

MEMORANDUM

JUL 28 '20 PM4:14
REC'D AMHERST TOWN CLERK

TO: Shavena Martin, Amherst Town Clerk
FROM: Steve Judge, Chair, Amherst Board of Appeals
DATE: July 28, 2020
RE: Revisions to the Amherst Board of Appeals Rules and Regulations

Pursuant to a vote of the Amherst Board of Appeals taken on June 11, 2020, and filed with the Amherst Town Clerk on July 28, 2020, the following Rules and Regulations and Appendix A-D are hereby effective as of July 28, 2020. These Rules and Regulations supersede all prior versions of the same.

**ZONING BOARD OF APPEALS
AMHERST, MASSACHUSETTS**

RULES AND REGULATIONS
Effective July 28, 2020

Pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 12 and Chapter 40B, s.21, the Amherst Board of Appeals hereby adopts the following revisions to the Board's existing Rules and Regulations governing the organization, procedures and conduct of the Board, and governing review and action on special permits, variances, appeals and comprehensive permits. The Rules and Regulations that follow replace, in their entirety, all prior Rules and Regulations adopted by the Board of Appeals.

ARTICLE 1 ORGANIZATION

SECTION 1.0 MEMBERS AND OFFICERS

The Zoning Board of Appeals shall consist of five (5) regular and four associate members, all residents of the Town of Amherst and appointed by the Town Council. The regular members shall elect all officers of the Zoning Board annually; officers consist of a Chair, Vice-Chair, and Clerk. The regular members shall also adopt and/or amend these Rules and Regulations. A majority vote is required to adopt or approve business matters covered by this section.

1.00 Chair - In addition to the powers granted by the Massachusetts General Laws and the Amherst Zoning Bylaw and subject to these Rules and Regulations, the Chair shall transact the official business of the Board, advise the zoning staff assistant, appoint

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such committees as necessary or desirable, direct the general work of the Board, and exercise general supervisory power. He/she shall report any official transactions that have not otherwise come to the attention of the Board at the appropriate hearing/meeting. The Chair shall be responsible for the orderly conduct of the Board's business, whether conducted during a public hearing or a public meeting. The Chair may use her/his discretion to rule out of order unsolicited or irrelevant comments made by members of the public. All points of order subject to these rules shall be decided by the Chair unless overruled by a majority of the Board in session at the time. The absence of the Chair shall not preclude the Board from conducting the Board's business.

- 1.01 Vice-Chair** - The Vice-Chair shall be a member of the Board and shall act as Chair when the Chair is absent or is otherwise unable to perform her/his duties. If both the Chair and the Vice-Chair are absent, the Clerk shall act as Chair and shall appoint an acting Clerk. The absence of the Vice-Chair shall not otherwise preclude the Board from conducting the Board's business.
- 1.02 Clerk** - The Clerk shall be a member of the Board and shall, in the absence of the staff assistant and subject to review by the Chair, supervise all of the clerical work of the Board including: reviewing all correspondence of the Board, sending all notices required by law, preparing rules and orders of the Board, reviewing 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 indices. If the Clerk and staff assistant are absent, the Chair shall appoint an acting Clerk.
- 1.03 Associate Members** - Associate members shall sit on the Board in the case of absence, inability to act or apparent conflict of interest on the part of any Board member, or in the event of a vacancy of the regular membership.

SECTION 1.1 ZONING SUPPORT STAFF

A zoning staff assistant, located in the Planning Department, shall attend all public meetings and hearings, and subject to review by the Chair, conduct the administrative work of the Board. Specifically, the staff assistant shall: receive all applications and related plans, written testimony and communications; prepare and review Board correspondences; send all notices required by law; review applications for compliance with the Zoning Bylaw and Rules and Regulations of the Board; prepare Board decisions; prepare related analyses, studies and reports; keep all relevant records of the Board's proceedings; and maintain necessary files and indices. Agenda's and panel composition shall also be arranged by staff based on availability of regular members and rotation of associate members in the absence of a Full Member. The Clerk shall assume these duties in the absence of staff support

SECTION 1.2 QUORUM

Three (3) members/associate members of the Board shall constitute a quorum of the Board.

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The number of Board members required to vote to approve a particular application is governed by relevant provisions of G.L. c.40A (application for a special permit, application for a variance or appeal of a decision or failure to issue a decision by the Building Commissioner) and G.L. c.40B, s.20-23 (application for a comprehensive permit).

SECTION 1.3 RESIGNATIONS

If a regular member or associate member resigns from the Board, the resignation shall be submitted, in writing, to the President of the Town Council and a copy shall be provided to the Town Clerk. Subject to any applicable restrictions relating to the terms of the appointment of the individual, the resignation may specify a future effective date, so as to allow completion of any pending cases to which the member has been assigned. Unless otherwise stated, the resignation shall become effective upon the filing of same with the Town Clerk.

ARTICLE 2 FUNCTIONS OF THE BOARD

SECTION 2.0 PUBLIC MEETINGS

Public meetings shall be conducted in accordance with G.L. c.30A ss.18-25.. Notice for each meeting shall be filed with the Town Clerk and publicly posted on the Town’s website, at least 48 hours prior to the meeting, excluding Saturdays, Sundays and legal holidays. Unless otherwise stated in a condition of a permit, notification pursuant to Chapter 40A, Section 11 is not required.

Public meetings, while open to the public, are not public hearings. Applications for special permits, variances, appeals or comprehensive permits require a public hearing as described below, and no new evidence or testimony concerning such applications shall be accepted or considered outside of a public hearing.

Business conducted at public meetings shall include:

- 2.00 Review and approval of final plans required as conditions of a special permit or comprehensive permit or other decisions of the Board, such as but not limited to improvements to sites, landscaping, signs, lighting, and related matters;
- 2.01 Other documents and/or information required by or related to conditions attached to existing special permits, comprehensive permit, or other decisions of the Board, such as but not limited to compliance with conditions, enforcement orders, and related matters;
- 2.02 Review and/or approval of *de minimus* changes in previously approved site plans, floor plans, elevations, management plans, or other aspects of an approval. In all cases, the purpose of the review is for the Board to determine whether the changes are significant enough to require formal modification of the permit and/or conditions;

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- 2.03 Other matters for which the Board is not required to hold a public hearing, such as Administrative Meetings.

The Board may seek clarifying information or testimony from the public as it deems necessary during a meeting, but unsolicited comments from the public may be ruled out of order.

