

As amended through December 1, 2016

Town of Chatham

Zoning Board of Appeals

Rules and Regulations

Originally adopted on January 8, 2004 and amended June 26, 2007, December 6, 2007 (filing form), November 6, 2008, August 26, 2010, June 28, 2012, December 3, 2015, and December 1, 2016

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CHATHAM TOWN CLERK

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SECTION I GENERAL

A. Type of Applications

Under applicable provisions of Massachusetts General Laws and the Town of Chatham Protective Bylaw, applications may be submitted to the Zoning Board of Appeals for any one of the following reasons:

1. An appeal by:
 - a. Any person aggrieved by reason of their inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L. c. 40A;
 - b. The Cape Cod Commission; or
 - c. Any person, including an officer or board of the Town, or of an abutting town, aggrieved by an order or decision of the Building Commissioner or other administrative official in violation of M.G.L. c. 40A or any Bylaw adopted thereunder.
2. A dimensional or use Special Permit where required or permitted by the Protective Bylaw;
3. A Variance from the Protective Bylaw; and
4. An application for a Comprehensive Permit to build low or moderate income housing as allowed by M.G.L. c.40B s. 21.

B. Applicant

The application may be brought only by a party in interest, except that an application for a Comprehensive Permit under M.G.L. c. 40B s. 21 may be made only by a public agency, a limited dividend, or nonprofit organization.

SECTION II ORGANIZATION

A. Elections

At the discretion of the board, either at the last regular meeting prior to the beginning of the calendar year, or at the first regular meeting after the beginning of the fiscal year should the membership change, the Board shall elect all officers including a Chairman, Vice-Chairman, and Clerk. An elected Chairman shall be eligible for re-election for a second consecutive term as Chairman but not for a third consecutive term. The concurring vote of at least three (3) members of the Board shall be required for the election of all officers. (amended 06/28/2012) Associate members shall not participate in the election of officers.

B. Chairman

The Chairman shall preside over all hearings and meetings of the Board. Subject to the rules as stated herein, the Chairman shall decide all points of order, unless overruled by a majority of the Board in session at the time. He/she shall appoint such committees as may be deemed necessary or desirable from time to time and exercise general supervision over the Boards activities.

C. Vice-Chairman

The Vice-Chairman shall act as Chairman in the event that the Chairman is absent or unable to perform his duties. He/she shall be subject to the provisions of Section II B. above as applicable. He/she shall perform all other duties as may be assigned by the Chairman.

D. Clerk

Subject to the direction of the Board and the Chairman, the Clerk shall be authorized to sign necessary documents, (e.g., decisions, notices required by law as well as by the rules and regulations of the Board, etc.).

E. Associate Members

Associate members shall participate and deliberate in meetings. The Chairman shall designate an associate member to vote in case of the absence, inability to act or conflict of interest on the part of a member. In the event of a vacancy on the Board, the chairman shall designate an associate member to act as a member until the vacancy is filled by an appointment by the Board of Selectmen.

F. Conflict of Interest

In the event of a member's inability to act on a specific application, said member shall excuse him/herself from the hearing on that application prior to the start of any presentation and shall physically remove himself from the hearing room. In addition, said member shall not offer any testimony to the Board on the application.

G. Quorum

A quorum shall consist of four members.

H. Hearings and Meetings

Hearings shall be held, as necessary, on the second and fourth Thursdays of each month. Hearings and meetings shall be held at 4:00 p.m. at the Town Offices meeting room, unless otherwise specified in the notice. If any hearing or meeting date falls on a holiday, the Board may designate an alternate date. (amended 08/26/2010, 06/28/2012)

I. Special Meetings

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

SECTION III PROCEDURE FOR FILING

A. Application Form

1. For submissions under Sections VIII D.2.a., VIII D.2.b., and VIII D.2.c., applicants shall use the form entitled Town of Chatham, Zoning Board of Appeals - Application. (See Appendix I for Application Form).
2. For submissions under M.G.L Chapter 40B, Section 21, applicants shall use the form entitled Town of Chatham, Zoning Board of Appeals - Application for Comprehensive Permit, dated August 6, 2003. (See Appendix II)

B. Filing of an Application

1. In the case of an appeal from the action or failure to take action by an administrative officer, an application shall be filed with the Town Clerk within thirty (30) days from the date of the issuance of a permit, the refusal of a permit or the determination, order, ruling or decision of the administrative officer.
2. All other applications under the Protective Bylaw shall be accepted by the Community Development Department Monday through Thursday from 7:00 a.m. to 4:00 p.m. and Fridays from 7:00 a.m. to 12:30 p.m., or such other regular business hours as established for the Department.
3. Applications asking for relief in the alternative shall be submitted and considered as two (2) separate filings and require two (2) separate applications. Separate applications are required for Special Permits and Variances.

