

RULES AND REGULATIONS



DUNSTABLE ZONING BOARD OF APPEALS

REVISED APRIL 29TH, 2010

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PREAMBLE

The foregoing Rules and Regulations are promulgated pursuant to the provisions of Section 17 of the Dunstable Zoning By-law, and the Commonwealth of Massachusetts General Laws Chapter 41 in regards to the subdivision of Land, Chapter 40A relating to zoning, generally, and Chapter 40B Sections 20 through 23 regarding the provision for low- and moderate-income housing.

SECTION 1 – ORGANIZATION

1.1 Officers

At the first meeting following the confirmation of the annual appointee, the Board shall elect all officers of the Board, to include a Chairperson and Clerk. Alternates do not participate in this act.

1.2 Chairperson: Powers and Duties

The Chairperson shall vote and be recorded on all matters coming before the Board. Subject to these rules the Chairperson shall decide all points of order, unless overruled by a majority of the Board in session at the time. The Chairperson shall appoint such committees as may be found necessary or desirable.

In addition to powers granted by general laws and local ordinance and subject to these rules and further instructions of the Board, the Chairperson shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. He shall at each meeting report on all official transactions that have not otherwise come to the attention of the Board.

1.3 Clerk

The Clerk shall be a member of the Board, designated by the Board. Subject to the direction of the Board and its Chairperson, he shall supervise all of the clerical work of the Board, including all correspondence of the Board, sending all notices required by law and the rules and orders of the Board, receiving and scrutinizing all applications for compliance with the rules of the Board, keeping dockets and minutes of the Board's proceedings, compiling all required records and maintaining necessary files and indexes.

1.4 Alternate Members

The Chairperson of the Board shall designate one or more alternate members appointed by the Board of Selectmen to sit on the Board in case of absence, inability to act or conflict of interest on the part of any Board member. In the event of a vacancy on the Board, the Chairperson may designate an alternate member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term.

1.5 Quorum

Three (3) members must be present for a quorum.

1.6 Meetings

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

SECTION 2 – GENERAL

2.1 General Procedures

The Planning Board, the Board of Selectmen or the Zoning Board of Appeals shall be the petition granting authorities as specified in the various sections of the Zoning By-law and shall hear and decide applications for special permits, variances, administrative appeals and comprehensive permits upon which they are empowered to act under the Zoning By-law. Upon receipt of an application, the petition granting authority shall refer the application and plan to such boards and officials as they deem appropriate and, except for 40B comprehensive permit applications, shall not hold a public hearing on the application until such time as reports have been received from all boards and officials to whom such has been referred or thirty-five (35) days have elapsed following referral without receipt of such reports whichever occurs sooner. A 40B comprehensive permit application shall be submitted by the Zoning Board of Appeals to “local boards” for review, as set forth under section 20 of chapter 40B. No request shall be granted unless and until the petition granting authority makes a written finding as to each of the following which it finds applicable to the application before it:

1. The proposed construction or use is consistent with the general purposes of the Zoning By-law;
2. The proposed construction or use will not impair the integrity of the district and adjoining districts;
3. The proposed construction or use will not be detrimental to the health and welfare of the occupants and users thereof, and citizens of the Town;
4. The proposed construction or use will not be detrimental to the value of nearby property.

The petition granting authority may impose conditions, safeguards and limitations on time and use.

SECTION 3 – APPLICATION PROCEDURES

3.1 Application Form

Every application for action by the Board shall be made on the official forms including the certified list of abutters and parties in interest. These forms shall be furnished by the Board of Appeals upon request. Any communication purporting to be an application shall not be treated as such until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed. **** Incomplete applications will not be accepted. ****

3.2 Filing Period

Every application shall be filed and every appeal taken within thirty (30) days from the date of refusal of a permit by, or the date of the order, ruling, decision or determination of, the Building Inspector or other administration official or board, except for application entered under MGL c. 40B, Sections 20 through 23 (low- or moderate-income housing), which maybe filed at any time.