SECTION 2.1 PUBLIC HEARINGS

- 2.10 Schedule** - Public hearings of the Board of Appeals are normally held on the second and fourth Thursday of each month at the Amherst Town Hall. Others may be scheduled as necessary.
- 2.11 Public Notice** - Notice of public hearings shall be published twice, one being two weeks in advance of the hearing, in a newspaper of general circulation for Amherst in accordance with G.L. c.40A, s. 11. Notice of public hearings shall be filed with the Town Clerk and publicly posted in accordance with the requirements of the Open Meeting Law, and not less than fourteen (14) days prior to the hearing. In addition, the applicant shall apply for, receive, and submit a Certified List of Abutter's prepared by the Assessor's Office (see application form) and the Town shall send by standard mail, postmarked at least 14 days prior to the date of the hearing, said notice to property owners of land within 300 feet of the property line as well as every abutting city or town, other relevant Town departments and boards, and any other interested parties.
- 2.12 Site Visits** - The Zoning Board of Appeals views all properties that come before it under applications for special permits, variances, appeals and comprehensive permits unless a decision is made in advance by the Board Chair that no site visit is needed. Applicants will be notified of the site visit, and should be prepared to meet with the Board at the site, usually on the Tuesday preceding the public hearing. The purpose of the site visit is to view the site and its relation to the surrounding area. Site visits are intended to familiarize the Board as to the locus of the proposed permit application and accordingly is not considered testimony, nor is testimony to be taken during any site visit.
- 2.13 Hearings to be Public** – All applications or modifications to a previously issued or adjudicated special permit, variance, appeal or comprehensive permit shall be considered at properly noticed public hearings. All hearings are open to the public. No person shall be excluded unless he/she is considered by the Chair to be a “serious hindrance” to the workings of the Board. Requests for modifications or changes in any conditions of previous permits or site plans attached thereto shall be heard at a public hearing, where such modifications or changes constitute an amendment to the original permit or decision.
- 2.14 Representation and Absence** - An applicant may present an application to the Board or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of the applicant, the Board may act on the matter using the

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information it has otherwise received, or the Board may decide by unanimous vote that the petition be denied, or continue the matter to a new date certain.

2.15 Hearing Procedure (except for Appeals pursuant to G.L. c.40A, s.8) – The Chair shall open the meeting, explain the procedures of the Board and open the evidentiary part of the hearing. All hearings proceed in the following order, with the Chair in charge of all portions of the hearing:

2.150 Notation by the Board all submitted materials and observations of the site visit, if applicable;

2.151 Applicant’s presentation and evidence gathering;

2.152 Questions from the Board;

2.153 Comments and questions from the public;

2.154 Applicant’s response;

2.155 Final comments and questions from the public, applicant and Board, in that order;

2.156 Close of evidentiary part of the hearing or, if necessary, continuation of the hearing to a date and time certain.

2.157 Public meeting deliberations, including but not limited to:

- 1) identify, review, and make findings of fact;
- 2) identify, discuss, and establish condition;
- 3) review and make findings required under any applicable section of the Zoning Bylaw and Section 10.38;
- 4) Motion to approve, or deny followed by a second. Discussion, if any of the motion (motion should be in the form of the agenda item unless modified)

2.16 Findings and Decision - Consideration of an application shall be based on findings of fact which the applicant has presented as well as specific findings that the application meets all of the necessary provisions of the Bylaw. This process may be referred to as the deliberative part of a hearing, and is conducted within a public meeting.

Approval may be subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with appropriate sections of the Bylaw.

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The Board's written decision shall state the specific findings of fact and reasons for its decision based on the applicable sections of the Zoning Bylaw, including but not limited to Table 3, "Dimensional Regulations" and Section 10.38, "Specific Findings Required."

Conditions of a decision which require that the applicant return to a future public meeting for review and approval of site plans, management plans, signs or other matters shall include a date certain for said review. Denial of an application may be based on a finding that either: (1) insufficient information was submitted with the application in order for the Board to adequately review the proposal; or (2) a determination, based on specific findings, that the project does not meet the applicable sections of the Bylaw

2.17 Voting - The record shall reflect the vote of each Board member upon each question or, if failing to vote, indicating such fact.

A special permit, variance, or appeal from the decision of the Building Commissioner issued by the Board shall require a vote of at least four (4) members of the five (5) member Board regardless of the number of Board members present and able to vote. A comprehensive permit issued by the Board shall require a vote of at least three (3) members of the five (5) member Board regardless of the number of Board members present and able to vote.

2.170 Pursuant to the accepted provisions of G.L. c. 39, Section 23D, the following additional provisions shall govern public hearings held by the Zoning Board of Appeals:

- 1) A member of the Zoning Board of Appeals participating in an adjudicatory hearing shall not be disqualified from voting in the matter solely due to that member's absence from no more than a single session of the hearing at which testimony or other evidence is received. To be eligible to vote, the member shall certify in writing that they have examined all evidence received at the missed session, which evidence shall include an audio or video recording of the missed session or a transcript thereof. The written certification shall be part of the record of the hearing. Nothing in this section shall change, replace, negate or otherwise supersede applicable quorum requirements.
- 2) In addition and notwithstanding the foregoing paragraph:
 - a. The provisions of Section 2.8.1 shall only apply to members participating in adjudicatory hearings which take place over a period of two or more sessions conducted at public meetings. Board members shall not be permitted to avail themselves of this provision for public hearings lasting only a single session.

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entitlement to a special permit and the Board may properly exercise its discretion in the grant of a special permit. Accordingly, the Board may impose conditions, safeguards and limitations on time or use of any structure or use for which a special permit is sought.

Complete Application: Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant to complete the application for a special permit prior to the filing of the same with the Town Clerk or the Board. This is a necessary step to ensure that all the information and documentation is provided for a review of the application. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements under Article III, Section 2.

Time Requirements for Board Action: When a complete application for a special permit is filed with the Town Clerk, the Board must hold a public hearing within 65 days from the day of filing. The decision of the Board must be filed with the Town Clerk within 90 days following the close of the public hearing as established by G.L. Chapter 40A, Section 9.

Time Requirements for Appeals of a Decision: Any person aggrieved by the Board's decision or failure to timely issue a decision regarding a properly applied for special permit may appeal to the Court as provided for in G.L. c.40A, s.17.

Time Requirements for Use or Construction: Unless otherwise provided for in the written decision of the Board, substantial use or construction of a project authorized by a special permit must commence within two years of filing the decision with the Town Clerk. Moreover, construction or operations granted by a special permit must conform to any subsequent amendment to the Amherst Zoning Bylaw unless the use or construction is commenced within a period of six (6) months after issuance of the special permit. In cases involving construction begun within such six-month period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable in order to maintain the exemption from subsequent amendments to the Zoning Bylaw.

- 3. 01 Variances** – Petitions for variances from the terms of the Zoning Bylaw dealing with particular aspects of land or structures may be submitted to the Board pursuant to G.L. c.40A, s.10 and Section 10.2 of the Zoning Bylaw. Use variances are not permitted in Amherst. A grant of a variance requires the Board to make specific affirmative findings as found in G.L. c.40A. s.10. These required findings are conjunctive; each finding must be made based upon the evidence submitted to the Board during the public hearing process in order for the Board to approve a variance from the Zoning Bylaw. The four conditions are:

Circumstances relating to soil conditions, shape, or topography that especially affect the

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property for which a variance is sought but do not generally affect the zoning district in which the land or structure is located; and

Facts showing that substantial hardship, financial or otherwise, will result from literal enforcement of the applicable zoning restrictions to the land or building; and

Facts supporting a finding that the relief sought will be desirable and without substantial detriment to the public good; and

Facts supporting a finding that the relief sought may be given without nullifying or substantially derogating from the intent and purpose of the Zoning Bylaws.

The Board may impose conditions and limitations both of time and of use, including the continued existence of any particular structures. The Board may not impose conditions based on the continued ownership of the land or structures to which the variance pertains.

Complete Application: Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant to complete the application for a variance prior to the filing of the same with the Town Clerk or the Board. This is a necessary step to ensure that all the information and documentation is provided for a review of the application. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements under Article III, Section 2.