C. Materials Accompanying an Application

Each application for a Special Permit or Variance to the Board shall be accompanied by the following:

1. Eleven (11) copies of a plot plan showing clearly the nature of the specific request being made by the applicant and including a north arrow, scale, names of streets, zoning districts, property lines, dimensions of the subject lot, total land area and the amount of buildable upland, locations of buildings on and uses of the property, parking areas, driveways, topographical information if required, location of Conservancy Districts (if applicable), distance from structures (both existing and proposed) to lot lines and Conservancy Districts, current percent of building coverage and the percent of building coverage after the proposed construction (or lot coverage as may be applicable), a proposed footprint, if any, superimposed on the existing footprint, and all other information pertinent to the application as required by the Protective Bylaw and these rules. All changes requested by the applicant shall be clearly identified on the plan.
2. Eleven (11) copies of building elevations for any application proposing new construction, additions or alterations, but not for first floor level decks or porches, said elevations shall show the existing structure as well as the proposed construction, and include the height of each

section of the existing structure, as well as the height of each section of the proposed structure. Such height calculation shall be performed and certified by a Massachusetts registered professional land surveyor, engineer or architect, and shall include the height of any flood-resistant foundation required by FEMA, the Massachusetts State Building Code, and the Chatham Protective Bylaw.

3. Eleven (11) copies of floor plans for any application proposing additions, new construction or a change in use of a structure. Said plans shall delineate the existing and proposed floor plans and the existing and proposed gross floor area* and shall delineate the proposed uses of all the interior space of all buildings and structures on a lot, including all areas below grade. The square footage of existing and proposed decks, porches, garages, outbuildings, etc., shall be calculated and separately indicated on the plans.
4. For dwelling located within the flood plain, an elevation certificate showing the existing conditions and a cost valuation of the proposed work will be required upon submittal of the application.
5. Eleven (11) copies of any changes made to plot plans, elevations, or floor plans originally submitted with the application filing, must be submitted for review by the Community Development staff and the Board not less than seventy-two (72) hours prior to the hearing. (amended 12/03/2015)
6. Written explanations related to each of the applicable criteria shall be submitted not less than five (5) business days prior to the hearing.

*Gross Floor Area: Gross floor area shall be the floor area, expressed in square feet, of each floor, including all areas which are or can be finished as habitable space within the building envelope(s), without deduction for garages, hallways, stairs, closets, and thickness of walls, columns or other features. If any room in a building(s) has a sloping ceiling, any portion of the room measuring less than five (5) feet from the finished floor to the finished ceiling shall not be included in any computation of the gross floor area. (amended 12/01/2016)

D. Filing Fee

Applications shall be accompanied by a check made payable to the Town of Chatham in the amount set in Appendix III. All fees are established to cover the cost and to otherwise defray reasonable expenses incurred by the Board and its review bodies in connection with applications filed.

E. Access to Property

The property must be accessible to the Zoning Board members. Additions or new construction must be staked along the perimeter of the project, 14 days prior to the hearing and access gates, etc. must be open. House numbers must be clearly visible so that the property can be easily identified. Failure to comply with these requirements may cause the Board to continue the Application.

F. Names and Address of Abutters

Each application shall be provided with a list prepared and certified by the Assessors of the Town, naming the applicant, abutters, all owners of land directly opposite the property line of the subject property on any public or private street or way; and all abutters to the abutters within three hundred (300) feet of the subject property, all as they appear on the most recent applicable tax list, notwithstanding that the land of any such owner is located in another city or town; in addition to the Planning Board of the Town of Chatham and the Planning Board of every abutting town. Such abutters shall be notified by prepaid mail of the hearing and decision.

G. Review by Other Boards

The Zoning Board of Appeals shall request recommendations from other Town Boards or Commissions as follows:

1. From the Planning Board for any application as required by Section IVA.3.d. and Section VIII.C.2. of the Protective Bylaw.
2. The Zoning Board of Appeals designates the Chatham Planning Board as its Review Body in the manner provided and subject to Section VIII.C.2. of the Protective Bylaw. The Board may request special analysis or study by its Review Body not otherwise specified in the Protective Bylaw.
3. From the Conservation Commission for any application involving a structure located within the required setback to a Conservancy District and as required by Section IV.A. of the Protective Bylaw.
4. From the Historic Business District Commission (HBDC) for any application requiring new construction, change in exterior façade or demolition of a building or structure in the Historic Business District.
5. From the Harbormaster and Shellfish Constable as required by Section IV.A.6. of the Protective Bylaw; and
6. From any other Board, Commission, Committee or Town Department not otherwise specified in the Protective Bylaw, but deemed appropriate by the Zoning Board of Appeals.

