 If the property that comprises the project or any part or boundary thereof has been examined, approved, and confirmed by the Massachusetts Land Court, such information shall be noted on the plot with case numbers and other pertinent references to Land Court Procedure, and the same requirement shall apply to any adjoining parcels of land of the applicant.
- 4.2.12 Suitable space on every plan sheet to record the action of the Zoning Board of Appeals and the signatures of the Board, including the date of approval and the date of endorsement.
- 4.2.13 Proposed layout (including plans and profiles) of street construction, storm drainage, water supply, sewage disposal systems, and all other utilities, including details required for construction as deemed by the Board (size, grades, inverts, location by station and offset, and material type).
- 4.2.14 Existing roadway profiles drawn in fine black line for existing centerline, dotted for left and dashed for right side, and the proposed profile of the existing finished center-line drawn in thick black solid line of proposed streets at a horizontal scale of one inch (1") equals forty feet (40') and vertical scale of one inch (1") equals four feet (4'). At least two (2) benchmarks, with descriptions, are to be shown on the plans and profiles, and existing and proposed grade elevations at every 50 foot (50') station on tangents and at every twenty five foot (25') station within vertical curves. All existing and proposed intersections and sidewalks shall be shown with all proposed grade elevations calculated. The plan and profile of one (1) street only shall be drawn on each sheet.

Plan and profiles of easements are required to verify maintenance equipment accessibility.

Elevations are to be referred to as either mean sea level or zero equals mean low water as established by the Coast and Geodetic Survey. Gradient shall be shown by figures expressed in percent. Elevations and locations of vertical curve Point of Vertical Curvature's, Point of Vertical Tangency's, high points, low points, "K" values and curve lengths must be shown.

- 4.2.15 Existing and proposed topography at two foot (2') contour intervals. The Board may require additional information on abutting land, whenever it is deemed necessary, to ensure compatibility of grades and drainage. Reference benchmarks, including descriptions must be identified. The road stationing shall be shown on the grading plans.
- 4.2.16 A signed statement that all surveying conforms to Land Court Standards shall appear on the original "plot" sheets.
- 4.2.17 Boundary traverse closure tables showing the areas and precision will be supplied for all lots, streets and easements.
- 4.2.18 Location and results of soil, percolation, and water table tests using the Department of Environmental Protection Soil Evaluation procedures under Title V. Water table tests are required under all proposed drainage detention facilities and adjacent to any road cuts greater than three feet (3').
- 4.2.19 Drainage design. Existing drainage characteristics of the general area of the proposed project, and the effect of the proposed use and any proposed drainage facilities on the existing drainage characteristics, shall be included with the plan.

A drainage plan will be prepared by a Registered Professional Engineer in the Commonwealth of Massachusetts and show existing and proposed streets, lots, two foot (2') contours, and other pertinent data; the drainage limits and acreage of the area tributary to each storm-water inlet and culvert, location and type of inlets proposed; and location, size, length, invert elevations and slope of proposed drains and culverts, structural details of inlets, manholes, pipes, headwalls, and all other drainage structures required to complete the plan shall be attached. The grading plan may be used provided that it includes all the information required. The drainage design and construction must adhere to all requirements of Section IV, Design and Construction Standards, Part D, Drainage and Runoff Control of the Freetown Subdivision Rules and Regulations as amended, and details of the drainage standards, appendix B of the Freetown Subdivision Rules and Regulations, as amended.

- 4.2.20 Location and species of proposed street trees will be shown including the location of trees to be retained as determined in the field by the Highway Surveyor.
- 4.2.21 Cross sections typical of each street, roadway and sidewalk to be constructed.
- 4.2.22 In tabular form as follows for each sheet of the project plan as submitted:
 - 4.2.22.1 The total property area of the project which is being subdivided on each sheet.
 - 4.2.22.2 The total area of lot(s) included on each sheet.
 - 4.2.22.3 The total of areas dedicated for street purposes, drainage, sewer or utility easements on each sheet.
 - 4.2.22.4 The total of areas reserved for parks, schools, and other public use on each sheet.
- 4.2.23 Locus map at a one inch (1") equals two thousand feet (2000') scale with a minimum of two (2) existing streets shown.
- 4.2.24 All "plot" sheets to be stamped and signed by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts and all other sheets to be signed and stamped by a Registered Professional Engineer licensed in the Commonwealth of Massachusetts.
- 4.2.25 Zoning Classification and location of any Zoning Districts boundaries that may lie within the locus of the plan. Dimensional regulations currently in effect shall also be listed including any conflicts.

- 4.2.40 A landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings, prepared and stamped by a registered landscape architect in the Commonwealth of Massachusetts.
- 4.2.41 Percent of building lot coverage and percentage of paved (impervious) are used for parking, loading, and access within the property.
- 4.2.42 The location and description of proposed open space or recreation areas.
- 4.2.43 The application shall also furnish a narrative summary of the vital statistics of the project. Such statistics shall include: Total gross and net square footage, number of parking spaces, and estimated amounts of water consumption and sewer discharge.
- 4.2.44 Projections of down gradient concentrations of nitrogen, phosphorus, and other relevant chemicals to be disposed of on-site, at property boundaries and at other locations deemed pertinent by the Board, prepared by a Hydrogeologist or Registered Professional Engineer possessing experience and education in Water Supply Protection and Hydrology.
- 4.2.45 Any additional information which the Board may require. The Board may engage a Massachusetts Professional Engineer experienced in groundwater evaluation, hydrogeology or hazardous and toxic materials to review the application for completeness and correctness and shall require the applicant to pay for the cost of the review.

4.3 Layout and Design Guidelines:

- 4.3.1 All streets, drainage, water system, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations governing the Subdivision of Land in the Town of Freetown, Section IV and appendixes A through E, as amended.
- 4.3.2 Fencing as required by the Board for safety and or screening.
- 4.3.3 All exterior lighting shall be limited to 15 feet in height and shall cast a maximum of eight (8) foot candles of light on the ground. Lighting shall also be directed not to blind vehicle or pedestrian traffic within or abutting the site.
- 4.3.4 All rubbish and trash containers shall be screened from view by fencing or landscaping. Said containers shall have heavy duty plastic tops to reduce noise when being serviced.
- 4.3.5 The wastewater treatment system shall meet a ten (10) parts per million (PPM) of nitrate-nitrogen limitation on the overall property.
- 4.3.6 Buildings shall be a maximum height of 2.5 stories.
- 4.3.7 For attached unit buildings the minimum setback from the property lines shall be two (2) times the height of the building. The setback between attached unit buildings shall be equal to the height of the highest building.
- 4.3.8 Utilities shall be underground, starting from the property line.
- 4.3.9 Off road parking shall be per the Freetown Planning Board's Special Permit Regulations, as amended. Additional spaces are required for office area visitors and staff.
- 4.3.10 Periodic monitoring shall be required when the site location and land use activities indicate a significant risk of contamination to the water supply, which risk shall be as determined by the Board

based upon recommendations of the Freetown Water Commission, Board of Health and Conservation Commission. Such monitoring may include analyses of water for appropriate substances and the installation of groundwater monitoring wells constructed and located as specified by the Water Commission or Board of Health. All costs shall be borne by the owner of the premises.

