

## **Town of Rowley Zoning Board of Appeals Rules**

As required by MGL Chapter 40A Section 9 and Section 12;  
MGL Chapter 40B Section 21 and the  
Rowley Protective Zoning Bylaws

*Adopted, Voted, Approved  
&  
Effective 11.20.19*

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**Town of Rowley  
Zoning Board of Appeals Rules**

**PART 1 – RULES as required by MGL c.40A §9 and §12**

**AUTHORITY AND PURPOSE**

These Rules of the Rowley Zoning Board of Appeals (ZBA) are adopted pursuant to and under the authority of the Rowley Zoning Bylaws; MGL c. 40A §12 and other applicable provisions of the Massachusetts General Laws. In exercising the powers granted by §14 of c.40A, a Board of Appeals may, in conformity with the provisions of this chapter, make orders or decisions, reverse or affirm in whole or in part, or modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit.

*The purpose of these Rules is to establish uniform standards and procedures for conducting the business of the ZBA. These shall apply to all matters over which the ZBA has jurisdiction including:*

- To hear and decide appeals from any decisions of the Building Inspector under MGL c.40A §8;
- To hear and decide applications for special permits as authorized by Rowley Zoning Bylaw;
- To hear and decide petitions for variances under MGL c.40A §10;
- To hear and decide applications seeking authorization and a Comprehensive Permit to build low and moderate income housing contemplated by MGL c.40B, §21;
- To hear and decide applications for an expansion of a non-conforming use, or a change of a nonconforming use to another non-conforming use, under section 5.2 of the Bylaw and MGL c.40A §6;
- To hear and decide upon all matters otherwise legally within the jurisdiction of the ZBA in exercising its powers under section 7.1.2, the ZBA shall act in accordance with MGL c.40A §9, §11, §15 and §16 as applicable.

*The ZBA is the special permit granting authority according to the following Sections of the Rowley Protective Zoning Bylaws (RPZB):*

- Section 6.1.3.1: Required Setback Area Exception
- Section 6.3.1.3: Minimum Lot Area for a 2 Family Conversion
- Section 4.11.3.2: Particular uses in the Municipal Watershed Protection District
- Section 5.0: Nonconforming Uses and Structures
- Section 6.6: Accessory In-Law Apartments

**ARTICLE ONE – ORGANIZATION**

**1.1: MEMBERS AND OFFICERS**

The ZBA shall consist of five regular and three alternate members (also sometimes referred to herein as 'regular members' and 'associate members') appointed by the Board of Selectmen.



### **1.2: SELECTION**

At the regular meeting each year in July to coincide with the start of the new fiscal year, the ZBA shall select from its membership a Chair and Vice Chair. Each shall be elected by a majority vote of the Board.

### **1.3: TENURE**

The officers shall take office at the same meeting of their selection and shall hold offices for a term of one year or until successors are elected by vote of the Board. All members are eligible.

### **1.4: CHAIR POWERS AND DUTIES**

The Chair shall vote and be recorded on all matters coming before the Board. Subject to these rules, shall decide all points of order, unless overruled by a majority of the Board in session at the time. Shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning Bylaws of the Town of Rowley and subject to these rules and further instructions of the Board, the Chair shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory authority. Shall at each meeting report the official transactions that have not otherwise come to the attention of the Board. The Chair shall be responsible including but not limited to the power and duty to:

Sign all communications, correspondence and decisions of the Board;

- Endorse all purchase orders, vouchers, and expense authorizations as required;
- Supervise the performance of duties by administrative assistant and members;
- Request opinions and advice of Town Counsel;
- Appoint Alternate Members to act upon Board matters in the absence or due to the inability to act as a regular Member;
- To request the production of testimonial or documentary evidence which the Board deems relevant to any matter pending before it; and in furtherance thereof, to issue subpoenas in accordance with the provisions of the Zoning Act.

### **1.5: VICE CHAIR**

A Vice-Chair shall be elected annually by a majority vote of the Board. The Vice-Chair shall preside in the absence of the Chair and shall have full powers of the Chair on matters which come before the Board during the absence or incapacity of the Chair. In the event that the office of Chair becomes vacant, the Vice Chair shall succeed to this office for the unexpired term. In the event that the office of both Chair and Vice Chair become vacant, the ZBA shall elect an alternate Chair to serve until the next regularly scheduled selection of officers. In the event that both the Chair and Vice Chair are absent from a meeting of the ZBA, the Clerk shall act as Chair for the duration of said meeting. The Clerk shall be responsible for executing documents in the name of the ZBA.

