

TOWN OF CHARLTON  
RULES APPLYING TO THE ZONING BOARD OF APPEALS

ARTICLE 1. General Governing Statutes, Ordinances, and Rules

The Board of Appeals, hereinafter referred to as the board, shall be governed by all of the following statutes, ordinances, and rules:

1. Applicable State Statutes, Local Ordinances and Rules.

To the extent that they remain in force and effect, as they are amended, or as they may be added to, the board and its members and officers shall be governed by state statutes and local ordinances including the following:

- a. State statutes applying general to public board, members, and officials.
- b. State statutes relating to activities of boards of appeals in relation to planning and zoning, including the Town of Charlton Zoning Bylaw, as amended.
- c. Ordinance and rules of (jurisdiction) generally affecting its local boards and official's. The zoning ordinance of the Town of Charlton.
- e. The rules of the board, as set forth herein.

1.2. Requirement for familiarity with State Statutes and Local Ordinances and Rules Affecting the Board.

Upon taking office, all members of the board shall familiarize themselves with the foregoing, and, while in office, members shall maintain such knowledge, including knowledge of amendments and additions, and shall be strictly governed thereby in the conduct of board affairs.

1.3 Rules of Board to be available to the public in the Board's Office.

1.1.1. A certified official copy of rules of the board, in current form, shall be available in the office of the board as a public record. Additional copies shall be provided to member of the board and made available to the public on request, but the official copy in the board's office shall govern. No amendment to these rules shall become effective until incorporated in the official copy.

1.1.2 Rules Public Record (Ch 40 a Sect 12}

A local zoning board of appeals must somehow put the public and applicants on fair notice of its rules' requirements. As noted above, as to rules relating to special permits and variances §§ 9 and 12 of the statute specifically require that same be filed with the town clerk, though failure to do so in and of itself is not fatal to the rules' validity. Neither such statutory provision sets forth any requirement that notice be given and a public hearing held prior to adoption or that a rule be published in any particular manner. Given the many provisions in the statute for such notices and hearings on a variety of matters, and in other statutes for the adoption of various types of rules and regulations by other municipal boards and officials, a fair inference lies that there are not such mandatory procedures as to the foregoing. And since there is no statutory provision

specifically as to local board of appeals rules governing an administrative appeal, as contrasted with a special permit or variance, a fortiori there is no specifically prescribed notice, hearing or publication requirement'. Nonetheless, a rule of which a board has not put the public, including potential petitioners whose particular property interests are at stake, on notice by means reasonably designed to apprise them of what is required of them likely would not pass constitutional muster under the due process clause of the Fourteenth Amendment to the Constitution of the United States and of Article 10 of the Massachusetts Declaration of Rights. Cf., Board of Appeals of Hanover v. Housing Appeals Committee, 363 Mass. 339, 363-364 (1973). While zoning bylaw provisions, and perhaps rules adopted thereunder, are not held to the same standards of specificity applicable to the subdivision rules and regulations of a planning board, see Castle Estates v. Planning

#### 1.4 Location of Board Office.

The office of the board shall be at the George C. McKinstry Municipal Office Building, 37 Main Street, Charlton, MA 01507.

### Article 2. Members

2.2.1 Number of members and alternates: Appointment: Qualification: Terms: Compensation: Procedure for Removal: Procedure for Filling Vacancies: and Terms of Members Appointed to Fill Vacancies.

Number of members and alternates: appointment: qualifications: terms: compensation: procedure for removal: procedure for filling vacancies; and terms of members appointed to fill vacancies shall be as provided in Section 7.3 ZONING BOARD OF APPEALS, Charlton Zoning Bylaw.

2.2 Causes for Removal from Board.

2.3 Resignation, Generally, and by Absence.

2.4 Vacation of Office.

### ARTICLE 3. Officers, Committees, Staff, Duties

3.1 Regular Election of Chairman, Vice-Chairman, and Clerk: Provisions for Contingencies: Continuation of Service until Successors Take Office.

Annually, as the last item of new business at the regular meeting of the board in the month of June, the board shall elect a chairman, vice-chairman and clerk. If such regular meeting is canceled or a quorum is lacking, the election shall be held within 36 days thereafter at a regular or special meeting. If no quorum can be obtained with 36 days, the election shall be held at a regular or special meeting held as soon thereafter a quorum can be obtained, provided that if no such election is held with 60 days of the date when generally required. The prior chairman, acting chairman and clerk shall remain in office until their successors take office at the next regular or special meeting following their election or appointment.