- 4.3.11 Drainage from loading areas for toxic or hazardous materials shall be separately collected for safe disposal. All drainage structures including outlets shall have a minimum thirty (30) foot vegetated buffer to wetlands.
- 4.2.12 Soil shall not be lowered to finished exterior grade less than five (5) feet above maximum groundwater elevation, unless technical evidence are to be provided showing to the Board's satisfaction that groundwater quantity or quality will not be detrimentally affected. Technical evidence may include, without limitation, a determination of soils and geologic conditions where evaporation/transpiration occurs.
- 4.3.13 All drainage and design construction must conform to the Department of Environmental Protection Stormwater Management Regulations.
- 4.3.14 A secondary access roadway shall be required if deemed by the Zoning Board of Appeals.
- 4.3.15 All signage shall be per the Freetown Planning Board's Special Permit Regulations, as amended
- 4.3.16 Where a public water system is located within four hundred feet (400') of a project, the developer shall connect to the public water system and the entire project shall be serviced with fire protection and potable water.

4.4 Maintenance Association Agreement

- 4.4.1 A Maintenance Association Agreement shall be submitted to the Zoning Board of Appeals, reviewed and approved of by the Town Counsel, and the Zoning Board of Appeals.
- 4.4.2 Upon approval, the Maintenance Association Agreement shall be recorded at the Registry of Deeds (or Land Court as applicable) prior to any construction beginning.
- 4.4.3 The Maintenance Association Agreement shall establish an association of all the property owners within the project that will have the authority to guarantee that all aspects of the project shall be maintained, repaired, reconstructed, etc. as needed in perpetuity assuming no "outside" or Town of Freetown assistance. Maintaining includes, snow plowing, street patching, repairing, street lights, street sweeping, catchbasin cleaning, landscaping, pipe cleaning, painting common public areas inside and outside, building maintenance, mowing, water system maintenance, sewer/septic maintenance and solid waste removal, etc.
- 4.4.4 The applicant shall make whatever initial monetary deposit as required into a special account to ensure the required funding for the Maintenance Association Agreement in perpetuity. The funds shall be deposited and the Maintenance Association Agreement shall be in full effect prior to the first occupancy permit being issued.

5.0 FEES

All applications shall be accompanied to Freetown by two certified checks made payable to the order of the Town of Freetown. One check shall be for Administrative fees and the second check shall be submitted as Consultant Review Fees and shall be deposited by the Town Treasurer into an individual special account. Any additional payments required shall be made within thirty (30) days of the billing date.

5.1 Administrative Fee

The administrative filing fee for a comprehensive permit shall be fifty dollars (\$50.00) per dwelling unit or a minimum of two hundred sixty dollars (\$260.00), whichever is greater plus an additional \$0.50 (50 cents) per foot of road to be constructed and five dollars (\$5.00) for every abutter submitted on the Form E Certified List of Abutters (See Subdivision Rules and Regulations, as amended). Additional costs incurred by the Board for advertising and sending notice to abutters by certified mail shall be borne by the Applicant. Approval and endorsement will be withheld from plans with improper filing fee payment.

5.2 Consultant Review Fee/Special Account

The fees of any professional consultants engaged by the Board to evaluate and provide information on Comprehensive Permits shall be borne by the applicant, as provided by pursuant to M.G.L. Chapter 44, Section 53G.

5.2.1 When reviewing an application for, or when conducting inspections in relation to an application, the Board shall obtain the assistance of outside consultants if warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the application. The Board shall require that applicants pay a "project review fee" consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of a proposed project.

5.2.2 In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws, good design principals and regulations. Such assistance may include, but not limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

5.2.3 Funds received by the Board pursuant to these regulations shall be deposited with the municipal treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee prior to the public hearing being closed shall be grounds for denial of the application.

5.2.4 At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

5.2.5 Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Zoning Board of Appeals has mailed or hand delivered notice to the applicant of the selection. The grounds for such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In

the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

5.2.6 The technical/legal review deposit shall be two hundred and fifty dollars (\$250.00) plus fifty dollars (\$50.00) per dwelling unit or unit or one dollar (\$1.00) per linear foot of roadway, whichever is greater shall be submitted with the application and used as compensation to a qualified consultant. Surplus funds are to be returned to the applicant. However, if the account is depleted prior to the technical review completion, the applicant will be required to supplement the account in an amount that the Board may feel is reasonably necessary to complete the review. Failure by the applicant to make the above referenced filing deposit prior to the closing of the public hearing, or supplementary deposit within ten (10) days of the request, shall be justification for project disapproval.

5.2.7 All applications shall be accompanied by a check payable to the order of the Town of Freetown.

6.0 REVIEW, PUBLIC HEARING AND DECISION

6.1 Before taking any action to approve, modify and approve or disapprove a Comprehensive Permit, the Board shall hold a hearing at which parties in interest shall have an opportunity to be heard (in accordance with M.G.L. Chapter 40A, Section 11), in person or by agent or attorney. Notice of the time and place of such hearing and the subject matter (in accordance with M.G.L. c40A, Section 11), sufficient for identification shall be published in a newspaper of general circulation in the Town of Freetown once in each of two (2) successive weeks, the first publication to be not less than fourteen (14) days and the second not less than seven (7) days before the date of the hearing and by mailing a copy of such advertisement to the applicant and to all owners of land abutting the land and all owners of land within three hundred feet (300') of a property line of the land shown on the plan as shown on the most recent tax list, including across an existing street.

6.2 Review by Other Town Agencies:

Prior to its formal review, the Zoning Board of Appeals should distribute copies of the plans, etc. (within five (5) business days of the receipt of the application) per Section 4.1. The Departments, Commission and Boards shall have thirty (30) days to review and submit first round written comments to the Board.

The applicant shall resubmit new information if requested (one (1) original and twelve (12) copies) to the Zoning Board of Appeals and the ZBA should redistribute said information within five (5) business days per Section 4.1. The Departments, Commissions and Boards shall have thirty (30) days to review and submit new comments to the Board.

6.3 The Board shall properly advertise and open a public hearing on the application within thirty (30) days of its receipt unless such time period is extended by written agreement of the Board and the applicant. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall hear all interested parties both for and against and shall take into consideration the recommendations of local officials.

6.4 The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

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

- a. approve a comprehensive permit on the terms and conditions set forth in the application,
- b. deny a comprehensive permit as not consistent with local needs or these regulations, or

- c. approve a comprehensive permit with conditions that do not render the construction or operation of such housing uneconomic.

7.0 APPEALS

- 7.1 If the Board approves the comprehensive permit, any person aggrieved may appeal within twenty (20) days and to the court provided in M.G.L. c40A S.17.
- 7.2 If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B S.22 within twenty (20) days.
- 7.3 Recording:
 - 7.3.1 No comprehensive permit shall take effect until a copy of the approved plan endorsed by the Board, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeal has been filed, and all requisite documents (covenants etc.) are recorded in the Registry of Deeds or Land Court (if applicable) and is indexed under the name of the record owner of the land.
 - 7.3.2 The applicant shall file all approved plans, documents, covenants, etc. at the Registry of Deeds or Land Court if applicable, and shall notify the Board in writing, presenting evidence of the recording of the plan and the documents. The Building Inspector shall not issue any building permits for the project until evidence of the recording of the plans, documents, and covenants have been received by the Board. The Applicant shall deliver to the Board one (1) copy of the approved and recorded Definitive Plans, and a copy of an affidavit filed by the owner stating that the title to the premises shown on said plan and appurtenances thereto are in the name of the applicant and free of all encumbrances or with encumbrances as set forth. Failure to do so within six months will permit the Board to vote to rescind said plan.