### **1.6: ADMINISTRATIVE ASSISTANT DUTIES**

The Administrative Assistant shall supervise all of the clerical work of the Board including all correspondence of the Board, receive and scrutinize all applications for compliance with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records and maintain necessary files and indices.

### **1.7: ALTERNATE MEMBERS**

Alternate members shall attend all meetings and hearings of the Board, and shall perform the duties of a regular member when so designated by the Chair. Alternate members shall sit on the Board in case of the absence, inability to act, or apparent conflict of interest on the part of any Board member, or as part of a regularly scheduled alternating rotation among the regular and/or alternate members. Alternate members shall attend all meetings regardless of rotation. Alternate members may participate in all deliberations. However, they may not make motions or vote on any application before the Board when five (5) regular members are in attendance. The Chair prior to a public hearing shall indicate those alternate members who shall be hearing and voting on the matter.

The Chair, after due reference to the official voting record from the previous meeting(s) (noting the last alternate to have voted) shall select the other alternate member to sit as the voting member for that entire meeting's agenda. In the event of a continued hearing, the alternate that was present for the matter shall be required to sit through and be included in the vote. (Please note: After the adoption of this Section, the senior alternate member will lead off the rotation.)

### **1.8: QUORUM**

A quorum for any meeting or hearing of the Board shall consist of at least four (4) members.

### **1.9: REGULAR HEARING DATES**

The regular hearing dates of the Board of Appeals shall be held at 7:00 pm on the **third Wednesday** of each month, or at other times determined by the Board. If a regular hearing is cancelled, it shall be held on the next regular hearing date unless otherwise provided.

### **1.10: MEETINGS OF THE BOARD**

Meetings of the ZBA may be called by the Chair or at the request of two (2) members. Notice thereof shall be given to each member at least 48 hours before the time set, not including Sundays and holidays except that announcement of a meeting at any hearing or other meeting of the Board attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law for all meetings.

## **ARTICLE TWO – MEETINGS**

### **2.1: ORDER OF BUSINESS**

The Order of Business at all regular meetings of the Board shall be as follows:

- 1) Call to Order
- 2) Misc. Business
- 3) Public Hearing (s)
- 4) Other Business
- 5) Adjournment

### **2.2: SPECIAL MEETINGS**

Special meetings may be called by the Chair or at the request of two (2) members. Notice thereof shall be given to each member and alternate member at least 48 hours before the time set, except that an announcement of a special meeting at any meeting attended by an official quorum of members shall be sufficient notice of such meetings. Notices shall be posted publicly.

## **ARTICLE THREE – APPLICATIONS TO THE BOARD**

### **3.1: APPLICATION FORM**

Every application shall be made on the official form of the ZBA which may be obtained from the ZBA office or the Town website. It shall be the applicant's responsibility to acquire the applicable forms. Any communication purporting to be an application shall be treated as merely advisory and no notice shall be deemed to have been given, until such time as it is made on the official application form and filed with the Town Clerk. Information called for by the form shall be furnished by the applicant in the manner therein prescribed. The Application consists of a completed Application Form, Permit and/or License Clearance Form, Certified Assessors Map, a Certified Parties-in-Interest list, (shall be supplied by the Town Hall Assessor in a manner that clearly indicates the Map Number, Block Number, Lot Number, Owner's Name and Mailing Address, and the Certification by the Assessor) eight (8) copies made of each; and filing fee. The "Application" must be signed by the Owner and the Applicant if different. (the owner may not always be the applicant in some cases).

### **3.2: FILING**

In accordance with the Town Protective Zoning Bylaws, MGL Chapter 40A, §15, every application for a variance shall be filed within thirty days from the date of denial of a permit, or the date of the order or decision/determination of the Inspector of Buildings.