### 3.1.1 Succession of Vice-Chairman to Office of Chairman: Special Elections.

If the chairman resign his office or becomes no longer a member of the board, the vice-chairman shall succeed him in office for the remainder of the term subject to a vote of ratification, by the board at their next regular or special meeting. If the vice-chairman resigns his office, becomes no longer a member of the board, or succeeds to the chairman's office, a special election shall be held at the next regular meeting of the board to select a vice-chairman to complete the term, provided that if such regular meetings is one immediately preceding the regular election and any duties to be performed by the vice-chairman in the intervening period can be performed by the vice-chairman in the intervening period can be performed in a satisfactory manner, the board may permit the office of vice-chairman to remain vacant for the period.

### 3.2. Duties of Chairman and Vice-Chairman: Appointment of Temporary Chairman to Preside at Meetings.

#### 3.2.1 Presiding at Meetings.

If present and able, the chairman shall preside at all meetings and hearing. If the chairman is absent or unable to preside, the vice-chairman shall preside. If both are absent or unable to preside, the members present shall appoint a temporary chairman to preside. In accordance with these and other applicable rules, the presiding officer shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance on motion duly made and passed. He shall maintain order and decorum, and to that end may order removal of disorderly or disruptive persons. He shall administer oaths to all witnesses, or arrange for such oaths to be administered.

#### 3.2.2 Other Responsibilities and Duties of Chairman: Delegation to Vice-Chairman.

The chairman shall have further duties and responsibilities, as indicated below. He may delegate specific duties generally to the vice-chairman or may authorize the vice-chairman to perform specific duties, during his absence from the jurisdiction or in case of his other disability to perform necessary board functions in a timely manner. The vice-chairman shall perform all duties so delegated, and in case of absence or incapacity of the chairman, on approval by majority of the board, shall perform any or all duties of the chairman whether or not delegated.

#### 3.2.3 Duties of the clerk are to attest to the vote and decisions of the Board.

### 3.3 Appointment of Secretary: Duties.

#### 3.3.1 Appointment.

The secretary to the board shall be appointed by the board and shall be an employee of the board.

#### 3.3.2. Duties of the Secretary

#### 3.3.2.1. Docket Book.

The Secretary shall maintain a docket book which shall be kept posted to date.

#### 3.3.2.2. Minute Book: Minutes a Public Record.

The secretary shall maintain a minute book which shall be kept posted to date. The minutes of the board shall be a public record, kept in the offices of the board.

#### 3.3.2.3. Notification of Expiration of Terms of Members: Vacancies.

### ARTICLE 4. Conduct of Board Members, Staff.

#### 4.1 Representation of Applicants or Appellants.

No member of the board, or of its staff, shall represent applicants or appellants on matters on which the board is to make determinations.

#### 4.2 Conflict of Interest.

No member of the board shall participate in any case in which he has financial or personal interest in the property or action concerned, or will be directly affected by the decision, or has or believes he has any other conflict of interest as defined by applicable law. No member of the staff of the board or of any agency serving the board shall prepare or present arguments or reports, or attempt to influence decision of the board, in any case in which he has similar interest.

##### 4.2.1. Chairman to Be Notified of Conflict of Interest.

#### 4.3 Disqualification on Grounds of Influence Other Than at Public Hearing.

A member may disqualify himself from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his appeal or application, other than in the public hearing.

#### 4.4 Expression of Bias, Prejudice, or Individual Opinion Prior to Hearing and Determination.

Board members may seek information from other members, the secretary, council to the board, or staff serving the board, prior to the public hearing, but no member shall discuss the case with any other parties thereto prior to the public hearing, or express any bias, prejudice, or individual opinion on proper judgment of the case prior to its hearing and determination. Violation of this rule shall be grounds of dismissal from the board.

#### 4.5 Members not to Vote Unless Present at Hearing.

No board member shall vote on any matter deciding an application or appeal except after attending the public hearing on the application or appeal.