3.3 Plan and Required Plan Information

- A. Each application and petition to the Board shall be accompanied by three (3) copies of a plan showing the following:
 - a. North point, date and scale;
 - b. Name and address of record owner, name and address of applicant, the seal of registration, signature and name and address of the Registered Land Surveyor, registered in the Commonwealth of Massachusetts, who prepared the plan;

- c. The complete property lines of the entire property which the application or petition pertains to;
- d. All public ways with their names within 300 feet of the property lines;
- e. The zoning district in which the property lies including any zoning district lines passing through the property;
- f. The property lines of all abutters within 300 feet of the subject property, together with the name and address of the owners of the property within 300 feet of the subject property;
- g. The Dunstable Assessors Map and Lot number for the subject property;
- h. Any public or common areas within the property or 300 feet of the property;
- i. Any existing variances and/or special permits pertaining to the property or to any property within 300 feet of the subject property.
- j. The topography of the property in two (2) foot contour intervals;
- k. Location, shape and size of all existing and proposed buildings, septic systems, and private wells on the property or within 300 feet of the property;
- l. Location of all existing and proposed underground utilities on the property, such as but not limited to water, sewer, telephone, electrical, natural gas, cable TV, or fiber optic communication system.
- m. All existing and proposed storm water drainage systems pertaining to the property, including but not limited to open ditches, natural waterways and water bodies, and underground piping and culverts;
- n. All easements existing and proposed pertaining to the property including the wording of the easements on separate sheets;
- o. All deed restrictions pertaining to the property including the wording of the deed restrictions on separate sheets;
- p. The locations of the base flood elevation on the property as shown on the Flood Insurance Rate Maps published for the Town of Dunstable by the Federal Emergency Management Agency (FEMA) July 5, 1982, or if none exists a statement that, "No Base Flood elevation applies to this property";
- q. Soil types on the property per the U.S. Soil Conservation Service detailed soil maps for the Town of Dunstable;
- r. The precise location, size and shape of all areas within the property which are in use or proposed to be used for parking or driveways;
- s. If required by the Dunstable Zoning By-law, other material required as per Section 14 regarding site plans;
- t. Certification that the plan conforms with the Rules and Regulations of the Registry of Deeds in preparing the plans.

The requirements of this section regarding the submission of materials may be reduced and/or modified upon written request by the applicant and subsequent approval by majority vote of the Dunstable Zoning Board of Appeals.

- B. If the application is entered under MGL c. 40B, Sections 20 through 23, as an application to build low- or moderate-income housing, the applicant shall submit six (6) copies of the following:
- a. A site plan containing the information prescribed therefor in Section 14.2 of the Zoning By-law and the plan of land described above.
 - b. Documents and other information sufficient to determine that the applicant is a public agency, limited dividend or nonprofit organization eligible to proceed under said sections of MGL c. 40B.
 - c. Documents and other information concerning the nature and conditions of the subsidy program(s) under which the applicant is proceeding, including but not limited to proposed financing, rent levels and tenant selection.
 - d. Proposed data and findings to support a conclusion by the Board that subsidized housing in the town does not exist in excess of ten percent (10%) of the housing units reported in the latest decennial census or is on sites comprising one and five tenths percent (1.5%) of the total zoned industrial, commercial and residential land in the town, or that the proposed construction will not result in use of more than three-tenths percent (0.3%) of said area of ten (10) acres, whichever is larger, in one (1) calendar year, and that the low-income residents of the town, whether or not in subsidized housing, do not comprise, when compared to all town residents, a disproportionate number compared to other municipalities in the region.
 - e. Specification of the particular permitting actions of local boards which the applicant proposes that the Zoning Board of Appeals grant by virtue of the Comprehensive Permit.

3.4 Filing Procedures

- A. Excepting applications for low- or moderate-income housing under MGL c. 40B, Sections 20 through 23, all applications and reapplications shall be filed with the Town Clerk, together with the list of parties in interest certified by the Board of Assessors, information required in 3.3 of these Rules and Regulations, A and B and a nonrefundable filing fee of \$500.00 payable to the Town of Dunstable. Upon receipt of such application, the Zoning Board of Appeals may within twenty-one (21) days thereof refer the application and plan to such other boards and officials as it deems advisable.
- B. For application filed under MGL c. 40B, Sections 20 through 23, all of the above applies, except see section 6.3 and 6.4 for filing and review fees and the filing shall be with the Secretary of the Board of Appeals, in care of the Town Clerk, and the Board shall transmit one (1) copy each of the complete application to the Board of Health and Board of Selectmen and any other board it deems applicable.