8.0 PERFORMANCE GUARANTEE

- 8.1 Before endorsement of its approval of the Plan by the Zoning Board of Appeals, the applicant shall agree to complete the required improvements (construction of ways, site work, buildings, and installation of municipal services) specified for the entire project on the approved plans, documents, etc., such construction and installation to be secured on one or in part by one and in part by the other, of the following methods which may from time to time be varied by the applicant:
 - 8.1.1 Final Approval with Covenant. The applicant shall file a Covenant (see Form F, Subdivision Rules and Regulations as amended), executed and duly recorded by the owner of record, running with the land, whereby such ways and services as shown on the approved plans, documents, etc. not covered by bond or deposit under 8.1.2 hereof, shall be provided to serve any lot or portion of the project before such lot may be built upon or conveyed, other than by mortgage deed.
 - 8.1.2 Final Approval with Bonds or Surety. The applicant shall either file a performance bond or a deposit of money or negotiable securities or bank passbook in an amount determined by the Zoning Board of Appeals to be sufficient to cover the cost of all or any part of the improvements specified in the plans, etc. not covered by a Covenant under 8.1.1 hereof. Such bond or security, if filed or deposited, shall be approved as to form and manner of execution by the Town Counsel and as to sureties by the Town Treasurer and shall be contingent on the completion of such improvements within a reasonable time period specified by the Board.

- 8.1.3 The period for completion in 8.1.1 and 8.1.2 may be extended by the Board at the written request of the applicant accompanied by satisfactory proof that such extension is necessary and in the public interest.
- 8.1.4 If said performance guarantee shall lapse before completion and certification of final inspection by the Board, a new guarantee shall be filed expeditiously by the application/controller of the land and/or project.
- 8.1.5 Sum of bond shall be determined by the engineer or engineers as set forth by the Z.B.A. to be the total cost of roadways, septic system, parking areas, municipal services and such estimated by our engineer and shall include a fifteen percent (15%) contingency.

9.0 ADMINISTRATION

- 9.1 After endorsement the applicant will supply to the Board all of the approved plans on computer disk compatible with AutoCad, Version 12.
- 9.2 Approval of the Plan does not constitute the laying out or acceptance by the Town of streets shown on the plan.
- 9.3 If the ways in any subdivision or project are not completed and the utilities aforesaid are not installed within the time so agreed to by the applicant or so required by the Board, any such bond may be enforced and any such deposit may be applied by the Board for the benefit of the Town. Ways, site work, buildings or portions thereof not completed within the time required shall thereafter be completed in accordance with the design and construction standards of the Board in effect upon the expiration of such time.
- 9.4 The endorsement of the plan approval by the Board shall be valid for a period of four (4) years from the date of said endorsement. Beyond four (4) years following the date of endorsement of the Plan, any undeveloped areas must conform to the current Protective By-Laws and the Rules and Regulations of the Town of Freetown, as amended.
- 9.5 The period for completion in 8.1.1 and 8.1.2 may be extended by the Board at the written request of the applicant accompanied by satisfactory proof that such extension is necessary and in the public interest.

10.0 RELEASE OF PERFORMANCE GUARANTEE

- 10.1 Upon the completion of ways, site work, buildings and the installation of municipal services in accordance with these Rules and Regulations, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant may send by registered mail to the Town Clerk a written statement in duplicate that the said construction or installation in connection with which such bond, deposit or covenant has been given, has been completed in accordance with said Rules and Regulations, such statement to contain the address of the applicant, and said Clerk shall forthwith furnish a copy of said statement to the Zoning Board of Appeals. If the Zoning Board of Appeals determines that said construction or installation has been completed, it shall release the interest of the Town in such bond and return the bond or deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, which may be recorded.

Final Release of Performance Guarantee will not be made until an As-Built plan and an Acceptance Plan (if applicable and requested by the Zoning Board of Appeals) meeting this Section are submitted, reviewed, all construction work deemed acceptable and a revised As-Built, and/or an Acceptance Plan (meeting this Section) submitted if any field corrections were deemed required.

10.2 If the Board determines that said construction or installation has not been completed, it shall specify to the applicant, in writing the details ("Punch List"), wherein said construction and installation fails to comply with its Rules and Regulations and do so within forty-five (45) days after the receipt by said Clerk of said statement. Said "Punch List" items shall be completed within a six (6) month period. Upon failure of the Board to act on such application within forty five (45) days after the receipt of the application by the Town Clerk all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five (45) day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant acknowledged, the Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

10.3 **A Utility As-Built Plan prepared by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts, will be supplied by the applicant (on mylar and twelve (12) contact prints), for review by the Zoning Board of Appeals. The Zoning Board of Appeals after consultation with the Planning Board, Highway Surveyor, Conservation Commission, Building Inspector, and Water Commission shall approve the work (within thirty (30) days of the As-Built submission) before any bituminous concrete is installed. If any construction modifications are required they also will be performed, a revised Utility As-Built submitted, reviewed (within thirty (30) days of the As-Built submission) and approved by the Board prior to any bituminous concrete being installed. The Utility As-Built Plan must meet all applicable criteria of Section 10.4 above. All applicants must plan ahead sufficiently to allow adequate time for the Board(s) review and approval.**

10.4 The applicant shall file with the Zoning Board an As-Built plan, prepared by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts, on mylar and on a computer disk compatible with AutoCad, Version 12 of the completed street or streets, utilities and easements together with proper legal descriptions for initiating an article in the Town Warrant pursuant to the acceptance of the ways by the Town Meeting (if applicable) and shall grant a deed to the Town of the streets, utilities and easements, as contained in the plan said deed to be recorded by the Town upon acceptance of the streets by the Town Meeting (if applicable). Eleven (11) contact prints must also be supplied.

10.5 The As Built plan will meet the following criteria:

10.5.1 Scale one inch (1") equals forty feet (40')

24" X 36" sheets

Index plan at one inch (1") equals one hundred feet (100') or otherwise approved by the Board.

A signature block for the Zoning Board of Appeals to sign when the road construction and as-built plan are complete and acceptable.

Professional Land Surveyor's stamp and signature

Lot numbers

Name of subdivision

Name of street(s)

Date

Name of owner

Name of applicant

Name of engineer

North point and reference

Bench marks

Locus map (1"=2000')

Intersecting boundary lines of abutting land

- 10.5.2 All necessary bearings, lengths of lines and radii, tangents, arc lengths, and central angles of curves of all lot lines, street lines and boundary lines, etc. needed to adequately describe but not limited to the following:
- streets
 - ways
 - lots
 - easements
 - common or public areas
- 10.5.3 Sufficient data to determine the locations, elevation, direction and length of:
- streets
 - ways
 - lot lines
 - boundary lines
 - pavement and right of way widths
 - location of permanent monuments
 - location and names of streets intersecting the subject area
- 10.5.4 Locations of the following (station and offset where appropriate):
- storm drains and all appurtances
 - water mains and all appurtances
 - sewer mains and all appurtances
 - other underground and above ground utilities (electric, telephone, gas, etc.) and all appurtances.
 - hydrants
 - water services, gate valves and sewer services including ties to buildings and other permanent structures.
 - street signs
 - headwalls
 - wheelchair ramps
 - guardrails
 - curbing and/or berms
 - edge of pavements
- 10.5.5 Sizes and material type of the following:
- storm drains
 - water mains
 - sewer mains
 - gas mains
- 10.5.6 Rim and invert elevations of the following:
- storm drains
 - sewer mains
- 10.5.7 Sidewalks and driveways.
- 10.5.8 U.S.G.S. elevation datum.
- 10.5.9 U.S.G.S. bench marks.
- 10.5.10 Original datum bench mark described.
- 10.5.11 Rates of gradients for drainage and sewer mains.
- 10.5.12 Roadway centerline stationed.
- 10.5.13 Offsite easements shown and completely described.
- 10.5.14 Profiles should meet the following requirements:
- Horizontal scale: 1"=40'
 - vertical scale: 1"=4'
 - Proposed center line grades-heavy line

Grade elevations at 50' stations
Locations of the following (station and offsets as appropriate):
 storm drains and all appurtenances
 sewer mains and all appurtenances
 headwalls

Sizes and material type of the following:
 storm drains
 sewer mains

Rims and inverts of the following
 storm drains
 sewer mains

U.S.G.S. elevation datum
Rates of gradients for drainage and sewer mains.
Roadway centerline stationed.
Off street easements shown with all utilities.

