

## TOWN OF YARMOUTH BOARD OF APPEALS

### RULES AND REGULATIONS

#### **ARTICLE I GENERAL**

##### *1.0 Scope and Purpose*

These rules are adopted by the Yarmouth Zoning Board of Appeals, as authorized by M.G.L. c.40A, § 12, for the purpose of establishing rules and regulations for the conduct of its business.

##### *1.1 Powers*

The Yarmouth Zoning Board of Appeals (Board) was established by the Yarmouth Zoning Bylaw (Bylaw) to act in all matters arising under that Bylaw, is designated by the Bylaw as a Special Permit Granting Authority, and is assigned the right and duty to exercise all powers given to it by the Bylaw and M.G.L. c.40A, including powers:

- a) To hear and decide Appeals by any person aggrieved by reason of their inability to obtain a permit or enforcement action from the Building Commissioner or their qualified designee, or the Zoning Enforcement Officer under the provisions of M.G.L. c.40A, under the Bylaw, or any order or decision of the Building Commissioner in violation of the Bylaw or c.40A. In exercising any of its powers, the Board may, as applicable, make orders or decisions, reversing or affirming, in whole or in part, or modify or revoke any order or decision, and to that end have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit; and
- b) To hear and decide applications for Special Permits upon which the Board is empowered to act under the Bylaw, and to impose conditions, safeguards, and limitations of time or use thereon; and
- c) To hear and decide petitions for Variances from the terms of the Bylaw, including Variances to allow uses other than those provided for in the "Use Regulation Table" of the Bylaw; and
- d) To hear and decide applications for Comprehensive Permits upon which the Board is empowered to act under these rules and M.G.L. c.40B, §§ 20-23, and to impose conditions, safeguards, and limitations thereon.

##### *1.2 Clerical Help*

The Board may, subject to appropriation and appointment, retain clerical and other assistants.

#### **ARTICLE 2 - ORGANIZATION**

##### *2.0 Members*

The Board consists of five (5) members appointed by the Board of Selectmen for terms of five (5) years so arranged that the term of one member expires each year. Vacancies in unexpired terms are filled in the same manner as the

original appointment.

### *2.1 Alternate Members*

Alternate Members of the Board are appointed by the Board of Selectmen for terms of one year. The Chairperson of the Board of Appeals may designate any Alternate Member to sit on the Board in case of absence, inability to act, or conflict of interest on the part of any member, and in the event of a vacancy, until such vacancy is filled as provided in Section 2.0.

Each new Alternate Member should, as may be feasible, attend at least two (2) nights of Board hearings before serving as a voting member on a panel.

### *2.2 Officers*

The Board elects a Chairperson, Vice Chairperson, and a Clerk from its own number at the first meeting in April of each year. The Chairperson presides over all meetings and hearings of the Board, establishes the agenda of the Board, calls for the production of papers, decides all points of order, and exercises general supervision over all activities of the Board.

- a) The Chairperson appoints such committees of the Board as may be necessary or desirable from time to time, and is a member ex-officio of each such committee.
- b) The Chairperson appoints a member of the Board as Acting Chairperson to perform any and all the duties and exercises all the powers of the Chairperson during the absence of the Chairperson and Vice-Chairperson for any reason.

### *2.3 Vice-Chairperson*

The Vice-Chairperson shall perform all the functions of the Chairperson in the absence of the Chairperson.

### *2.4 Clerk*

The Clerk may, but is not required to be, a member of the Board and shall direct or undertake the performance of all administrative and clerical functions necessary to the lawful and efficient operation of the Board.

### *2.5 Zoning Administrator*

A Zoning Administrator(s) may be appointed by the Board of Appeals, subject to the confirmation by the Board of Selectmen.

The Zoning Administrator(s) shall carry out powers of the Board of Appeals delegated by such Board by a concurring vote of all except one member of the Board consisting of five members. Any person aggrieved by a decision or order of the Zoning Administrator, whether or not previously a party to the proceeding, or any municipal office or board, may appeal to the Board of Appeals, as provided in M.G.L. c.40A, § 14, within thirty (30) days after the decision of the Zoning Administrator has been filed in the office of the Town Clerk. Any appeal, application or petition filed with said Zoning Administrator as to which no decision has been issued within thirty-five (35) days from the date of filing shall be deemed denied and shall be subject to appeal to the Board of Appeals as provided in M.G.L. c.40A, § 8.

