

# **TOWN OF HARWICH**

## **BOARD OF APPEALS**

### **RULES AND REGULATIONS**

These Rules and Regulations are adopted by the Zoning Board of Appeals of the Town of Harwich under the authority of the General Laws of the Commonwealth of Massachusetts ("Mass. Gen. L."), Chapter 40A, Section 12. These Rules and Regulations, as amended from time to time, become effective upon their filing with the Harwich Town Clerk and supersede any Rules and Regulations previously filed with the Town Clerk.

#### **1. GENERAL**

**1.1 Powers of the Board.** In accordance with M.G.L.c.40A,, and the Town of Harwich Bylaw (the "Bylaw"), the Zoning Board of Appeals of the Town of Harwich ("the Board") shall have the following powers:

- (a) In accordance with M.G.L.c.40A, to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from the applicable official or by any person aggrieved by an order of the Building Commissioner, a Building Inspector, or any other administrative official in violation of any provision of the M.G.L. or of the Bylaw;
- (b) to hear and decide applications for special permits upon which the Board is empowered to act under the Bylaw, and applications for comprehensive permits under M.G.L.c.40B; and
- (c) to hear and decide petitions for variances as set forth in M.G.L.c.40A, Section 10 and the Bylaw.

**1.2 Composition of the Board** In accordance with M.G.L.c.40A and the Bylaw, the Board shall consist of five (5) regular and five (5) associate members. An associate member may sit as a voting member when designated by the Chair.

**1.3 Officers; term limits.** As authorized by Mass Gen. L. c.40A, the Board shall annually elect one (1) regular member to serve as chair and one (1) regular member to serve as clerk.

#### **1.4 Duties of Officers:**

- (a) the Chair shall preside at all meeting of the Board.
- (b) the Clerk shall:

- (i) read all correspondence at meetings, provided that the Chair may permit the staff to read the correspondence;
- (ii) take over the duties of the Chair when the Chair is unable to perform his/her duties.

#### **1.5 Duties of Members:**

(a) All members shall:

- (i) attend as many meetings as possible, alerting the Chair or staff when they are unable to attend a meeting;

- (ii) be prepared to do some work outside of regular meetings.

(b) When designated by the Chair, an associate member shall participate in proceedings and vote.

**1.6 Reorganization of Board of Appeals.** At the first meeting of the Board following annual reappointments, the Board shall reorganize. The Board shall elect a Chair and a Clerk from the membership, as follows: the Chair of the most recent meeting shall call for nominations from the Board members. In the absence of the Chair of the most recent meeting, the members will elect an acting Chair from its members to oversee the nomination and election of a Chair and Clerk. A successful nomination will require a second from another member. More than one nomination can be accepted for each position. When all nominations have been accepted, the Chair will call the vote. If the nominations result in a single person for each position a simple showing of hands shall constitute a vote. However, if there is a duplicate nomination for the same position, a secret ballot may be used at the option of the Board.

**1.7 Quorum.** A quorum of the Board shall consist of 3 or more members; however, there must be a minimum of four (4) members present to act on an application before the Board.

**1.8 Conflict Between These Rules and the Local or State Zoning Laws.** It is intended that the Bylaw shall govern in all respects regarding these Rules and Regulations. In the event of any conflict between the provisions of these Rules and Regulations and the Bylaw, the Bylaw shall prevail. In the event of any conflict between any provision of these Rules and Regulations and of any law of the Commonwealth of Massachusetts, such law shall prevail.

## **2. APPLICATIONS**

**2.1 Form of Application.** Each application for action by the Board shall be made on the official form and pursuant to the instructions thereto, which are available from the Town of Harwich Building Department. Applications shall be completed as specified therein and in accordance with these Rules and Regulations.



**2.2 Number of Originals.** One (1) original application (no photocopies) typewritten or hand printed, must be completed and signed by the Petitioner or the Property Owner prior to filing the application with the Board of Appeals.