10.6 At the time the street or way or portion thereof is ready for acceptance (if applicable) and to facilitate acceptance by the Town of Freetown, the developer shall have prepared and certified by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts, a "Plan of Acceptance" that meets the following criteria:

10.6.1 Scale: 1"=40'

10.6.2 North Arrow and reference

10.6.3 They must be supplied on the original material (linen or mylar) along with two sets of sepia prints and eleven sets of contact prints.

10.6.4 24" x 36" sheets

10.6.5 Street name

10.6.6 3 ½" by 3 ½" registry block

10.6.7 Certification and stamped by a Professional Land Surveyor licensed in the Commonwealth of Massachusetts.

10.6.8 Locus map

10.6.9 Location of all monuments

10.6.10 Dimensions of streets (widths, areas, etc..)

10.6.11 All necessary bearings, lengths of lines and radii, tangents, arc lengths, and central angles of curves of all street lines and boundary lines, etc. needed to adequately describe but not limited to the following:

 streets
 ways
 easements
 common or public areas

10.6.12 Ownership of abutting lots

10.6.13 Lot lines within one hundred feet (100') of the street right-of-way and/or easements

10.6.14 The acceptance plan must be recordable at the Registry of Deeds or Land Court as applicable.

10.6.15 A signature block for the Planning Board to sign when the road is acceptable for acceptance by the Town of Freetown.

10.6.16 A blank space (4" x 8") shall be provided on the lower right hand corner on the plan for a title block to be filled in by the developer. The Surveyor shall place a certification on the plan stating "The street (or way or portion thereof) is laid out and the bounds have been set as shown on this plan" and shall be dated, signed and the surveyor's stamp affixed thereon. The plan shall be submitted to the Board of Selectmen.

11.0 SEVERABILITY OF PROVISIONS

The provisions of these Rules and Regulations are severable. If any provision of these Rules and Regulations is held invalid, the other provisions shall not be affected thereby. If the application of these Rules and Regulations, or any of its provisions to any person or circumstances is held invalid, the application of these Rules and Regulations and their provisions to other persons and circumstances shall not be affected thereby.

12.0 WAIVER OF COMPLIANCE

Full compliance with these Rules and Regulations may be waived by the Zoning Board of Appeals provided such waivers are deemed to serve the public interest and are not conflicting with M.G.L. Chapter 40B. Requested waivers (original and twelve (12) copies) shall be submitted in writing at the time of the application.

13.0 VIOLATIONS

Written notice of any violations of this regulation shall be provided by the Building Inspector to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than thirty (30) days be allowed for either compliance or revitalization of a plan for longer-term compliance. In the enforcement of this regulation, the Building Inspector shall notify the Board of Health, Zoning Board, Planning Board and Conservation Commission of any violations.

14.0 MODIFICATION OF COMPREHENSIVE PERMIT

Any request for a modification of the land covered by the approved permit shall be governed by the regulations then in force. Such modification shall show clearly the areas being replatted and the reference number(s) of all previous plans of these same areas, together with filing dates. Plans shall clearly indicate previously existing lot lines by dashed lines. These lines shall be clearly identified with proper notations. Petitions for modification must be submitted per Section 4.0 of this regulation.

15.0 BUILDING PERMIT

No building shall be erected within the project without written permission from the Zoning Board by release of covenant, bond, or securities resulting from the fulfillment of developed obligations.

The Building Inspector shall not issue any permit for the erection of a building until he is first satisfied that the lot on which the building is to be erected has sufficient access (as determined by the ZBA in consultation with the "Inspection Team" {see section 16} and the Planning Board). No occupancy permits shall be issued until the above paragraph is met, all binder course asphalt is installed and sufficient securities are being held by the Board to ensure the completion of the project.

16.0 INSPECTION NOTICES

The developer shall notify the individual members (as applicable) of the "Inspection Team" at least 48 hours prior to the time at which each one of the required inspections should take place. The inspection team includes (but not limited to) the Building Inspector, Wiring Inspector, Plumbing Inspector, Highway Surveyor, Gas Inspector, Water Commission, Engineer designated by the Board and anyone else designated by the Board. The developer shall provide safe and convenient access to all parts of work for inspection by the inspection team, Board members or agents. **No work shall be approved that has been backfilled before the required inspection.**

To assure compliance, the following procedure must be followed:

- 16.1 The developer must notify each member of the inspection team and the Board in writing seven (7) days before the start of construction.
- 16.2 The developer must notify the Highway Surveyor, Water Commission and Electrical Inspector (as applicable) and the engineer designated by the Board when underground utilities and drainage are installed in order that inspection may be carried out before any backfilling is done.
- 16.3 The subgrade must be approved by the Highway Surveyor and the engineer designated by the Board before the application of the gravel base course.
- 16.4 The gravel base course must be approved by the Highway Surveyor and the engineer designated by the Board before the application of bituminous concrete (street or sidewalk). A Utility As-Built Plan (per Section 12.0) shall also be submitted, reviewed and approved by the Zoning Board of Appeals before the application of bituminous concrete (street or sidewalk).
- 16.5 The developer must notify the Highway Surveyor and the engineer designated by the Board forty-eight hours (48) prior to the start of each application of bituminous concrete on the street and sidewalk and of placement of curbing.
- 16.6 The developer must keep the Highway Surveyor and the engineer designated by the Board informed when materials and other items of work are ready for inspection such as the installation of bounds, loam and seeding, and general cleanup.
- 16.7 The developer is responsible to ensure that every aspect of construction of the project is inspected by the appropriate municipal official prior to backfilling or covering said inspection item. Any items not inspected shall not be accepted. The developer shall be required to uncover all covered work for municipal inspection.
- 16.8 Approval of the work completed, to the satisfaction of the Board, including approval of materials used, for each of the inspected items must be granted prior to the continuance of subsequent work activities.
- 16.9 A deposit of one thousand dollars (\$1,000.00) plus five dollars (\$5.00) per linear foot of roadway (center line measurement) shall be posted in advance of any construction activity in the project. These funds are to be used as compensation for site visits, construction inspections, meetings attended and administrative responsibilities tended to, by a consultant, on behalf of the Zoning Board. Said funds are to be held in a

special account by the Treasurer and disbursed under the direction of the Zoning Board to a qualified consultant as provided by Chapter 593, Acts of 1989, pursuant to MGL Chapter 44, Section 53G. Unexpended funds will be returned to the owner upon satisfactory completion of the project; conversely, should the funds prove to be insufficient, the owner will be required to supplement the account with additional deposits.