- **Special Permit** - Each application shall be filed with the Town Clerk and a copy of said application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the applicant with the ZBA. The ZBA shall hold a public hearing on any application for a special permit within sixty-five days from the date of filing of such application. The decision of the ZBA shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the ZBA. A copy of such agreement shall be filed in the office of the Town Clerk. A special permit issued by the ZBA shall require a vote of at least four (4) members of a five (5) member board. (MGL c.40A §9)
- **Variance** - Each petition for variance to the ZBA or an appeal from the decision of the Inspector of Buildings shall be taken within thirty days of the date of such decision or within thirty days from the date on which the petition in question shall have been deemed denied. The Inspector of Buildings shall forthwith transmit to the ZBA all documents and papers constituting the record of the case. The ZBA shall hold a hearing within sixty-five days from the receipt of notice by the Inspector of Buildings. The decision of the Board shall be made within one hundred days after the date of the filing of petition. (in accordance with the Town Protective Zoning Bylaws and MGL c.40A §10 & §15)
- **Appeal** – Each appeal to the ZBA shall be taken within thirty days from the date of decision which is being appealed. The Applicant shall file a notice of appeal specifying the grounds thereof, with the town clerk, and a copy of said notice, (from Inspector of Buildings) including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the Applicant to the ZBA.

Any appeal to the ZBA from the decision of the Inspector of Buildings shall be taken within thirty days of the date of such decision or within thirty days from the date on which the appeal, application or petition in question shall have been deemed denied. The Inspector of Buildings shall forthwith transmit to the ZBA all documents and papers constituting the record of the case in which the appeal is taken. The ZBA shall hold a hearing within sixty-five days from the receipt of notice by the Inspector of Buildings.

The decision of the Board shall be made within one hundred days after the date of the filing of an appeal. The required time limits for a public hearing and said action may be extended by written agreement between the applicant and the Board of Appeals.  
(MGL c.40A §15)

	<u>BI to BOA</u>	<u>BOA Hearing</u>	<u>BOA Decision</u>
<b>Appeals</b>	<b>30 days</b>	<b>65 days</b>	<b>100 days</b>
<b>Variances</b>	<b>30</b>	<b>65 days</b>	<b>100 days</b>
<b>Special Permit</b>	<b>-----</b>	<b>65 days</b>	<b>90 days</b>

Every application shall be an original plus seven (7) stamped copies from the Rowley Town Clerk's office and must be filed with the office of the ZBA. The Town Clerk shall indicate the date on which the application was received. The date of receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed.

It shall be the responsibility of the applicant to furnish all supporting documentation with the application. The dated copy of the application received by the Town Clerk does not absolve the applicant from this responsibility.

### **3.3: PLAN OF LAND AND ELEVATIONS TO ACCOMPANY PETITION**

Waiving of Requirements: The Board may at its discretion waive any and all of the requirements pertaining to all or part of an application if, based on information provided or additionally requested, it is in the judgment of the Board appropriate and does not compromise the ability of the Board to faithfully execute its authority.

Each application and petition to the Zoning Board shall be accompanied by the following described plan and elevations. Plans must be submitted to the Town Clerk prior to the first public hearing before the ZBA. Failure to comply with any of the requirements may result in a dismissal by the Zoning Board of an application as incomplete.

1. **Major Projects:** (Major projects are those which involve one of the following):
  - A: Six (6) or more parking spaces whether existing or proposed;
  - B: Three (3) or more dwelling units whether existing or proposed;
  - C: 5,000 square feet of building area whether existing or proposed.

Those projects that are less than the above limits shall require only the information as indicated below with an asterisk (\*). However, in some cases, the Zoning Board may waive certain filing requirements or request further information as listed below. Such information shall be considered as required.

2. Plan Specifications:

Plans and drawings clearly representing existing and proposed conditions. Plans shall include all measurements. An architectural scale or ruler should not be necessary to read plans.

Site Plan Review Requirements - Section 7.6.1 of the Rowley Protective Zoning Bylaw requires Site Plan Review for any use or changes of use for which the approval of the ZBA is required. Please see Section 7.6 of the RPZB for Site Plan requirements, criteria for evaluation, and procedures.

Requirements specific to certain uses can be found in the Rowley Protective Zoning Bylaws (RPZB) in Section 4.11 Municipal Water Supply Protection District (MWSPD), Section 5.0 (Nonconforming Uses and Structures), and Section 6.6 (Accessory In-Law Apartments).

