

Town of Bolton, Massachusetts

Zoning Board of Appeals

663 Main Street
Bolton, Massachusetts 01740
978-779-2297



Rules and Regulations

1 GENERAL

1.1 PURPOSE AND SCOPE

These Rules and Regulations (hereinafter Rules) are adopted by the Bolton Zoning Board of Appeals (the Board) as authorized by M.G.L. c.40A, § 9 through § 12 for the purpose of establishing uniform procedures for conducting the business of the Board. The business of the Board shall, in general, but without limitation, consist of hearing all appeals, petitions and applications coming under its jurisdiction by virtue of the applicable provisions of the Massachusetts General Laws and the Bolton Zoning Bylaws and other Bylaws. Such appeals and matters of original jurisdiction, subject to conformance with these Rules, will in general consist of the following:

- 1.1.1 To receive and act upon all appeals from the action of the Building Inspector in performing the duties and responsibilities contemplated by the Massachusetts General Laws, the Bolton Zoning Bylaws and the Massachusetts Building Code, within the Town of Bolton.
- 1.1.2 To receive and act upon all applications for variances from compliance with the applicable provisions of the Bolton Zoning Bylaws;
- 1.1.3 To receive and act upon all applications for special permits for which the Board of Appeals has authority;
- 1.1.4 To receive and act upon all applications seeking a comprehensive permit to build low and moderate-income housing contemplated by M.G.L c.40B, § 21;
- 1.1.5 To receive and decide appeals taken by aggrieved persons as provided in M.G.L c.40A, § 8; and,
- 1.1.6 To receive and act upon all matters otherwise legally coming under the jurisdiction of the Board.

1.2 PETITIONER OR APPLICANT

As defined herein, petition or application may be brought by any party in interest, except that an application under M.G.L c.40A, § 8 may be made only by a public agency or by a limited dividend or non-profit organization. A petition or application may be filed by a

property owner, a tenant, a licensee, a prospective purchaser, or other applicant providing documentation certifying the petitioner's legal interest and right to file; such documentation must accompany the petition or application.

2 ORGANIZATION

2.1 MEMBERSHIP

The Board shall be comprised of five (5) regular members and two (2) associate members, as appointed by the Board of Selectmen, each for a term of five years.

2.2 ELECTIONS

At the first regular meeting following the qualification of the annual appointee(s), the Board shall elect a chairperson and a clerk. Associate members shall not participate in this election.

2.3 CHAIRPERSON-POWERS AND DUTIES

The chairperson or its designee shall have the following powers and duties: to preside over all hearings and meetings of the Board; to decide all points of order, subject to the rules herein stated, unless overruled by a majority of the Board in session at the time; and to appoint such committees as may be necessary or desirable; and to appoint a zoning administrator. In addition, the chairperson shall supervise the work of the support staff and exercise general supervision over the Board's activities.

2.4 CLERK

The clerk shall be a member of the Board and shall have the following powers: to preside over meetings and hearings as acting chairperson in the event the chairperson is absent, and to approve and sign decisions on behalf of the Board.

2.5 SIGNING DECISIONS

The chairperson or the clerk shall have the authority to sign decisions voted on by the Board. The Board may vote to designate other Board members to sign a specific decision voted by the Board.

2.6 ZONING ADMINISTRATOR

The Zoning Administrator is appointed by the chairperson and shall not be a member of the Board. The Board may delegate to the zoning administrator some of its powers and duties by a concurring vote of four of five members. Subject to the direction of the Board and its chairperson, the Zoning Administrator shall perform all of the Board's clerical work, including, but not limited to, the following: correspondence; sending all notices; receiving and reviewing all petitions and applications for compliance with the rules of the Board; preparing dockets, agendas, and minutes of the Board's proceedings; compiling records; maintaining files and transmit to the Board all documents and papers.

2.7 ASSOCIATE MEMBERS

When a member of the Board is absent, unable to act, or has a conflict of interest, the chairperson or acting chairperson may designate an associate member to sit on the Board

for the duration of the application under consideration, or for a time period designated. In the event of a vacancy on the Board, the chairperson may designate an associate member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

2.8 QUORUM

A quorum for a hearing shall consist of any combination of four members and designated associate members. A quorum for a business meeting shall consist of any combination of three members and designated associate members.