**2.3 Specification of Nature of the Requested Relief.** On the application, in the space provided, the applicant must state in reasonable detail the relief being requested from the Board

**2.4 Authority of Applicant.** Any application brought by anyone other than the record owner of the property affected shall provide the name and address of the record owner and explain the applicant's relationship to the owner (e.g., lessee, holder of an option to purchase, attorney, etc.) The application shall include evidence satisfactory to the Board of the record holder's consent to the application being filed and heard.

**2.5 Materials that Must be Submitted with the Application.** Each request for action by the Board must be accompanied by 12 sets of the application and all supporting documents. In addition to paper copies, all plans and other documents must be submitted in electronic form. The Board may, in its discretion, waive any requirement of the application, or the Board may require additional material considered necessary for its review of the application. Extra copies of the plans will be disposed of after the hearing unless otherwise requested.

**2.6 Inadequate Plans or Forms.** The Board may in its discretion, consistent with the laws of the Commonwealth of Massachusetts and the Bylaw, reject any application as inadequate and may dismiss, with or without prejudice, any application for the failure to include therewith adequate plans and/or other such supporting documentation as is required by the application and these Rules and Regulations. The Board may also ask the applicant to supplement the submission with additional information.

**2.7 Other Materials That Can Be Filed With Applications.** Applicants are encouraged to provide the Board with any other pertinent materials which may assist the Board in carrying out its duties. Such pertinent materials may include (without limitation) letters of the neighborhood's character (e.g., average setback, lot size, house size), written narratives, photographs, artist's renderings of proposed project, arguments and briefs, as well as requests for particular findings, orders, or decisions.

**2.8 Mechanism for Filing Accompanying Materials.** Unless otherwise provided by the M.G.L. or the Bylaw, voluntary accompanying materials may be filed before the close of the hearing, but the applicants are strongly encouraged to file such materials at least seven (7) calendar days before the hearing.

**2.9 Filing Fees.** Each application, unless submitted by a duly-authorized Town office or employee on behalf of a board, commission, or other agency of the Town,



shall be accompanied by a non-refundable filing fee. The fees are set by the Board and may change from time to time. The current filing fees are set forth on Exhibit A. Filing Fees, which is attached hereto and incorporated herein by reference. The Board shall have the power to waive or reduce the filing fee in whole, or in part, in its sole discretion.

**2.10 Abutters List.** The Applicant shall file with the application a certified abutters list from the Town of Harwich Assessors Department, which requires a separate application and fee.

### **2.11 Withdrawal of Applications.**

**2.11.1 Prior to the Public Hearing.** Any petition for a variance or an application for a special permit which has been transmitted to the Board may be withdrawn, without prejudice to the applicant, prior to the publication of the notice of the public hearing thereon, but thereafter may be withdrawn without prejudice only with the approval of the Board. The applicant shall submit a letter in writing requesting the withdrawal and stating the reason therefor.

**2.11.2 After the Commencement of the Public Hearing.** After the commencement of the public hearing, an applicant may ask the Board to permit withdrawal of the application. The Board may, in its discretion, allow withdrawal of the application with or without prejudice.

## **3. HEARINGS**

**3.1 Hearing Schedule.** Hearings shall be held by the Board in accordance with the schedule determined annually by the Board. A copy of the hearing schedule may be obtained from the Town of Harwich Building Department.

**3.2 Hearings Open to the Public.** Hearings shall be held in accordance with the M.G.L. and shall be open to the public except at such times as the Board shall vote to go into Executive Session in accordance with the applicable provisions of the M.G.L..

**3.3 Conduct of Hearings.** The Board shall conduct hearings in accordance with the provisions of the meeting protocol adopted from time to time by the Board, provided that, the Chair, in the Chair's discretion, shall have the right to change the conduct of the hearing in the interest of administrative efficiency.

**3.4 Attendance at Hearings.** An applicant must either be present at the hearing or represented by an authorized person. If no one appears at the hearing, the Board shall, in its discretion: (a) proceed with the hearing; (b) continue the hearing, or (c) dismiss the application, with or without prejudice.