ARTICLE 5. Appeals and Applications: Filing: Time Limits: Information Required: Effects of Failure to Provide Required Information: Order at Hearings: Public Notice: Decisions

5.1 Powers of the Board: Limitations: Procedures, Generally. The board shall have all and only such powers as are delegated to it by the Commonwealth of Massachusetts Chapter 40 A, and by the Town of Charlton Zoning By-law and shall exercise such powers only in the manner, for the purposes, and in accordance with the procedures set forth therein.

5.2 Waiver of Notice and Special Notice (Chapter 40 a Section 11)

Section 11 of the Zoning Act provides that

The [PGA] or [SPGA] may accept a waiver of notice from, or an affidavit of actual notice to any party in interest or, in his stead, any successor owner of record who may not have received a notice by mail, and may order special notice to any such person; giving not less than five nor more than ten additional days to reply.

This provision is designed to allow a zoning board to deal with the situation where it has become aware of a defect in mailed notice of a hearing. The petitioner may be requested to cure the defect by procuring a waiver of notice or an affidavit of actual notice, from the party in interest inadvertently overlooked or his or her successor owner of record. In the event that such a waiver or affidavit is not forthcoming, the board may order a special notice to such person.

5.3 Parties of Interest (Ch 40 A Sect. 11)

Section 11 of the statute provides in pertinent part as follows:

'Parties in interest' as used in this chapter shall mean the petitioner, abutters, owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner 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, the planning board of the city or town, and the planning board of every abutting city or town." Notably absent from the above definition is the building inspector or other administrative official whose decision is being appealed under §8 and 15 of the statute.

Comment:

(It, seems that such official is in fact a "party in interest" and should be notified, but whether the Courts have or would interpret the statute in that way, or instead have or would say such an interpretation is logical, but that the omission of such persons from the definition is a lacuna which the Legislature would have to correct if it wishes.)

5.4 APPEAL PROCEDURES ARISING UNDER SECTION 8 OF THE ZONING ACT

Section 8 of the Zoning Act provides for a specific procedure for administrative appeals from a decision of the zoning enforcement officer:

An appeal to the permit granting authority as the zoning ordinance or by-law may provide, may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of this chapter, by the regional planning agency in whose area the city or town is situated, or

by any person including an officer or board of the city or town, or of an abutting city or town aggrieved by an order or decision of the inspector of buildings, or other administrative official, in violation of any provision of this chapter or any ordinance or by-law adopted thereunder .G.L. c. 40A, § 8.

#### 5.5 What Actions (or Nonactions) May Be Appealed

Section 8 creates appeal rights deriving from each of the three types of enforcement actions outlined above:

The refusal of the building inspector (or other zoning enforcement officer) to issue a building permit to a landowner; The refusal of the building inspector (or other zoning enforcement officer) to take a requested enforcement action; and Any other order or decision of the building inspector or other administrative official in violation of any provision of the Zoning Act or any ordinance or bylaw adopted thereunder.

Comment:

In *Dufault v. Millennium Power Partners L.P.*, 49 Mass.App.Ct. 137, 727 N.E.2d 87 (2000) (TOWN OF CHARLTON ZONING BOARD OF APPEALS), the Appeals Court held that the issuance of a site plan approval by the planning board is not an appealable order or decision under Section 8. *Dufault v. Millennium Power Partners L.P.*, 49 Mass.App.Ct. at 142, 727 N.E.2d at 91. Rather, it is a condition precedent to the issuance of a building permit and, once the building permit is issued, an aggrieved person may then appeal the site plan approval and permit to the board of appeals under Section 8. Decision collaterally by appealing the building permit will have this appeal dismissed.

Similarly, a question arises as to whether a landowner who is denied a building permit and who fails to appeal that decision is precluded from filing a second application for a permit. See *Balcam v. Town of Hingham* 41 Mass.App.Ct. 260, 669 N.E.2d 461 (1996). It would seem that the applicant should be able to refile the application at any time. This interpretation is consistent with the language of G.L. c. 240, § 14A,

ARTICLE 6. COMPREHENSIVE PERMITS RULES Section Authorization These Rules are authorized by G.L. c. 40B, sec 21 and GL. c. 44, sec. 53G. The specific rules are attached to this document as Exhibit - A hereto.

#### ARTICLE 7. Procedures at Hearings

The following rules shall apply in relation to hearings:

(VARIANCE AND APPEALS)

(SPECIAL PERMITS AS BELOW)

##### 7.1 Any Person May Appear or Be Represented:

Authorization of Representatives:

At the hearing, any person may appear or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of extent of their authorization.