FORM Z
TOWN OF FREETOWN
APPLICATION FOR APPROVAL OF COMPREHENSIVE PERMIT PLAN

Date: _____, _____

To the Zoning Board of Appeals of the Town of Freetown:

The undersigned, being the applicant as defined under Chapter 40B, Sections 20-23, for approval of a proposed comprehensive permit shown on a plan entitled _____

By: _____

Dated: _____ and described as follows: located: _____

Assessor's Map Number: _____ Lot number _____ Book _____

Page _____ Purchase date of property _____, Number of lots proposed _____, total acreage of tract _____

Frontage _____ Depth _____ Lot Area _____ (Square Feet)

total feet of proposed roadway _____, hereby submits said plan in accordance with the Rules and Regulations of the Freetown Zoning Board of Appeals and makes application to the Board for approval of said plan.

The undersigned title to said land is derived from _____

by deed dated _____ and recorded in the Bristol County Registry of Deeds

Book _____, Page _____ registered in the _____ Registry of

Land Court, Certificate of Title No. _____; and said land is free of encumbrances except for the following _____

Have you previously filed an application with the Zoning Board of Appeals for this property? _____

If so, what was the filing date? _____ File Number? _____ Hearing Date? _____

What is the Federal funding source or sources? _____

What is State funding sources? _____

Are there any other funding sources? _____

Do you have a letter of support from the selectmen? _____

Please attach copy of the Selectmen letter of support. _____ Date of letter? _____

The undersigned hereby applies for the approval of said plan by the Board, in belief that the plan conforms to the Board's Rules and Regulations. Permission is hereby granted to the Zoning Board of Appeals or any other municipal official or their agent, acting on official business, to enter and inspect the premises.

NOTE: APPLICANT OR DESIGNEE MUST BE PRESENT AT ZONING BOARD HEARING!

ALL STATEMENTS MADE HEREIN, ARE UNDER THE PAINS AND PENALTIES OF PERJURY AND ARE CORRECT. SIGN BELOW AFTER READING THE PERJURY STATEMENT. (FALSE STATEMENTS SHALL BE CAUSE FOR REVOCATION OF THIS PERMIT, AND IT WILL BECOME NULL AND VOID!)

Applicant's signature _____
Print applicant's name _____
Applicant's address _____

Applicant's phone _____
Applicant's Fax _____
Owner's signature and address if not the applicant or applicant's authorization if not the owner _____

Received by Town Clerk _____
Date _____
Signature _____

A DETAILED DRAWING WITH ALL DIMENSIONS, TO SCALE, AND ALL OTHER SUBMITTAL REQUIREMENTS UNDER SECTION 4.0 OF THE ZONING BOARD OF APPEALS COMPREHENSIVE PERMIT REGULATIONS, MUST BE ATTACHED TO THIS APPLICATION AT THE TIME IT IS FILED. (There must be twelve (12) copies enclosed.)



TOWN OF KINGSTON
ZONING BOARD OF APPEALS

Kingston, Massachusetts

02364

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OFFICE
OF
KINGSTON

**Comprehensive Permit Rules of the Town of Kingston
Zoning Board of Appeals**

Sections

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

1.00: Purpose and Context

These Rules establish procedures for applications to the zoning board of appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 31.02. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These Rules alone are not sufficient to describe comprehensive permit procedures before the zoning board of appeals. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general Rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

2.00: Definitions

- (a) *Board* means the zoning board of appeals established under M.G.L. c. 40A, § 12.
- (b) *Local board* means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) may be deemed local boards if they perform functions usually performed by locally created boards.

3.00: Filing, Time Limits, and Notice

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

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c), below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;
- (b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This report shall include a Project Information Summary and Environmental Impact Statement. This submission may be combined with that required in section 3.01(a), above;
- (c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;
- (d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;
- (e) where a subdivision of land is involved, a preliminary subdivision plan;
- (f) a preliminary utilities plan showing the proposed location and types of sewage, and water facilities, including hydrants.
- (g) four (4) copies of drainage calculations consistent with Best Management Practices and the Massachusetts Stormwater management Guidelines, prepared by the Applicant's engineer, including design criteria used, drainage area and other information sufficient for the Board to determine the necessary size of any drain, drainage area, culvert or bridge;
- (h) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,
 - (1) the applicant shall be a public agency, a non-profit organization, or a limited dividend organization,
 - (2) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and
 - (3) the applicant shall control the site;
- (i) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.
- (j) a completed Zoning Board of Appeals application form. The form is available at the Town Clerk's office.

3.02: The application shall be accompanied by a filing fee, which will be filed with the Town Clerk. The filing fee will be accompanied by a memo from the town Planner, verifying the amount submitted is correct,

based upon the number of proposed housing units as follows:

- (a) for Limited Dividend Organizations - \$500.00 flat fee plus \$15.00 per unit.
- (b) for Non-Profit Organizations - \$500.00 flat fee plus \$5.00 per unit.
- (c) for Public Agencies and Local projects, including for Local Initiative Projects (760 CMR 45.00), - \$500.00 flat fee plus \$5 per unit.

3.03: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01(h), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application.

In order to allow review by local officials, the Applicant shall file the following:

- (a) one (1) complete application for the Town Clerk together with all of the following items;
- (b) eight (8) complete applications with the Town Clerk for the Zoning Board of Appeals;
- (c) one (1) complete application filed directly with each of the following boards, officials, and departments: the Board of Selectmen, Planning Board, Board of Health, Conservation Commission, Sewer Commission, Water Commission, Fire Department, Police Department, Building Inspector, Streets, Trees and Parks Department, Open Space Committee, Consulting Engineer, Town Planner, and Town Counsel, for their review and comment;
- (d) Compliance with the three hundred foot radius from the property line notification requirement. Verification from the Assessors Office that the abutter's list is correct and references the correct property.
- (e) Envelopes with stamps on them, **(No metered stamp strips from the post office. The post office will not accept these as the envelopes will not be mailed the same day as the date on the strip)** addressed for each property owner on the above referenced abutter's list, as well as one envelope with postage stamps on it **(no metered stamp strips. The post office will not accept these. Ask the Post Office for a stamp in the amount of \$4.00 and one 37 cent stamp and the remaining 5 cents in smaller amounts)** in the amount of \$4.42 and addressed to the petitioner. (The certified mailing information will be completed by the Zoning Secretary prior to mailing for this piece.) These envelopes should show a return address of: Zoning Board of Appeals, 26 Evergreen Street, Kingston, MA. 02364.
- (f) A separate Check in the amount of **\$73.00 made payable to MPG** for the cost of publication of the public notice. This must be paid prior to the publication of the public notice, so please include this with your application.
- (g) one (1) unbound copy of the complete application, together with 11" x 17" copies of all plans (with match lines), shall be made available to the Town Planner for copying purposes.

Upon delivery to the respective boards, officials and departments as outlined above, the applicant shall obtain a receipt for said filing, which receipt shall be presented to the Zoning Board of Appeals prior to the opening of any public hearing.

3.04: The Zoning Board has the right to receive complete information from the applicant. In the event of an incomplete application, the Board may deny the same, without prejudice or it may open the hearing on the condition that the applicant shall provide all the listed material before proceeding with the hearing. Notwithstanding the foregoing, an applicant that has failed to provide information that satisfies the jurisdictional requirements of

760 31.01(1), shall be given sixty (60) days to cure any such defect.