## **ARTICLE 3 - MEETINGS**

### *3.0 Regular Meetings*

Regular meetings of the Board are held as necessary at 6:00 PM on the second and fourth Thursdays of each month, or at other times on call of the Chairperson, at the place specified in the meeting notice.

### *3.1 Special Meetings*

Special meetings may be called by the Chairperson or at the request of two (2) members. Reasonable notice thereof shall be given to each member at least forty-eight (48) hours before the time set except that announcement of a special meeting at any meeting attended by all members shall be sufficient notice. Notices shall be posted publicly as required by applicable law.

### *3.2 Quorum & Voting*

A quorum for the purpose of hearing any petition to the Board at any meeting shall be three (3) members. The Board shall render a decision on Comprehensive Permits based on a majority vote of the Board. The Board shall render a decision on Appeals, Special Permits and Variances based on a supermajority vote of the Board.

### *3.3 Meetings Open To Public*

All meetings of the Board are open to the public and conducted in accordance with M.G.L. c.30A, §§ 18-25.

### *3.4 Meeting Times*

It shall be the policy of the Board to conclude all hearings by no later than 10:00 PM, or earlier, as the Chairperson may prescribe. To this end, the agenda for all hearings shall be closed once it appears to the Board that additional matters will not be able to be accommodated within this time limitation. In the event that the hearings scheduled on an agenda are not concluded by 10:00 PM, the Board shall continue the same to the next available agenda.

## **ARTICLE 4 HEARING NOTICE & APPEARANCE**

### *4.0 Public Hearing*

A public hearing is required in all instances as a condition precedent to the allowance of an Appeal, issuance of a Special Permit, Comprehensive Permit, or grant of a Variance by the Board.

### *4.1 Notice of Hearing*

Notice of all hearings shall be published, posted, and mailed as required by M.G.L. c.40A, § 11.

### *4.2 Appearance*

An applicant or opponent may appear on their own behalf or be represented by an agent or attorney. All agents, other than legal counsel, shall have written authorization to represent the Applicant. In the absence of any appearance by the Applicant or their agent, the Board may, in its discretion, decide the matter on the basis of the

record and other information taken at the hearing, or continue and/or dismiss the application with or without prejudice.

## **ARTICLE 5 HEARING PROCEDURES**

### *5.0 Hearings*

- a) Hearings will start at the time stated in the notice unless delayed because of prior hearings.
- b) No person shall address a hearing of the Board without leave of the Chairperson, and all persons shall, at the request of the Chairperson, be silent. If a person, after warning from the Chairperson, persists in disorderly behavior, the Chairperson may order him or her to withdraw, may direct a police officer or constable to remove him or her until the hearing is adjourned.
- c) The Chairperson may close or suspend the hearing immediately if, in his or her opinion, these Rules are being violated or the hearing becomes disorderly.
- d) The Chairperson will open each hearing by reading, or causing to be read, the notice as advertised.
- e) The petitioner or his or her representative will then present his or her cause, stating fully the reason(s) why the petition or application should be granted.
- f) The Chairperson shall read or cause to be read, summarized or simply referenced, at such time or times deemed appropriate by the Chairperson, all correspondence received by the Board.
- g) When the petitioner or his or her representative has concluded, the Chairperson will allow all those in favor of the matter under consideration to speak. Those who wish to speak will rise, address the Chairperson, give their names and addresses, and then proceed.
- h) When all those in favor have spoken, the Chairperson will then allow those in opposition a similar opportunity to be heard.
- i) Rebuttals may only be allowed at the discretion of the Chairperson.
- j) No cross-examination will be allowed although questions seeking information and deemed relevant by the Board may be allowed at the Chairperson's discretion.
- k) Members of the Board who are hearing the case, including non-voting Alternate Members, may direct appropriate questions during the hearing.
- l) After the conclusion of the public hearing, the Board will deliberate and render its decision unless otherwise announced.