SECTION 4 - HEARINGS

4.1 Timing

- A. A public hearing shall be held on each application no later than sixty-five (65) days from the date of transmittal from the Town Clerk, except for hearing held under MGL c. 40B, Sections 20 through 23 (low- or moderate-income housing), which shall be held within thirty (30) days from the date of application filing, and provided that hearings on applications entered under Section 4.3 of the Dunstable Zoning By-law shall be held no earlier than thirty-five (35) days from the date of application filing so as to permit other boards and officials to review the application and plans unless all the other boards and officials earlier respond. A public hearing on a 40B comprehensive permit application shall commence within 30 days after the application is filed.
- B. Notice of hearing shall be advertised as required by the provisions of the Massachusetts General Laws, Chapter 40A and 40B (each of two successive weeks but not less than fourteen (14) days prior to the hearing date in a newspaper of general local circulation plus posting in Town Hall). In addition, a copy of the advertised notice shall be sent by mail, at least seven (7) days prior to the date of the hearing, postage prepaid, to the applicant or petitioner, and to the parties in interest.

4.2 Hearings to be Public

All hearings shall be open to the public. No person shall be excluded unless he is considered by the Chairperson to be a “serious hindrance” to the conduct of the hearing.

4.3 Representation and Absence

An applicant may appear in his own 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 on the matter using the information it has otherwise received.

4.4 Brief to the Board

It is recommended that every application be supported by a brief setting forth in detail all facts relied upon by the parties.

4.5 Order of Business

- A. The order of business at a hearing shall proceed as follows:
 - a. Roll call by the Clerk of Board Members and Associate Board Members present;
 - b. Reading of petition and legal notices by the Clerk, together with presentation of exhibits including other Board reviews and written briefs received, if any;
 - c. Roll call by the Clerk of Abutters present;
 - d. Identification of any other Town Officials present;
 - e. Applicant’s presentation;
 - f. Opponent’s presentation, if any;
 - g. Comments/questions by those seeking information, including Abutters, which shall be limited to two (2) minutes, unless otherwise agreed by the Board;
 - h. Applicant’s rebuttal, restricted to matters raised by opponent’s presentation;
 - i. By vote of the Board, closing of the presentation and discussion portion of the hearing;
 - j. Discussion by the Board of the information presented, and subsequent vote by the same to close this discussion;

- k. The Board shall set a closing date for receipt of any additional written arguments and/or hearings on the application, if appropriate. If no such continuation of the application is necessary, the Clerk shall commence a vote of each individual Board Member via a roll call, and then declare the decision of the Board. Upon either an established date closing date or declaration of decision, the public hearing shall close.

- B. Members of the Board who are hearing the case may direct appropriate questions during the hearing.

SECTION 5 - DISPOSITION

5.1 Voting Requirement

- A. The concurring vote of at least four (4) members of the Board shall be necessary in any action taken by the Board with the exception of MGL c. 40B decisions where the majority rules.
- B. The record shall show the vote of each member upon each question or, if absent or failing to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for its decision.

5.2 Withdrawal

An application may be withdrawn without prejudice by the petitioner by notice in writing to the Clerk at any time prior to the publication of the notice of the public hearing by the Board, but thereafter be withdrawn without prejudice only with the approval of the Board.

5.3 Reconsideration

Once a decision has been voted upon and the meeting at which the decision was made is adjourned, there shall be no reconsideration of a decision of the Board.

5.4 Reapplication

No appeal, application or petition which has been unfavorably and finally acted upon by the Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless the Board finds by a vote of four members of the Board specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

5.5 Limitation on Special Permit Granting: Extensions

If a special permit is granted by the Board, construction or use shall be commenced within eighteen (18) months from the date of filing of the Board's decision in the office of the Town Clerk unless good cause is shown by the applicant. If the application is for a comprehensive permit, construction must commence within three years after the date the approval becomes final.

5.6 Lack of Decision

Except for 40B comprehensive permit applications, if no decision is made within ninety (90) days of the public hearing, the application is deemed to be a grant of the special permit application applied for or if no decision is made within one hundred (100) days of the filing of a variance petition or administrative appeal, the variance or relief requested in the administrative appeal is deemed to be granted. If no decision is made on a 40B comprehensive permit application within forty (40) days of the close of the public hearing, the application shall be deemed granted.

5.7 Decisions

All decisions by the Zoning Board of Appeals shall be recorded on the official notice of decision and detailed decision forms as supplied in Chapter 40A of the Massachusetts General Laws, the latter to contain a detailed record of the proceedings, the reasons for the decision, and a certification that copies of the decision have been forwarded to the Town Clerk within fourteen (14) days of the decision.