H. Requirements for Scheduling an Application

1. In order to allow for substantive comments to be prepared by other Boards, Commissions and Committees, it is the preference of the Zoning Board of Appeals that applicant(s) file for hearings with all other appropriate Boards, Commissions or Committees prior to the scheduling of a hearing by the Zoning Board of Appeals.

SECTION IV HEARINGS

A. Notice

Notice of hearings shall be advertised as required by the provisions of M.G.L. c. 40A s.11. In addition, a copy of the advertised notice shall be sent by mail, at least 14 days prior to the date of the hearing, postage prepaid, to the applicant; and to all other parties in interest and certified by the Assessors' Department; to the Town Zoning Officers; and to the Planning Boards of abutting towns.

B. Hearings

All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law M.G.L. c. 39 s.23A-23C except when the Board shall vote to go into executive session in accordance with M.G.L. c. 39.

C. Representation and Absence

An applicant may appear before the Board or may be represented by an agent or attorney. In the absence of an appearance without due cause indicated by the applicant, the Board shall decide on the matter by using the information it has before it; continue the hearing to a subsequent date; or dismiss the application, with or without prejudice, at its discretion.

D. Continuances Prior to Public Hearing

An applicant may request a continuance, in writing, of the Application to a future date prior to the commencement of the hearing. However, the request must be made in writing and the applicant or a representative should appear before the Board to formally submit the request and be prepared to state the reason for the request for continuance. The applicant must also submit, in writing, an agreement to extend the time limit for a decision by the Zoning Board on the application, if applicable. Failure to submit such an agreement will result in the automatic denial of the request. The Board may grant or deny the request to continue.

E. Procedure

1. The meeting shall start at the time stated in the notice and hearings shall be conducted in the order listed in the notice, unless agreed to otherwise by the Zoning Board. Continuations of hearings from previous meetings shall be resumed after the closure of all hearings scheduled for the day, unless agreed to otherwise by the Board.
2. The Chairman shall open each hearing by reading or causing to be read the notice as advertised.
3. The applicant or a representative shall then present the case, stating fully the reason(s) why the application should be granted.
4. When the applicant or representative has concluded the presentation, the Chairman shall allow those in favor of the matter under consideration to speak. Those who wish to speak shall rise, address the Chairman, give their names and addresses, and then proceed.

5. All communications received by the Board concerning the Application, shall be distributed to the Board and read by the Chairman or other designated Board member(s). In the case of "Form Letters" one copy of the letter will be read in its entirety and all others with the same content will be summarized with, at a minimum, stating the name of the author and the general position represented.
6. The Chairman shall then allow those in opposition the same opportunity to be heard as those in favor of the matter. Those in attendance may ask questions at the discretion of the Chairman; all questions shall be directed to the Chairman.
7. The Chairman shall allow, at his or her discretion, the applicant or representative the opportunity to rebut testimony.
8. Board members may direct questions to anyone present.
9. When all the facts have been presented, the Chairman shall close the public hearing.

F. Decisions

1. Generally, the Board shall make a decision after each application has been concluded, unless both the Board and the applicant agree to a continuance. (amended 8/26/2010)
2. The Board shall send a copy of its decision to the applicant, the abutters, the Planning Board, the Board of Assessors, the Town Clerk, the Board of Selectmen, the Building Commissioner, and where applicable, to the Board of Health, the Conservation Commission, the Historic Business District Commission and other Town boards or departments as determined to be appropriate by the Zoning Board of Appeals. Copy of the approved plot plans, elevations, and floor plans, signed by the Chair, shall be forwarded to the Building Inspector. (amended 12/03/2015)
3. The decision of the Board becomes final when the Notice of Decision has been filed with the Town Clerk and has been duly recorded as provided in (4) below. It is the duty of the Board to file the Notice of Decision with the Town Clerk within fourteen (14) days of the Board rendering a decision. In all instances, the Notice of Decision shall be filed with Town Clerk within 90 days of the closing of the public hearing.
4. No Variance or Special Permit approved by the Board shall take effect until a notice of such approval, signed by the Chairman or Clerk, has been recorded in the Barnstable County Registry of Deeds. The recording of such approval shall be the responsibility of the applicant receiving the Variance or Special Permit.
5. No permit for construction shall be issued by the Building Department until the approval of the Variance or Special Permit has been recorded as provided in (4) above and a copy of the recording filed with the Board.

SECTION V ACTIONS BY THE BOARD

A. Voting Requirements

The concurring vote of at least four members of the Board shall be required for and the granting of a Special Permit or Variance, except as provided in Massachusetts General Law 40B and any regulations thereunder. The record shall show the vote of each member upon each question. The Board shall, in addition, clearly set forth the reasons for its decision. A concurring vote of at least three (3) members of the Board shall be required for the election of officers.