## **ARTICLE 6 FILING PROCEDURES**

### *6.0 Eligible Applicants*

Any notice of Appeal, application for Special Permit, Comprehensive Permit, and petition for a Variance may be

filed by a property owner, tenant, licensee, prospective purchaser, or other person in possession of a legal interest in the property and by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c.40A, or by any individual agency, officer, or Board as provided for in M.G. L. c.40A, § 8. Said notice of Appeal, application for Special Permit, Comprehensive Permit, or petition for a Variance shall be filed with the Town Clerk, who shall forthwith transmit a copy thereof to the Board. If, in the judgment of the Board, some person or party, other than the named Applicant, is indispensable to the complete determination of the matter before the Board, it may require the Applicant or petitioner to join such person or party in the petition or application prior to the conclusion of the public hearing thereon.

### *6.1 Application Filing Requirements*

- a) Every such notice of Appeal, application for Special Permit, Comprehensive Permit, and petition for a Variance must be submitted on the forms provided by the Board for such applications.
- b) Two (2) original copies of the application must be completed by the petitioner and signed by the petitioner, the property owner, and the Building Commissioner prior to filing the application with the Board of Appeals.
- c) All Appeals, applications for Special Permit, and petitions for a Variance must be accompanied by six (6) Certified Plot Plans (thirteen (13) Certified Plot Plans if the location is within the Aquifer Protection District), Comprehensive Permits, must be accompanied by nineteen (19) Certified Plot Plans, not more than 2 years old, prepared by a Registered Land Surveyor or qualified Professional Engineer, which plan shall show: the locus; the parcel or parcels of land involved; the existing or proposed building or buildings; the proposed additions or alterations of existing buildings with all dimensions set forth; the location of the septic; existing and proposed drainage; the existing or proposed frontage, front, side, rear line distances; all perimeter dimensions; location and width of abutting and on-site streets and drives; existing and proposed parking; existing topography and proposed grading plan; areas of proposed and retained vegetation; and distinction between upland and wetland. The petitioner shall file with the application sufficient plans and drawings so that the Board can address all of the criteria. In the case of new construction, renovations and additions, raze and replacements, accessory apartments, the Board also requires architectural renderings, sketches or elevations, and scaled floor plans and certified plot plans (less than two years old). However, the Board may in its discretion, waive these requirements or request additional material considered necessary for its review of the application.
- d) All Appeals, applications for Special Permit, Comprehensive Permit, and petitions for a Variance shall be accompanied by a list, by map and parcel numbers of the lot in question, abutting lots, and lots directly opposite on any public or private street or way, and lots abutting the abutters within three hundred (300) feet of the property line of the locus.
- e) All Appeals, applications for Special Permit, Comprehensive Permit, and petitions for a Variance must be accompanied by filing fees established by the Board of Selectmen.
- f) In the event that an application is deemed incomplete or a non-conforming application, the Board shall open the hearing but need not consider approval of the same unless and until the Applicant brings the application into conformance. In the event that the Applicant fails to do so, as directed by the Board, the Board may deny the Application.

## **ARTICLE 7 APPEALS**

### *7.0 Appellant*

An Appeal to the Board may be taken by any person aggrieved by reason of his or her inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c.40A, by the regional Planning Agency in whose area the Town of Yarmouth is situated, or by any person, as provided for in said § 8, aggrieved by an order or decision of the Building Commissioner or other administrative official in violation of any provision of said c.40A, or Bylaw.

### *7.1 Time for Filing*

Any such Appeal must be taken within thirty (30) days from the date of the action appealed by filing an Appeal, specifying the grounds thereof, with the Town Clerk, and with the Board.

### *7.2 Copies*

Upon receipt of such Appeal, the Town Clerk shall forthwith transmit copies to the Board and to the Building Commissioner or officer of the Board whose order or decision is being appealed, who then shall transmit forthwith to the Board all documents and papers constituting the record of the case.

### *7.3 Time for Hearing*

The Board shall hold a public hearing on any such Appeal transmitted to it by the Town Clerk within sixty-five (65) days from the said transmittal, the time may be extended by written agreement from both parties.

