

# **Rules of Procedure (aka Rules and Regulations)**

## **Local Historical Commission or Historic District Commission Collected Materials from Commissions in Massachusetts**

Rules of Procedure (aka Rules and Regulations) are an essential component of a well-run, efficient local commission. They organize the internal business of the commission, providing specific procedural actions for the commission to follow annually, monthly, and within action items at each meeting. Rules of procedure typically items such as the place and time of regular meetings, the annual meeting schedule, the procedure for the election of officers and the duties of the chairperson, vice chairperson, and secretary, the role of alternate commission members, the procedure for alternate commission members to step in as voting members, the procedures for calling a special meeting, the delegation of authority to the chairperson or municipal staff, the signatory authority and procedure for the signing of certificates, the length of time that a certificate is valid, the expectations of commission members and the process for amending the rules and regulations.

**Compiled by Chris Skelly, Massachusetts Historical Commission**  
Please send comments, updates or additions to [christopher.skelly@state.ma.us](mailto:christopher.skelly@state.ma.us)

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**HISTORIC DISTRICT COMMISSION  
AMHERST, MASSACHUSETTS**

**RULES AND REGULATIONS**

**1. GENERAL RULES; JURISDICTION**

The Historic District Commission ("the Commission") shall be governed by the Historic District Bylaw of the Town of Amherst (the "Bylaw"), and by Chapter 40C of the General Laws of Massachusetts, as amended. The Town's jurisdiction in regard to the Bylaw shall be delineated on the official Local Historic District Map of the Town of Amherst, on file in the Amherst Town Clerk office, Planning Department office, the Hampshire County Registry of Deeds and at the Massachusetts Historical Commission.

The Commission has adopted these Rules and Regulations under the authority of Section 5.2 of the Bylaw, which authorizes the Commission to adopt, and from time to time amend, reasonable Rules and Regulations not inconsistent with the Bylaw.

**2. MEETINGS OF THE COMMISSION; RECORDS**

Regular Meetings of the Commission generally shall be held on the first Monday of each month at 3:00pm in Town Hall or at such other dates and times as the Commission shall determine hereafter. Notice of the date, time, and location of all meetings shall be posted in the Town Hall at least 48 hours prior to their scheduled time. A quorum of four members is required for the Commission to conduct any business and to vote on all matters.

Special Meetings of the Commission may be held at the call of the Chair or at the request of two members. Notice of Special Meetings shall be posted as above.

Cancellation of Meetings. If there is no Commission business to conduct, the Chair may dispense with a meeting by giving notice to all members and alternate members and by posting a notice of the cancellation in Town Hall.

Certificates shall be recorded with the Town Clerk within 60 days of the receipt of an application for a certificate. In addition copies of the Certificate will be sent to the property owner and placed in the Commission's files. Copies of all Certificates of Appropriateness will be sent to the Building Commissioner.

**3. CHANGES REQUIRING COMMISSION APPROVAL**

**3.1 Changes not requiring Commission approval.**

Construction and alterations not requiring a building permit may be undertaken without applying for a certificate from the Commission, unless such construction or alteration would remove an exterior architectural feature.

Before undertaking any construction or alterations as to which there is any doubt whether

approval is required as to the jurisdiction of the Commission, the owner or applicant should contact the Amherst Building Commissioner (the “Building Commissioner”) or a designated person in the Town Planning Department. Applicants may also contact the Commission by e-mail or through the Building Commissioner.

### 3.2 Changes Requiring Commission Approval

Most changes in the exterior appearance of a building or site located within the District require that the Commission issue a Certificate of Non-Applicability, a Certificate of Appropriateness, or a Certificate of Hardship.

3.2.1 Before any work begins, the Building Commissioner shall determine pursuant to Section 7.8 of the Bylaw whether the application is “not subject to review of the Commission” based on Sections 6, 9, and 10 of the Bylaw. The Building Commissioner shall make this determination and issue a Certificate of Non-Applicability on behalf of the Commission within five (5) business days following the filing of an application that is “not subject to review of the Commission.” All such actions by the Building Commissioner shall be reported to the Commission at its next meeting.

The following alterations of exterior architectural features, visible or not visible from a public way, have been determined, in accordance with Section 10 of the Bylaw, not to require review by the Commission and thus to be subject to approval by Certificate of Non-Applicability:

3.2.1.a - Windows – Replacement of windows by windows of the same number of panes, with substantially similar dimensions of muntins, frames, sash, rails and stiles; and made of material having a substantially similar appearance.

3.2.1.b – Vinyl siding – Replacement of vinyl siding by substantially similar vinyl siding.

3.2.1.c – Stairs – Replacement of stairs by stairs having a substantially similar appearance, using substantially similar materials.

3.2.1.d – Balcony, decking, and handrails – Replacement of a balcony, decking, or handrails with a balcony, decking, or handrail having a substantially similar appearance, using substantially similar materials.

3.2.1.e – Roof material – Installation of asphalt shingles to replace dissimilar asphalt or other roof materials.

3.2.1.f – Solar panels – Non-reflective solar panels installed flat (not inclining) on a roof.

3.2.1.g – Doors – Replacement of an existing door with a door appropriately designed with regard to architectural style.

3.2.1.h - The ordinary maintenance, repair or replacement of any EXTERIOR ARCHITECTURAL FEATURE within a DISTRICT which does not involve a material change in design, material or the outward appearance thereof.

3.2.2 Each application requiring Commission approval shall be upon a form to be designated by the Commission and accompanied by such plans, elevations, photographs, specifications, material and

other information as may be deemed necessary by the Commission. To avoid incomplete applications with attendant delays, applicants are required to schedule an appointment with the Building Commissioner and Town Planning Department staff at which time the application will be reviewed for completeness and accepted for filing if complete. There are no filing fees for any application to the Commission.