Time Requirements for Board Action: When an application for a variance is filed with the Town Clerk, the Board shall hold a public hearing within 65 days from the day of filing. The decision of the Board shall be made within 100 days from the date of filing the application with the Town Clerk.

Time Requirements for Appeals of a Decision: Any person aggrieved by the Board's decision or failure to timely issue a decision regarding a properly applied for variance may appeal to the Court as provided for in G.L. c.40A, s.17.

Time Requirements for Use or Construction: If the rights authorized by a variance are not exercised within one year of the date of such grant, the variance shall lapse. The required time limits for exercising said rights may be extended by written agreement between the petitioner and the Board for an additional period not to exceed six months, provided that the application for such an extension is filed with the Board prior to expiration of the variance. A copy of such agreement shall be filed in the office of the Town Clerk.

3.02 Appeals of an Order or Decision of the Building Commissioner – Pursuant to G.L. c.40A, s.8 and Section 10.1 of the Zoning Bylaw, the Board of Appeals may receive the following appeals from:

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- 3.020** A person aggrieved by an inability to obtain a permit from the Building Commissioner;
- 3.021** A person aggrieved by enforcement action, or lack thereof, from the Building Commissioner;
- 3.022** The regional planning agency, an officer or board of the Town or of an abutting town aggrieved by an order or decision of the Building Commissioner or Town official perceived to be in violation of the Zoning Bylaw.

Time Requirements for the Petitioner: An appeal pursuant to G.L. c. 40A, Section 8 must be taken by the petitioner within 30 days from the date of the order or decision that is being appealed. The application for appeal must be filed with the Town Clerk, specifying the grounds for the appeal. Copies of the application of appeal also shall be filed by the petitioner with the officer or Board whose order or decision is being appealed and with the Zoning Board of Appeals.

Time Requirements for Board Action: As provided in G.L. Ch. 40A, Section 15, a request shall be forwarded to the officer or Board whose decision is being appealed to transmit all documents and papers constituting the record of the case to the Board of Appeals. The Board shall hold a public hearing on any appeal application within 65 days from the date of filing. The decision of the Board shall be made within 100 days from the date of filing the application with the Town Clerk. The required time limits for a public hearing and said action may be extended by written agreement between the petitioner and the Board. A copy of such agreement shall be filed in the office of the Town Clerk.

- 3.03 Comprehensive Permits** – Pursuant to G.L. c. 40B s.20, any public agency or limited dividend or nonprofit organization proposing to build low/moderate-income housing may submit a single application to the Board of Appeals in lieu of separate applications to other applicable Boards such as the Town Council, Conservation Commission or the Planning Board. The Board of Appeals shall notify each local Board or agency of the application by transmitting a copy of the comprehensive permit application for review and recommendation. The Board shall request the appearance of other Board representatives as are deemed necessary or helpful, and shall take into consideration their recommendations in making its decision. See Article IV for specific requirements applicable to comprehensive permit applications.

Complete Application: Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant to complete the application for a comprehensive permit prior to the filing of the same with the Town Clerk or the Board. This is a necessary step to ensure that all the information and documentation is provided for a review of the application. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements under Article III, Section 2.

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Time Requirements for Board Action: The Board shall hold a public hearing within 30 days of receipt of the application and shall render a decision, based upon a majority vote of the Board, within 40 days after closing the public hearing.

Time Requirements for Decision appeals: Any person aggrieved by the Board's decision for the comprehensive permit may appeal to Court within 20 days as provided in G.L. c40A, s.17. Applicants aggrieved by a denial of the application, or by conditions attached to a grant of the comprehensive permit may appeal to the Massachusetts Housing Appeals Committee if and only if, the Town of Amherst is not consistent with local needs or benefitting from a defined "safe harbor" as those phrases are found in G.L. c.40B, s.20 and 760 CMR 56.00 et seq. Such appeal shall be taken within 20 days after the date the decision was filed with the Town Clerk.

SECTION 3.1: APPLICATION REQUIREMENT FOR APPLICATIONS TO THE BOARD: SEE ARTICLE 4 FOR ADDITIONAL REQUIREMENT PERTAINING TO COMPREHENSIVE PERMIT APPLICATIONS

3.10 Application Form - Every application submitted for action by the Zoning Board of Appeals, including special permits, variances, comprehensive permits, and appeals from the decision of the Building Commissioner, shall be made on the official application form of the Board. Petitioners can obtain application forms from the zoning office located in the Planning Department or Inspection Services.

Prior to filing the application with the Town Clerk, the following information is required:

- 3.100** A current (no more than 30 days old) and valid "Certified List of Abutters" from the Assessor's office, signed by the Assessor;
- 3.101** Appropriate site plans, floor plans, management plans, memoranda or any other documents that the Building Commissioner or zoning staff assistant deem necessary;
- 3.102** The appropriate fee as required in Section 2.6 and Appendix B;
- 3.103** Applicants are required to schedule an appointment with the Building Commissioner and zoning staff assistant prior submission of an application. An application must be determined to be complete prior to filing with the Town Clerk. The final determination of a complete application shall be made by the Building Commissioner based on accuracy and completion of the plan requirements as provided herein;

It is the responsibility of the applicant to furnish all supporting documentation with the application.

3.11 Plans to accompany application

3.110 Initial application - Each application shall be submitted with one (1) full size hard copy set of all plans and materials. Additionally, 11” x 17” copies of all scaleable and legible plans (with match-lines) shall be provided to the Board for copying purposes by the Board or the Town Clerk together with ten (10) sets of such plans. Additionally, each application shall be accompanied by one digital version of all plans and information. Each document submitted electronically shall be clearly labeled and shall be submitted at the time of application by thumb drive, CD, or by email. Submissions shall comply with the Amherst Digital Plan Submission Guidelines:
<http://amherstma.gov/DocumentCenter/View/19752>

3.111 Transmittals – The Board may seek an advisory opinion from any Town department, agency, official or commission relating to any application submitted for a special permit, variance or comprehensive permit. These departments, agencies, officials or commissions will normally include the Building Commissioner, Town Engineer, Fire Chief and Planning Board, Conservation Commission, Board of Health, Historical Commission, Design Review Board, Affordable Housing Trust or any other relevant agency or board as determined by the Board or otherwise required by law.

3.112 Revisions prior to a public hearing - Any new or revised information submitted after the initial application is not guaranteed to be reviewed by Town officials prior to the public hearing. Any new or revised information, other than nonmaterial changes, as deemed by the Chair shall be submitted no later than one week prior to the public hearing and shall be submitted in the same manner and to the same extent as required for the initial application.