2.9 REGULAR MEETINGS

Regular meetings of the Board shall be held at the Town Hall on the first Wednesday of every month or at the call of the chairperson, or at such places and times as the Board may designate. Notices shall be posted publicly as required by law.

2.10 SPECIAL MEETINGS

Special meetings may be called by the chairperson, or at the request of any two members. Written notice thereof shall be given to all members at least forty-eight (48) hours before the meeting begins. Notices shall be posted publicly as required by law.

3 APPLICATION FOR HEARING

3.1 APPLICATION FORM

Every petition or application for action by the Board shall be made to the Board on an official application form, entitled "Zoning Board of Appeals-Application for Hearing" which shall be furnished by the Zoning Administrator upon request. Each petition or application for a special permit or variance shall be submitted on separate application forms to the Town Clerk. Any communication purporting to be an appeal, a petition, or an application shall be treated as mere notice of intention to seek Board action until it is made on the official application form. To constitute an official application, petition, or appeal, all information called for in the application form shall be furnished by the applicant in the manner therein prescribed and further specified in these Rules, and in precise language identifying the provision of the Zoning Bylaws and the specific nature of the appeal, petition or application. An application found to be incomplete upon receipt by the Board may be returned to the applicant for completion and re-filing. The date of any re-filing shall be the date of the application.

3.2 FILING PERIOD FOR APPEAL

In the case of an appeal to the Board from the action or failure to take action by the Building Inspector, a petition or application for said appeal shall be filed with the Town Clerk within thirty (30) days from the date of issuance of a permit or refusal of a permit by, or on order, ruling, decision or determination of the Building Inspector per M.G.L. c. 40A §15.

3.3 SUBMITTALS

Submittals shall be made in accordance with the requirements of one of the following sections:

- S. 4. Submittals for Appeals, Variances or other Petitions
- S. 5. Submittals for Special Permits
- S. 6. Submittals for Comprehensive Permits

4 SUBMITTALS FOR APPEALS, VARIANCES OR OTHER PETITIONS

4.1 INFORMATION TO BE PROVIDED WITH APPLICATION

All information required by these Rules shall be provided as a part of the application. The Board may return all incomplete applications for completion and re-filing when the information provided is inadequate to determine the facts and circumstances, or inadequate to prepare a public hearing notice.

- 4.1.1. Nine (9) copies of the Bolton Board of Appeals Application Form, Part I shall be filed with the Town Clerk, who shall return one date-stamped copy to the applicant indicating the date the application was received by the Town. A detailed list identifying each requested exemption from the requirements of the Zoning Bylaws, any Planning Board rule or regulation, and any Bylaw of the Town of Bolton, setting forth (a) the citation of the applicable Bylaw or rule, (b) the nature and extent of each requested exemption, and (c) all facts and data supporting the need for the exemption.
- 4.1.2. Eight (8) copies of all plans must accompany the application. Plans are to be drawn to scale and prepared by a land surveyor registered in Massachusetts. The plans shall show at a minimum all boundaries and their dimensions, existing and proposed structures or activities, wells, septic systems, driveways, parking areas, and easements and rights-of-way. The location of all structures, wells, and septic systems on all abutting properties shall also be shown.
- 4.1.3. Eight (8) copies of a certified list prepared by the Board of Assessors showing names and addresses of parties of interest of abutting property owners, any abutters to the abutters whose property is within three hundred (300) feet of the property lines of the property that is the subject of the application. Owners of property directly opposite said property on any public or private street(s) as they appear in the Assessor's records shall be considered direct abutters.

- 4.1.4. Eight (8) copies of a set of color photographs showing the underlying subject property and relevant structures. Photographs may be submitted in electronic format on Compact Disc or by email to the Zoning Administrator.
- 4.1.5. A filing fee of one hundred (\$100) dollars plus six (\$6) per abutter on the certified list of abutters prepared by the Board of Assessors must be submitted with each application.