Site plans which accompany special permit applications for Accessory in-law apartments under Section 6.6.2 and setback and lot area exceptions under Sections 6.1.3.1 & 6.3.1.3 need not have plans prepared by a registered professional architect, landscape architect, or civil engineer.

\*A. Neighborhood plan: 8 copies, 8 ½" x 11" of Assessors map with site centered.

\*B. Elevations: 8 copies of elevation plans showing the existing building (all 4 aspects) and any proposed work to be highlighted. Existing and proposed structures may be combined on a single elevation or submitted separately as long as the proposed changes can be clearly seen.

\*C. Site Plan prepared by a registered Professional Engineer and/or Land Surveyor.

3. Features to be indicated on plan:

a. *Site orientation*

- 1) 'north' point
- 2) zoning district(s)
- 3) names of streets
- 4) wetlands (if applicable)
- 5) property boundaries and locations of buildings on adjacent properties
- 6) deed restrictions, easements, and other restrictions that may affect the applicant's proposal

b. *Legend, graphic aids*

- 1) proposed features shall be clearly differentiated from existing features
- 2) current zoning setbacks, front, side, and rear yard dimensions shall be indicated for all structures
- 3) graphic scale
- 4) date of plan
- 5) title of plan
- 6) names, addresses, and phone numbers of applicant, owner of record (if different) and designer or surveyor.



4. Further Requirements:

Major projects shall require that in addition to the above mentioned features, plans must show detailed utilities, soils, and topographic information, and must bear the stamp of a registered engineer or surveyor. A set of building elevation plans may be required when the application involves new construction/conversion and/or a proposed change in use. The Zoning Board may require further information to be shown. **Please supply a 'digital disc' if possible.**

5. Referrals

Applications and site plans which come to the ZBA will be sent to the following applicable public entities: Board of Selectmen, Planning Board, Building Inspector, Board of Health, Fire Department and Conservation Commission, for an advisory opinion to the ZBA. The Board shall have the authority to alter or waive these requirements as it deems necessary or appropriate in particular cases.

6. Special Requirements for Signs

The following information must be indicated on the drawings supplied at the time of application for review of signs:

- A. Drawings to scale indicating the dimensions of the sign, mounting fixtures, lettering, graphics, and separate areas or ornamentation on the sign or fixtures.
- B. Representative colors and materials on the sign and all fixtures.
- C. If applicable, a table indicating the difference between the proposed sign and any former sign and the current regulations.

**3.4: WRITTEN DOCUMENTATION TO ACCOMPANY PETITION**

Variance

Applications for a variance must be supported by a legibly written memorandum setting forth in detail all facts relied upon. This is necessary in the case of a variance when the criteria, based on MGL c. 40A, §10, and the Rowley Protective Bylaws variances, should be clearly identified and factually supported.

Appeals

Applications for appeals under MGL c. 40A, §8 and §15, and the Rowley Zoning Bylaws, must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should support a finding that the appellant was aggrieved by reason of his/her inability to obtain a permit or enforcement action from the applicable administrative officer. Such facts shall also include reference to the applicable laws, reasons why the appellant should obtain the permit or enforcement action, and what remedy the appellant is requesting from the Zoning Board.

Special Permits

Applications for Special Permits under MGL c. 40A §9 must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should include detailed information to support a finding for the items as listed. In addition, all conditions as set forth in the Rowley Protective Bylaws must be addressed in terms of the applicant's plans for meeting any such conditions.

### Special Permits for Non-Conformities

Applications for Findings under MGL c. 40A §6 and the Rowley Protective Bylaws for Non-Conformities, must be supported by a legibly written memorandum setting forth in detail all facts relied upon. Such facts relied upon should include detailed information to support a Special Permit for Non-Conformities that the proposed extension or alteration shall not be more substantially detrimental than the existing nonconforming use.