B. Withdrawal

Any application for a Variance or a Special Permit which has been transmitted to the Board of Appeals may be withdrawn without prejudice by the applicant prior to the publication of the notice of a public hearing thereon, but thereafter, may be withdrawn without prejudice only with the approval of the Board.

C. Modification

When a hearing has been adjourned and an application has been voted upon, there shall be no modification of a decision of the Board without a new public hearing.

D. Repetitive Petition

In order to have an application for a Variance or Special Permit which has been unfavorably acted upon by the Board reconsidered within two years of its denial, the applicant must receive the consent of both the Zoning Board of Appeals and the Planning Board, after due notice is given to the parties in interest of the times and places of the proceedings when the question of such consent will be considered. All but one voting member of each Board must consent to the Repetitive Petition. The Boards must agree that specific and material changes have occurred in the conditions upon which the previous unfavorable action was based. If the Boards agree, a new public hearing for the Variance or Special Permit may be held by the Zoning Board of Appeals on the same date as the proceedings for the aforementioned Repetitive Petition, provided that due notice has been given to the parties in interest of the time and place of such proceedings as part of the legal advertisement notifying them of the request for a Repetitive Petition. (amended 06/26/2007)

E. Three Year Limitation on Approval

If an application is approved by the Board, all permits necessary for the prosecution of the work shall be obtained and construction shall be commenced within three years from the date of the filing of the Board's decision with the Town Clerk, unless otherwise provided by the Board in the specific decision notwithstanding the Town of Chatham Protective Zoning Bylaw. A reasonable extension of said time may be granted by the Board in the case of an appeal to the Superior Court or Land Court under M.G.L. c.40A s. 17 or for other good cause shown.

SECTION VI SPECIAL ESCROW ACCOUNTS

A. Special Escrow Accounts for Application Review Costs (See Appendix IV)

The Zoning Board of Appeals, pursuant to M.G.L. c.44 Section 53G, is empowered to assess and collect certain fees associated with the reasonable costs of reviewing permit applications which, by reason of scale, size, complexity and other factors, require the assistance of professional consultants such as an engineer, planning or traffic expert.

At the time of filing an application for a Special Permit, amendments thereto, Variance, Appeal, or Comprehensive Permit the ZBA Chairman, if appropriate, in consultation with the Planning Board Chairman, Community Development Director and/or the Building Commissioner shall make a decision as to whether in addition to the filing fee funds shall be deposited with the Town Treasurer for the establishment of a Special Escrow Account. The amounts required for the escrow account if required are listed in Table 5. If such is required, an application will not be complete until the fee and escrow account have been established. Following the establishment of a Special Escrow Account and verification that all of the other submittal requirements have been met, the Board will schedule a public hearing pursuant to M.G.L. c 40A, Section 9.

The Planning Board, as the Technical Review Board for applications filed under Sections VIII.C.2. of the Protective Bylaw is also empowered to retain such consultants as it deems necessary to complete its review responsibilities for the Zoning Board. The cost of consulting services incurred by the Planning Board shall be borne by the Applicant and be paid from funds deposited in the Special Escrow Account.

Funds deposited in the Special Escrow Account will be expended only to pay the reasonable cost of professional consulting fees required to review permit applications listed in Appendix IV. All such Special Escrow Accounts established under this Section shall be deposited in interest bearing accounts opened by the Town Treasurer.

If at any time prior to the closing of the public hearing required for such permits the balance in the Special Escrow Account falls below Five Hundred Dollars (\$500.00), the Applicant shall deposit additional funds to replenish the account back to the original or Planning Board modified level within ten (10) days of written notification from the Zoning Board of Appeals or Planning Board; failure to do so may result in an unfavorable recommendation on the proposed permit if it is determined by the Planning Board that the review cannot be completed.

If at any time the cost of reviews and inspections for a project exceeds twice the original escrow account deposit amount listed on Appendix IV, no further expenditures will be made until the status of the project has been reviewed by the Planning Board and the applicant authorizes in writing additional expenditures for the project.

B. Special Escrow Account Purposes during Construction

The Zoning Board may require money to be deposited in the escrow account for the review and inspection of construction authorized by the granting of a Special and Comprehensive Permit. The decision to require such funds shall be made as part of the Decision. Construction Escrow funds shall be deposited in the established Escrow Account with the funding amount set according to the reasonable anticipated costs of reviews and inspections to verify that construction complies with the terms and conditions of applicable permit(s). The Applicant shall deposit in the Account the amount determined by the Zoning Board of Appeals, Planning Board or Building Commissioner, which shall not be greater than the amount required to establish the Account at the time a permit application is filed, prior to construction of projects covered by this Section. If at any time prior to completion of a project the Special Escrow Account balance falls below Five Hundred Dollars (\$500.00), the Applicant shall deposit additional funds to replenish the account to its original (construction phase) balance unless a lesser amount is authorized by the Zoning Board of Appeals, Planning Board, or Building Commissioner. Failure to comply with this requirement within ten (10) business days may cause the Planning Board or Building Commissioner to request that Zoning Board hold a public hearing to consider rescinding its grant of a Special Permit or Comprehensive Permit.