**3.5 Legal Duty.** The applicant has the legal duty to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Opponents are under similar legal duty to present their cases truthfully and completely.

**3.6 Continuance.** The Board may continue any matter to another specified time, provided that notice of the date, time and place of the continued hearing and its subject matter is announced at the hearing being continued.

**3.7 Additional Submissions Required by the Board.** In the case of a Special Permit, the Board may require the applicant, at the applicant's expense, to submit professionally prepared documentation of the environmental, traffic, or other impacts of the requested relief in order to assist the Board in determining whether the requested relief will be substantially more detrimental to the neighborhood than the existing structure(s).

#### **4. CONSULTING FEES**

**4.1 Payment of Consulting Fees.** The Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning Bylaw, to pay for the employment of an outside consultant to assist the Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these Rules and Regulations.

**4.2 Procedure.** Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant and the date such deposit is due.

**4.3 Means of Appeal.** The applicant may appeal the Board's selection of a consultant to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within fourteen (14) days of the applicant's receipt of the designation.

**4.4 Grounds for Appeal.** Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications as set forth in the M.G.L. The required time limits for the Board to act on the underlying application shall be extended by the duration of the appeal. The written appeal should specify the nature of the conflict of interest and detail the lack of required qualifications. A copy of the appeal shall be simultaneously provided to the Board.

**4.5 Delivery of Initial Deposit.** If the applicant does not file an appeal within the time period specified in Section 4.3 above, the applicant shall deliver the initial



deposit, in the form of a certified check or bank check, to the Town of Harwich Building Department for deposit, within the time limits set in the designation letter, or, if an appeal is filed, within fourteen (14) days after the Board of Selectmen have acted upon such appeal. In the event that the Board of Selectmen makes no decision regarding the appeal within thirty (30) days following the filing of such appeal, then the selection of the Board shall stand and the applicant shall deliver the initial deposit within fourteen (14) days thereafter.

**4.6 Amount of Deposit.** The initial deposit amount may be any amount up to the estimated total of the consultant's fee, as determined by the Board.. If the deposit amount is less than the estimated total, the Board may ask the applicant for supplemental deposits, which shall be due and payable within fourteen (14) days of the request.

**4.7 Grounds for Dismissal.** Failure to pay the initial or any supplemental deposit shall constitute grounds for the Board to deny the special permit, variance, or other requested zoning relief, with prejudice.

**4.8 Return of Unused Funds.** The Town of Harwich will pay the consultant's bills as approved by the Board, from the funds on deposit, and will return any interest earned by the deposited funds and any funds remaining unused at the completion of the applicant's project, upon direction of the Board.

## **5. COMPREHENSIVE PERMITS**

**5.1 Purpose.** This Section 5. establishes procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under Mass. General Laws c. 40B. The Board's general rules for conduct of hearings under M.G.L. c. 40A shall also apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules and these, these rules in Section 5 shall govern.

**5.2. Filing.** The application for a comprehensive permit shall consist of thirty two (32) sets of the following:

(a) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site, signed by a registered architect.

(b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood.

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

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

(e) Where a subdivision of land is involved, a preliminary subdivision plan.

(f) A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants.

(g) Documents showing that the applicant fulfills the jurisdictional requirements, that is,

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

(2) the project shall be fundable by a subsidizing agency under a low- and moderate-income housing subsidy program; and

(3) the applicant shall control the site.

(h) A list of requested waivers or exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations.

(i) Complete list of all abutters and abutters of abutters, in accordance with the M.G.L., within 300 feet.

(j) "Site approval letter" from State, Federal or other qualified funding agency indicating acceptability of site.

(k) the Project Eligibility letter, showing that the applicant fulfills all requirements of the M.G.L. and applicable regulations.

In addition to paper copies, all plans and documents must be submitted in electronic form.