4.2 REQUIREMENTS TO BE MET FOR GRANTING VARIANCE

As set forth in M.G.L c.40A § 10, the applicant shall show that the following conditions are met:

- 4.2.1 That there are circumstances that exist relating to the soil conditions, shape, or topography of the land or structures that uniquely affect such land or structures, but that do not affect generally the zoning district in which such land is located; and,
- 4.2.2 That literal enforcement of the provisions of the Bolton Zoning Bylaws would involve substantial hardship, financial or otherwise, to the applicant; and,
- 4.2.3 That the desired relief may be granted without substantial detriment to the public good; and,
- 4.2.4 That the desired relief may be granted without nullifying or substantially derogating from the intent and purpose of Bolton Zoning Bylaws.

4.3 GRANTING A VARIANCE

- 4.3.1 Conditions. In granting a variance, the Board may impose whatever conditions, safeguards and limitations it deems necessary to comply with the intent and purpose of the Zoning Bylaw.
- 4.3.2 Lapse. A variance shall lapse if the rights authorized by a variance are not exercised within one year from the date that the variance was granted. After such time the rights granted by a variance may only be re-established after notice and a new hearing.
- 4.3.3 Grant of Variance. If the Board acts favorably and grants a variance, the petitioner must record the decision with the Worcester County Registry of Deeds, in Worcester, Massachusetts. The petitioner shall pay all recording fees.

5 SUBMITTALS FOR SPECIAL PERMITS

5.1 INFORMATION TO BE PROVIDED WITH APPLICATION

All information required by these rules shall be provided as a part of the application. The Board may return all incomplete applications for completion and re-filing when the information provided is inadequate to determine the facts and circumstances, or inadequate to prepare a public hearing notice.

- 5.1.1 Nine (9) copies of the Bolton Board of Appeals Application Form, Part I shall be filed with the Town Clerk, who shall return one date-stamped copy to the applicant indicating the date the application was received by the Town. A detailed list identifying each requested exemption from the requirements of the Zoning Bylaws, any Planning Board rule or regulation, and any bylaw of the Town of Bolton, setting forth (a) the citation of the applicable Bylaws or rules, (b) the nature and extent of each requested exemption, and (c) all facts and data supporting the need for the exemption.
- 5.1.2 Eight (8) copies of a certified plan must accompany the application. It is to be drawn to scale and prepared in recordable form by an engineer or land surveyor registered in Massachusetts, showing, at a minimum, all boundaries and their dimensions, existing and proposed structures or activities, wells, septic systems, driveways, parking areas, and easements or rights-of-way. The location of all structures, wells, and septic systems on all abutting properties shall also be indicated.
- 5.1.3 Eight (8) copies of a certified list prepared by the Board of Assessors showing names and addresses of parties of interest of abutting property owners, abutters of abutters whose property is within three hundred (300) feet of the property lines of the petitioner must accompany the application. Owners of property directly opposite on any public or private street(s) as they appear in the Assessor's records shall be considered direct abutters.
- 5.1.4 Eight (8) copies of a set of color photographs showing the underlying subject property and relevant structures. Photographs shall be submitted in electronic format on Compact Disc or by email to the Zoning Administrator.
- 5.1.5 All existing and proposed buildings, structures, signs, parking areas, driveways, openings, fire lanes, service areas and other open areas, must be shown on the plans.
- 5.1.6 All existing and proposed land features with contours at two-foot intervals (except when otherwise approved by the Board) water courses, ponds, streams, wetlands, soils by SCS type, ground water elevations, flood plains and proposed methods for handling surface drainage and runoff must be shown on the plans.
- 5.1.7 All existing and proposed facilities for sewage and refuse and other waste disposal, and storage areas must be shown on the plans.

- 5.1.8 All existing and proposed buffers and planting areas for screening purposes, walls, fences, outside lighting and signs must be shown on the plans.
- 5.1.9 All information with regard to the proposed use of any buildings or structures must accompany the application.
- 5.1.10 A filing fee of one hundred (\$100) dollars plus six (\$6) per abutter on the certified list of abutters prepared by the Board of Assessors must be submitted with each application.