3.113 Site Plans: Unless waived by the Board, all site plans shall be prepared by a Registered Engineer, Surveyor or Landscape Architect, and shall include the following:

- 1) Name of property owner, developer and name of engineer, surveyor, landscape architect or builder;
- 2) Date, title and scale of plan;
- 3) Separate locus map showing site location and location of buildings

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on surrounding properties, north arrow;

- 4) All existing lot lines, easements, rights-of-way, size of property in square feet, setback, side and rear yard dimensions as set forth in Table 3 of the Bylaw and zoning district;
- 5) Location and use of all existing and proposed buildings and structures, including dimensions and heights;
- 6) Location and names of existing or proposed streets, curb cuts, entrances and exits, parking areas, sidewalks, loading/service areas, utility systems;
- 7) Existing and proposed contours and finished grade elevations, including location and volume of significant filling or excavations;
- 8) Location of all natural features, including significant watercourses, wetlands, water bodies, bedrock outcroppings, stone walls and all trees, including drip lines, of eight (8) inch diameter at breast height (DBH) or larger on the subject property. In addition, all stone walls and trees, including drip lines, to be affected by clearing and/or construction within any portion of any public right-of-way immediately adjacent to the subject property shall also be shown, according to provisions of G.L. c.40, Section 15C (Scenic Roads Act) and G.L. c.87 (Shade Tree Act);
- 9) Location of containers and enclosures for storage and disposal of waste, recyclables and, where applicable, waste kitchen oil;
- 10) Number and location of parking spaces required; compliance with and/or information regarding compliance with all applicable provisions of Article 7, including but not limited to maneuverability, screening, and design standards.
- 11) Calculation of total lot area, wetlands, building coverage and total lot coverage.

3.114

Management Plan: For most special permits and where relevant for comprehensive permit applications, the Board will require a management plan, which shall include the following:

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1) For all applications:

- a.** Trash and recycling, including size and quantity of storage containers, storage location including any enclosure or screening, frequency of pickup and name of hauling company;
- b.** Description of anticipated parking needs for all employees, tenants, residents, visitors and provisions for handicapped accessible spaces and methods of management and/or monitoring. Unless waived by the Board, said description is not a substitute for a site plan.
- c.** Lighting, including hours of illumination, location, and wattage of fixtures. New lighting fixtures shall be accompanied by manufacturer's specification sheet including an image of the fixture. All new exterior lighting shall be designed or oriented to be downcast and comply with Exhibit D. Where applicable, the Board may require a photometric plan for existing and/or proposed lighting fixtures;
- d.** A sign plan, if applicable. Said sign plan shall show the proposed location, size, materials, color, lettering and any illumination;
- e.** Where applicable, a plan for snow removal, snow storage, and name of contractor;
- f.** Where applicable, a plan for landscape maintenance, including annual schedule of watering, fertilizer application, mowing, pruning, leaf pick-up, and replacement schedule of proposed vegetation.

2) For restaurants and businesses, if applicable:

- a.** Plan for the management of patrons regularly gathering outdoors on the property, including those awaiting entry, and monitoring of patrons inside the establishment, including monitoring occupancy limits. For establishments with occupancy greater than 100 people, or for high volume or large occupancy establishments, as

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determined by the Board, proof of Crowd Manager Certification shall be required.

- b.** Hours of operation;
 - c.** Noise management for any live or pre-recorded entertainment, vent fans, HVAC equipment and other significant sources of sound;
 - d.** Trash, recycling and waste kitchen oil management (storage and disposal, including frequency of pick-up);
 - e.** Number of indoor/outdoor seats for patrons, including seasonal outdoor dining;
 - f.** Lighting operation, including hours of illumination by location;
 - g.** Storage for seasonal outdoor dining furniture;
 - h.** Provisions and schedules for deliveries, loading, and unloading of any products, goods/services, - including take-out/delivery service, if applicable
- 3)** For any residential rental use applications including comprehensive permit applications containing rental housing:
- a.** A proposed lease agreement. The Board may require proof that an owner has informed future tenants of relevant Town Bylaw's including, but not limited to, noise, nuisance house, alcohol and keg licensing.
 - b.** A complaint response plan;
 - c.** A copy of current or pending Rental Permit under the Town's Residential Rental Property Bylaw, if applicable;
 - d.** Number of units, existing and proposed;
 - e.** Number of bedrooms, existing and proposed;

- f. Number of anticipated tenants;
- 4) If the property is not owner occupied, information about a Resident Manager, qualified professional management company, or similar provision for the property management of the use shall be submitted.
- 5) For large residential applications:
- a. Storage for vehicles, materials, equipment and/or household goods;
 - b. On-site recreational facilities;
 - c. Noise, odor and dust mitigation measures;
 - d. Maintenance and replacement schedules for site furnishings;
 - e. Any other aspects of site management the Board shall deem necessary for adequate review of the potential site impacts of the application.

3.115 **Landscape plan:** showing proposed vegetation to be planted, including street and shade trees, shrubs and other planting. Parking lot screening, by species and type shall be detailed. Existing vegetation of note (see “Site Plan” above) and any intermittent or year-round streams, ponds or other wetlands shall also be shown. Said plans shall also include the following, if applicable:

- 1) Maintenance and replacement schedules for existing and/or proposed vegetation;
- 2) Plant list/key indicating plant location, species, size (at planting), caliper, and quantity

3.116 **Building Plans:** unless waived by the Board, building plans for any proposed improvements shall be prepared by a Massachusetts licensed architect or professional designer. Said plans shall include accurate, scaled renderings of existing and proposed conditions as follows:

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- 1) Elevations, showing exterior facades indicating materials, architectural features and colors proposed;
- 2) Floor Plans with dimensions showing schematic layout, use of interior spaces and means of egress;

3.117 **Lighting plan:** showing location and type of outdoor lighting and lighting fixtures, said lighting to be designed to minimize glare and light spillover onto adjacent properties, streets. All exterior lighting shall be designed and installed so as to be shielded or downcast, and to avoid light trespass onto adjacent properties. Lighting fixtures shall be selected according to the Dark Sky compliance recommendations. See Appendix D.

3.118 **Sign plan,** including, but not limited to, dimensions, color, graphics, placement, lettering and any sign lighting

3.119 In addition, the Board may require submission of the following information/plans:

- 1) **Soil erosion plan,** if applicable, showing all measures proposed to prevent or reduce erosion both during and after construction.
- 2) **Filling of land** – See Section 3.12 and 5.10 of the Zoning Bylaw.
- 3) **Traffic Impact Statement** – See Appendix A.
- 4) **Outside Consultants** – See Appendix B.

3.12 **Waivers or Additional Requirements** – The Board shall have the right to modify or waive any of the submittal requirements under Section 2.1 above, or to request additional information necessary to render a decision. For waivers to any applicable provision of these Rules and Regulations, the applicant shall submit, in writing, the specific reasons for a waiver including how or what information has been provided to allow the Board to make the decision without the required plan. To modify or request additional information, the Board must determine the specific additional information necessary to render a decision during a public meeting or public hearing.

3.13 **Project Summary, Written Submissions** – It is recommended that all applications be supported by a written project summary detailing all relevant facts of the application.

Project summaries shall be filed with the application, with supplementary information submitted at the public hearing or within such time thereafter as may be fixed by the

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encourages developments that promote sustainability, protect neighborhood character, do not increase flood risks within the general neighborhood or otherwise adversely affect water based natural resources, do not overburden existing infrastructure (including, but not limited to, sewer, water and storm drainage systems), and minimize traffic congestion but provide enhancements to transit, bicycle and pedestrian access within the Town. The Town has adopted a Strategic Housing Plan (2018), Housing Production Plan (2013), Master Plan (2010) and Open Space Plan (2017) that sets forth planning priorities for the Town and the Board of Appeals intends on requiring compliance with the enumerated goals and polices of both planning documents, as amended from time to time. An applicant for a comprehensive permit project is encouraged to review carefully these plans. In addition, it is highly recommended that the Applicant meet with the Town Manager, Building Department, Planning Director, Affordable Housing Trust, and other relevant Town staff members prior to submitting an application for a comprehensive permit. This recommendation is independent of any requirement that a comprehensive permit applicant may have as a condition precedent for obtaining project eligibility approval from the Commonwealth.