### Special Permits for Accessory In-Law Apartment

All Special Permits for Accessory In-Law Apartments must comply with the Zoning bylaw. Accessory In-Law apartments may be created only by special permit issued by the ZBA and only within single family dwellings and located on lots, both in existence prior to January 1<sup>st</sup>, 1990. In addition, accessory in-law apartments shall be located on lots meeting the minimum lot area in the district in which it is located on the date of filing of the application for special permit. All requirements of the Rowley Protective Zoning By-Law section 6.6 must be complied with along with written approval from the Board of Health. *(a completed 'Declaration of Covenants' form must be recorded along with the approved Decision)*

### Brief to the Board

It is recommended that every appeal and every application for a variance, special permit, or special permit for nonconformities be supported by a brief setting forth in detail all facts relied upon by the parties. This is particularly desirable in the case of a variance when the following points, based on MGL c. 40A, §15, should be clearly identified and factually supported:

- a) The particular use proposed for the land or building.
- b) The conditions especially affecting the property for which a variance is sought which do not affect generally the zoning district in which it is located.
- c) Facts which make up the substantial hardship, which result from literal enforcement of the applicable zoning restrictions with respect to the land or buildings for which the variance is sought.
- d) Facts relied upon to support a finding that the relief sought will be desirable and without substantial detriment to the public good.
- e) Facts relied upon to support a finding that the relief sought may be given without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
- f) All plans to support variance requested.

### **3.5: FILING AND CONSULTATION FEES**

All applications to the ZBA must be accompanied by a check made payable to the Town of Rowley. Failure to pay the following amounts shall constitute a failure to comply with these requirements which will result in the dismissal of an application as incomplete. A notification, administrative and advertisement fee of \$250.00 plus one dollar (\$1) per name for each name over 25 names listed on the supplied "certified parties-in-interest" list for each application is required at the time of filing. This fee includes the publication of a legal advertisement in a newspaper of general circulation in the town and notification to abutters as required by MGL c. 40A §11.

Technical/Planning and Processing Fee is only required with the Application if the Application is for a Comprehensive Permit or a special permit under the Rowley Protective Zoning Bylaws (RPZB) Section 4.11 Municipal Water Supply Protection District (MWSPD) to cover all expenses incurred by the Board of Appeals with respect to the proposed Application for engineering, professional planning review, inspections when applicable, and other expenses; including sampling and testing as required by the ZBA or its agents, beyond the initial filing fee.

A special account shall be established by the Town Treasurer/Town Accountant in the town treasury and kept separate and apart from other monies. The special account, including accrued interest, shall be expended by the ZBA at its discretion. Any amount remaining in the account for the Application, including accrued interest shall be returned to the applicant following approval or disapproval of the Application. A final report of said account shall be made available to the applicant upon written request. (760 CMR 56.05(2)(5))

## **ARTICLE FOUR – HEARINGS**

### **4.1: NOTICE**

Notice of hearings shall be advertised as required by the provision of MGL Chapter 40A and the Rowley Town Bylaws.

### **4.2: VIEWING**

It is the custom of the ZBA to view all site locations if Board believes it is necessary.

### **4.3: AGENDA**

The agenda for public hearings shall be prepared by the ZBA and shall be completed by the preceding Tuesday. When the agenda is completed, the ZBA shall post with the Town Clerk department. Meetings shall be scheduled for 7:00 PM of the meeting night. Normally not more than four (4) hearings shall be conducted on any given night. Exceptions may be allowed in cases where hearings are continued. The order of hearings shall be determined at the discretion of the Chair.

### **4.4: HEARING TO BE PUBLIC**

All hearings shall be open to the public. No person shall be excluded unless he/she is considered by the Chairperson to be a “serious hindrance” to the proper performance of the duties of the Board.

### **4.5: REPRESENTATION AND ABSENCE**

An applicant may appear in his/her behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board may decide or issue a decision upon the matter based upon all information submitted and received and available to it.

### **4.6: ORDER OF BUSINESS FOR HEARINGS**

The Chair shall call the hearing to order and the following shall be read aloud at the Public Hearing: Applicant’s application (or summary thereof) and the Public Hearing Procedure.

It shall be noted for the record that notice was sent to all lot owners (abutters, persons of interest) within 300 feet as provided by the applicant from the Town Assessors dept.



1. The Chair of the Board shall recognize persons from the floor and other members of the Board before they speak. No person shall speak unless recognized by the Chair.
2. Before speaking, the person shall state their name, address, and relation to the project (i.e., applicant, land owner, legal counsel.) Name alone is sufficient when speaking again.
3. The order of the public hearing shall be in general as follows:
  - i. Explanation of application and procedure by the Chair.
  - ii. Applicant's presentation.
  - iii. The Chair shall read all Town Department memos/letters of response.
  - iv. The Chair shall request those in favor of the application to speak.
  - v. The Chair shall request those opposed to the application to speak.
  - vi. The Chair shall recognize Board members who wish to ask questions or provide comment.