## **ARTICLE 8 VARIANCES**

### *8.0 Petitioner*

Any person may petition the Board to grant, with respect to particular land or structure, a Variance from the terms of the Bylaw, including Variances to allow a use other than provided for in the Use Regulation Table.

### *8.1 Requirements*

As provided in M.G.L. c.40A, § 10 and Bylaw Section 102.2.2, Variances may be granted only:

- a) In accordance with the terms and conditions set forth in the Town of Yarmouth Bylaw, the Yarmouth Zoning Board of Appeals Rules and Regulations, and M.G.L. c.40A, and shall be subject to general or specific provisions set forth therein;
- b) After a public hearing for which notice has been given by publication, posting, and mailing as provided by M.G.L. c.40A, § 11;
- c) A literal enforcement of the provisions of the Bylaw would involve a substantial hardship, financial or otherwise, to the petitioner or appellant; and
- d) The hardship is owing to circumstances relating to the soil conditions, shape, or topography of such land or

structures and especially affecting such land or structures, but not affecting generally the zoning district in which it is located; and

- e) Desirable relief may be granted without either: substantial detriment to the public good; or nullifying or substantially derogating from the intent or purpose of the Bylaw.

### *8.2 Time of Hearing*

The Board shall hold a public hearing on any petition for a Variance transmitted to it by the Town Clerk within sixty-five (65) days from the said transmittal or said time may be extended by written agreement.

### *8.3 Lapse*

As provided by M. G. L. c.40A, § 10, rights authorized by the grant of a Variance must be exercised within one (1) year of the date of the grant of such Variance or they shall lapse. These rights may be re-established only after public notice and a new hearing as provided by M.G.L. c.40A and these Rules and Regulations. Variances may be extended only as provided by M.G.L. c.40A, § 10.

### *8.4 Decision Format*

The Board, in its discretion, may request the applicant or petitioner to submit to the Board a proposed decision that in the applicant or petitioner's opinion would comply with the requirement of the Bylaw, these Rules and Regulations, and M.G.L. c.40A, which proposed decision the Board may accept or reject in whole or in part and shall not in any way or for any reason be binding upon the Board.

### *8.5 Conditions*

The Board may impose on any Variance granted conditions, safeguards, and limitations of both time and/or use, including the continued existence of any particular structure but excluding any conditions, safeguards, or limitations based upon continued ownership of the land or structures to which the Variance pertains by the applicant, petitioner, or any owner. The failure of full compliance with any such conditions, safeguards, and limitations shall, to the extent permitted by law, be the basis for the Board, after notice and public hearing, to reverse or modify its decision granting the Variance.

## **ARTICLE 9 SPECIAL PERMITS**

### *9.0 Application*

- a) The Board is authorized to hear and decide applications for Special or other Permits for the uses and under the terms specified in the Bylaw, and is empowered also, to impose conditions, safeguards, and limitations on time or use.
- b) Application for a Special Permit is accompanied by the required forms as stated in Section 6.1 of these Rules and Regulations and must be filed with the Town Clerk, a copy of which must be given forthwith by the Applicant to the Board of Appeals.

## *9.1 Requirements*

Special or other Permits shall be granted only:

- a) In accordance with the terms and conditions set forth in the Bylaw and M.G.L. c.40A, and shall be subject to general or specific provisions set forth therein;
- b) After public hearing for which notice has been given by publication, posting, and mailing as provided by M.G.L. c.40A, § 11; and
- c) The Applicant demonstrates that no undue nuisance, hazard, or congestion will be created and that there will be no substantial harm to the established or future character of the neighborhood nor of the Town. In addition, individual sections of the Zoning Bylaw contain supplemental special permit criteria for specific uses and types of development.

## *9.2 Time of Hearing*

The Board shall hold a public hearing on any application for a Special Permit transmitted to it by the Town Clerk within sixty-five (65) days from the said transmittal or said time may be extended by written agreement.

## *9.3 Lapse*

Special Permits issued by the Board shall lapse within two (2) years unless substantial use or construction has commenced, or as otherwise provided in the decision of the Board.