## 7.2 Witnesses to Testify Under Oath.

All witnesses to material facts shall testify under oath, to be administered by the chair.

## 7.3 Order of Presenting Evidence.

a. The chair, or such persons as he may direct, describes the nature of the case, and evidence available to the board is presented, including staff reports.

b. The applicant or appellant outlines the nature of the request and presents supporting evidence.

c. The chair, or such persons as he may direct, First, call upon the Board of Selectmen, Building Inspector, Zoning Enforcement Officer, and Planning Board of the Town of Charlton, Second, call the abutters and owners of the land within 300 feet of the property line, being the same persons named-in the Assessors Certificate which was a part of the petition. SEE ATTACHMENT FOR COMPREHENSIVE SPECIAL PERMITS.

These Rules are authorized by G.L. c. 40B, sec 21 and GL. c. 44, sec. 53G. The specific rules are attached to this document as Exhibit - B hereto

d. Applicant presents evidence.

e. Objectors cross-examine.

f. Board members examine witnesses for applicant's side.

g. Objectors present evidence.

h. Applicants cross-examine.

i. Board members examine witnesses for objector's side.

j. Rebuttal by applicant.

k. Rebuttal by objectors.

## 7.4 Evidence.

The board shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the board members present.

## 7.5 Conduct During Hearings:

Interrogations:

During the hearing, each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the chair. There shall be no questioning or argument between individuals in the audience. The chair or board members, counsel to the board, or staff may direct any questions to the applicant, witnesses, or any person speaking from the audience, to bring out pertinent facts. The chair or board members may call for pertinent facts from the staff, or make appropriate comments pertinent to the case. No board member should debate or argue with person in the audience.

## ARTICLE 8. Findings and Decisions, Individual Cases or Classes of Cases.

### 8.1 Timing of Decisions.

With due consideration to the length of the agenda, the nature of the case, the complexity of the evidence, and the findings required, the chair may elect, subject to being overruled by a majority of the board in attendance on motion duly passed:

- a. To proceed immediately to determination and decision on conclusion of the hearing in the particular case, or
- b. To defer determination and decision until later in the same meeting, or
- c. To defer determination and decision until a specified special or regular meeting of the board within the time limit set by these Rules.

In the course of determinations under a or b, above, should it be found advantageous to defer further determination or decision in the case for good cause stated, the chair may elect or the board may move to continue such determination and decisions to a later time in the same meeting or to a specified special or regular meeting.

### 8.2 Finding and Decisions, by Classes of Cases.

### 8.3 Form and Procedure for Decisions.

All such decisions of the board shall be made at a public meeting by motion made and seconded and by roll call vote. The motion shall be in the form of findings of fact and shall state the reasons for the findings by the board. If the grant of a special exception or variance includes conditions or safeguards, such conditions and safeguards, and the reasons therefore, shall be stated in the motion.

## ARTICLE 9. Notification of Decisions.

Notice of the board decision shall be given to the applicant or appellant, and to other interested parties who have requested such notice (in writing to the clerk), by presenting the decision, to the Town Clerk of the Town of Charlton, by the secretary of the board as soon as reasonable possible after the decision is reached, but within 10 days.

## ARTICLE 10. Records of Cases

### 10.1 Content of Records of Individual Cases.

The decision of the board shall be shown in the record of the case. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the finding of fact made by the board.

## ARTICLE 11. Establishing Priorities of Action and Time Limits on Special Exceptions and Vacancies: Performance Bonds or Sureties: Expiration of Time Limits: Extensions.

11.1 Failure by Board to Act. (Ch. 40 a Sect. 15 p. 5)The fifth paragraph of the Section 15, after discussing some of the time limits for board of appeals action, in pertinent part reads:Failure by the board to act within said one hundred days or extended time, if applicable, shall be deemed to be the grant of the appeal, application

or petition. The petitioner who seeks such approval by reason of the failure of the board to act within the time prescribed shall notify the city or town clerk, in writing, within fourteen days from the expiration of said one hundred days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail and each notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the board failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such approval has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner.

#### ARTICLE 12.

Request to Withdraw or Amend Appeals or Application: to Defer or Continue Hearings.