## **ARTICLE FIVE – DISPOSITION BY THE BOARD**

### **5.1: FILING**

A decision on any hearing shall be filed with the Town Clerk within the time limits established by Chapter 40A of the General Laws of Massachusetts and the Town Bylaw.

### **5.2: VOTING REQUIREMENTS**

The concurring vote of four members of the Board shall be necessary to reverse any order or decision of any administrative official under MGL Chapter 40A or to affect any Variance or Special Permit. The Chair shall make known to the applicant when the minimum requirement of members is present for a hearing and he/she shall give the applicant the option of proceeding with the hearing or continuing. The record shall show information as required by MGL Chapter 40A and the Town's Bylaw. Members of the ZBA may vote on an application if he/she examines all of the evidence received by the Board at the one session of its adjudicatory hearing on the matter which the member failed to attend, including an audio or video recording of the missed session, and executes a certification prior to participating in a vote on the matter.

### **5.3: WITHDRAWAL**

Any appeal, application or petition may be withdrawn without prejudice at any time prior to the publication and mailing of notice of the hearing by a written notice to the Clerk as cited in the Town Bylaws. Thereafter, the Board may, by majority vote, upon the applicant's request, grant leave to withdraw without prejudice at any time prior to a final decision upon the matter.

### **5.4: EXTENSIONS OF SPECIAL PERMITS AND VARIANCES**

Special permits may be extended by the Board for good cause upon written request by the applicant. Requests to extend special permits for good cause may be granted by the Board without public hearing. Special permits, which have lapsed due to the failure to exercise the rights granted thereunder, or failure to establish good cause for an extension, shall only be reestablished upon reapplication in the same manner as an original application.

Variances may be extended for one six-month period, if the petitioner files a written request for extension with the Board in compliance with MGL c.40A §10. Such requests must be filed at least 30 days prior to the lapse date and may be acted upon by the Board without a

public hearing. If rights granted under a variance expire due to failure to exercise such rights or failure to extend for six months, then variances shall be null and void.

#### **5.5: CONTINUATION/EXTENSION OF A HEARING**

Applicants may request a continuance in person during a scheduled hearing, or in writing in advance of a scheduled hearing. Any request for a continuance that would extend the hearing beyond the required time to act (100 days from date of application for variances and appeals, or 90 days from date of hearing for a special permit) shall be in writing, regardless of the applicant's attendance at the hearing. If agreed to by the Board, this continuance and extension request shall be filed with the Town Clerk.

#### **5.6: RECONSIDERATION**

Decisions of the Board are final only when submitted to and filed with the Town Clerk. Once a Decision has been voted upon and the meeting adjourned, reconsideration may occur only during a duly constituted public meeting only upon written notice to any and all abutters or other parties previously noticed.

#### **5.7: REPETITIVE PETITION**

No appeal of a decision by the Inspector of Buildings, nor request for a special permit or variance which has been unfavorably and finally acted upon by the Board of Appeals shall be reconsidered within two years after the date of final unfavorable action unless (1) the Zoning Board agrees that new evidence presented indicates that the reapplication is substantially altered from the original petition and (2) the Board of Appeals find specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in its records prior to scheduling a new hearing.

#### **5.8: WRITTEN DECISION**

Decisions of the Board shall be in writing and signed by the Board Members acting on said case. A copy of the Decision and any plans referred to therein shall be filed with the Town Clerk and the Planning Board. A copy of the Decision shall be provided to the owner/applicant and parties in interest. The Decision shall not take effect until recorded at the Registry of Deeds.

### **ARTICLE SIX – POLICIES AND ADVICE**

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

**PART 2 – COMPREHENSIVE PERMIT RULES as required by MGL c.40B §20 - §23  
and 760 CMR 31.02, or CHAPTER 77A of the ACTS OF 1969.**

**ARTICLE ONE - PURPOSE AND CONTEXT**

**1.1:** These Rules establish procedures for applications to the ZBA for comprehensive permits granted under MGL c.40B §§ 20-23 and the rules promulgated thereunder. They are required by MGL c. 40B §21 and by 760 CMR 31.02. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.