Strict compliance with these Regulations may be waived if the Board finds that, but for the grant of the waiver, the proposed project would be rendered uneconomic, otherwise inconsistent with the housing goals of the Town and that granting the waiver is in the public interest and is not inconsistent with the intent and purpose of the law and these Regulations. Any request by an applicant for a waiver from these Regulations must be submitted to the Board in writing as part of the application. Such requests shall identify the specific sections of these Regulations from which waivers are sought and shall include a statement setting forth the reasons why the applicant believes a waiver should be granted.

SECTION 4.1 DEFINITIONS

- 4.10** “Board” means the Zoning Board of Appeal, established by G.L. c. 40A, sec. 12, and Section 10.10 of the Town of Amherst Zoning Bylaws, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.
- 4.11** “Local Board” means any local board, department or official, including but not limited to the Board of Health; Conservation Commission; Historical Commission; Town Manager; Fire Department, Police Department; the Town Council; Affordable Housing Trust and all boards and commissions performing functions usually performed by locally-created boards and commissions.
- 4.12** "Local Preference" To the maximum extent allowed by law, the Board may require that comprehensive permit developments provide for local preference tenant or homeowner selection procedures. “Local preference” tenants or homeowners include current town residents or their immediate family members (such as adult children or elderly parents), employees of the town or the school district, and non-residents who either work for private business or non-profit establishments within the town or whose children are enrolled in the Amherst

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public schools. Other categories of “local preference” may be expanded from time to time by determination of the Amherst Affordable Housing Trust.

SECTION 4.2 APPLICATION & DOCUMENTATION

- 4.020** A complete application (“Application”) and full documentation provided with the Application shall be submitted to the Board, as more fully described in these Regulations, before the Application will be deemed properly filed. The detail included in such documentation shall be commensurate with the scale of the project and the project’s associated impacts to the built and natural environment. In addition, the Board may require additional information during the review process, as it deems reasonably appropriate.
- 4.021** Submittal Requirements. The Applicant for a comprehensive permit or for any substantial modification of a previously issued comprehensive permit shall submit the following with its application for a comprehensive permit. Submissions shall comply with the Amherst Digital Plan Submission Guidelines:
<http://amherstma.gov/DocumentCenter/View/19752>.
- 4.022** Project Eligibility documentation: documents specified in 760 CMR 56.04 to show the status of the Applicant and the acceptability of the site, including:
- 1) evidence that the Applicant is a public agency, non-profit organization or a limited dividend organization;
 - 2) evidence that 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 insure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04;
 - 3) evidence that 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 access to develop the project as proposed in the Application; and all materials, including correspondence to and from, the subsidizing agency, upon which the Project Eligibility letter was issued.
 - 4) Preliminary Site Development Plan(s) - preliminary site development plan(s) (“Site Plan”) showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area, walks and paved areas; and proposed landscaping improvements and open areas within the site including street trees, seating areas and landscape buffers. The Site Plan shall be signed and stamped by a registered professional engineer licensed in the Commonwealth of Massachusetts.

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Said Plan shall include the following information:

- a. existing wetland resource areas protected under the Massachusetts Wetlands Protection Act and Amherst Wetland Protection Bylaw and Regulations, and including all land subject to flooding. Wetlands shall be delineated by a professional wetland scientist;
- b. existing and proposed topography at two-foot intervals;
- c. existing structures on adjacent properties within one hundred feet (100') of the nearest property line;
- d. existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24" dbh);
- e. proposed stormwater management system;
- f. proposed entrance and egress to the property;
- g. proposed lighting and a photometric analysis. See Appendix D;
- h. Any proposed on site power generation facilities (such as a solar panel array); and
- i. Any proposed wireless communication facilities.

4.023 Report on Existing Site Conditions - 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, any wetlands or vernal pools, mature trees, 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.).

4.024 Preliminary Scaled Architectural Drawings - preliminary architectural scaled drawings (with a minimum scale of 1/8" = 1'0") including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by an architect. If one of the requested waivers is for relief from lot line setbacks or building height limitations, documentation shall include a street elevation showing the proposed new construction and existing buildings to at least 100 feet adjacent to the requested waiver area. The Board may additionally request a sun shading study after review of the streetscape elevation.

4.025 Tabulation of Proposed Buildings - a tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and summary

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showing the percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and by open areas.

- 4.026** Utility Plans – a utilities plan showing the proposed location and types of wastewater, water supply (including hydrants) and stormwater management and drainage features and facilities. Adequate supporting information shall be provided to demonstrate that all utilities and related infrastructure shall meet all applicable federal and state laws and regulations (including, but not limited to, Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection and Low Impact Development guidelines or best management practices, whichever is more stringent), as well as related regulations and requirements. Additionally, the utility plan or a separate utility plan shall show the location and type of electric and gas utilities and telecommunication(s) facilities.
- 4.027** Recreation and Open Space Amenities- a detailed listing and site plan identifying the recreation and open space amenities and areas to be proposed and set aside within the proposed project’s locus.
- 4.028** List of Requested Exemptions - a detailed list of requested exemptions to local bylaws, regulations, codes and requirements, which shall include an analysis of each requirement for which an exception is sought, the location on the plans for which the exception is sought (if applicable) and a complete explanation of why the exception is required to keep the project from becoming uneconomic. Only those exemptions specifically enumerated in the Application or as revised during the public hearing shall be considered; “blanket” requests for waivers will not be granted.
- 4.029** Pro Forma - a complete financial pro forma, detailing the projected costs and revenues of the proposed project. The pro forma shall itemize all development costs and all profits and distributions, in accordance with applicable law, regulations and requirements, including, where applicable, the requirements and guidelines of the Commonwealth’s Department of Housing and Community Development, MassHousing and the entity from which subsidy funding is sought. The Applicant shall fully disclose, in writing, to the Board all related party transactions. If the claimed land acquisition value is five percent (5%) or greater than the land’s most recent assessed valuation as determined by the Town of Amherst, the application shall contain an appraisal of the property, prepared by an appraiser certified as a Massachusetts General Appraiser, with a valuation date no greater than six months prior to the application date.
- 4.030** Impact Analysis of the Natural and Built Environment (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - prepared by a qualified environmental scientist, professional wetland scientist (PWS), professional hydrologist, professional engineer, certified soil scientist, botanist, hydrogeologist and/or other scientific professional with

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demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Impact Analysis shall assess the impact of the construction phase(s) of the development, and the completed development on the environment within the development and adjacent thereto and shall be used to assist the Board in determining whether any local or regional need for below market rate housing outweighs relevant impacts of the proposed project at the proposed location. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions, construction phase impacts and post-development impacts on:

- 1) surface and groundwater quantity and quality;
- 2) groundwater recharge;
- 3) open space and recreational areas and space;
- 4) wildlife habitats and corridors; wetlands and bodies of water, including streams and rivers, both localized and general;
- 5) species of special concern in Massachusetts; and
- 6) historic and cultural resources.

Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Impact Analysis.