#### ARTICLE 13. Rehearings.

#### ARTICLE 14. Amending or Waiving Rules

##### 14.1. Amending Rules.

These rules may be amended by a majority of the board except where such amendment would be contrary to requirement or limitations set by state law or the zoning ordinance. An amendment may be proposed at any regular meeting of board.

##### 14.2 Waiving or Suspending Rules.

A rule of procedure may be suspended or waived at any meeting by unanimous vote of board members present unless such rule is set by state legislation or the zoning ordinance.

#### ARTICLE 15.

Any ambiguities or omission in the foregoing rules, applying to the Zoning Board of Appeals of The Town of Charlton, shall be resolved or interpretation in accordance with the A The Zoning Board Manual, Frederick h. Bair, Jr. @, Copyright 1984 by the American Planning Association, 1313 E. 60th St., Chicago, IL 60637, or any subsequent revisions.

Approved Version March 1997

Revision A

Revision B dated 08/19/2003

7.3.6 The Zoning Board of Appeals shall adopt rules consistent with Chapters 40A and 808 of the Massachusetts General Laws and provisions of this Bylaw for the conduct of its business.

## EXHIBIT – A

### COMPREHENSIVE PERMITS RULES TOWN OF CHARLTON RULES APPLING TO THE ZONING BOARD OF APPEALS

#### ARTICLE 6

##### 1 Section Authorization

These Rules are authorized by G.L. c. 40B, sec 21 and GL. c. 44, sec. 53G.

##### 2 Section Complete Application and Documentation

It is the intent of the Board to have a complete application and full documentation provided with the application. The Board may deny a comprehensive permit if material information is missing. In addition, the Board may require additional information during the review process, as it deems appropriate.

##### 3 Section Submittal Requirements

The applicant shall be required to submit the following information:

- (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. All structures of five or more units must have site development plans signed and stamped by a registered architect. Structures of less than five units may submit a sketch of the matters referenced herein and in Subparagraph (c) below, which need not have an architect's signature and stamp, subject, however, to the Board's right to require architectural plans, at any time prior to or during the hearing, if deemed necessary by the Board;
- (b) A report, together with a plan(s) if applicable, regarding 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. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown.);
- (c) Preliminary architectural scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by the architect;
- (d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and 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 or a definitive subdivision plan. If a preliminary plan is submitted, the Board shall have the right to require the

applicant to submit any and all information typically required on a definitive plan, if deemed necessary by the Board;

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

(g) Documents specified in 760 CMR 31.01 to show the status of the applicant and the acceptability of the site;

(h) Appropriate documentation evidencing the applicant's control of the site;

(i) A list of requested exemptions to local requirements and regulations, including local codes, bylaws and/or regulations;

(j) Certified plan of land prepared, by a registered land surveyor or a registered professional engineer;

(k) Twenty-five (25) copies of said application/petition with attachments and exhibits shall be submitted to the Town Clerk upon filing (to be distributed to the ZBA Members, the ZBA Recording Secretary, and to all of the Town departments). Up to ten (10) additional copies shall be provided to the ZBA upon request;

(l) Projects shall contain a statement of the impact of project in terms of traffic, public safety, municipal, school and public facilities, recreation, and the effect on open space and the natural environment;

(m) A copy of the deed to the applicant's property showing the Registry of Deeds Book and Page number(s). If the property is under a Purchase and Sales Agreement, a copy of said agreement shall also be provided;

(n) An abutters list certified by the Town's Assessor's Office listing all "abutters" as defined in GL. c. 40A, sec. 11.

#### 4 Section Filing Fee

The application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed:

\$3000.00 BASE FEE, PLUS  
\$ 500.00 PER UNIT PROPOSED.

#### 5 Section Written Authorization

(a) If the applicant is not the owner of the property, the owner(s) shall provide written authorization for the subject application by the applicant on the application.

(b) If the individual signing the application is unable to attend any hearing on the application, the Board shall require written authorization from the applicant that the designated representative has consent to represent the applicant or to withdraw the application.

#### 6 Section Outside Consultants

The board of appeals may hire outside consultants for review and analysis of any application when the board determines it appropriate. The cost for the outside consultants shall be borne by the applicant.