## *9.4 Decision Format*

The Board, in its discretion, may request the applicant or petitioner to submit to the Board a proposed decision that in the applicant or petitioner's opinion would comply with the requirement of the Bylaw, these Rules and Regulations, and M.G.L. c.40A, which proposed decision the Board may accept or reject in whole or in part and shall not in any way or for any reason be binding on the Board.

## *9.5 Conditions*

The Board may impose on any Special Permit granted conditions, safeguards, and limitations on both time and/or use. The failure of full compliance with any such conditions, safeguards, and limitations shall, to the extent permitted by law, be the basis for the Board, after notice and public hearing, to reverse or modify its decision granting the Special Permit.

## **ARTICLE 10 COMPREHENSIVE PERMITS**

### *10.0 Purpose and Context*

These Rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive Permits granted under M.G.L. c.40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c.40B, § 21 and by 760 CMR 56.00 et seq. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.



These Rules alone are not sufficient to describe Comprehensive Permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with M.G.L. c.40B, §§ 20-23. In addition, the Board's general Rules for conduct of hearings under M.G.L. c.40A apply to Comprehensive Permit applications. In case of inconsistency or conflict between those general Rules of conduct and these Rules, these Rules shall govern.

### 10.1 *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; housing partnership committee; water, sewer, or other commission; fire, police, traffic, or other department; Building Commissioner or similar official or board; or Board of Selectmen.
- c) *Limited Dividend Organization* means any Applicant which proposes to sponsor housing under M.G.L. 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 the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 10.2.1(i)).

### 10.2 *Filing, Time Limits, and Notice*

10.2.1 In addition to the requirements of Section 6.1 herein, 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 (4) or fewer units may submit a sketch of the matters in Sections 10.2.1(a) and 10.2.1(c), below, which need not have an engineer's or architect's signature. All structures of five (5) or more units must have site development plans signed by a registered engineer;
- 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, topographical conditions, wetlands, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in Section 10.2.1(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 conforming to all of the applicable requirements for plan submittals as contained in the Yarmouth Rules & Regulations Governing the Subdivision of Land;

- f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Yarmouth Stormwater Management Regulations or Bylaw requirements, as applicable, or best management practices, whichever is more stringent;
- g) documents showing that the Applicant fulfills the jurisdictional requirements of 760 CMR 56.04, 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. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04;
  - (iii) 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.
- 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. In preparing its *pro-forma*, the Applicant shall fully disclose any costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs;
- j) 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 site approval;
- k) 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;
- l) a list of all prior development projects completed by the Applicant, along with a brief description of each such project;
- m) evidence of local need for the type and number of housing units being proposed by the Application;
- n) a complete copy of the final Site Eligibility Application to the designated subsidizing agency;
- o) a draft affordable housing regulatory agreement.

10.2.2 The application shall be accompanied by a filing fee established by the Board and approved by the Board of Selectmen.

10.2.3 Within seven (7) days of filing of the application, the Board shall notify each local official and local board of the application by sending such official a copy of the list required by Section 10.2.1(h), above, as well as any other information that will enable such local official and local board to assess the proposed project. Based upon that information, it shall also invite the participation of each local official and local board who has a substantial interest in the application by providing such official with a copy of the entire application and a recommended time period in which to submit comments to the Board. In order to allow review by local officials and local board, the Applicant

shall provide the Town Clerk with two (2) originals and nineteen (19) copies of the complete application so that all boards, officials and departments may review the same; one unbound copy for copying purposes; and an electronic copy of all application materials. Additionally, 11"x17" copies of all plans (with match-lines) shall be made available to the Town Clerk for copying purposes.

### *10.3 Review Fees*

10.3.1 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.

10.3.2 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, 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.

10.3.3 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 M.G.L. c.44, § 53G and Section 11, below. 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.

### *10.4 Public Hearing and Decision*

10.4.1 The Board shall hold 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 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, and balance regional housing needs with local concerns such as health, safety, design, open space, planning, environmental impacts, and other local concerns. Presuming that the Applicant has made timely submissions of materials, the public hearing shall not extend beyond 180 days from the opening of the public hearing unless such time period is extended by written agreement of the Applicant.