These Rules alone are not sufficient to describe comprehensive permit procedures before the ZBA. They must be read in conjunction with, and implemented in a manner consistent with, THE COMPLETE REGULATIONS of the Housing Appeals Committee, 760 CMR 56.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development MGL c. 40B, §§20-23. In addition, the Board's general Rules for conduct of hearings under MGL c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

**ARTICLE TWO – DEFINITIONS**

- 2.1:** (a) **Board** means the zoning board of appeals established under MGL 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; or other commission; fire, police, traffic, or other department; inspector of buildings, board of selectmen, highway department, light department and water department.
- (c) **Limited Dividend Organization** means any entity which proposes to sponsor a Project under the MGL c.40B, §§20 through 23; and is not a public agency or a nonprofit; and is eligible to receive a Subsidy from a Subsidizing Agency after a Comprehensive Permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of the Subsidizing Agency relative to a reasonable return for building and operating the Project.

**ARTICLE THREE – APPLICATION, FILING, PLANS**

- 3.1:** The application for a comprehensive permit shall consist of:
- a. All plans shall be on sheets at least 24 inches by 36 inches in size, at a scale of one inch equals forty feet. Detailed areas may be at one inch equals twenty feet.
  - b. **Applicants shall provide twenty (20) copies of all plans and documents required under this section.**
  - c. Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walk and paved areas; and proposed landscaping

improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;

- d. A topographical plan showing existing and proposed conditions with a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in section (a), above;
- e. A preliminary, scaled, architectural drawing. 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;
- f. 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;
- g. Where a subdivision of land is involved, a preliminary subdivision plan;
- h. 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 Storm Water Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;
- i. Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 56.00, that is:
  - The applicant shall be a public agency, a non-profit organization, or a limited dividend organization.
  - 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 56.00.
  - The applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses or will be able to possess the necessary control over the site and the site access to develop the project as proposed in the Application.
  - A full list, itemized by Town Bylaw and Regulations and paragraph number, of all requested waivers shall be included with the application. Such list shall contain detailed reasons for each waiver requested, including effect on overall project costs.
  - A complete pro-forma, detailing the projected costs and revenues of the proposed project. In preparing its pro-forma, the Applicant shall limit its costs to actual investment in the property. Acquisition costs shown in the pro-forma shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm's length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally,

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.

- The Board's application form, copies of which are available on the Town of Rowley website and at the Board's office.
- A certified list of abutters and other parties-in-interest including names, mailing addresses, map, block, and lot numbers, and a copy of the Assessors map, all of which can be obtained at the Rowley Town Hall from the office of the Board of Assessors;
- A list of state, federal or other approvals necessary to be sought and granted prior to issuance of a building permit for the project;
- The application fee as set forth in section 3.2 below and the initial review fee as set forth in section 4 below;
- Any additional information the Board determines is necessary to make a sound decision.

**3.2:** The application shall be accompanied by a two-part filing fee consisting of a fixed amount of \$5,000 *plus* a variable amount based upon the number of proposed housing units as follows:

- for Limited Dividend Organizations - \$150 per unit
- for Non-Profit Organizations - \$100 per unit

There shall be no filing fee (fixed or variable parts) for any project proposed as a local initiative pursuant to 760 CMR 56.00.

Additionally, the application fee shall include \$5,000 to pay for the services of legal counsel for assistance in any project of 25 units or less, and \$7,500 for any project in excess of 25 units but not exceeding 75 units and \$10,000 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the Chapter 40B process. The Board, in its sole and unfettered discretion may waive any part of, or the entire fee. Alternatively, the applicant may opt to pay for the Board's legal counsel in the manner prescribed by MGL c. 44 §53G or §4.00 hereof.

**3.3:** Prior to the commencement of the public hearing, the Board shall notify each local board of the application by sending or making available to such Board a copy of all plans, documents and other information required by section 3.1 above that will enable such local Board to assess the proposed project.

#### **ARTICLE FOUR - REVIEW FEES AND PROCUREMENT**

**4.1:** 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. In the interest of commencing such review as expeditiously as possible, all applicants shall include an initial review fee in the amount of \$10,000 as part of their application. The Board shall use the initial review fee to retain consultants per the provisions set forth below.