### 3.3 Hearing Procedures

The Commission shall consider applications in the order of their receipt. An applicant may appear in person or by agent at the Commission hearing. Review of an application at a public hearing shall generally be conducted according to the following procedure:

1. The chair opens the public hearing, explaining the procedures of the Commission and the legal framework under which the Commission is acting, including other Town laws or procedures relevant to the application.
2. The applicant or his or her representative presents the application.
3. Questions by Commission members, coordinated by the Chair.
4. Comments by members of the public.
5. Opportunity for the applicant to make a summation statement.
6. Close of the evidentiary part of the public hearing, or, if necessary, continuation of the hearing to a date and time certain.
7. After the evidentiary part of a public hearing is closed, the Commission deliberates on the application, with further input from the applicant or members of the public received only on request.
8. After the Chair states findings under the governing Bylaw provisions and the Commission's Rules and Regulations, the Commission votes whether to issue a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship. The Commission may continue the deliberative part of the public hearing, or it may request that the application be withdrawn or revised.

### 3.4 Site Visits

The Commission shall view all properties that come before it by application, unless the Building Commissioner has determined to issue, or recommend that the Commission issue, a Certificate of Non-Applicability, in which case the Chair may waive a site visit. The purpose of a site visit is to observe and inspect exterior architectural features, subject to an application to the Commission in relation to similar features of buildings or structures in the surrounding area. Applicants shall be notified of the site visit and should be prepared to meet with the Commission at the site. Testimony shall not be taken at the site visit.

### 3.5 Issuance of Certificates of Appropriateness

The Commission shall follow all the procedures for review of applications contained in Section 7 of the Bylaw. If a public hearing is required under Section 7.4 of the Bylaw, all the costs of notifying owners of all adjoining properties and other town officials and publishing public notices shall be paid by the applicant. Pursuant to Section 7.13 of the Bylaw, in addition to an aggrieved person's right to appeal an adverse decision to the Hampshire Superior Court, such person may first seek review by an arbitrator designated by the Pioneer Valley Regional Planning Commission.

### 3.6 Duration of Certificates of Appropriateness

A Certificate of Appropriateness shall remain valid for work commenced within a period of one year from the date of its issuance. If at the end of the year the work has not been commenced and prosecuted with due diligence, the Certificate shall expire and be of no further effect. Before the date of expiration, however, the applicant may file a request for an extension of time. At its discretion, the Commission may grant, in writing, one or more extensions of the Certificate for periods not exceeding ninety days each. A new owner who wishes to continue the authorized work must apply to the Commission for a transfer of the Certificate to his or her name.

### 3.7 Guidelines for Decisions

In administering the Bylaw the Commission and the Building Commissioner may be guided by the current versions of such Town of Amherst documents as the Preservation Plan, the Master Plan, the Design Review Board Handbook, the Zoning Bylaw and any other land use Bylaws of the Town. As to all procedural matters not covered in these Rules and Regulations, those of the Zoning Bylaw shall apply.

As to the features of all buildings deemed by the Commission to be significant to the history of the Town of Amherst, the Commission may also be guided in part by various technical publications issued from time to time by Federal and State entities and other organizations concerned with the preservation and protection of historic buildings. These publications may include the Massachusetts Historical Commission's Preservation Planning Manual, the Massachusetts Historical Commission's Massachusetts State Historic Preservation Plan, the National Park Service's Historic Buildings Preservation Briefs, and the US Department of Commerce's Preservation Tech Note.

### 3.8 Public Meetings

Public meetings shall be conducted in accordance with the Commonwealth of Massachusetts Open Meeting Law, MGL 30A, §§ 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.

Public meetings, while open to the public, are not public hearings. Applications for Certificates of Appropriateness are heard in public hearings described in Section 3.3.

Business conducted at public meetings shall include:

- Review of changes in approved site plans, elevations, etc. to determine whether such changes are substantially in accordance with plans, etc. approved by the Commission in approving the issuance of a Certificate of Appropriateness.
- Administrative meetings of the Commission.

### 3.9 Demolitions

Applications for a Certificate to approve a demolition, as defined in Sec. 13.2 of the Amherst Historic Demolition Bylaw (Article 13 of the Amherst Zoning Bylaw), will be reviewed by the Commission together with the owner's plans for any building or structure whose construction shall have been made possible by the

demolition. If the Owner does not present plans for such replacement building or structure at the time of seeking approval for a demolition, the Commission will consider any later applied-for construction or alterations both in itself and as alterations from the previously demolished structure.

#### 4. ENFORCEMENT AND PENALTIES

The Commission shall have all the legal remedies available to it under Chapter 40C of the General Laws of Massachusetts, including the remedies listed in Section 11 of the Bylaw.

The date of adoption of these Rules is April 29, 2013

These Rules and Regulations of the Historic District Commission may be amended by an affirmative vote of not less than four members of the Commission, provided that such amendment shall have first been presented in writing at a meeting preceding that at which the vote is taken. The Commission shall file a copy of any such amendments with the Town Clerk.

Amended:

November 18, 2013, Approved December 16, 2013

December 11, 2017, Approved January



# Town of Brookline

## *Massachusetts*

### **BROOKLINE PRESERVATION COMMISSION**

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## **RULES AND REGULATIONS AND GENERAL INFORMATION**

### **A. GENERAL**

#### **Section 1. Introduction**

The Brookline Preservation Commission (Commission) of the Town of Brookline, Massachusetts (Town), hereby adopts the following rules for the conduct of its business. A copy of these Rules and Regulations, and all amendments thereto, shall be filed with the Town Clerk.