5.2 REQUIREMENTS TO BE MET FOR GRANTING SPECIAL PERMIT

As set forth in M.G.L c.40A § 9, the following shall be identified and justified on the application form and verbally during the presentation at the hearing:

- 5.2.1 The particular type of use proposed for the land or structure;
- 5.2.2 The conditions and character of operations of the proposed use showing that these will be in harmony with the general intent and purpose of the Zoning Bylaws and the zoning district in which the use is located; and,
- 5.2.3 The nature of the proposed use in relation to both the general and specific provisions of the Zoning Bylaws governing that use and the zoning district in which it is located.

5.3 GRANTING A SPECIAL PERMIT

- 5.3.1 Conditions. In granting a special permit, the Board may impose conditions, safeguards and limitations it deems necessary to comply with the intent and purpose of the Zoning Bylaw.
- 5.3.2 Lapse. A special permit shall lapse if the rights authorized by a special permit are not exercised within 24 months from the date that the special permit was granted. After such time the rights granted by a special permit may only be re-established after notice and a new hearing.
- 5.3.3 Grant of Special Permit. If the Board acts favorable and grants a special permit, the petitioner must record the decision with the Worcester County Registry of Deeds, in Worcester, Massachusetts. The petitioner shall pay all recording fees.

6 SUBMITTALS FOR COMPREHENSIVE PERMITS

These rules establish procedures for applications for comprehensive permits granted under M.G.L. c. 40B, Sections 20-23. The purpose of these rules is to facilitate the development of affordable housing in Bolton.

- 6.1.1 The applicant will comply with all local requirements and regulations, including local codes, ordinances, Bylaws or regulations unless an exemption or variance is requested and listed in the application or modification to the application. This will include, but not be limited to:
 - 6.1.1.1 Town of Bolton Bylaws
 - 6.1.1.2 Planning Board Rules and Regulations including Subdivision Rules and Regulations
 - 6.1.1.3 Conservation Commission Rules and Regulations
 - 6.1.1.4 Rules and Regulations of the Board of Health
- 6.1.2 All information required by these Rules shall be provided as a part of the application. The Board may return all incomplete applications for completion and re-filing when the information provided is inadequate to determine the facts and circumstances, or inadequate to prepare a public hearing notice.
- 6.1.3 All information required is to be provided to the Board in both hard copy and PC-readable files on a Compact Disk (CD) that may be read by a Microsoft Windows based personal computer. Exact file formats and programs are to be in a format that can be read by the Board on industry-standard PC programs. In the event the file format is not currently in use by the Board, the applicant will supply a copy of the program to the Board to allow the board to read the files.

6.2 THE APPLICATION FOR A COMPREHENSIVE PERMIT

The applicant seeking approval of a Comprehensive Permit shall submit to the Zoning Board of Appeals the following:

- 6.2.1 Twelve (12) copies of the project description and twelve (12) full-size paper prints of the plan and twelve (12) reduced size copies of the plan. All information is to be provided on a CD in a form approved by the Board in advance of submission of the application; (Refer to Section 6.3);
- 6.2.2 Twelve (12) copies and one CD of the list of requested exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations including reason for requesting the exception and the financial impact on the project (Refer to Section 6.4);
- 6.2.3 Nineteen (19) copies and one CD of the Zoning Board of Appeals, Application for Hearing Part I Refer to Section 6.5); and,
- 6.2.4 Two (2) checks, one for Administrative Fee and one for Consultant Review Fee (refer to Section 6.6)

6.3 PROJECT DESCRIPTION AND PLANS

- 6.3.1 The full size plan shall be drawn at a scale, of 1 inch equals 40 feet, on sheets 24 inches by 36 inches, (larger sheets are acceptable up to 30 inches x 42 inches). The reduced size plan shall be 17 inches by 22 inches or smaller;
- 6.3.2 The project name, boundaries, north arrow, date, scale, legend, zoning classification of parcel, location of any zoning district boundary lines and the title "Preliminary Application for Comprehensive Permit in Bolton";
- 6.3.3 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 structures of five or more units must have site development plans signed by a registered architect;
- 6.3.4 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, locations and widths of adjacent streets, traffic patterns and character of open areas, if any, in the neighborhood;
- 6.3.5 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;
- 6.3.6 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;
- 6.3.7 Where a subdivision of land is involved, a preliminary subdivision plan;
- 6.3.8 Preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including cisterns;
- 6.3.9 FEMA 100-year flood plain and any zoning overlay districts (if applicable);
- 6.3.10 Major site features of the land such as existing stone walls, buildings, structures, bounds, large trees (over 18 inches diameter) or wooded areas, rock outcrops, water bodies, wetlands, streams and stream obstructions within 500 feet upstream and downstream from the subdivision property lines, existing trails, cart paths and historic artifacts;