4.031 Traffic Impact Report (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board) - prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project's impact on the congestion, safety and overall convenience of the roadway system, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the Town of Amherst or located in an adjacent municipality. The project's cumulative impacts on both vehicular and pedestrian travel shall be addressed in detail. See Appendix A for additional details and requirements.

4.032 Statement of Impact on Municipal Facilities and Services – (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board) The Application shall provide a detailed analysis of the impact of the proposed project on municipal facilities and services and include an analysis of the costs imposed upon the Town as well as the anticipated tax and other revenue to be generated by the proposed project.

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- 4.033** Statement of Demonstration of compliance with Amherst's Master Plan and Open Space Plan – The Application shall provide a detailed analysis as to how the proposed development is consistent and in harmony with the goals of the Amherst Master Plan and the Open Space Plan, as they may be revised from time to time.
- 4.034** Roster of Development team members and list of prior developments – (i) a list of all members of the development team, including all contractors and subcontractors to the extent known at the time of the Application; and (ii) a list of all prior development projects (regardless of whether residential or commercial, etc.) over the last ten (10) years.
- 4.035** List of abutters, certified by the Assessor's office, including addresses and owners' names of record.
- 4.036** Twenty (20) paper copies of said Application with attachments and exhibits shall be submitted to the Town Clerk upon filing together with 2 cds (or flashdrives) each with separate pdf files of each of the required documents (to be distributed to the Board Members, the Board Recording Secretary, and to various Town departments). Up to ten (10) additional copies shall be provided to the Board upon request. Additionally, 11" x 17" copies of all scaleable and legible plans (with match-lines) shall be provided to the Board for copying purposes by the Board or the Town Clerk together with five (5) sets of such plans.
- 4.037** Payment of filing fee. The Application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed. See Appendix B.
- 4.038** Consistent with Local Needs Status. If the applicant for a comprehensive permit intends on challenging Amherst's status as consistent with local needs as defined in G.L. c.40B s.20 or as being in a "safe harbor" as defined in 760 CMR 56.00 et seq., the applicant shall include argument for their challenge with their application to the Board including evidence in support of the same.

SECTION 4.3

REVIEW FEES

Pursuant to G.L. c.44, s.53G, the Board may employ outside consultants to provide technical assistance in various disciplines, including, but not limited to, civil engineering, traffic and transportation planning and engineering, wetlands and wildlife science, hydrology, hydrogeology, architectural and landscape design, financial and construction expertise, and stenographers. See Appendix C for additional details.

If the Board requests the applicant to pay the fees of a particular review consultant, the applicant shall provide the Board with the fees prior to the commencement of work by the consultant. In accordance with 760 CMR 56.05(5)(c) if the applicant does not provide the Board with the requested fees within 7 days of such request, the Board may deny the Comprehensive Permit.

SECTION 4.4 PROCEDURES

- 4.40** Within 7 days of receipt of a complete application, the Board shall notify local boards and other officials, departments, boards or commissions in the Board's discretion, that the application has been received, which notice shall include the requested waivers. The Board may request that local boards and departments provide guidance to assist the Board in evaluating the application. All reports and correspondence shall become part of the public record.
- 4.41** The Board shall open a public hearing on a complete application within thirty days of its receipt thereof provided that said complete application includes the filing fees and all the information required by these regulations. Unless one or more of the items of information required by these Regulations is waived by the Board, an application will not normally be deemed complete if it does not contain all of the filing requirements established herein. The Board may in its discretion allow one or more of the items of information required by these Regulations to be submitted during the Board's public hearing on an application.
- 4.42** The Board shall request the appearance at the hearing of such representatives of Local boards or members of the general public as it considers necessary or helpful in reviewing the application. The applicant or its agent(s) shall appear at each of the public hearing sessions held on the completed application and be available for questioning by the Board, the Board's agents and representatives, representatives from any Local boards and the general public, subject to the principles of due process and the procedural rules of the Board. The following is a general guideline to the order of proceeding: (a) applicant's presentation (which may be reasonably limited to a set amount of time by the Board) (b) local officials (c) comments by those in attendance (which may also be reasonably limited to a set amount of time by the Board).
- 4.43** In making its final decision, the Board shall take into consideration the recommendations of Local boards and the public and acknowledge within the Board's written decision, all written comments received from Local boards, officials or members of the general public.
- 4.44** Unless otherwise excused by the Board or its agents, the applicant shall cause to be present at each of the public hearing sessions held on the completed application any professional, expert or other witness who has participated in the drafting of the proposed Project plans or relevant elements of the Project or whose testimony would otherwise be relevant to the Board's deliberations and the public's understanding of the proposed Project. The Board will not accept the testimony of a lay witness (whether said witness is the applicant or the applicant's agent) with regard to technical matters (including legal, engineering, financial, scientific or construction) unless the lay witness demonstrates to the Board that he/she possesses sufficient skills and knowledge to so testify and then, and only

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then, the Board may permit such testimony but only in regard to the demonstrated area(s) of expertise of the witness.

- 4.45** Pursuant to G.L. c.44, s.53G or otherwise, the Board may in its discretion collect appropriate fees from the applicant for the retaining of a notary public or other qualified stenographer and may in its discretion cause a stenographic record of the proceedings to be made. The applicant shall be entitled to a copy of the stenographic record and said record shall be referred to either directly or by reference in the Board's decision. See Appendix C for additional details.
- 4.46** Where the application materials required by these Regulations, by statute, by 760 CMR 56.00 et seq. and as required by the Board during the course of the public hearing in this matter have been received or their submission waived in writing by the Board, the Board shall close the public hearing within 180 days unless said time period is extended by written agreement of the Board and the applicant. In all other respects, the public hearing is deemed terminated, in the Board's sole judgment, when all public testimony has been received and all information requested by the Board and required by these Regulations, by statute and by 760 CMR 56.00 et seq. has been received to the satisfaction of the Board.

SECTION 4.5 REVIEW CRITERIA

- 4.50** Site Selection. Amherst encourages comprehensive permit applications that promote appropriately designed conversion and reuse of existing structures to affordable multi-family housing, or otherwise and where possible, develops housing on currently developed sites.
- 4.51** Limited environmental impact.
- 4.52** Development shall minimize to the extent possible:
 - 4.520** Depletion and contamination of ground waters;
 - 4.521** Alteration or relocation of waterways and drainage patterns;
 - 4.522** Any use of groundwater for irrigation of landscaping;
 - 4.523** Alteration of existing, natural grades, and overall volume of cut and fill;
 - 4.524** Area over which existing vegetation will be disturbed, especially if within 200 feet of a river, pond or stream or wetland resource as defined by the Amherst Wetland Bylaw and Regulations, or having a slope of more than 15%;
 - 4.525** Removal of mature trees;