#### **Section 2. Powers, Functions and Duties of the Commission**

The Commission without limitation has the following powers, functions and duties:

- a) To investigate the desirability of establishing Local Historic Districts in accordance with MGL 40C (Historic Districts) in the Town; to propose changes in the boundaries of Historic Districts as it deems appropriate; to report on the historical and architectural significance of the buildings, structures or sites to be included in any proposed Historic District or any existing Historic District whose boundaries it proposes to change; to hold public hearings on any such reports; to submit final reports with its recommendations, and maps of the proposed district or districts or boundary changes to town meeting; all in accordance with MGL 40C and Article 5.6 of the General By-Laws of the Town of Brookline (the Historic Districts By-law).
- b) To hear and decide on cases of demolition, in accordance with the Demolition Delay By-Law, Article 5.3 of the General By-Law.
- c) To advise the Zoning Board of Appeals under sections 5.21.5.d and 5.09.2.m of the Town's Zoning By-Law.
- d) To serve as the Town's Historical Commission under Chapter 40, Section 8d, and, in that capacity, participate in research, advocacy, survey, and public education programs designed to preserve the Town's cultural assets.
- e) To act as agent for the Town's Certified Local Government (CLG) Agreement under the Federal CLG program through Massachusetts Historical Commission (MHC), with respect to MGL 40C, MGL 40 section 8d, and the National Register of Historic Places (National Register or NR) Program; and to maintain a system for survey and inventory. A CLG such as Brookline has access to additional funding

from MHC for Survey & Planning grants and can make determinations of eligibility for NR listing.

f) To participate in environmental review and compliance projects that affect properties listed on the National and State Registers of Historic Places and receive federal or State funding in accordance with Section 106 of the National Historic Preservation Act, 36 CFR, Part 800, M.G.L. c. 9, §§26-27C, as amended by chapter 254 of the Acts of 1988, and 950 CMR 70.00 – 73.00.

g) To participate in the design review of properties listed on the National Register which receive CDBG or HOME funds, in accordance with a Programmatic Agreement with Advisory Council on Historic Preservation.

h) Subject to appropriation, to employ consultants and incur other expenses appropriate to the carrying on of its work in consultation with the Director of Planning and Community Development; to accept money gifts and expend the same for such purposes; and to charge filing fees for applications.

i) To administer on behalf of the Town any properties or easements, restrictions or other interests in real property which the Town may have or may accept as gifts or otherwise and which the Town may designate the Commission as the administrator thereof.

## **B. COMMISSION ORGANIZATION**

### **Section 1. Commission Membership**

a) Seven Commission Members (Commissioners) and four Alternate Members (Alternates) are appointed by the Selectmen to serve in staggered terms.

b) Appointments to the Commission are regulated by the Town By-law 5.6, MGL 40C, and the CLG Agreement.

c) Upon any vacancy or failure to seek reappointment the Chairperson shall communicate to the Board of Selectmen any recommendations he or she may have, taking into account all Commissioners, Alternates, and candidates.

d) In accordance with M.G.L. c.40c, §4, Town of Brookline General Bylaw § 5.6 provides that one member of the Commission shall be appointed by the Selectmen from two (2) nominees submitted by the Commission. To fill this position the Commission shall, if possible, nominate two (2) professional historian/preservationists for appointment.

### **Section 2. Tenure.**

Commissioners and Alternates serve three-year terms, which begin on August 31st. Commissioners and Alternates continue to serve to the end of their terms and into the following term until reappointed or replaced. The Chairperson and Vice-Chairperson(s) may not serve in the same position for more than 6 consecutive one-year terms, provided however that the calculation of such consecutive terms shall only begin with the first election of officers after September 1, 2008.

**Section 3. Resignation.**

- a) Any Commissioner or Alternate may resign by delivering his or her written resignation to the Board of Selectmen. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.
  
- b) The Chairperson may request the resignation or non-reappointment of any Commissioner or Alternate who repeatedly fails to attend meetings, including site visits and/or sub-committee meetings, or repeatedly arrives late and/or leaves early without notification and/or satisfactory reason.

**Section 4. Officers**

- a) The Officers of the Commission shall consist of a Chairperson, a Vice-Chairperson or Co-Vice – Chairpersons, and a Secretary.
  
- b) The Commission shall elect the Officers annually, at its first regularly scheduled meeting following the annual appointments.
  
- c) Only a Commissioner may serve as Chairperson or Vice-Chairperson. The office of Secretary may be held by any person, including a Town employee.
  
- d) Except as otherwise provided by law or by these Rules and Regulations, the officers of the Commission shall hold office until their successors are chosen.

**Section 5. Power and Duties of Chairperson**

The Chairperson shall preside over all meetings and hearings of the Commission. Subject to the rules as stated herein, the Chairperson shall: determine the procedures of the meeting and decide all points of order, unless overruled by a majority of the Commission in session at the time; appoint the members and chairpersons of Subcommittees; supervise the work of the Commission; arrange for necessary help; sign and date each certificate issued by the Commission; and, appoint subcommittees and representatives. The Chairperson shall designate an Alternate to take the place of a Commissioner who is absent, unable to act, or recuses him or herself.

**Section 6. Powers and Duties of Vice-Chairperson**

The Vice-Chairperson(s) shall act as Chairperson in the event that the Chairperson is absent, disabled, does not participate in a particular matter or is otherwise unable to perform his/her duties. The Vice-Chairperson(s) shall assist the Chairperson in supervising the work of the Commission and shall participate in meetings with staff. In the event that neither the Chairperson nor the Vice-Chairperson(s) is available to preside at a meeting or hearing on a particular matter and the chairperson has not designated a Commissioner to preside, one of the remaining regular Commissioners shall be appointed by majority vote for that meeting/hearing or particular matter.

**Section 7. Secretary:**

The duties of the Secretary shall include, without limitation, the following which the Secretary shall perform or cause to be performed: Provide public notice of meetings; compile minutes of all meetings of the Commission; Maintain a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein; Receive and process, on behalf of the Commission, all petitions, applications for certificates and other official correspondence; Prepare agendas for all

Commission meetings; Perform such other duties and assume such other responsibilities as the Chairperson and the Commission may from time to time direct.

**Section 8. Compensation.**

All Commissioners and Alternates shall serve without compensation.