5.8 Effective Date

No special permit, variance, administrative appeal or comprehensive permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the North Middlesex District and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

5.9 Distribution

Copies of the notice of decision of a special permit, variance, administrative appeal or comprehensive permit shall be mailed; postage prepaid, by the Clerk of the Board of Appeals to:

- A. The owner.
- B. The applicant if different from the owner.
- C. Parties in interest as listed on the certified list of parties in interest.
- D. The Town Clerk, Building Inspector, Planning Board and any other Boards it deems necessary.
- E. Copies of the notice of decision, except for comprehensive permit decisions, shall be sent to those interested parties furnishing their name and address to the Clerk at the close of the public hearing.

SECTION 6 – COMPREHENSIVE PERMITS

6.1 Purpose and Context

These rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under, M.G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c. 40B, § 21, and by 760 CMR 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 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 M.G.L. c. 40B & 20-23. In addition, the Board's general Rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

6.2 Definitions

A. **Board** means the Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

B. **Local board** means any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board of selectmen.

C. **Limited Dividend Organization** means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 6.3 (i)).

6.3 Filing, Time Limits, and Notice

A. The application for a comprehensive permit shall consist of:

- (a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks, and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 6.3.A (a) and 6.3.A (c), 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;
- (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. This submission may be combined with that required in section 6.3.A (a), above;
- (c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;
- (d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;
- (e) where a subdivision of land is involved, a preliminary subdivision plan;
- (f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;
- (g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,
 - (i) the applicant shall be a public agency, a non-profit organization, or a limited

dividend organization,

- (ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 31.01, and
 - (iii) The applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application;
 - (h) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.
 - (i) a complete *pro-forma*, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall 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.
 - (j) a complete copy of any and all materials and applications submitted by the applicant to any prospect subsidizing agency or source, including, but not limited to applications for site approval.
 - (k) a list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities.
 - (l) a list of all prior development project completed by the Applicant, along with a brief description of each such project.
- B. The application shall be accompanied by a filing fee of \$3,000 for administrative services and a separate check is required equal to \$15,000.00 for projects containing less than thirty (30) units or \$30,000.00 for projects containing thirty (30) or more units and will be held in escrow as deemed necessary to cover the cost of professional reviews by other specialists such as attorneys, consultants, engineers, etc. Whenever the account falls below 50% of the requirement set by the Board, the applicant must deposit an additional amount sufficient to return the account to the required level.

The Board, in its sole and unfettered discretion may waive any or all of these additional fees if it is determined that a specific review(s) is not necessary. Alternatively, the applicant may opt to pay for the Board's legal counsel or financial consultant in the manner prescribed by M.G.L. c. 44, §53G and Section 6.4 hereof.

- C. Within seven 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 § 6.3 A, above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, it shall also, 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. In order to allow review by local officials, the Applicant shall provide the Town

Clerk with twenty-five copies of the complete application so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with match lines) shall be made available to the Town Clerk for copying purposes.

6.4 Review Fees

- A. When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.
- B. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 6.3 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.
- C. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of M.G.L. c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.
- D. 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.
- E. 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 process 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.

6.5 Public Hearing and Decision

- A. 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 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.
- B. The Board of Appeals during the course of its public hearing, including any continuance thereof, may require such information, documentation or plans as it may deem necessary to proceed with thoughtful consideration and deliberation upon such application for the protection of the Town of Dunstable and the health, safety, and welfare of its residents.

All requested supplemental information shall be provided to the Board of Appeals by the applicant at least fifteen (15) days in advance of the next hearing date or the meeting may be automatically continued to the next available date on the schedule. Any information requiring technical review shall be submitted to the Board of Appeals by the applicant, a minimum of three (3) weeks prior to the next hearing to allow adequate time for examination by the Board's consultant.

- C. The Board shall render a decision, based on a majority vote of the Board, 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.
- D. 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.
- E. 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.

6.6 Changes in Application

- A. In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated subsidizing agency.

- B. In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 6.3 hereof that is deemed by the Board to be necessary to evaluate such changes.
- C. In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 6.3 C, above.
- D. 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.

6.7 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. c. 40A, § 17.
- B. If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to be unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

SECTION 7 – EFFECTIVENESS AND AMENDMENTS

- 7.1 These rules are hereby adopted by the Dunstable Zoning Board of Appeals and made effective on April 29, 2010. Any subsequent amendments to the same shall become a part of this subsection as to not affect the integrity of the entire document. The rules and any subsequent amendments made thereto shall be filed with the Dunstable Town Clerk.

Date: _____

Josh West, Chairperson
Dunstable Zoning Board of Appeals

Adopted by vote of the Board