**5.2.1.2 Filing Fee.** Each application, shall be accompanied by a non-refundable filing fee. The fee is set by the Board and may change from time to time. The current filing fee is set forth on Exhibit A. Filing Fees, which is attached hereto and incorporated herein by reference. The Board shall have the power to waive or reduce the filing fee in whole, or in part, in its sole discretion.

**5.3 Local Review.** Within seven (7) days of filing of the application, the Board shall notify local boards (as defined in 760 CMR) of the application by sending such local board a notice of the application and a copy of the list of requested waivers. Based upon that list, it shall also, within the same seven days, invite the participation of each local board as the Board deems necessary or helpful in making its decision on such application, by providing such official with a copy of the entire application.



#### **5..4. Review Fees.**

(a). If after receiving an application the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants, as provided in the M.G.L. and applicable regulations. The Board may elect to work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

(b) A review fee may be imposed for

(i) review of studies prepared on behalf of the applicant or the preparation of independent studies on behalf of the Board, as reasonably required by the applicant's submission;

(ii) such other reasonable use of consultants for engineering or other purposes as may be required.

All written results and reports shall be made part of the record before the Board.

(c) All fees assessed pursuant to this section shall be reasonable in light of

(i) the complexity of the proposed project as a whole;

(ii) the complexity of particular technical issues;

(iii) the number of housing units proposed;

(iv) the size and character of the site; and

(v) the projected construction cost.

(d) Any invitation for bids, request for proposals or consulting agreement otherwise entered into by the Board shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten (10) days of receiving written notification of selection of a bidder, offeror or consultant, the Board may deny the comprehensive permit.

(e) Prior to paying the review fee, except in the circumstances when the applicant has requested and the Board has followed the provisions of M.G.L. Chapter 40B, the applicant may appeal the selection of the consultant to the Board of Selectmen as set forth in the M.G.L. and applicable regulations.

(f). Each review fee shall be deposited in a special account established by the Treasurer-Collector pursuant to the M.G.L. and applicable regulations.

(i) Funds from the special account may be expended only for the purposes described in section 5 4 above and in compliance the M.G.L. and applicable regulations



(ii) Within thirty (30) days of the completion of the project, or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.

(g) The Town Accountant shall submit annually a report of the special account to the Board of Selectmen for its review. This report shall be published in the annual town report.

## **5.5. Public Hearing and Decision**

(a) The Board shall hold a public hearing on the application within thirty (30) days of its receipt, in accordance with the provisions of the M.G.L. and applicable regulations. It may request the appearance at the hearing of such representatives of local boards as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local boards. In the event of an incomplete application, i.e., one not filed in accordance with these Rules and Regulations or the provisions of the M.G.L. and applicable regulations, then the Board may open and continue the hearing until such filing is complete.

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

(c) If at any session of the public hearing on the application a quorum of the Board is not present, the hearing will be opened solely for the purpose of scheduling a date, time and place for the hearing or any continued session thereof, to commence. In the event that less than a full five (5) member board shall be present on any night, whether known in advance of said hearing date or at the date, time and place of said session of the public hearing, the applicant will be afforded an opportunity to request, in writing, that the Board continue said hearing and schedule a date, time and place for such hearing or any continued session thereof. In such event, the hearing shall only be opened and immediately thereafter adjourned to another day, for the purpose of continuing the hearing and scheduling a date, time and place for such continued hearing, without any evidence, documents or comments being received by the Board at such time. The Board shall make reasonable efforts to notify the applicant, the abutters or other interested parties of such circumstances in advance of any hearing date scheduled and of the new date scheduled, so as to try and minimize the inconvenience to any applicant, abutter or interested party.

(d) The Board may dispose of the application in the following manner:

(i) Approve a comprehensive permit on the terms and conditions set forth in the application;



(ii) Deny a comprehensive permit as not consistent with local needs;

(iii) Approve a comprehensive permit with conditions with respect to height, site plan, size, shape, building materials, or other appropriate subject matter and considerations as may properly apply. To the extent possible, the Board shall identify and specify such conditions to the applicant in advance of closing the public hearing and give the applicant the opportunity to consider such proposed condition(s) and comment thereon, in particular as to whether such condition is reasonable and consistent with local needs, render the construction or operation of the proposed housing uneconomic or such other comment as the applicant deems appropriate prior to the decision of the Board.