**Section 9. Staff.**

The Commission has a staff of preservation planners, one of whom may be the Secretary. The Commission Staff is the Preservation Division of the Planning and Community Development Department of the Town of Brookline.

**C. PUBLIC HEARINGS AND MEETINGS**

**Section 1. Quorum**

- a) A quorum for all Commission activities shall consist of any four Commissioners and Alternates if the alternates have been appointed by the Chairperson to vote. A quorum for a subcommittee shall be a majority.
- b) Commissioners and Alternates shall inform the Staff or Chairperson if they are unable to attend a meeting or there is a conflict of interest on a given case.
- c) Alternates shall be designated by the Chairperson from time to time to take the place of Commissioners who are absent or recuses themselves for any reason. If designated to vote for an absent Commissioner, the Alternate shall continue to vote until the Commissioner arrives and until the conclusion of the agenda item then under consideration.
- d) Alternates when not designated to take the place of a Commissioner shall sit with the Commission and participate in discussions but shall not make or second motions or vote.
- e) Alternates may be appointed as full voting members of, and may chair, subcommittees.

**Section 2. Meetings .**

- a) All meetings shall be open to the public and duly noticed in accordance with MGL c. 39, §§23A-23C and 24, commonly referred to as the Open Meeting Law.
- b) Regular meetings of the Commission shall be held on the second Tuesday of each month at 6:15 p.m., at Town Hall, or at such time, date or place as set forth in the notice for the meeting/hearing. Special meetings and hearings may be called by the Chairperson, the Vice-Chairperson in the Chairperson's absence, or at the request of two Commissioners.

c) In the event that the absence or departure of Commissioners and/or voting Alternates from a meeting of the Commission or of one of its subcommittees causes a lack of quorum, or that the business before the Commission or subcommittee cannot be completed at one sitting, the presiding officer may adjourn the meeting and subsequently reschedule another or may continue the meeting by announcing a time and place, consistent with statutory deadlines, for resumption at such meeting. Motions for adjournment or continuance shall require concurrence of a numerical majority of members present and voting.

d) If the date, time, and place for resuming a Commission meeting or public hearing or committee meeting is announced during a meeting or public hearing, then no additional notice shall be required for the continued meeting or public hearing provided that notice of the initial meeting or public hearing was adequately posted. The time and location of any such continued meeting or public hearing may be subsequently changed only with proper notification.

### **Section 3. Vote**

a) The Chair may propose to entertain a specific motion on an issue or may entertain such motions from the voting members.

b) Motions need not be framed in the affirmative.

c) Each member's vote shall be recorded in the minutes. The Chairperson shall normally participate in all votes.

d) The concurring vote of a majority of the Commissioners (including voting alternates), i.e. not less than four (4), shall be necessary to issue a Certificate of Appropriateness or a Certificate of Hardship. A valid vote on all other matters shall be a simple majority of the Commissioners and voting Alternates present, as long as there is a quorum. A tie vote shall be recorded as such. In case of a tie, the motion is not approved.

e) Members, or Alternates designated to act for Members, may abstain from any vote at their own discretion.

### **Section 4. Notice & Agendas**

a) Pursuant to MGL 40C, §11, at least fourteen (14) days before a hearing on any application for a Certificate of Appropriateness, a Certificate of Non-Applicability or a Certificate of Hardship, the Commission shall give public notice of the time, place, and purposes thereof in such manner as it may determine, and by mailing, a copy of said notice to the applicant, the owner of record if different from the applicant, to abutters and abutters of abutters and the owners of other property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Brookline Planning Board, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the Commission shall deem entitled to notice.

b) Meeting agendas containing notice of the individual hearings shall be posted at the Town Clerk's Office and on the Town Website at least one week prior to the meeting. Agendas shall also be sent to applicants and interested parties at that time. Items may be called up to 30 minutes prior to the time

shown on the agenda. Items for the agenda must be filed with the Commission Staff by noontime eight (8) days prior to the next scheduled meeting, in order to appear on the agenda.

### **Section 5. Recusals**

a) Should a member miss a presentation and discussion at a public meeting related to an application, that member shall recuse him/herself from the discussion and the vote on that application at that meeting. If said presentation is substantially recapitulated in the member's presence prior to a discussion and vote at a subsequent meeting, the member may participate in that subsequent discussion and vote.

b) Should a member be an abutter with respect to a matter before the Commission, regardless of whether or not recusal is required by the conflict of interest law, it is preferred, as a matter of Commission policy, that said member recuse him or herself with respect to that matter.

## **D. GENERAL REGULATIONS**

### **Section 1. Conflict of Interest**

All Commissioners and Alternates shall abide by the MGL c. 268A, and other conflict of interest and ethics laws and guidelines.

### **Section 2. Official Opinion**

No Commissioner, Alternate, or staff member shall purport to express the official position or opinion of the Commission, except in accordance with a specific vote of the Commission. Personal opinions or beliefs shall be clearly identified as such.

### **Section 3. Amending these Rules and Regulations**

Proposed amendments to any portion of these Rules and Regulations, including the design guidelines, shall be in writing and shall be made available to all members of the Commission at such time as notice is given for the regular or special meeting at which they are to be considered. A majority of the Commissioners (excluding alternates) shall be required to amend these Rules and Regulations.

### **Section 4. Historic District Design Guidelines and Appendixes**

The Historic District Design Guidelines are incorporated herein by reference.

## **E. LOCAL HISTORIC DISTRICTS**

### **Section 1. Guidelines.**

a) The Commission shall publish Guidelines which, among other things, shall include: i) the scope of its review authority, ii) any specific limitations on its review authority, iii) its guidelines for determining the appropriateness of any proposed alterations, construction, and/or demolition, and iv) the procedures for the application process for any required Certificate.

b) While the Guidelines shall establish norms and parameters for the decisions of the Commission during design reviews, exceptions due to specific characteristics of a particular property or its context shall be recognized and allowed at the Commission's discretion; Such discretionary latitude is not to be confused with any consideration related to "Hardship."

c) The fact that the Guidelines may be mute on a specific issue shall not preclude the Commission from ruling with respect to that issue within the limits allowed by the Bylaw and MGL c. 40C.