- 6.3.11 Existing and proposed contours at intervals of 2 feet or smaller for the entire site;
- 6.3.12 Preliminary profile of all proposed streets, ways, roads and drains, together with a cross-section of the way and of any open channels;
- 6.3.13 Identification and statement of any easements, covenants or restrictions applying to the parcel being subdivided, and notice of any decision by the Zoning Board of Appeals;
- 6.3.14 Documents showing that the applicant fulfills the following requirements:
 - 6.3.14.1 The applicant shall be a public agency, a non-profit organization, or a limited dividend organization;
 - 6.3.14.2 The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and,
 - 6.3.14.3 The applicant shall control the site.
- 6.3.15 Copies of any "site approval letter/project eligibility letter" that the applicant has obtained from any state or federal housing agency. The hearing will not be opened and the application will not be considered complete, if this letter is not part of the application;
- 6.3.16 Preliminary site plans showing original topography and proposed topography changes, roads, and other improvements, including typical cross-sections, profiles, details and specifications, and approximate dimensions of any buildings and structures, existing and proposed;
- 6.3.17 Preliminary site plan of the entire proposed housing development showing approximate distances, bearings, radii and tangents of all site, boundary, lot and property lines; all streets, rights-of-way and easements, and the names of all abutting owners and of all persons and entities having any rights in any easements;
- 6.3.18 Preliminary foundation, floor, and roof plans of all buildings, including approximate elevations and typical wall sections, electrical, plumbing and mechanical plans; preliminary construction details with typical materials specifications listed;
- 6.3.19 Preliminary detailed site plan, depicting the approximate location of all proposed and existing buildings, wells, easements, rights-of-way, septic systems, roads, sidewalks, fire ponds, driveways and other improvements or modifications;

- 6.3.20 Preliminary detailed site plan accurately delineating the approximate location of all existing wetlands;
- 6.3.21 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, under all buildings and adjacent to any road cuts greater than three feet (3’).
- 6.3.22 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.
 - 6.3.22.1 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 the Bolton Subdivision Rules and Regulations as amended.
- 6.3.23 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 Planning Board;
- 6.3.24 Engineering studies and all hydrological reports for the proposed site;
- 6.3.25 Environmental study reports that relate to the proposed site;
- 6.3.26 All financial information for the project. Include all Federal, State and private funding sources and project pro forma showing estimated costs and projected profit of the project. A full compilation and certification of total development costs and total revenues on a federal income tax basis prepared by a CPA according to generally accepted accounting standards. All required information to review of the applicants financial projections, credentials and market projections;
- 6.3.27 Marketing studies, appraisals, cost estimates and all other documents that refer or relate to the data contained in the pro forma;

- 6.3.28 Traffic report showing the impact of the proposed project on the traffic patterns and volume. The traffic report is to include an analysis suitable for public safety to determine the impact on the community;
- 6.3.29 Corporate articles of organization of the applicant, certificate of good standing from the Office of the Secretary of State of the Commonwealth if the applicant is a corporation, together with a certificate from the Massachusetts Commissioner of Corporations and Taxation stating that the applicant is registered as a non-profit, or a limited dividend, corporation;
- 6.3.30 A detailed narrative statement as to how the exterior design of the proposed structures will be consistent with the surrounding neighborhood, comparing elevations, window configurations, setbacks, roof lines, and other exterior features with all surrounding public and private buildings within 400 yards;
- 6.3.31 A detailed narrative statement (with supporting documentation) of the impact of the project on town services, including a specific quantitative projection of the impact on schools, traffic, transportation, recreation, open space, roads and road maintenance, solid waste, police and safety services and utilities (including water, electric, and natural gas);
- 6.3.32 Letters, memoranda, and other documents specifically identifying the subsidy program and the state or federal agencies to which application has been, or will be made;
- 6.3.33 Abutters certified by the Board of Assessors showing names and addresses of abutting property owners, abutters to the abutters whose property is within three hundred (300) feet of the property lines of the property that is the subject of the application. Owners of property directly opposite said property on any public or private street(s) as they appear in the Assessor's records shall be considered direct abutters; and,
- 6.3.34 Maintenance Association Agreement
- 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 Bolton assistance. Maintaining includes, snow plowing, street patching, repairing, street lights, street sweeping, catch basin 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.
- 6.3.34.1 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