In the event that such initial review fee is insufficient to fund all the costs incurred or to be incurred by the Board's outside consultant, the Board may, by majority vote, require that the Applicant pay a reasonable additional review fee for the employment of outside consultants chosen by the Board.

**4.2:** The following shall apply to the **work** of the Board's consultant:

- a. The work of the consultant shall consist of review of materials submitted by the applicant; including studies prepared on behalf of the applicant, and shall not consist of independent studies on behalf of the Board;
- b. The work shall be in connection with the applicant's specific project; and
- c. All written results and reports shall be made part of the record before the Board.

**4.3:** The Board shall comply with the Uniform Procurement Act, MGL c. 30B, §1-19, and shall contact the Chief Procurement Officer (Town Administrator) for all issues involving c. 30B.

**4.4:** All fees assessed pursuant to this section shall be reasonable in light of:

- a. The complexity of the proposed project as a whole;
- b. The complexity of particular technical issues;
- c. The number of housing units proposed;
- d. The size and character of the site;
- e. The projected construction costs; and
- f. Fees charged by similar consultants in the area

*As a general rule, the Board will not assess any fee greater than the amount which might be appropriated town funds to review a similar town project.*

**4.5:** In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 3.00 hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

**4.6:** 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 MGL c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant and in compliance with the Uniform Procurement Act, MGL c. 30B, §1-19. Accrued interest may also be spent for

this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

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

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

#### **ARTICLE FIVE - PUBLIC HEARING AND DECISION**

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

**5.2:** The Board shall render a decision, based on a majority vote of the Board, and shall file such decision in writing with the town clerk within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received, including the reports of any outside consultants retained for review of the project, and the Board has voted, by majority vote, to close the hearing.

**5.3:** 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 to 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. 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.

**5.4:** 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.

#### **ARTICLE SIX - CHANGES IN APPLICATION**

**6.1:** 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, constitute a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated subsidizing agency.

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

**6.3:** In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the town departments.

**6.4:** 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.

#### **ARTICLE SEVEN - POLICIES AND ADVICE**

**7.1:** Any advice, opinion, or information given by any Board member, or any other local board or employee of the Town of Rowley, shall not be binding on the Board.

#### **ARTICLE EIGHT – APPEALS**

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

**8.2:** 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 MGL c.40B §22.



### ADOPTION

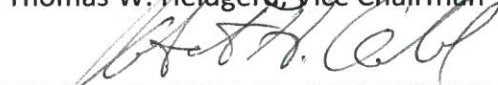
The foregoing rules are hereby adopted by the Rowley Zoning Board of Appeals at their **September 18<sup>th</sup>, 2019** meeting and made effective on **September 18<sup>th</sup>, 2019**. All former rules of this Board are hereby ratified except as amended. (See original in the Town Clerk's Office with Clerk's stamp.)

Date Nov. 20<sup>th</sup> 2019


  
Donald W. Thurston, Chairman

  
Thomas W. Heidgerd, Vice Chairman

  
Kevin Reilley, Member

  
Robert H. Clewell, Member

  
Donna Thibodeau, Member

  
Karla Chaffee, Associate Member

### History

- Comprehensive Permit section three of the Rules & Regulations adopted February 25<sup>th</sup>, 1988
- Revised and adopted section 1,2,24,3, of the Rules & Regulations by the Board of Appeals, December 31<sup>st</sup>, 1991
- Rules & Regulations revised, reformatted, and renumbered, fees modified, additional technical information and plan submissions required. Application form revised and adopted by the Zoning Board of Appeals on May 28<sup>th</sup>, 1992.
- Reformatted in Word 2000, January 2002 without changes to facilitate the Town Web site.
- Revised, reformatted, renumbered, fees modified and adopted by the Zoning board of Appeals May 8<sup>th</sup>, 2003 and effective July 1<sup>st</sup>, 2003.
- Comprehensive Permit pgs. 5-13 replaced and adopted by the Zoning Board of Appeals effective October 1<sup>st</sup>, 2010
- Complete Rules revised, reformatted, renumbered, fees modified, appendices modified, and voted, adopted, accepted by the Zoning Board of Appeals effective May 18<sup>th</sup>, 2017.
- Pages 5 & 6 – removed word 'Clerk' and changed day of week (Thursday to Wednesday) for meetings – voted and accepted by the Zoning Board of Appeals effective September 18<sup>th</sup>, 2019.