When a project is deemed to be complete by the Building Commissioner and all professional consulting costs incurred have been paid, the Applicant shall receive a final report of funds expended from and remaining in the Escrow Account. Any funds remaining in the Escrow Account, including earned interest if applicable, shall be remitted to the Applicant.

C. Obligations of Subsequent Owners

If at any time prior to completion there is a conveyance or transfer of legal ownership of a site or sites for which a Special Permit or Comprehensive Permit has been granted, the new owner shall be responsible for meeting all applicable requirements of this Section by establishing a new Special Escrow Account or accepting the obligations of a pre-existing one. Any person or entity claiming to be the Applicant's successor in interest shall provide the Planning Board with sufficient documentation of the same.

D. Procedures for Selecting, Retaining and Deploying Consultants

The Zoning Board of Appeals may meet jointly with the Planning Board as needed to identify one or more consultants mutually agreeable to each of the respective Boards. Such consultants shall be comprised of professionals who, by reason of training, experience, qualifications and possession of relevant licensure, registration or certification, are deemed competent to perform the services necessary for the Building Commissioner, Planning Board, acting as the technical review board, or Zoning Board of Appeals to complete its obligations under the Protective Bylaw during consideration of the application and/or during construction. The applicant shall be notified in writing of the selection and given seven calendar days to appeal this decision as set forth in subsection E. below. Such consultants shall be retained under a written not-to-exceed fee contract with the Town for a specific scope of services, such scope to be limited to those issues for which the Boards require specialized assistance. Upon completion of the work scope, consultants shall deliver a written report to the Planning Board, Zoning Board of Appeals, Director of Community Development, Building Commissioner, and the Applicant.

E. Appeal of Consultant Selection

Upon notification of the consultant selection, the applicant shall have the right to appeal the selection within seven days of notification to the Zoning Board of Appeals, proposing three alternative consultants for consideration. The Zoning Board of Appeals in consultation with the Building Commissioner and/or Planning Board as appropriate, shall have fourteen (14) days to agree to one of the three alternative consultants or to use the consultant originally selected.

Any applicant aggrieved by a consultant selection decision of the Zoning Board of Appeals may appeal the same to the Board of Selectmen within fourteen (14) days of notification of the final decision. Applicants may appeal consultant selection on grounds that the consultant may have a conflict of interest; or does not possess suitable qualifications, which shall consist of either an education degree in or related to the field at issue or three or more years of practice in the field at issue or a closely related field. An applicant's appeal must be accompanied by a concurrent written extension of time for the application to be heard by the Zoning Board of Appeals, including as appropriate an extension of time for the Planning Board to complete its Technical Review. In the event that the Board of Selectmen fails to act on the appeal within thirty (30) days of the date on which it is filed, the Zoning Board of Appeals' consultant selection shall stand. The Selectmen are encouraged to respond within the thirty (30) day period.

SECTION VII WAIVERS & AMENDMENTS

A. WAIVERS

The Board may in a particular case waive strict compliance with the requirements of the Rules and Regulations when in the judgment of the Board such action is in the public interest and not inconsistent with the Ordinance or other law.

B. AMENDMENTS

The Board may hold a Public Hearing to amend the Rules and Regulations.

SECTION VIII SEPARABILITY

The invalidity of any section or provision of these Rules and Regulations shall not invalidate any other section or provision hereof.

40B Comprehensive Permit Rules **The Chatham Zoning Board of Appeals.**

Under Chapter 40B, the Massachusetts Comprehensive Permit Law, (Massachusetts General Law Chapter 40B, Sections 20-23) the local Zoning Board of Appeals (ZBA) is empowered to grant comprehensive permits for the construction of affordable housing.

Section

- 1:00 Purpose and Context
- 2:00 Definitions
- 3.00 Filing, Time Limits, and Notice
- 4:00 Review of Applications and Review Fee
- 5:00 Public Hearing and Decision
- 6:00 Appeals

1:00 **Purpose and Context**

These rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive Permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G. L. c.40B, §§ 20-23. They are required by M.G. L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

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

For the purpose of discussing project concepts, the Applicant is encouraged to meet with the Director of Community Development and/or designees and the Chairman of the Zoning Board of Appeals, or his/her designees, prior to the development of plans for submission of an application for a Comprehensive Permit, for the purpose of discussing project concepts.