- 6.3.34.2 Upon approval, the Maintenance Association Agreement shall be recorded at the Worcester County Registry of Deeds (or Land Court as applicable) prior to any construction beginning.

6.4 LIST OF REQUESTED EXCEPTIONS TO LOCAL REQUIREMENTS

List of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations including reason for requesting the exception and the financial impact on the project. The list is to include:

- 6.4.1 Specific item per the Bolton Bylaw or local rules and regulations;
- 6.4.2 Reason for requesting exception;
- 6.4.3 Financial impact; and,
- 6.4.4 All requests for exemptions or waivers must identify the specific bylaw, rule or regulation by name and by chapter, section and subsection.

6.5 BOLTON BOARD OF APPEALS APPLICATION

Nineteen (19) copies of the Bolton Board of Appeals Application Form Part I. One date-stamped copy will be returned to the applicant indicating the date the application was received by the Town.

6.6 FEES FOR COMPREHENSIVE PERMITS

All applications shall be accompanied by two (2) certified checks made payable to the order of the Town of Bolton. One 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.

6.6.1 Administrative Fee

The administrative filing fee for a comprehensive permit shall be five hundred dollars (\$500.00) and shall accompany each application.

6.6.2 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.

- 6.6.2.1 A deposit for the consultant review fee shall be submitted with each application (a check made payable to the Town of Bolton) in the amount five thousand dollars (\$5000.00) plus one hundred (\$100.00) dollars for each dwelling unit. This deposit is to be used as compensation to secure

the services of qualified consultants, should the Board determine they are required.

- 6.6.2.2 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.
- 6.6.2.3 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 is 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.
- 6.6.2.4 All fees assessed pursuant to this section shall be reasonable in light of the complexity of the proposed project, the complexity of the technical issues, number of housing units the size and character of the site, projected construction costs and fees charged for similar consultants in the area
- 6.6.2.5 Funds received by the Board pursuant to these regulations shall be deposited with the Town Treasurer, who shall establish a special account for this purpose.
 - 6.6.2.5.1 Expenditures from this special account may be made at the direction of the Board to consultants chosen by the Board alone.
 - 6.6.2.5.2 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.
 - 6.6.2.5.3 If the Consultant Review Account is depleted prior to the technical review of the application for a comprehensive permit, the applicant will be required to supplement the account in an amount that the Board may feel is reasonably necessary to complete the review.
 - 6.6.2.5.3.1 Failure by the applicant to make the above referenced filing deposit within ten (10) days of the request, shall be justification for project disapproval.

6.6.2.5.3.2 Surplus funds are to be returned to the applicant at the end of the hearing.

6.6.2.5.4 Within five (5) days of selection of the consultant by the Board, the applicant may appeal the selection of the consultant to the Board of Selectmen.

6.6.2.5.4.1 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.

6.6.2.5.4.2 The minimum qualification 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.

6.6.2.5.4.3 The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that no decision is made by the Board of Selectman within one month following the filing of the appeal, the selection made by the Board shall stand.

6.7 CHANGES TO APPROVED COMPREHENSIVE PERMITS

Any change, amendment, or modification to an approved comprehensive permit, or approved plan referenced in a comprehensive permit, whether a substantial or insubstantial change, must be approved by a majority vote of the Board of Appeals.

An applicant wishing to make a change to an approved comprehensive permit shall advise the Board in writing of the nature and extent of the proposed change. The applicant shall submit twelve (12) copies of the plan, in the same format including as required by Section 6.3 of the Board's regulations, showing the proposed change or changes overlaid on the approved plan, on all relevant sheets of the plan. If the applicant is requesting a change to a written component, such as a condition of a comprehensive permit, the applicant shall submit the proposed change of the wording of the comprehensive permit. If other components of the project, as listed in Section 6.3, will change as a result of the proposed amendment, the applicant shall submit accompanying documentation showing the resulting changes.