## **Section 2. Non-conforming conditions**

a) The Commission shall accept the “grandfathered” condition of any building at the time of the creation of an Historic District even if said building may incorporate work inconsistent with its Guidelines for which no Building Permit can be documented.

b) In the event that an allegation is made that work requiring a Certificate of Appropriateness has been done at an unknown time without such Certificate, Staff shall endeavor to document by whatever means may be available whether the work existed at the date the Historic District came into existence. If the Commission determines that said work post-dates the creation of the Historic District, it may require an application for a retroactive Certificate of Applicability. The transfer of ownership or of control of a property since the date when such work was completed shall not constitute “grandfathering” of said work.

c) If an existing violation or violations are present on a property that is the subject of an application for a certificate of appropriateness, the Commission may deny the application on that basis, if the property owner fails to modify the application to include acceptable curative action, or the Commission may approve the application subject to a condition requiring the property owner to cure any existing violations. Such conditional approval may: (i) require the property owner to cure any such violations before a building permit is issued for the work requested in the application, (ii) allow the curing work to proceed contemporaneously with the application work, or (iii) provide for some combination of (i) and (ii). The Building Commissioner may issue a stop work order should he or she believe that the curing work is not occurring in the approved manner or if so requested by the Commission upon it making a similar determination. As used herein, "existing violation" means a previous change to the exterior architectural features of a structure that was effected without a certificate of appropriateness from the Commission under circumstances that required such a certificate to be issued, as determined by the Commission.

## **Section 3. Hearing and Design Review Process**

a) An applicant may appear in person or be represented by an agent at the Commission meeting.

- i) The Chairperson shall convene a Public Hearing;
- ii) The Chairperson or Staff shall give a preliminary statement concerning the application;
- iii) The applicant or agent shall present his or her application;
- iv) The Commission members may discuss the application, followed by public comments from anyone else with an interest in the proposal;
- v) Commission members may ask clarifying questions after each speaker;
- vi) The Public Hearing shall be closed.

The Commission may then deliberate and make a determination but need not do so at that time.

b) If upon examination by the Commission, it determines that the application is not sufficiently complete, for whatever reason, for the Commission to make an informed determination (regardless of any preliminary determination by staff), it must inform the applicant as to what additional materials are

required and may continue the case with the applicant's written concurrence until they have been provided.

c) In cases where more information is needed or when the Commission determines that revisions to the proposed designs are necessary, and with the written concurrence of the applicant, the case may be continued and may be referred to a subcommittee appointed by the Chairperson, which will meet with the applicant as often as necessary to review and comment on revisions or on more fully developed plans. The subcommittee will make a recommendation to the Commission at a subsequent public hearing. In some cases where only minor revisions to the plans are necessary, the subcommittee may be charged with making a final approval of the application.

d) A subcommittee Chairperson may determine that drawings or other required information submitted less than seven days before a meeting of the Commission have not been submitted in a timely manner if the subcommittee does not reasonably have time to schedule and post a meeting to consider them, and may defer consideration of the matter to the next following Commission meeting.

e) The Commission and its Subcommittees will make every effort to suggest ways in which an application can be amended so that it will be consistent with the guidelines. Discussion among members and the applicant shall focus on arriving at a solution satisfying all concerned. However, Commission or Subcommittee members may not undertake to impose a specific design upon a project in whole or in part beyond referring to the Guidelines and suggesting ideas or architectural precedents for consideration and the applicant should always consult with his or her architect or contractor about any such considered idea or detail.

f) No decision of the Commission shall be deemed to have set a "Precedent" in contradiction to the Guidelines.

g) The Commission may approve a portion, or portions, of an application with the issued certificate specifically indicating which portions are applicable. The remainder of the application must be voted on within sixty (60) days of the original application date, unless further extended by the applicant in writing.

h) A decision by the Commission on an application may be accompanied by binding written conditions and/or by recommendations. Any recommendations made by the Commission, beyond those imposed as conditions and/or limitations on the Certificate and/or beyond the approved drawings, are not binding on the applicant.

i) Where an applicant requires a special permit and/or variance from the Board of Appeals and also requires approval from the Preservation Commission, he or she should meet with the Planning and Community Development Director or designee to discuss the needed relief and coordination of the approval process. In most cases, if variance relief is needed, the applicant will be advised to go through the Board of Appeals approval process before applying to the Preservation Commission; if, however, special permit, rather than variance relief is needed, the applicant will be encouraged to seek approval from the Preservation Commission before being heard by the Board of Appeals.

#### **Section 4. Disapproved Applications.**

- a) If an applicant claims financial hardship, he or she may be required to submit such personal financial records as the Commission deems necessary to make a determination.
- b) It may be determined by the Commission that an asserted hardship is specific to the circumstances of an individual and the mitigation allowed by the Certificate may reasonably be limited in duration to the tenure of occupancy or ownership of the property by that individual in which case the Commission's decision may include a requirement that the changes it allows shall be reversed at the end of said tenure and that the decision shall be recorded with the deed.

#### **Section 5. Issuance and Duration of Certificates**

- a) Any Certificate for work to be done is valid for work commenced within a period of one year from the date on which it is stamped by the Town Clerk, and shall remain in effect until such work is completed. If by the end of one year the authorized work has not been commenced and prosecuted with due diligence, or if such work is suspended in significant part for a period of one year after the time the work is begun, the Certificate shall expire. However, the applicant may request an extension or renewal of the Certificate, and at its discretion the Commission may grant, in writing, an extension or renewal of the Certificate for a period not to exceed one year. If the Commission does not grant an extension, any new application will need to fulfill all requirements and guidelines that may be in force at that time; there will be no grandfathering of previously approved plans that have not been completed.
- b) Certificates shall expire when the applicant no longer possesses an ownership interest in the property. Any previously approved work not yet completed at the time of the sale or transfer must be resubmitted to the Commission for approval.