## **5.6. Appeals**

(a) If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. Chapter 40A.

(b) If the Board denies the comprehensive permit or approves the permit with conditions or requirements that make the building or operation of the proposed housing uneconomic, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. Chapter 40B.

## **5.7. Final Plans, Permits, etc.**

Any final or as-built plans, permits, certificates of approval, certificates of action, orders of condition or other like documents shall be filed with the Board immediately upon receipt by the applicant, as a condition of any decision by the Board.

## **5.8 Effective Date**

These Rules and Regulations shall take effect immediately upon adoption by the Board and filing a copy thereof with the Town Clerk pursuant to M.G.L. Chapter 40A, and Chapter 40B.

# **6. DECISIONS**

## **6.1 Recommittal and Rehearing**

If the Board determines, at any time after the public hearing closes, that an application, or the evidence submitted to support that application fails to conform in all respects with the requirements of the laws of the Commonwealth of Massachusetts and/or the Bylaw, and/or these Rules and Regulations, or fails to entitle the applicant to the requested relief, it may, subject to applicable time limitations set forth in M.G.L.c.40A, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials.



## 7. COMMUNICATIONS WITH THE BOARD.

**7.1 Written Communications Only.** Other than at a hearing or as e-mail, all communications to the Board must be in writing and submitted to the Town of Harwich Building Department for distribution to the Board members and filing in the permanent files. Any such communication shall be submitted in ten (10) copies.

**7.2 Electronic Communications.** Communications by e-mail should be sent only to the Board's recording secretary, whose web address is on the Board's web page, for distribution to the Board members and filing as public record.

**7.3 No Ex Parte Communications.** No applicant or interested party may hold an ex parte discussion (i.e., a discussion outside the forum of the public hearing) of any adjudicatory matter pending before the Board with a sitting Board member. Subject to the foregoing sentence, Board members prior to the hearing or before a continued hearing may make site visits to the property and the neighborhood in question.

**7.4 Time for Submission of Communications.** Anyone submitting materials in connection with a pending application is encouraged to do so at least seven (7) calendar days in advance of the hearing, so that the applicant, other interested parties and Board members have sufficient time to review the submission.

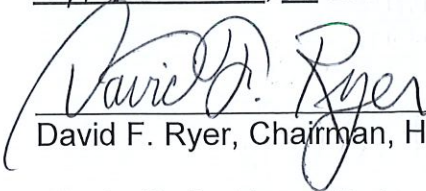
## 8. GENERAL

**8.1 Waiver by the Board.** The Board may, in a particular case, waive strict compliance with the requirements of these Rules and Regulations when, in the judgment of the Board, such action is in the public interest and not inconsistent with the laws of the Commonwealth of Massachusetts and/or the Bylaw.

**8.2. Board Records.** Records of the Board shall, at reasonable times, be made available to the public and copies of the same may be obtained at the then current cost established by the Board in accordance with applicable law or regulation.

**8.3. Amendment.** This Board may at any time amend or modify these Rules and Regulations with the concurring vote of a simple majority of the members present, and the amendment or modification shall take effect when a copy is filed with the Town Clerk.

**Adopted** by vote of the Zoning Board of Appeals of the Town of Harwich on APRIL, 27 2022.

  
David F. Ryer, Chairman, Harwich Board of Appeals

Filed with the Town Clerk on April 28 2022

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**EXHIBIT A**  
**FILING FEES**

The filing fee for a Special Permit or Variance shall be \$315.

The filing fee for a Comprehensive Permit shall be \$500, plus \$50 per unit, based on the number of units in the proposed project, regardless of whether they are to be rental or for sale units.