At a duly posted meeting of the Board, the Board shall review the request with the applicant and/or the applicant's representatives. The Board may seek assistance from an outside consultant or consultants, paid by the applicant, in determining whether the proposed change or changes constitute a substantial or insubstantial change; or determining whether to allow a substantial change to the approved comprehensive permit. "Substantial change" for the purposes of this paragraph shall include, but not be limited to, all matters defined as substantial changes in 760 CMR 31.03 (2)(a). If the Board finds the proposed change is substantial, the Applicant shall submit an application to the Town Clerk, and the Board shall open a public hearing on the proposed change pursuant to requirements under M.G.L. Chapter 40B.

6.8 NOTICE OF PUBLIC HEARINGS

Notice of all public hearings shall be advertised in a newspaper as required by the provisions of M.G.L c.40A § 11. In addition, a copy of the advertisement shall be sent by mail, prior to the date of the hearing, postage prepaid, to the applicant, to all parties in interest as defined in said § 11 and as they appear on the Board of Assessors certified assessors list of abutters, to the Board of Selectmen, to the Building Inspector, and to the Town Clerk.

6.9 HEARINGS TO BE PUBLIC

All hearings shall be open to the public and shall be conducted in accordance with the Open Meeting Law, M.G.L c.39, § 23A.

6.10 REPRESENTATION AND ABSENCE

An applicant shall appear in his or her own behalf, or be represented by an authorized agent or attorney. If the applicant or his/her authorized agent or attorney does not appear at the scheduled hearing, the Board may decide the matter using the information it has received.

7 HEARING PROCEDURES

7.1 APPEALS, VARIANCES AND SPECIAL PERMITS

- 7.1.1 Hearings will start at the time and place stated in the notice, unless delayed because of prior hearings or lack of a quorum. In the event that a quorum, but not all five (5) members are present, the applicant will be informed that a unanimous vote would be required for approval of the application. In addition, the applicant will be given the option of proceeding with four members; proceeding with five members under the provisions of M.G.L Chapter 39, §23D; waiting for the fifth (5th) member; or continuing the hearing to a time certain without discussion or taking any action. If the applicant chooses to proceed with five members under the provisions of M.G.L Chapter 39, §23D, the Board shall record the meeting using a video or audio recorder.
- 7.1.2 The chairperson, or designee, will normally open each hearing by reading the hearing notice as published; ask that the petitioner to present the case, stating fully the reason(s) why the petition or application should be granted; soliciting questions and/or information from the public, asking each person to identify themselves by name and address; and requesting members of the Board ask any questions. At the discretion of the chairperson, these procedures maybe modified to meet the needs of the hearing.

- 7.1.3 When all the facts have been presented, the chairperson will inform the petitioner, or the petitioner's agent or attorney, and others present of the Board's next action.
- 7.1.4 If the nature of the application so dictates, the Board may indicate that a site visit is appropriate. Said visits shall be scheduled while the hearing remains open and be reconvened to a specific time and place.

7.2 COMPREHENSIVE PERMIT HEARING

- 7.2.1 Hearings will start at the time and place stated in the notice, unless delayed because of prior hearings or lack of a quorum. In the event that a quorum, but not all five (5) members are present, the applicant will be informed that a unanimous vote would be required for approval of the application. In addition, the applicant will be given the option of proceeding with four members; proceeding with five members under the provisions of M.G.L Chapter 39, §23D; waiting for the fifth (5th) member; or continuing the hearing to a time certain without discussion or taking any action. If the applicant chooses to proceed with five members under the provisions of M.G.L Chapter 39, §23D, the Board shall record the meeting using a video or audio recorder. The chairperson, or designee, will open each hearing by reading the hearing notice as published; introduction of members of the Board, and identifying members of other boards present.
- 7.2.2 If the application is determined to be incomplete, an agreement should be reached at this point, followed by continuation of the hearing. If no agreement can be reached, the hearing should be concluded, and a denial of the permit, without prejudice, be made.
- 7.2.3 The chairperson will ask the petitioner to present the case, stating fully the reason(s) why the petition or application should be granted; solicit questions and/or information from the public, asking each person to identify themselves by name and address; and requesting members of the Board to ask questions. At the discretion of the chairman, these procedures maybe modified to meet the needs of the hearing.
- 7.2.4 The Chairperson shall solicit comments and suggestions from local boards and agencies, with a request that all points be addressed in formal letters directed to the Board complete with any legal arguments supporting positions taken.
- 7.2.5 The Chairperson shall adjourn or continue the hearing as required.