10.4.2 The Board may, no later than fifteen (15) days from the opening the public hearing, make a determination to deny the application as set forth in 760 CMR 56.03(1) in accordance with the procedure set forth in 760 CMR 56.03. Said determination shall be made in writing and provided to the Applicant, the Massachusetts Department of Housing and Community Development, and the designated subsidizing agency.

10.4.3 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.

10.4.4 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 in the event that the proposed project presents adverse impacts or local concerns that outweigh the community's housing needs, or
- c) approve a Comprehensive Permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. Such pro-forma shall be subject to peer review at the Board's option, consistent with the preceding Section 10.2 of these Rules. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.
- d) issue a decision that is deemed consistent with local needs due to the applicability of any of the safe harbors, as described under 760 CMR 56.03

10.4.5 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.

10.4.6 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 Yarmouth's Rules & Regulations Governing the Subdivision of Land. The Zoning Board and not the Planning Board shall be the permit granting authority.

10.4.7 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.

### *10.5 Changes in Application*

10.5.1 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.

10.5.2 In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 10.2 hereof that is deemed by the Board to be necessary to evaluate such changes.

10.5.3 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 10.2 above.

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

### *10.6 Appeals*

10.6.1 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.

10.6.2 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.

### *10.7 Lapse*

Comprehensive Permits shall expire within three (3) years, or as may be extended by the Board.

## **ARTICLE 11 CONSULTANT FEES**

### *11.0 Purpose*

As provided by M.G.L. c.44, § 53G, the Yarmouth Zoning Board of Appeals may impose upon the Applicant reasonable fees for the employment of outside consultants, engaged by the Board of Appeals, for specific expert services. 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 permit application. Such services shall be deemed necessary by the Board to come to a final decision on an application submitted to the Board of Appeals pursuant to the requirements of the Zoning Bylaw (M.G.L. c.40A), Comprehensive Permit (M.G.L. c.40B), or any other state or municipal statute, bylaw or regulation, as they may be amended or enacted from time to time. The Board of Appeals may also impose fees for other consultant services related to application review, or permit conditioning or monitoring, under any of the above-referenced laws or regulations.

### *11.1 Special Account*

Funds received pursuant to these rules shall be deposited with the Town Treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Board of Appeals without further appropriation as provided in M.G.L. c.44, § 53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the Applicant. Expenditures of accrued interest may also be made for these purposes.

### *11.2 Consultant Services*

In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers, landscape architects, architects or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Specific consultant services or assistance may include, but are not limited to analyzing application materials and technical information, traffic, drainage, wastewater, noise, on-site monitoring or inspecting a project or site for compliance with the Board's decision or regulations, inspecting a project during construction or implementation, or any other services

related to the project deemed necessary by the Board. The consultant shall be chosen by, and report only to the Board and/or its designee.

### *11.3 Notice*

The Board of Appeals shall give written notice to the Applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the fee to be charged to the Applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the Applicant if the application or request is withdrawn within five (5) business days of the date notice is given.

### *11.4 Payment of Fee*

The fee must be received prior to the initiation of consulting services. The Board may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the Applicant to pay the consultant fee specified by the Board within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Board to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in the Zoning Bylaw or its regulations. An appeal by the Applicant stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third-party consultant review identified as necessary by the Board.

### *11.5 Appeals*

The Applicant may appeal the selection of the outside consultant to the Board of Selectmen, who may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the Board of Selectmen and a copy received by the Board within ten (10) business days of the date consultant fees were requested by the Board of Appeals. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

### *11.6 Return of Unspent Fees*

When the Board's review of a project is completed and a permit/decision issued, any balance in the special account attributable to that project shall be returned within thirty (30) days. The excess amount, including interest, shall be repaid 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 appropriate documentation. A final report of said account shall be made available to the Applicant or Applicant's successor in interest.

## **ARTICLE 12 ACTIONS BY THE BOARD**

### *12.0 Voting*

The concurring vote of four (4) members of the Board is necessary to reverse any order or decision of the Building Commissioner or to decide in favor of the Applicant on any matter legally coming under the Jurisdiction of the Board or to grant any Variance or Special Permit in the application of the Bylaw. If a motion is made to grant such relief, but such motion receives less than the required four (4) affirmative votes, the relief shall be deemed to have

been denied, in the absence of another motion and vote which does receive the requisite affirmative votes. If a motion is made to deny such relief, and such motion receives at least three (3) affirmative votes, the relief shall be deemed to have been denied.