#### **Section 6. Final drawings and design development**

- a) For projects requiring working drawings or similar detailed technical information, approval based on design documents that are less detailed than working drawings shall be contingent upon continuing review and approval by staff and/or a subcommittee of details and of any proposed changes.
- b) The Commission may approve applications "subject to review and approval of details by staff." Unless specified otherwise, such review and approval should be limited to details, dimensions, and materials decisions whose effect would not materially change the appearance of the project, as depicted in the design presentation drawings that were reviewed and approved by the Commission. Staff shall consult with the Chairperson if clarifications are required regarding the Commission's intent.
- c) The Commission may approve applications, particularly for larger projects such as new buildings, "subject to review and approval of details by a subcommittee and staff," in which case the subcommittee may approve minor changes that would be apparent if shown on the approved drawings, as long as the subcommittee believes that the changes are reasonably justified, minor in character, and in keeping with the Commission's intentions in approving the design. The subcommittee may consult with the Chairperson, or with the Commission at its next regular meeting, if in doubt.
- d) After approval at a public hearing and further development of the plans, if required, each page of two copies of the approved building plans shall be stamped as "Approved" signed and dated by the Chairperson. One copy of the approved and signed plans shall be delivered by staff to the Building

Commissioner and the second, along with any supporting material presented for the Commission's consideration, shall be placed in the Commission files.

e) If the Commission or staff in consultation with the Chair determines that a proposed change to an already issued Certificate of Appropriateness or Certificate of Hardship project is substantial, then a new public hearing and a new Certificate are required. Applicants may anticipate this requirement by applying for such a Certificate in a timely manner.

### **Section 7. Construction, Inspection, and verification of work performed**

a) Commission staff shall periodically make site visits to projects under construction including a final visit before a certificate of occupancy is issued and, in cooperation with the building inspector, verify that they appear to be in conformity with the approved design. If any condition at variance with the approved design is observed, Staff will request that the Certificate of Occupancy be withheld until the project is in conformity with the approved design. Any unauthorized work done outside the scope of the Certificate of Appropriateness and not promptly corrected renders the Certificate of Appropriateness null and void.

b) For alterations, construction, or demolitions subject to Commission review and which require a building permit, the Building Commissioner is the *de facto* next line of enforcement of Commission rules and regulations, guidelines and decisions. Just as the Building Commissioner cooperates with and coordinates with the Board of Health and the Conservation Commission to ensure that proposed plans are acceptable to those Town bodies, the Building Commissioner ensures that no building permit is issued in an Historic District for plans that have not received a Certificate from the Commission. In addition the Building Inspector must be attentive to the approved design and must notify the Commission Staff in the event of any variations observed between the approved design and the as-built project.

c) In the event of differing views or uncertainties about what was approved by the Commission or possible conflicts between Building Code requirements and parameters established in the Certificate issued by the Commission or the plans as stamped and signed by the Commission, the Staff and Chairperson will consult with the Building Inspector to establish a mutually agreeable process to reach a solution on an expedited basis. The Chairperson will inform the Commission members of any such occasions, and the Commission will meet, on an emergency basis if needed, to decide how to proceed.

### **Section 8. Enforcement and penalties**

a) The Commission shall determine whether a particular activity not authorized by any certificate is in violation of the terms of the Historic District Bylaw. Upon a written complaint of any Town resident or property owner, or upon its own initiative, the Commission may initiate any appropriate action or proceedings in the name of the Town to prevent, correct, restrain, or abate violation of the Bylaw.

b) If an owner of a property in an Historic District either: i) fails to obtain a Certificate for alterations, construction, or demolition under the Commission's purview, or ii) fails to observe the conditions of a Certificate, the Commission shall first notify the owner in writing that the requirements of the Bylaw and/or Certificate are not being met. The owner will be given one week to respond to this notification with a plan to correct the situation. The owner will be requested to present the proposed plan at the next Commission meeting. If there is no satisfactory response from the owner within that time period

or if the proposed plan (as it may be modified during the discussion at the Commission meeting) is found inadequate, the Commission may declare the situation on the site to be illegal under MGL. 40C §6 and request that the Town apply the available remedies under MGL. 40C §13. The Commission may also refer the matter to the Building Inspector for enforcement of the conditions of the building permit or to remedy the absence of a permit if that is the case.

c) As provided by Section 10.1 of the General By-Laws, as may be amended from time to time, whoever violates the provisions of Section 5.6 of the General By-Laws, may be punished by a fine not exceeding three hundred dollars (\$300). As provided by M.G.L. c. 40C, section 13, as may be amended from time to time, whoever violates any of the provisions of M.G.L. c. 40C, may be punished by a fine of not less than ten dollars (\$10) nor more than five hundred dollars (\$500). Each day any violation continues shall be deemed a separate offense.

d) The Commission may exercise the procedures provided pursuant to MGL. 40 §21D for non-criminal disposition of violations of these rules and Articles 5.3 and 5.6 of the Town of Brookline General By-Laws in District Court.

### **Section 9. Filing.**

The Commission shall file with the Town Clerk and with the Building Commissioner a copy or notice of all certificates and determinations of disapproval issued by it.

## **F. DEMOLITION REVIEW UNDER ARTICLE 5.3 OF THE TOWN'S BYLAWS**

### **Section 1. Applicability**

a) An application for a building permit with demolition in an MGL 40C historic District is reviewed under Article 5.3 of the Town's General Bylaws in the same manner as any other application for a building permit in an Historic District, provided however that nothing herein shall preclude the application of those provisions of article 5.3 which may exceed the scope of review of article 5.6, including without limitation the Demolition of Public National Register Interiors and Demolition by Neglect provisions of article 5.3.

b) An application for a building permit with demolition anywhere outside of an MGL 40C Historic District shall be processed in accordance with Article 5.3 of the Town's General By-laws.

c) Unlike design review under article 5.6, which is limited to those exterior portions of a structure visible from a public way, consideration of Significance under article 5.3 may, when appropriate, consider all exterior and interior features of a structure.