8 ACTIONS BY THE BOARD

8.1 VOTING REQUIREMENTS

The concurring vote of four (4) members of the Board shall be necessary to decide in favor of the applicant on any matter legally coming under the jurisdiction of the Board, or the record shall show the vote of each member upon each question. If a voting member missed one session of a hearing, the member must certify in writing under the penalties and pains of perjury that they have reviewed an audiotape, videotape, or written transcript of the proceedings before issuing a vote on the petition.

The Board shall, in addition, set forth clearly the reason(s) for its decisions.

8.2 WITHDRAWAL

Any application or petition may be withdrawn without prejudice by the applicant or petitioner prior to the publication of the first public hearing notice. Once the notice has been published, a withdrawal without prejudice may only be made with the approval of the Board.

8.3 RECONSIDERATION

When a petition or application has been voted upon and the meeting adjourned, there shall be no reconsideration of a decision of the Board except as provided in M.G.L. 40A § 16.

8.4 TIME LIMITATION ON APPROVALS

- 8.4.1 The Petitioner/applicant should refer to the Bolton Zoning Bylaws, section 2.2.3.3 regarding the lapse of authorization if not exercised within specified time.
- 8.4.2 The zoning administrator will send copies of all decisions of the Board to the parties of interest, the Board of Selectmen, the Planning Board, the Board of Assessors, the Town Clerk, the Building Inspector and, where applicable, to the Board of Health, the Conservation Commission, and other Town boards or departments.
- 8.4.3 All decisions become final when the decision is filed with the Town Clerk and duly recorded as required below.
- 8.4.4 No variance or special permit approved by the Board shall take effect until the decision signed by the Board is recorded in Worcester County Registry of Deeds. The recording of such notice is a responsibility of the petitioner for the variance or special permit. Proof of all recordings shall be submitted to the Town Clerk and the Board.
- 8.4.5 Variance. Public hearings must be held within 65 days of filing, and the decision must be made and filed with the Town Clerk within 100 days of the

- 8.4.6 Special Permit. The public hearing must be held within 65 days of filing. The decision must be made within 90 days of the closing of the hearing. The decision must be filed with the Town Clerk within 14 days after it is made. No decision is final until the appeal period has expired and the Town Clerk certifies that no appeal has been taken.
- 8.4.7 Comprehensive Permit. Public hearing must be held within 30 days of the filing. The Board shall render a decision and file it with the Town Clerk within forty (40) days after the close of the public hearing.
- 8.4.8 Appeal from Unfavorable Action. Public hearings must be held within 65 days of the filing. A decision must be made and filed with the Town Clerk within 100 days of the filing.

9 NON-BINDING ADVICE

Any advice, opinion, or information given by any individual member of the Board or any other official or employee of the Town to the applicant or petitioner shall not be binding on the Board.

10 PERFORMANCE BOND

A performance bond may be required by the Board as a condition of a special permit or comprehensive permit or variance issued by the Board. The Board shall determine the amount of any bond and shall send copies of its decision to the Board of Selectmen and the Town Treasurer who shall act in accordance with the instructions of the Selectmen.

11 AMENDMENTS

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

12 EFFECTIVE DATE

These Rules were adopted at a regular meeting of the Board on October 10, 2001 and reconfirmed by the Board at a meeting on October 17, 2001 and became effective as of that date and replace the Rules and Regulations version June 24, 2001. Any rules previously adopted and subsequently amended are hereby repealed. No actions taken under previous Rules shall be affected by said repeal.

REVISED: June 24, 2001, October 17, 2001, July 18, 2007