### *12.1 Withdrawals*

- a) Prior to the first publication of notice of the hearing upon a petition, the petitioner may, of right, request to withdraw the petition without prejudice, as provided in M.G.L. c.40A, § 16.
- b) Prior to the commencement of the public hearing on the merits of a petition, a request to withdraw the petition without prejudice shall generally be allowed, provided the same or a substantially similar petition has not been denied or withdrawn within the proceeding two (2) years. A majority vote of the Board shall be sufficient to grant such a request.
- c) After commencement of the public hearing on the merits of a petition, a request to withdraw the petition without prejudice may be allowed for good cause. In considering such requests, the Board shall consider the reasons for the request, the interests of the petitioner, and the affect of the requested withdrawal upon the neighborhood, abutters and Town. A majority vote of the Board shall be sufficient to grant such a request.
- d) After any vote by the Board has been taken on the merits of a petition, but prior to the conclusion of that hearing, a request to withdraw the petition without prejudice shall not be allowed, except upon a showing of good cause, substantial hardship and excusable neglect (in not making the request prior to the taking of the vote), but only upon the concurring vote of at least four (4) members of the Board present. It is the policy of the Board that such requests generally shall not be granted.
- e) The foregoing procedures shall not apply to petitions which are filed in response to existing zoning violations or enforcement actions or violation notices brought, issued or undertaken by the Building Commissioner/ Zoning Enforcement Officer. As to such matters, no withdrawals without prejudice shall be allowed by the Board, except as mandated by M.G.L. c.40A, § 16, unless the petitioner demonstrates that the violation or non-compliance has been abated.
- f) All requests to withdraw shall be in writing, signed by the petitioner or his/her duly authorized representative, unless made in person at the public hearing.
- g) In matters heard by the Zoning Administrator, the same policies and procedures shall apply, except as to the voting requirements.

### *12.2 Re-application: Two Year Bar*

As provided by M.G.L. c.40A, no Appeal, application for a Special Permit, Comprehensive Permit, or petition for a Variance which has been unfavorably and finally acted upon by the Board shall be acted upon favorably within two (2) years after the date of final unfavorable action unless (1) the Board finds by vote of four (4) or more members specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and (2) all but one of the members of the Planning Board consent thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

### *12.3 Requests for Reconsideration*

- a) If, after the Board has closed a public hearing and taken a final vote upon a petition, any voting member wishes to reconsider his or her vote, he/she shall so notify the Chairperson prior to the filing of the Board's decision with the Town Clerk. If the Chairperson determines that good cause exists for reconsideration of the matter, the decision rendered by the Board at the public hearing shall not be filed with the Town Clerk unless and until the Board has reconvened and considered the member's request for reconsideration. Upon making this determination, the Board shall:
  - 1) Notify the petitioner or Applicant that the request for reconsideration will be entertained by the Board, and that the decision will not be filed with the Town Clerk until that time.
  - 2) Schedule the matter for further consideration at the next available meeting of the Board (with the same Board members present as originally voted upon the petition),
  - 3) If the original decision of the Board is vacated, the Board shall entertain any new dispositive motions to grant, deny, or grant with conditions the petitioner or application the same manner as at the conclusion of the original hearing, with a concurring vote of four (4) members required to grant a Variance or Special Permit, or grant relief from a decision of the Zoning Enforcement Officer, and concurring vote of three (3) members required for a Comprehensive Permit, or as otherwise required by law. The new decision shall thereafter be written and filed in due course.

## **ARTICLE 13 - DECISION**

*13.0 Time:* The following timelines shall be met unless extended by written agreement of the Board and Applicant.