4.00: Review Fees

- 4.01: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.
- 4.02 In hiring outside consultants, the Board may engage engineers, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.
- 4.02A The Board shall impose reasonable fees for the employment of outside consultants to be deposited in a special account. Such rules shall provide for an administrative appeal from the selection of the outside consultant to the town board of selectmen. 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 a municipal permit granting board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the town board of selectmen within one month following the filing of the appeal, the selection made by the municipal permit granting authority shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in this section. Any such account shall be established by the municipal treasurer in the municipal treasury and shall be kept separate and apart from other monies. The special account, including accrued interest, if any, shall be expended at the direction of the authorized board or authority without further appropriation, provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project shall be repaid to the applicant or to the applicant's successor in interest and a final report of said account shall be made available to the applicant or to the applicant's successor in interest. The municipal accountant shall submit annually a report of said special account to the chief elected body and chief administrative official of the municipality for their review. Said report shall be published in the town annual report. The municipal accountant shall submit annually a copy of said report to the director of the bureau of accounts.
- 4.03: Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G.. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.
- 4.04: At the completion of the Board's review of a project, any excess amount in the account, including

interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

- 4.05: Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.
- 4.06: Any failure by the Applicant to pay a reasonable review within ten days of the request therefore may be grounds for denial of the Comprehensive Permit Application.

5.00: Public Hearing and Decision

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

5.02: The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

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

- (a) approve a comprehensive permit on the terms and conditions set forth in the application,
- (b) deny a comprehensive permit as not consistent with local needs, or
- (c) approve a comprehensive permit with conditions, including but not limited to height, site plan, size, shape or building materials, that do not render the construction or operation of such housing uneconomic.

6.00: Changes in Application

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

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

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

7.00: Appeals

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

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



TOWN OF RAYNHAM

BOARD OF APPEALS

~~XXXXXXXXXXXXXXXXXXXX~~

RAYNHAM, MASSACHUSETTS 02767

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TOWN OF RAYNHAM
MASSACHUSETTS

The Raynham Zoning Board of Appeals

Rules and Regulations Governing Comprehensive Permit

1.0 PURPOSE AND AUTHORITY

These rules establish procedures for applications to the Raynham Zoning Board of Appeals for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969). M.G.L. c. 40B, §. 20-23. They are required by M.G.L. c. 40B, §. 21., as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of these rules is to facilitate the review and permitting of affordable housing in Raynham.

1.1 These rules and regulations may be adopted and from time to time amended by majority vote of the Raynham Zoning Board of Appeals members present and voting, provided such adoption or amendment is taken after a public hearing on any proposed changes.

1.2 These rules and regulations are effective when voted, and a copy filed with the office of the Town Clerk, with appropriate endorsements, such as:

Date of adoption: December 6, 1999

Date filed with Town Clerk

Amendments

2.0 DEFINITIONS

2.1 Board means Raynham Zoning Board of Appeals (ZBA) established under M.G.L. c. 40A, §. 12.

2.2 Local Board means any local board or official, including, but not limited to any board of survey; board of health, planning board, conservation commission, historical commission, water, sewer, or other commission or district; fire police, traffic, or other department; building inspector or similar official or board, city council or board of selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

3.0 APPLICATION FOR COMPREHENSIVE PERMITS

3.0 A. APPLICANT (Petitioner)

An application or petition for a Comprehensive Permit may be brought by a property owner, agent, or prospective purchaser who submits certification (such as an executed purchase and sales agreement) or property interest and authority to file.

3.1 OFFICIAL APPLICATION FORM:

Application for Comprehensive Permits shall be made on an official form (the form shall be furnished by the Town Clerk or the Clerk of the Zoning Board upon request), completely and properly filled out.

3.2 CONTENTS OF APPLICATION:

The completed application form, original plan, and nine (9) copies shall be submitted to the Zoning Board with an additional copy filed forthwith with the Town Clerk by the applicant. The following information shall be furnished by the applicant.

3.2.1 A site plan drawn at a scale of 1" = 40' unless another scale is previously requested by the applicant and found suitable by the Board.

3.2.2 A professional engineer or registered architect shall prepare the required plans.

3.2.3 The plan shall be stamped by the registered land surveyor who performed the instrument boundary survey and who shall certify the accuracy of the locations of the buildings, setbacks and all other required dimensions, elevations and measurements, adjacent property wells and septic systems. The plans shall be signed under the penalties of perjury.

3.2.4 The scale, date and north arrow shall be shown.

3.2.5 Lot number, dimensions of lot in feet, size of lot in square feet, and width of abutting streets and ways;

3.2.6 The location of existing or proposed building(s) on the lot shall be shown with the total square footage and dimensions of all buildings, building elevations, floor plans (including size and number of bedrooms with floor area) and perspective rendered elevations.

3.2.7 The location of existing wetlands, unique vegetation (shall be performed by a registered arborist), water bodies, wells, one-hundred year flood plain elevation and other natural features, streams, wetlands, vistas, slope areas, geological features, unique vegetation, historic features, and others that may be important to the site.

3.2.8 A landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings.

3.2.9 Percentage of building lot coverage and percentage of paved (impervious) area used for parking, loading, and access within the property.

3.2.10 Existing and proposed topographical lines at two-foot contour intervals on the tract and within 50' thereof.

3.2.11 The location and a description of proposed open space or recreation areas.

3.2.12 Existing and proposed street, parking, drainage, and utility systems, prepared by a professional engineer registered in Massachusetts.

3.2.13 The applicant shall submit information regarding all measures proposed to prevent pollution of surface water or groundwater, soil erosion, increased runoff, and flooding.

3.2.14 Projections of down gradient concentrations of nitrogen, phosphorus, and other relevant chemicals to be disposed of on-site, at property boundaries and at other locations deemed pertinent by the Board, prepared by a hydrogeologist or Registered Professional Engineering possessing experience and education in Water Supply Protection and Hydrology.

3.2.15 A locus plan at 1" = 100', 200' or 400' scale showing the location, names and present widths of the secondary streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership, and topography taken from assessors' plans or field survey, if available, or properties therein.

3.2.16 The application shall also furnish a narrative summary of the vital statistics of the project. Such statistics shall include: Total gross and net square footage, number of parking spaces, and estimated amounts of water consumption and sewer discharge.

3.2.17 "Low Income" Units Shall Remain "Low Income" for At Least Forty (40) Years.

3.3 Layout and Design Standards

3.3.1 All streets, drainage, water system, sewerage, utilities, grading and other improvements shall be made in accordance with the Rules and Regulations by the recommendations of other boards, committees, officials, and state regulations.

3.3.2 Fencing as required by the Board for safety or screening.

3.3.3 An upkeep and maintenance plan with supporting legal documents.

3.3.4 All exterior lighting shall be limited to 15 feet in height and shall cast a maximum of 8 foot candles of light on the ground. Lighting shall also be directed not to blind vehicle or pedestrian traffic, adjacent buildings or dwelling within or abutting the site.

3.3.5 All rubbish and trash containers shall be screened from view by fencing or landscaping. Said containers shall have heavy duty plastic tops to reduce noise when being serviced.

3.3.6 Buildings shall be a maximum height of thirty (30) feet.

3.3.7 For attached unit buildings, the minimum setback from the property lines shall be two (2) times the height of the building. The setback between separate unit buildings shall be equal to or greater than the height of the highest building.