2:00 **Definitions**

- a. **Board** means the Zoning Board of Appeals established under M.G.L. c. 40A, § 12, and the Town of Chatham's Protective Bylaw.
- b. **Local Board** means any local board or official, including, but not limited to, any Board of Survey, Board of Health, Planning Board, Conservation Commission, Historical Commission, Water, Sewer, or other commission or district; Fire, Police, Traffic, or other department; Building Inspector or similar official or board; City Council or Board of Selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

3:00 **Filing, Time Limits, and Notice** (See Appendix III)

3.01: The application for a Comprehensive Permit shall consist of the application shown in Appendix II, the application fee (See Appendix IV), and thirty (30) copies of the following:

- a. **Completed project application form**
- b. **Project Eligibility/Site Approval Letter**, from a State or Federal housing agency, stating that the project has been determined eligible under a particular housing subsidy program.
- c. **Evidence of Site Control**, a deed, purchase and sales agreement, option agreement, or similar document as evidence that the development has control over the property proposed for development
- d. **Plans and Drawings** showing information as follows:
 - i. **Cover sheet** - name of project, name and contact information of applicant and plan preparer, name of owner (if different from applicant), project location map, total acreage, number of proposed units.
 - ii. **Existing conditions** plan, showing:
 - Scale (Recommended: 1 inch = 20 feet or 30 feet, north arrow, symbols key)
 - Property lines with distances and names of direct abutters
 - Existing streets, parking areas, sidewalks, driveways (outlines) with dimensions
 - Existing buildings (footprints) with dimensions
 - Existing topography (2 foot contours)
 - Natural features, including water bodies and wetlands, and habitat types
 - Existing vegetation depicted generally, except that the locations and types of any hardwood trees of 4" caliper or larger shall be shown specifically
 - Proposed buildings (footprints) with dimensions
 - Proposed roadways and parking areas (outlines) with dimensions

- Existing utilities and infrastructure
- iii. **Preliminary site development plan**, showing:
- Scale (recommended: 1 inch=20 feet or 30 feet), north arrow, symbols key
 - Tabulation of buildings, showing number of buildings per type and dimensions, number and types (number of bedrooms per unit) and dimensions of units
 - Property lines and names of direct abutters
 - Proposed topography (2 foot contours)
 - Natural features and vegetation to remain
 - Buildings (footprints) with type keyed to architectural drawings
 - Existing buildings to remain
 - Roadways, sidewalks, and driveways and associated drainage structures
 - Parking areas with spaces delineated
 - Open space and landscaped areas, including any buffers and fences
 - Subdivision lines (if applicable) with approximate courses, distances, lot sizes, and building setbacks
 - Locations and types of utilities, including septic or wastewater treatment system if applicable
- iv. **Preliminary architectural drawings**, showing:
- Typical architectural elevations of each type of building proposed with dimensions
 - Typical floor plans for each type of unit
- e. **Narrative**, detailing the proposed project and its impacts
- i. **Project description**, including:
- Existing site/area description - location, size, dimensions, access, features, ownership, existing development, zoning, adjacent uses, abutters
 - Proposed site alterations, with changes in topography and natural features, including vegetation and any significant natural resource or wildlife habitat
 - Proposed new construction and rehabilitation, with numbers and types of buildings proposed, unit types, and units per acre
 - Features of historic or archeological significance
 - Amenities for residents - open space, landscaping, recreation areas and facilities, walkways, bike paths
- ii. **Housing program**, including housing program to be utilized (e.g. Local Initiative Program), housing types and bedroom data, proposed affordable/market rate ratios, project density.
- iii. **Project impacts**, including projected impacts and mitigating measures proposed, on the following:
- Vehicles - trip generation data, impact upon and existing conditions on surrounding roadways, sight and stopping distances at project entrance(s),

availability of public transportation, on-site circulation, provisions for pedestrian circulation and safety, mitigating measures proposed

- Historical/archeological features
- Impacts to adjacent properties and uses - noise and visual buffers
- Natural resources
- Municipal services - public safety, water supply, wastewater treatment

iv. **Construction impacts** - schedule, protection of vegetation, erosion control, noise, dust.

f. **Requested exceptions** - List of requested exceptions to local bylaws, codes, regulations, and fees, including zoning bylaws and subdivision regulations

3.02: Within seven (7) days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01 (f) above. Based upon that list, it shall also, within the same seven (7) days, invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application.

4:00 **Review Fees**

4:01 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. Whenever possible it shall 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.

4:02 A review fee may be imposed only if:

- a. The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board.
- b. The work is in connection with the applicant's specific project, and
- c. All written results and reports are made part of the record before the Board.

4.03: A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19, and the following additional requirements:

- a. For services in an amount less than \$10,000.00, the Board shall issue an invitation for bids conforming to the requirements of M.G. L. c. 30B, § 5 or a request for proposals conforming to the requirements of M.G. L. c. 30B, § 6.
- b. For services in an amount of \$10,000.00 or more, the Board shall issue a request for proposals conforming to the requirements of M.G.L. c. 30B, § 6.