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- 4.526** Soil loss or instability during and after construction;
 - 4.527** Alteration or disturbance of land within any flood plain or wetlands area;
 - 4.528** Adverse impacts to municipal facilities
 - 4.529** Blockage of trails or potential trails;
 - 4.530** Disturbance of important wildlife habitats or corridors, outstanding botanical features or scenic or historic environment;
 - 4.531** Visual prominence of man-made elements which are not necessary for safety or orientation including visibility of building sites from existing streets and existing protected open space;
 - 4.532** Blockage of vistas through new development;
 - 4.533** Traffic congestion and reliance on private transportation; and
 - 4.534** Number of driveways exiting onto existing streets.
- 4.53** Development shall maximize to the extent possible:
- 4.530** Preservation of uncontaminated ground and surface waters;
 - 4.531** Visual prominence of natural features of the landscape;
 - 4.532** Legal and physical protection of views from public ways and existing protected open space;
 - 4.533** Connections via publicly accessed trails to and between protected open space and other trails;
 - 4.534** Buffers for and connections among existing protected open spaces;
 - 4.535** Wildlife corridors;
 - 4.536** Access to public transportation;
 - 4.537** Creation of, and access to, pedestrian walkways and bicycle paths;
 - 4.538** Adherence to Amherst's adopted Open Space Plan;
 - 4.539** Adherence to Amherst's Master/Comprehensive Plan
 - 4.540** Stormwater Mitigation;

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4.541 Compensatory Flood Storage;

- 4.54** Developments shall demonstrate use of environmentally sustainable planning and engineering approaches for natural resources management to improve water quality, control flooding, maintain ecological diversity, promote adaptation to climate changes and ensure that Amherst's residential areas, commercial centers and infrastructure are developed in harmony with natural resource conservation.
- 4.55** Site and building planning should be compatible with the existing neighborhood character and existing development pattern.
- 4.56** Compatible architectural features include scale, materials, roof style and pitch, porches or balconies, and exterior detailing. Rooflines and setbacks may mitigate height differences with neighboring structures.
- 4.57** Site planning should maintain existing significant trees as reasonably feasible and replace trees to be removed with trees of a sufficient diameter to provide shade and infill within a reasonable period after planting. All landscaped areas should be continuously maintained and provided adequate water. The Board may require that the Applicant submit a landscape maintenance plan providing for periodic reviews by Town Departments or Boards.
- 4.58** All paved areas should provide for proper stormwater control with a focus on low impact design techniques. If pervious pavers are proposed, the landscape maintenance plan must provide for control of sediment at areas of pervious pavement.
- 4.59** All exposed storage areas shall be screened from abutting properties. Trash dumpsters shall be fully screened on three sides with solid walls to block visual access from street level and with a solid front gate.
- 4.60** Traffic impacts. Developments shall minimize increase of automobile traffic and enhance access to public transit and enhance both bicycle and pedestrian access to public ways.
- 4.61** Non-residential uses and structure. If permitted without need for a special permit in the underlying zoning district, the Board may consider appropriate limited scale non-residential uses and structures within a comprehensive permit application if, and only if, the non-residential uses and structures are subordinate and accessory to the principal residential use. The Board shall, upon a separate motion made and seconded prior to a vote on the comprehensive permit, approve of any non-residential use or structure within a comprehensive permit application by an affirmative vote of no fewer than four (4) voting members of the Board.

SECTION 4.6

DECISION

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- 4.60** The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant.
- 4.61** The Board may dispose of the application in the following manner:
 - 4.610** approve a comprehensive permit on the terms and conditions set forth in the application; or
 - 4.611** deny a comprehensive permit as not consistent with local needs pursuant to G.L. c.40B, s.20-23 or due to the failure of the applicant to conform to these Regulations or those found at 760 CMR 56.00 et seq.; or
 - 4.612** approve a comprehensive permit with conditions consistent with these Regulations.

SECTION 4.7 APPEALS

- 4.70** If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the Superior Court or Land Court as provided in G.L. c. 40A, § 17 and G.L. c.40B, s.21.
- 4.71** If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to render the Project uneconomic, the applicant may appeal to the Housing Appeals Committee as provided in G.L. c. 40B, s. 22 but only if the Town of Amherst is not consistent with local needs.

SECTION 4.8 AMENDMENTS TO APPROVED PLANS 9

- 4.80** If after the issuance of a comprehensive permit an applicant seeks to make changes to an approved project, it shall promptly notify the Board in writing, describing such change. Within 20 days of receipt of written notification, the Board shall determine and notify the applicant whether it deems the change substantial or insubstantial. Substantial changes shall include: any increase in the number of dwelling units within the previously approved development; any decrease in land area within the previously approved development; a change from rental to ownership or ownership to rental status; a decrease in the number of below market rate units from the previously approved development regardless of a decrease in the development's overall density and any other condition or factor that, in the Board's sole judgment requires the need for a public hearing to discuss and analyze the proposed changes to a previously approved comprehensive permit development.
- 4.81** If the Board determines the change is insubstantial, the comprehensive permit

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shall be deemed to incorporate the change.

- 4.82** If the Board determines the change is substantial, it shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of the close of the hearing. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing, however nothing shall prevent the Board from ensuring that all prior conditions have been adhered to and fulfilled by the current applicant or its predecessor(s) in interest or title.

ARTICLE 5

ADOPTION

The foregoing rules and Appendix A-D are hereby adopted this 11 day of June 2020 by the Amherst Zoning Board of Appeals and filed with the Town Clerk on July 28, 2020. These Rules and Regulations supersede all prior versions of the same.

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APPENDIX B APPLICATION FEES

Fees accompanying applications to the Board of Appeals shall conform to the schedule below. In addition to ALL application fees, a flat fee of \$75 dollars is required for legal advertisement, plus \$25 dollars for a Certified List of Abutters. Payment for legal advertisement and Certified List of Abutters must be submitted with application.

Please note: If and after a Special Permit is granted, there is a \$10 filing fee with the Town Clerk and a \$75 dollar filing fee at the Registry of Deeds.

**High Impact Uses – Non-residential = \$500
Residential = \$300 + \$50/ new dwelling unit**

- PURDs
- Residential uses with more than 6 units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Congregate housing for the elderly and disabled, fraternities/sororities
- Institutional Uses – e.g., Medical or residential institutions, cemetery, private lodge or club)
- Government and Public Service Uses
- Research and Industrial Uses

**Moderate Impact Uses – Non-residential = \$300
Residential = \$150 + \$50/ new dwelling unit**

- Residential uses with 6 or fewer total units – e.g., Town Houses, Apartments, Subdividable/Converted Dwellings, Hotel or Motels, Inns, Hostel, Two-family detached
- Dwelling units in combination with stores or other permitted business or commercial uses
- Lodgers/Boarders/Roomers/Bed and Breakfast
- Supplemental apartments
- Retail, Business and Consumer Service Uses
- Motor Vehicle Related Uses
- Extensive Uses
- Flag lots (\$150 per flag lot)

Low Impact Uses - \$50

- Applications for/by owner-occupied single family properties– e.g., accessory uses, other than supplemental apartments, fences, signs

Other:

- Variances = \$300
- Appeals from a decision of the Building Commissioner = \$110
- Amendments or modifications to existing permits = Same fee as use

Comprehensive Permits & Affordable Housing Projects * = \$500 + 50 / new dwelling unit

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- Limited Dividend Organizations - \$9 per unit
- Non-Profit Organizations - \$3 per unit
- Public Agencies and Local; Local Initiative pursuant to 760 CMR 45.00 - \$0
 - * *Projects including 10% or more affordable units as defined under Section 12.20, Amherst Zoning Bylaw are considered Affordable Housing Projects.*

Town Projects – The application fee for certain Town projects may be waived administratively by the Director of Conservation and Development.