3.3.8 Utilities shall be underground, starting from the property line.

3.3.9 No parking lot or building construction shall be allowed within 100 feet of a wetland area or within 200 feet of a wetland protected by the Rivers Act (310 CMR 10.00)

3.3.10 All storm water runoff from impervious surfaces shall be recharged on-site unless, in conducting its review, the Board determines that either recharge is not feasible because of unique site conditions or is undesirable because of uncontrollable risks to water quality from such recharge. Such recharge shall be by surface infiltration through vegetated surfaces unless otherwise approved by the Board during the site plan review. If dry wells or leaching basins are approved for use, they shall be constructed after oil, gas and sediment traps have been installed. Drainage from loading areas for toxic or hazardous materials shall be separately collected for safe disposal. All drainage structures including outlets shall have a minimum thirty (30) feet vegetated buffer to wetlands.

3.3.11 Soil shall not be lowered to finished exterior grades less than five (5) feet above maximum groundwater elevation, unless technical evidence is provided to the Board's satisfaction that groundwater quantity or quality will not be detrimentally affected. Technical evidence may include, without limitation, a determination of soils and geologic conditions where evaporation/transpiration occurs.

3.3.12 A paved secondary access roadway shall be provided, if deemed necessary or required by the ZBA.

3.3.13 A SAFETY AND EVACUATION PLAN: Ambulance, Civil Defense, Fire, Police, Rescue Departments and Planning Board.

4.0 FEES

All applications shall be accompanied by two certified checks made payable to the order of the Town of Raynham. One check shall be for administrative fees and the second check shall establish an individual special account. Any additional payments required shall be made within thirty (30) days of the billing date.

4.1 ADMINISTRATIVE FEE:

The filing fee shall be five thousand dollars (\$5,000.00) for a comprehensive permit application.

4.2 CONSULTANT/LEGAL/REVIEW FEE/SPECIAL ACCOUNT: (A Form W-9 is required.)

4.2.1 Every Comprehensive Permit application shall be required to file the following minimum review fee to establish an individual special account. If, in addition, this minimum amount is not sufficient to cover the entire cost of the review, the Board shall adjust said special account at the applicant's expense. When the special account reaches seventy-five percent (75%) expenditures, the applicant will be required to deposit additional funds for anticipated expenses as determined by the Zoning Board. This account can be used to hire professional consultants, including, but not limited to, architects, attorneys, engineers, architects, wetland specialists, etc. The minimum fee and the adjustment schedule are as follows:

0 - 5 acres = \$5,000
6 - 10 acres = \$7,000
11 - 20 acres = \$9,000
21 + acres = \$11,000

4.2.2 Where specific conditions arising from the land or the nature of the proposal necessitates the assistance of a planning, engineering, traffic, soils, hydrologic or other consultant(s), the Zoning Board may engage such consultant services to assist the Board in analyzing the project to ensure compliance with all relevant laws, ordinances, bylaws, regulations, good design principles, and state-of-the-art technology.

4.2.3 Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special individual account for this purpose. 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 in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay all review fees shall be grounds for denial of the application or permit.

4.2.4 Review fees may only be spent for services rendered in connection with the specific project for which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including any interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. The applicant must submit a written request for these funds. A final report for said account shall be made available to the applicant, upon request, or to the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with the documentation establishing such succession in interest.

4.2.5 Any applicant may make an administrative appeal from the selection of the outside consultant to the Board of Selectmen, providing that such appeal is made within 14 days of notification of the Board's appointment 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 as may be set by the Board. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

4.3 OTHER COSTS AND EXPENSES:

The applicant is responsible for preparing notices and associated costs of mailing to abutters and any parties in interest (as referenced in the Comprehensive Permit Application) by certified mail, return receipt requested. The prepared notice shall be reviewed by the Zoning Board or its agent before being mailed. Return receipts are to be addressed to the Zoning Board. The prepared notices/certified mailing shall be delivered to the Zoning Board agent not less than twenty-one (21) business days before the date of the public hearing.

5.0 REVIEW PUBLIC HEARING AND DECISION

5.1 REVIEW BY OTHER TOWN AGENCIES

Prior to its formal review, the Zoning Board shall distribute copies of the plans and supporting documents and information (within five (5) business days of the receipt of the completed application) to the following town departments: Building Inspector, Conservation Commission, Planning Board, Department of Public Works, Board of Health, Police, Fire, Ambulance, Rescue Departments and Zoning Officer. These departments shall have forty-five (45) days to review and submit written comments to the Board. Failure of the various Boards and Commissions to make comments within the forty-five (45) day time frame shall be deemed lack of opposition thereto.

5.2 The Board shall hold a public hearing on the application within ³⁰forty-five (45) days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

5.3 The Board shall render a decision, based on a majority vote of the Board, within forty-five (45) days after termination of the comprehensive permit hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received, all information requested by the Board received, and the hearing closed by the chairman of the ZBA.

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

- a. approve a comprehensive permit on the terms and conditions set forth in the application,
- b. deny a comprehensive permit as not consistent with local needs, or
- c. approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials and ZBA rules and regulations, that do not render the construction or operation of such housing uneconomic.

6.0 APPEALS:

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

6.2 If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B §. 22 (H.A.C.)

7.0 EFFECTIVE DATE

7.1 RECORDING:

No comprehensive permit shall take effect until a copy of the decision, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeals have been filed, is recorded in the Registry of Deeds and is indexed under the name of the owner of record of the land.

7.2 PROOF OF COMPLIANCE WITH CONSERVATION COMMISSION AND BOARD OF HEALTH:

No comprehensive permit shall take effect until copies of the Board of Health and Conservation Commission written decision of approval or a determination of applicability or order of conditions and until the Raynham Board of Health certifies the wells and septic systems and they all meet the relevant sections of Title V, bearing the date filed with the Town Clerk, is recorded in the Registry of Deeds and is indexed under the name of the owner of record of the land.

8.0 PERFORMANCE GUARANTEE

As a condition of the Comprehensive Permit, the applicant shall post a bond, or other form of surety, as a safeguard for performance, and/or a penal sum in a form and amount acceptable to the Board, prior to the expiration of the twenty (20) day appeal period, unless the Board shall specify otherwise. If the applicant is not the owner and must purchase the property in question in order to assume such obligations, or if another form of ownership or control is in force, such person or entity shall comply with the provisions of this subsection within twenty (20) days following the date of such purchase or control. If said performance guarantee shall lapse before completion and certification of final inspection by the Board, a new guarantee shall be filed expeditiously by the applicant/controller of the land and/or project. (Sum of bond shall be determined by the engineer or engineers as set forth by the ZBA to be the total of cost of roadways, septic system, parking areas and such estimated by our engineer).

9.0 SEVERABILITY OF PROVISIONS

The provision of these Rules and Regulations are severable. If any provisions of these Rules and Regulations is held invalid, the other provisions shall not be affected thereby. If the application of these Rules and Regulations, or any of its provisions to any person or circumstances is held invalid, the application of these Rules and Regulations and their provisions to other persons and circumstances shall not be affected thereby.

10.0 WAIVER OF FULL COMPLIANCE

Full compliance with these Rules and Regulations may be waived by the Zoning Board, provided such waivers are deemed to serve the public interest and are not conflicting with Chapter 40B M.G.L. Requested waivers shall be submitted in writing at the time of the application.