Pursuant to G.L. c. 44, sec. 53G and G.L. c. 40B, sec. 21 the Board of Appeals, through this regulation, provides for an applicant's payment of the fees for outside consultants as set forth below:

(a) When conducting any hearing pursuant to G.L. c. 40B, sec. 21 (the subject of which is hereinafter referred to as a "proposal"), the Board of Appeals may determine that the assistance of outside consultants is warranted due to:

- (i) the size, scale or complexity of the proposal;
- (ii) the complexity of particular technical issues;
- (iii) the potential impact of the proposal; or
- (iv) the character of the site,

The Board may require that the applicant(s) pay a review fee consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of an application.

(b) In hiring outside consultants, the Board may engage engineers, planners, traffic consultants, attorneys, housing specialists and financial analysts, and/or other appropriate outside consultants who can assist the Board in reviewing and analyzing the proposal. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue of three or more years of practice in the field as issue or a related field.

(c) Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the directions of the Board in connection with the hearing of a specific proposal for which a review fee has been collected from the applicant without further appropriation. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit.

(d) Review fees may only be spent for services rendered in connection with the specific proposal as to which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount in this 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 the 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 an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications. The time limit for the Board's action on the proposal shall be extended by the duration of any such administrative appeal. In the event that no decision regarding the appeal is made by the Board of Selectmen within one month following the filing of such appeal, then the selection of the Board of Appeals shall stand.

## EXHIBIT - B

### ARTICLE 7. Procedures at Hearings

The following rules shall apply in relation to hearings: (SPECIAL PERMITS)

#### 7.1 Any Person May Appear or Be Represented:

##### Authorization of Representatives:

At the hearing, any person may appear or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of extent of their authorization.

#### 7.2 Witnesses to Testify Under Oath.

All witnesses to material facts shall testify under oath, to be administered by the chair.

#### 7.3. Order of Presenting Evidence.

a. The chair, or such persons as he may direct, describes the nature of the case, and evidence available to the board is presented, including staff reports.

b. The applicant or appellant outlines the nature of the request and presents supporting evidence.

c. The chair, or such persons as he may direct, First, call upon the Board of Selectmen, Building Inspector, Zoning Enforcement Officer, and Planning Board of the Town of Charlton, Second, call the abutters and owners of the land within 300 feet of the property line, being the same persons named-in the Assessors Certificate which was a part of the petition.

d. Applicant presents evidence.

e. Objectors cross-examine.

f. Board members examine witnesses for applicant's side.

g. Objectors present evidence.

h. Applicants cross-examine.

i. Board members examine witnesses for objector's side.

\*\*\*\* END ON SPECIAL PERMIT PROCEDURE

j. Rebuttal by applicant.

k. Rebuttal by objectors.

#### 7.4 Evidence.

The board shall not be bound by strict rules of evidence, not limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony or evidence. The chair shall rule on all questions relating to the admissibility of evidence, but may be overruled by a majority of the board members present.

#### 7.5 Conduct During Hearings: Interrogations.

During the hearing, each side shall proceed without interruption by the other. All arguments and pleadings shall be addressed to the chair. There shall be no questioning or argument between individuals in the audience. The chair or board members, counsel to the board, or staff may direct any questions to the applicant, witnesses, or any person speaking from the audience, to bring out pertinent facts. The chair or board members may call for pertinent facts from the staff, or make appropriate comments pertinent to the case. No board member should debate or argue with person in the audience.

#### ARTICLE 14. Amending or Waiving Rules

##### 14.1. Amending Rules.

These rules may be amended by a majority of the board except where such amendment would be contrary to requirement or limitations set by state law or the zoning ordinance. An amendment may be proposed at any regular meeting of board.

##### 14.2 Waiving or Suspending Rules.

(SEE ITEMS INSERT WITH \*\*\*\*) (SPECIAL PERMITS)

#### ARTICLE 8. Findings and Decisions, Individual Cases or Classes of Cases.

##### 8.1 Timing of Decisions.

With due consideration to the length of the agenda, the nature of the case, the complexity of the evidence, and the findings required, the chair may elect, subject to being overruled by a majority of the board in attendance on motion duly passed:

- A. to proceed immediately to determination and decision on conclusion of the hearing in the particular case, or
- B. to defer determination and decision until later in the same meeting, or
- C. to defer determination and decision until a specified special or regular meeting of the board within the time limit set by these Rules.

In the course of determinations under a or b, above, should it be found advantageous to defer further determination or decision in the case for good cause stated, the chair may elect or the board may move to continue such determination and decisions to a later time in the same meeting or to a specified special or regular meeting.