### **Section 2. Substantially Gutting National Register Interiors That Are Open to the Public**

a) Section 5.3.2.h .iii of the General Bylaws states that with respect to a building listed on or eligible for listing on the National Register of Historic Places, "Demolition" includes "substantially gutting (as defined by the Preservation Commission per section 5.3.14) an interior space". In addition to the substantially total removal of all of the interior finishes (e.g. plaster, moldings, wood paneling, and decorative surface treatments such as polychromy, murals, or stenciling) and trim from the walls and ceilings of such a space, "Substantially Gutting" shall include the removal of so much of said finishes and trim from such a space as to have the effect of substantially destroying the intended appearance and

feel of the space and shall also include the partitioning of such a space through the insertion of partial or complete new floor levels and/or walls so as to have the same effect. When said finishes and trim are largely left intact the following actions, singly or together, shall NOT be considered to contribute to “Substantially Gutting”: installation of upgraded HVAC, lighting, and electric systems, including by means of the removal and like-kind replacement of wall and ceiling finishes and trim, as may be required for access (but excluding the removal of original architectural lighting fixtures); replacement of non-colored glass windows and skylights with units of same size and appearance; replacement of floor surfaces other than those of historic value; such modifications as may be required to meet ADA or safety code requirements as unobtrusively as possible; changes for demonstrable liturgical purposes; changes to the amount or arrangement of attached furnishings, such as seating.

### **Section 3. Systematic Removal, Effacement, or Destruction of Exterior Architectural Elements on National Register properties**

Section 5.3.2.h.iv of the General Bylaw states that with respect to a building listed on or eligible for listing on the National Register of Historic Places, “Demolition” includes “the systematic removal, effacement, or destruction of the exterior architectural elements which define or contribute to the historic character of the Building”. That shall include, without limitation:

- a) Stripping the exterior surfaces off of more than 50% of the building, but excluding like-kind repairs or replacements and excluding the replacement of window sash combined with like-kind replacement of any affected window trim.
  
- b) Installation of synthetic siding, including without limit, panning and aluminum or vinyl clapboards and/or polymer stucco, in a manner that causes the covering over and/or removal and/or modification of a substantial portion of the following, provided that they are original or contributing features:
  - i) Window and door trim, including cornices and drip caps; including the shortening of stools (windows); and the removal of side lights and transoms (doors);
  - ii) Cornice and eave ornament, such as entablatures, rakes, brackets, dentils, and rafter tails;
  - iii) Porches and porticos, including posts, columns and handrailing;
  - v) All other decorative trim, such as pilasters, quoins, and corner boards.
  - vi) Replacement of slate roofing material on the sides of mansards.
  - vii) Replacement of roofing features such as dormer trim, balustrades and cupolas.
  - viii) Removal or amputation of chimneys in exterior walls
  - ix) Changes to sizes and proportions of window opening
- c) Repairs to the building without the application of artificial siding but involving similar systematic removal or effacement of a substantial portion of such features.

### **Section 4. Demolition by Neglect**

a) If the Commission Staff has reason to believe, through visual inspection or other means, that a building which it believes falls into one or more of the categories listed as (a) through (d) of Section 5.3.5, may be undergoing Demolition by Neglect, as defined by the bylaw, then the Commission shall notify the Building Commissioner and the owner and the Commission and the Building Commissioner shall jointly hold a public hearing to i) confirm whether or not the building is significant which shall require a vote of the Preservation Commission only and ii) determine whether or not it is undergoing Demolition by Neglect which shall require a vote of the Preservation Commission and the concurrence of the Building Commissioner. In furtherance of determining its condition, the Commission may, at

any time, request an inspection of the building by the Building Commissioner.

b) If the Commission and Building Commissioner both determine that the building is undergoing Demolition by Neglect, the Commission and the Building Commissioner shall attempt to negotiate a voluntary agreement with the owner for appropriate and timely repairs sufficient to structurally stabilize the building and/or prevent further deterioration.

c) In the event that the Commission and the Building Commissioner both determine that they are not able to negotiate such an agreement with the owner, for any reason, or that the owner has agreed to undertake but has failed to satisfactorily complete such repairs in a timely manner, then the Commission and the Building Commissioner may take such action as is permitted under Sections 5.3.13 and/or 5.3.15, and/or without limit the Building Code, including seeking a court order that specific repairs be undertaken to secure the building against the elements, vandals, and vermin, to halt further deterioration, and to stabilize it structurally.

d) Upon completion of all repairs that have been agreed upon between the owner and the Commission and Building Commissioner or that have been ordered by the Building Commissioner, or that have been ordered by the court, and upon certification to the Commission by the Building Commissioner that said repairs have been completed and that the building has no current Building Code violations, the Commission shall certify that the building is no longer undergoing Demolition by Neglect.

### **Section 5. Demolition by Misadventure**

If, i) following an Application for a demolition permit for a building for which the Commission Staff has made an Initial Determination of Significance or ii) following notification to the owner of a hearing for Demolition by Neglect as defined in the bylaw, or iii) during the period of demolition delay for a building determined to be significant, or iv) during a period when a building has been determined to be undergoing Demolition by Neglect, the building is demolished or destroyed directly or indirectly as a result of fire or other such cause providing that the building has been determined, either before or after demolition, to have been significant, a rebuttable presumption shall arise that the owner voluntarily demolished the building without obtaining a demolition permit in accordance with the provisions of Section 5.3, -Section 5.3.15 shall be deemed applicable. Per Section 5.3.15 the Building Commissioner shall not issue any permit required under the State Building Code for such premises (except as necessary to secure public safety or health) for a period of two years from the date of destruction of the building or structure, unless the owner can provide evidence satisfactory to the Building Commissioner that the owner took reasonable steps to secure the building against fire or other loss or that the cause of the destruction was not otherwise due to the owner's negligence. As used herein, premises refers to the parcel of land upon which the demolished building was located and all abutting parcels of land under common ownership or control.