11.0 VIOLATIONS

Written notice of any violation of these ZBA adopted Rules and Regulations shall be provided by the Building Inspector to the owner of the premises, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than thirty (30) days be allowed for either compliance or revitalization of a plan for longer-term compliance. In the enforcement of these ZBA Rules and Regulations, the Building Inspector shall notify the Health Inspector of any violations and seek the Health Inspector and/or Agent's assistance.

REHOBOTH ZONING BOARD OF APPEALS COMPREHENSIVE PERMIT RULES – G.L. C. 40B, §20-23

§ 1 Purpose and context.

A.

These Rules establish procedures for applications to the zoning board of appeals for comprehensive permits granted under MGL c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by MGL c. 40B, § 21 and by 760 CMR 56.00, et seq. The purpose of that Act and these Rules is to facilitate the proper development of affordable housing in Massachusetts.

B.

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

C.

These rules take effect on passage and supersede any other c. 40B rules that may have been adopted by the Board.

§ 2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOARD

The Rehoboth Zoning Board of Appeals established under MGL c. 40A, § 12.

LIMITED DIVIDEND ORGANIZATION

Any applicant which proposes to sponsor housing under MGL c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit its actual profit as required under law. [See § **3A(9)**.]

LOCAL BOARD

Any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen.

§ 3 Filing; time limits; fees; notice.

A.

The application for a comprehensive permit shall consist of:

(1)

Site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. All site development plans shall be stamped by a registered Professional Engineer;

(2)

A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in § **3A(1)**, above;

(3)

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

(4)

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

(5)

Where a subdivision of land is involved, a Preliminary or Definitive Subdivision Plan conforming to all of the applicable requirements of the Rehoboth Regulations for the Subdivision of Land;

(6)

A utilities plan, stamped by a registered Professional Engineer showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that

- the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent,
- The water supply, which must be based on one or more wells in the absence of a public water system, will be adequate to supply anticipated present and predicted future needs.
- The individual home septic systems, which must be used in the absence of a town sewage system, will meet all applicable codes.

(7)

Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is:

(a)

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

(b)

The project shall be fundable by a subsidizing agency under a low or low- and moderate-income housing subsidy program. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04.

(c)

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

(8)

A concise list of requested exceptions to local requirements and regulations, including local codes, by-laws or regulations, along with an explanation of the reasons for seeking such exceptions. Blanket waivers requests shall not be permitted;

(9)

A complete financial pro-forma, detailing the projected costs and revenues of the proposed project. In preparing its pro-forma, the Applicant shall limit its costs to actual arm's length expenses in purchasing and developing the property. Additionally, the Applicant shall fully disclose any land or development costs ascribed to related entities;

(10)

A complete copy of any and all materials and applications submitted by the Applicant to any prospective subsidizing agency or source, including, but not limited to applications for project eligibility;

(11)

A list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities;

(12)

A list of all prior development projects completed by the Applicant, along with a brief description of each such project;

(13)

Evidence of local need for the type and number of housing units being proposed by this Application.

(14)

If the project requires work that would, in conventional circumstances, require a filing with the Rehoboth Conservation Commission under any local wetlands bylaw, the Applicant shall provide any and all information that would normally be required for such a filing with the Conservation Commission. The same applies to any other filings that might be required by other overlay zoning requirements of the Town of Rehoboth, including Groundwater Protection and Flood Plain Districts.

B.
Fees.

(1)

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

(a)

For Limited Dividend Organizations: \$1,000 flat fee, plus \$50 per unit;

(b)

For Non-Profit Organizations: \$1,000 flat fee plus \$25 per unit;

(c)

For Public Agencies or governmental entities: \$0.

(2)

These fees are applicable for both original applications as well as for applications for permit modifications that are deemed to be substantial by the Board.

(3)

Additionally, the application fee shall include \$5,000 to pay for the administrative expense of expert legal counsel. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the c. 40B process. The Board, in its sole and unfettered discretion may waive any or all of these additional fees if it is determined that legal review is not necessary. Alternatively, the applicant may opt to pay for the Board's legal counsel or financial consultant in the manner prescribed by MGL c. 44, § 53G and § 4 hereof. Upon request by the applicant, the Board may, for good cause shown, waive the legal or consulting fees contemplated under this paragraph for non-profit or public applicants.

C.

Within seven days of filing of the application, the Board shall notify every pertinent local official, board or department of the application by sending such official a copy of the application. Based upon that information, it shall also invite the participation of each local official who has an interest in the

application. In order to allow review by local officials, the Applicant shall provide the Town Clerk with 25 copies of the complete application so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. Additionally, eleven-inch by seventeen-inch copies of all plans (with match-lines) shall be made available to the Town Clerk for copying purposes. The following list includes the committees and officials typically requiring notification.

- Board of Selectmen
- Planning Board
- Conservation Commission
- Board of Health
- Rehoboth Housing Authority
- Police Department
- Fire Department
- Building Department
- And, if applicable, special considerations may expand the list to include, among other groups, the Historic Commission, Cemetery Commission, Agricultural & Natural Resources Preservation Commission, Community Preservation Committee, and the Historical Commission.

D.

The above-stated materials shall be accompanied by other information as may be required in a form prescribed by the ZBA. Should such form not be available, the Applicant shall use the Town's form for application for a Special Permit

§ 4 Review fees.

A.

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

Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

B.

In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, regulations, industry standards and best practices. Such assistance may include, but not be limited to, analyzing an application, reviewing plans and reports, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

C.

Funds received by the Board pursuant to this section shall be deposited with the town treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of MGL c. 44, § 53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

D.

At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

E.

Any applicant may make an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict

of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue, or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the ZBA shall stand.

§ 5 Public hearing and decision.

A.

The Board shall commence a public hearing on the application within 30 days of its receipt, unless such time period is extended by written agreement of the Board and the Applicant. The Board may request the appearance at the hearing of such representatives or local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

B.

The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing may be deemed terminated when all public testimony has been received and all information requested by the Board has been received.

C.

The Board may dispose of the 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 in the event that the proposed project presents adverse impacts to local concerns that outweigh the Town's housing needs; or

(3)

Approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape

or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address issues arising under zoning, wetlands, planning or other local concerns while not rendering the construction or operation of such housing uneconomic. The scope of conditions may include any matter that would normally be addressed by a Local Board in review of a conventionally proposed project. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing, the geographical area and the current economic climate. The Board is permitted to engage a financial consultant, at the Applicant's expense (see above) for any review of the impact of conditions that may be imposed.

D.

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

E.

If a subdivision of land is involved, the following shall apply:

(1)

No construction is permitted until a Definitive Subdivision Plan has been submitted to and approved by the Board;

(2)

The Definitive Subdivision Plan shall be prepared and submitted in accordance with Rehoboth's regulations governing the Subdivision of Land. The Zoning Board and not the Planning Board is the permit granting agency.

F.

No comprehensive permit shall take effect until a copy of the decision, bearing the certification of the Town Clerk, that 20 days have elapsed after the filing of

the decision and no appeals have been filed, is recorded in the Registry of Deeds and is indexed under the name of the owner of record of the land.

§ 6 Changes in application.

A.

In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter or other suitable determination from the designated subsidizing agency that such changes are approvable under the subject subsidizing program.

B.

In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in § **3** hereof that is deemed by the Board to be necessary to evaluate such changes.

C.

In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in § **3C**, above.

D.

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

§ 7 Appeals.

A.

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

B.

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