- a) The Board shall act on an application for an Appeal or on a petition for a Variance within one hundred (100) days after the date of the filing thereof with the Town Clerk, with such decision to be filed with the Town Clerk within fourteen (14) days following said hundredth (100<sup>th</sup>) day. Failure of the Board to so act may be deemed to be a grant of the Relief or Variance sought, to the extent required by M.G.L. c.40A.
- b) The Board shall act on and file a decision on an application for a Special Permit within ninety (90) days after the date of completion of the public hearing for which notice was given as required by M.G.L. c.40A, § 11. Failure of the Board to so act may be deemed to be a grant of the Special Permit sought, to the extent required by M.G.L. c.40A.
- c) The Board shall act on an application for a Comprehensive Permit and shall render a decision based on a majority vote of said Board, within forty (40) days after the completion of the public hearing.

### *13.1 Content*

- a) Upon reaching its decision, the Board shall issue its decision, setting forth the name and address of the owner/appellant/petitioner, the location of the property, the nature of the relief granted or denied, and the concerns of the Board for such a grant or denial, and, in the case of a grant of relief, any limitations or conditions imposed therein.
- b) The decision shall be signed by the Chairperson, or by the Zoning Administrator acting within the scope of his/her authority, or by the Clerk in the absence of the Chairperson or Zoning Administrator.



- c) Any relief which is not expressly granted in said written decision shall be deemed to have been denied.
- d) The Board may make reference to, and/or incorporate by reference into its decision, any plan or other documents which is of assistance to the Board in describing the relief or conditions and limitations imposed. However, notwithstanding such incorporation or reference, no additional or different relief shall be implied, based upon the contents of such documents or plans, beyond that expressly recited by the Board in its decision.
- e) Record of Proceedings (Decision): The Board shall make a detailed record of its proceedings, showing the vote of each member on each question or, if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions and its other official actions, copies of all of which shall be filed within the office of Town Clerk within the requisite time period.

*13.2 Notice*

Notice of any decision of the Board shall be mailed forthwith to the petitioner, applicant or appellant, the parties of interest, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to be sent. Each notice shall specify that appeals, if any, shall be made pursuant to M.G.L. c.40A, § 17, and be filed within twenty (20) days after the decision was filed in the office of the Town Clerk.

*13.3 Recording and Effect*

No Variance, Special Permit, Comprehensive Permit, or any extension, modification, or renewal thereof shall take effect until a copy of the decision, certified by the Town Clerk as specified below, is recorded in the Barnstable County Registry of Deeds and indexed in the Grantor Index under the name of the owner of record of the land affected or is recorded and noted on the owner's Certificate of Title. The Town Clerk shall certify on said copy that twenty (20) days have elapsed since the date the decision as filed with him or her and no appeal has been filed, or if filed, such appeal has been dismissed or denied. Proof of recording shall be filed with the Board of Appeals within ten (10) days of recording.

**ARTICLE 14 ADVICE AND OPINIONS**

Any advice, opinion, or information given to an applicant, appellant, or petitioner by any member, alternate member, secretary, or clerk of the Board, Building Commissioner, or any other official or employee of the Town prior to a public hearing on a matter before the Board shall not be binding on the Board.

**ARTICLE 15 AMENDMENTS**

These Rules and Regulations may be amended by vote of four (4) members of the Board at a regular or special meeting thereof provided that the amendment(s) shall have been submitted to the Board at a regular meeting prior to the date on which the Board acts thereon.

**ARTICLE 16 EFFECTIVE DATE**

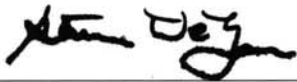
These Rules and Regulations were originally adopted at a meeting of the Board on August 24, 1995 and revised on the following dates: April 13, 2000, September 7, 2000, January 24, 2002, and May 26, 2022.

**ARTICLE 17 CONFLICT**

These Rules and Regulations are adopted in accordance with M.G.L. c.40A, § 12, and in the event of a conflict between any of these Rules and Regulations and the provisions of the Bylaw or said laws, the provisions of the Bylaw of laws, as the case may be, shall prevail. The invalidity of any section or provision of these Rules and Regulations shall not invalidate any other section or provision hereof.

**ARTICLE 18 WAIVER**

The Board may, in a particular case, waive strict compliance with the requirements of these Rules and Regulations when, in the judgment of the Board, such action is in the public interest and not inconsistent with the Bylaw and Massachusetts General Laws.



Steven DeYoung, Chairman & Clerk  
Adopted: May 26, 2022