APPENDIX C PROJECT REVIEW FEES

In accordance with M.G.L. Chapter 44, Section 53G, the Zoning Board of Appeals may impose project review fees for those applications which require the services of outside consultants for the review process due to the size, complexity, or scale of a proposed project; the need for additional expertise in the review; or because of the potential impacts of a project. This determination shall be made by the Board during a public hearing after an initial presentation of a project.

The Board may engage attorneys, engineers, planners, landscape architects, architects or other appropriate professionals.

Fee Payment – The Board shall determine the amount of the initial deposit to be made and the amount of any additional funds that may be required during the review process. The applicant shall pay such fees to the Town of Amherst and such fees shall be deposited in a special account with the Town.

Expenditure of Fees – Outside consultants retained by the Board shall be paid from this special account. The expenditure of said fees shall be at the direction of the Board, without further appropriation. Said fees are to be expended only in connection with services rendered for the specific project for which the fees were collected.

Excess Fees – After completion of the Board’s review of a project, any excess fee amount, including interest, shall be refunded to the applicant or the applicant’s successor in interest and a final report of said account shall be made available to the applicant or applicant’s successor in interest.

Failure to Pay Fee – Failure to pay a Review Fee by the applicant shall be grounds for disapproval of the subject application.

Administrative appeals – The choice of a consultant selected by the Board for the review of an application may be appealed in writing to the Town Council by the applicant, provided such appeal is initiated within two weeks of the selection. The ground for such appeal shall be limited to claims that the selected consultant:

- a) has a conflict of interest
- b) does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in or related to the field at issue or three years or more years of practice in the field at issue or a related field.

The required time limits 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 Town Council within one month following the filing of the administrative appeal, the selection made by the Board of Appeals shall stand.

Reports – The Town Treasurer shall submit a report annually of said special account to the

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Town Council, the Town Manager and the State Bureau of Accounts. In addition, the Town Treasurer shall include the report in the annual Town Report.

APPENDIX D

**EXAMPLES OF ACCEPTABLE/UNACCEPTABLE
LIGHTING FIXTURES**

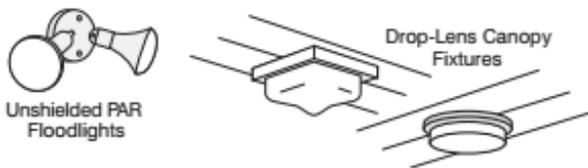
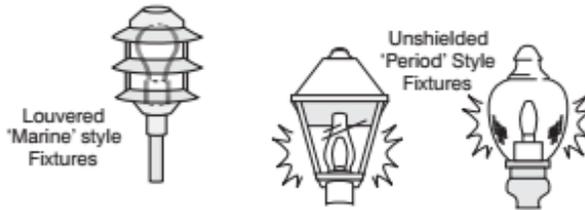
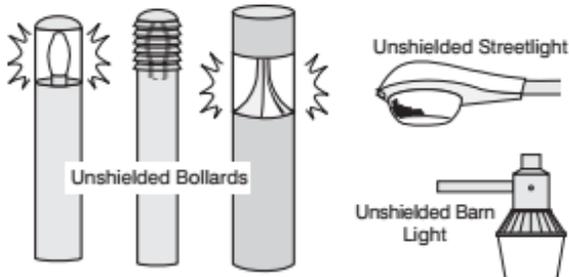
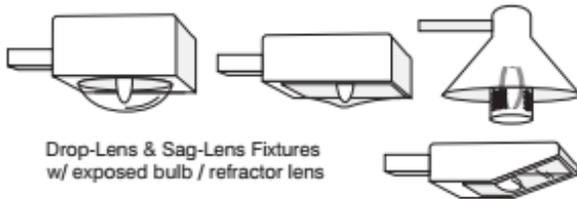
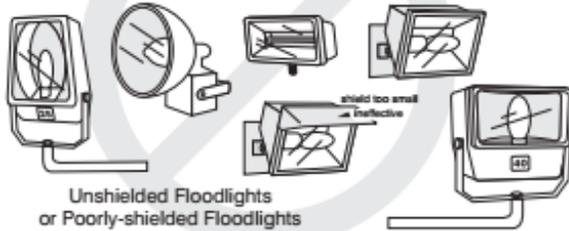
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DARK SKY COMPLIANT FIXTURES

Examples of Acceptable / Unacceptable Lighting Fixtures

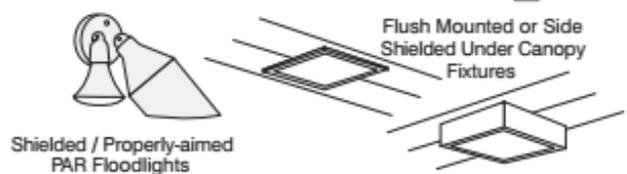
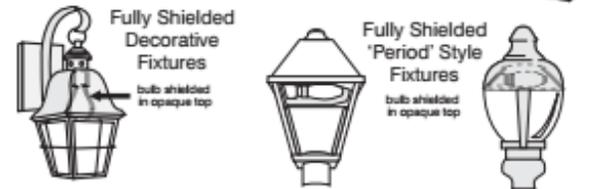
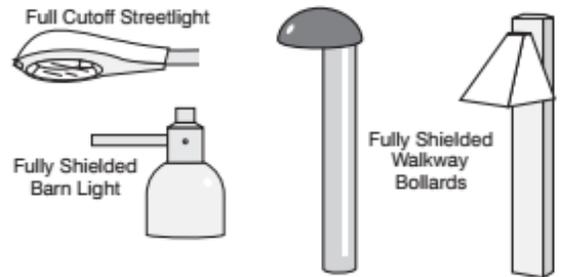
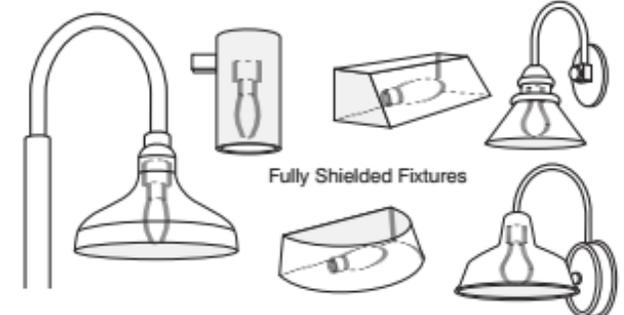
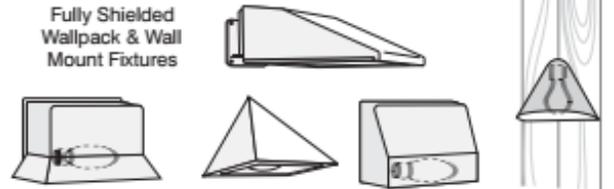
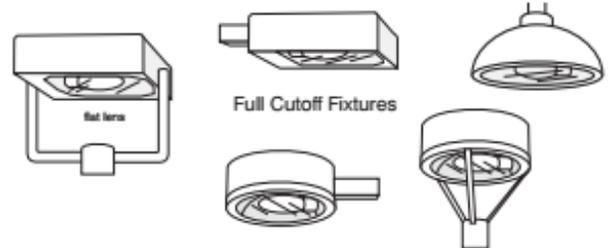
Unacceptable / Discouraged

Fixtures that produce glare and light trespass



Acceptable

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night



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