- c. For all services, whether in amounts less than or greater than \$10,000.00,
 - i. The applicant shall be given five (5) days notice and opportunity to attach written comments to the invitation for bids or requests for proposals,
 - ii. At least three (3) bona fide bids or proposals shall be received, and,
 - iii. The applicant shall be given five (5) days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract.
- d. A bona fide bid or proposal shall include:
 - i. The name of each person performing the work,
 - ii. The educational and professional credentials of each person performing the work,
 - iii. The work experience of each person performing the work,
 - iv. A description of the work to be performed,
 - v. The hourly rate charged by each person performing the work, and
 - vi. All other expenses to be incurred.

4.04 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 from town or city funds to review a similar town or city project.

4.05: Any invitation for bids or request for proposals 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 or offer or, the Board may deny the Comprehensive Permit.

- 4.06: Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Board of Selectmen.
- a. 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.
 - b. 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.
 - c. 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 Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.
- 4.07 Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G. L. c. 44, § 53G.
- a. Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, M.G. L., c 30B, §§ 1-19.
 - b. Within 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.
 - c. The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review. This report shall be published in the city or town annual report.

5:00: **Public Hearing and Decision**

- 5.01: The Board shall hold a public hearing on the application within thirty (30) days of its receipt. It may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.
- 5.02: The Board shall render a decision, based upon 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.
- 5:03: The Board may dispose of the application in the following manner:
- a. Approve a Comprehensive Permit on the terms and conditions set forth in the application.

- b. Deny a Comprehensive Permit as not consistent with local needs, or
- c. Approve a Comprehensive Permit with conditions with respect to height, site plan, size, shape or building materials that do not render the construction or operation of such housing uneconomic.

6:00: **Appeals**

6:01: If the Board approved the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in M.G. L. c. 40A, § 17.

6:02: If the Board denies the Comprehensive Permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

APPENDIX II

APPLICATION FOR COMPREHENSIVE PERMIT
UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 40B
Town of Chatham, Massachusetts

Applicant:

Name _____ Phone _____

Address _____

Owner (if different):

Name _____ Phone _____

Address _____

Project:

Project Name _____

Street Address _____

Assessors' Map/Block/Lot _____

Registry of Deeds Bk/Pg or Certificate of Title No. _____

Number of residential units proposed _____

Signature of Applicant _____ Date _____

Application Checklist

(See Section B of Zoning Board's 40B Regulations for Comprehensive Permits@)
Thirty copies of all information is required for a complete application package.

Required information

Note missing information, if any

- ____ 1. **Signed application form**
- ____ 2. **Review fee - _____ units @ \$____/unit**
- ____ 3. **Project Eligibility/Site Approval Letter**
- ____ 4. **Evidence of Site Control**
- ____ 5. **Plans and drawings**
 - ____ a. **Cover sheet**
 - ____ b. **Existing conditions plan**
 - ____ c. **Preliminary site development plan**
 - ____ d. **Preliminary architectural drawings**
- ____ 6. **Narrative**
 - ____ a. **Project description**
 - ____ b. **Housing program**
 - ____ c. **Project impacts**
 - ____ d. **Requested waivers**

APPENDIX III

**TIME LINE FOR REVIEW OF COMPREHENSIVE PERMITS
UNDER MASSACHUSETTS GENERAL LAWS CHAPTER 40B
Town of Chatham, Massachusetts**

NOTE: Days include all days except Sundays and legal holidays

| Deadline in days from trigger date | Required action |
|---|---|
| Trigger: | Receipt of application |
| 1 | Notification of Chairman of ZBA of receipt of application |
| 5 | Set date of public hearing Review application package for completeness Notify applicant of any missing information in application package |
| 14 | Complete public hearing packet Public hearing packet to ZBA, applicant, and other boards and officials Public notice |
| 30 | Open public hearing |
| Trigger: | Close public hearing |
| -- | Negotiations |
| 40 | Decision |
| Trigger: | Receipt of decision by applicant |
| 20 | Appeal |
| Trigger: | Receipt of notification of proposed change in project |
| 20 | Determination by ZBA if change is substantial |
| 30 | Open public hearing (only if change is substantial) |

APPENDIX IV

**SCHEDULE OF FILING FEES AND SPECIAL ESCROW ACCOUNTS
TOWN OF CHATHAM, MA**

| Application Category | <u>Filing Fee</u> | <u>Escrow Account</u> |
|---|--------------------------|--------------------------|
| Special Permits, Dimensional Variances, Appeals, (Sec. VIII) | \$ 175.00 (Nov. 6, 2008) | N/A |
| Special Permits (Commercial/Business, Mixed Use) | \$ 500.00 | \$ 2,500 |
| Amendments to Existing Special Permits (Non-Residential) | \$ 250.00 | \$ 2,500 |
| Comprehensive Permits | | |
| 1-10 Units | \$ 1,500 | \$1,500 + \$250 per unit |
| 11-25 Units | \$ 2,000 | \$2,000 + \$250 per unit |
| 26 + Units | \$ 2,500 | \$2,500 + \$250 per unit |

Filing fee is separate from the Escrow Account, it is non-refundable and is deposited in the Town's General Fund. Special Permit Amendment shall mean amendments to Special Permits issued for non-residential development (including lawfully pre-existing nonconforming use Special Permits) or mixed-use developments in any Zoning District.

Note: Filing fees are separate from and in addition to advertising fees. Advertising fees require the submission of a separate check made payable to the local newspaper. An additional advertising fee is also required for hearings that are continued at the request of the applicant. (amended November 6, 2008)

**TOWN OF CHATHAM
ZONING BOARD OF APPEALS
APPLICATION**

Application No. _____

APPLICANTS NAME: _____

MAILING ADDRESS: _____

TELEPHONE: _____

OWNER OF PROPERTY NAME: _____

MAILING ADDRESS: _____

LOCATION OF PROPERTY: _____

Street Name and Number

Assessors' Map/Block/Lot

Registry of Deeds Title Reference Book _____ Page _____, or Certificate of Title Number _____ and Land Court Lot # _____ and Plan # _____

If the Applicant is someone other than the owner of the property, explain the basis for his or her interest in this request.

Nature of request (Check appropriate request (s) listed below. Attach additional sheets as needed.

- A. An appeal from an administrative decision under Section VIII.D.2.a. of the Zoning Bylaw.**
(State nature of this Appeal and list any section (s) of the Bylaw which are applicable).
- B. An application for a Special Permit under Section VIII.D.2.b. of the Zoning Bylaw.**
(Describe the intended use and list any section (s) of the Bylaw which are applicable).
- C. An application to change, alter or extend a pre-existing nonconforming structure or use under Section 6 of Chapter 40A of the M.G.L.**
(Describe existing nonconformity and proposes changes, alterations or extensions).
- D. An application for a Variance under Section VIII.D.2.c. of the Zoning Bylaw.**
(State the nature of the requested Variance and list any section (s) of the Bylaw which are applicable).

Total land area of parcel: _____ **Present Zoning Classification:** _____

Was this lot created by an 81L Exemption plan? Yes No If yes, please provide documentation.

Signature of Applicant or Representative: _____

NAME: _____

ADDRESS: _____

TELEPHONE: _____

Date Received by Chatham Town Clerk: _____

MINIMUM INFORMATION WHICH MUST BE INCLUDED WITH APPLICATION:

Eleven complete packets containing copies of the following items:

1. Site plan showing the location of existing structures and proposed construction.
2. A permit denial, or copies of any other denial and proposed by Town official or body, whichever applicable.
3. Completed copies of this form.
4. Copies (to scale) of all exterior elevations, both existing and proposed floor plans, and any other information as required on the instruction sheet attached to this form.
5. Separate applications are required for Special Permits and Variances.

NOTIFICATION OF "PARTIES IN INTEREST" IS REQUIRED. Parties in interest include: Owners of direct abutting lots; owners of lots abutting direct abutting lots where a property line is within 300 feet of the lot to which the Application applies, and owners of lots directly across any public or private way from the lot to which the Application applies. The ASSESSORS will certify the names and address of parties of interest and will notify the same.

Applications for Special Permits or Variances may be delivered to the Community Development Office. An Application is not complete until it is signed and accompanied by a check made payable to the "Town of Chatham" in the amount of one hundred seventy-five dollars \$175.00 for residential projects, \$500.00 for commercial or mixed-use projects, \$250.00 for amendments to existing Special Permits, and if an Application for a Comprehensive Permit under Chapter 40B, the appropriate amount as listed in Appendix IV of the Zoning Board of Appeals Rules and Regulations, and a second check in the amount of eighty dollars \$80.00, made payable to "The Cape Cod Chronicle" for the required advertising. The authenticity of the information on the Application is the responsibility of the person signing the Application and NOT the Town Clerk. Hearings are scheduled within sixty-five (65) days of acceptance by the Town Clerk. Decisions of the Board of Appeals are filed with the Town Clerk and may be appealed to the Superior or District Court within twenty (20) days of such filing. Decisions do not take effect until they are recorded with the Barnstable County Registry of Deeds after the twenty (20) day Appeal period has expired.

.....
FOR BOARD USE ONLY

DATE OF HEARING: _____

LEGAL ADVERTISEMENT: 1ST PUBLICATION _____ 2ND PUBLICATION _____

DECISION OF BOARD OF APPEALS: _____ Approved _____ Denied Vote: _____

Board Member

Board Member

Board Member

Board Member

Chairman