### **Section 6. Mitigation; Lifting of Stay of Demolition.**

If the applicant wishes to more quickly lift the stay of demolition of a building that has been deemed significant, the applicant may submit its plans for the use and improvement of the property after demolition to the Commission for its review and approval or in the alternative offer to mitigate the effects of demolition in some other way, including without limitation photographing the building, or preserving on site or elsewhere some of its architectural features or benefiting some other Historic

Resource. If the Commission, which may recommend changes, finds the proposal acceptable, and the Commission and the applicant are able to agree in writing upon whatever stipulations may be necessary to ensure that the proposal will be carried out as planned, the Commission shall advise the Building Commissioner in writing to the effect that it is satisfied that there is no reasonable likelihood that the building can be preserved, restored, rehabilitated or moved. At any time after receiving such written advice, the Building Commissioner may issue a Demolition Permit for a Significant Building, subject to such stipulations and pre-conditions, if any, as the Commission and the applicant may have agreed upon as mitigation for the demolition.

### **Section 7. Required reapplication**

If no Demolition Permit is issued within three years of the Commission's determination of Significance and of the termination of any court action preventing the issuance of said permit, whichever period shall be longer, or if a Demolition Permit is issued but the building is not demolished before the expiration of said permit, including any extensions allowed by the Building Commissioner, then any subsequent Application for the demolition of the building shall be processed in accordance with sections 5.3.3. through 5.3.12 inclusive, without reference to any prior determination with respect to Significance. Upon a showing by the applicant that due to the complex nature of the development project and despite the applicant's significant efforts he or she has been unable to permit, design and/or finance a project within three years, the Preservation Commission may extend the time for a Demolition Permit for a reasonable time to accommodate such a project.

## **G. ADVISORY DESIGN REVIEW AND DETERMINATION OF WHETHER A BUILDING IS "HISTORIC" UNDER THE TOWN'S ZONING BYLAW**

### **Section 1. Determination of whether a building is "Historic"**

If the design of a proposed modification of an existing building which is believed to be "Historic" is referred to the Commission for review either by direction of the Zoning Board of Appeals (ZBA) or Planning Board or per section 5.21.5.d of the Town's Zoning Bylaw, the Commission shall first determine by vote that said building is "Historic" with respect to the purposes of the Zoning Bylaw by applying such standards of historical significance as the Commission might use with respect to sustaining an initial determination of Significance under section 5.3 of the Town's Bylaws and the Commission shall report such determination to the ZBA.

### **Section 2. Design review of modifications to such an "Historic" building**

Immediately following such determination that such a building is "Historic" with respect to the purposes of the Zoning Bylaw the Commission shall undertake design review of the proposed modifications applying, to the extent allowed by the circumstances, the design standards and guidelines used for design review in the Town's Local Historic Districts while following as needed the applicable administrative and calendar requirements of the Zoning Bylaw and MGL c.40A. Except when final design approval by the Commission has been made mandatory by the ZBA, if for any reason the Commission and the applicant are not able to arrive at a mutually acceptable design at the conclusion of the review process, the Commission's report to the ZBA shall describe all concerns which the Commission has with the final design and shall recommend to the ZBA whether or not the design should be approved.

**Section 3. Design review of Demolition of a building in the Coolidge Corner Overlay Zoning District “that may include consideration of any replacement structure(s).”**

In the event of a demolition or proposed demolition of a principal structure on a lot in a National Register Historic District within the Coolidge Corner Overlay Zoning District, but which structure is not also in a Local Historic District, the Commission shall undertake Advisory Design Review of any proposed replacement structure per Section 5.09.2.m of the Town’s Zoning Bylaw, applying, to the extent allowed by the circumstances, the design standards and guidelines used for design review in the Town’s Local Historic Districts while following as needed the administrative and calendar requirements of the Zoning Bylaw and MGL c.40A. During said review, the Commission may determine that such design might preferably include without limitation the retention of some or all of the original building in any new construction. If for any reason the Commission and the applicant are not able to arrive at a mutually acceptable design at the conclusion of the review process, the Commission’s report to the ZBA shall describe all concerns which the Commission has with the final design and shall recommend to the ZBA whether or not the design should be approved.

**H. CAPTIONS and SEVERABILITY**

- a) Any captions contained herein are for identification purposes only and shall not be deemed to effect, modify, or amend in any way the meaning of these Rules and Regulations.
  
- b) The provisions of these Rules and Regulations are severable; if any such provision or provisions shall be held invalid or unconstitutional by any decision of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provisions of these Rules and Regulations. .

## LOCAL HISTORICAL COMMISSION RULES AND REGULATIONS

{History: Adopted by the Historic District Commission of the Town of Falmouth, January 20, 2010 Rev. March 6, 2012, June 6, 2014, July 1, 2014, January 6, 2015; Revised by Historical Commission on March 2017}

### GENERAL REFERENCES

General Court: Chapter 40C of the Massachusetts General Laws. Town of Falmouth Code Chapter 36. Falmouth Historic District Bylaw

*Formerly General Court: Chapter 654 of the Acts of 1975 and its associated amendments {Chapter 158 of the Acts of 1984; Chapter 290 of the Acts of 1985; Chapter 250 of the Acts of 1991; Chapter 189 of the Acts of 1993; Chapter 41 of the Acts of 2009; and Chapter 118 of the Acts of 2014}*

### TABLE OF CONTENTS

<b>ARTICLE I</b>	Authority, Historical Information, Purpose.
<b>ARTICLE II</b>	Definitions
<b>ARTICLE III</b>	Conduct of Meetings
<b>ARTICLE IV</b>	Application Requirements
<b>ARTICLE V</b>	Procedure for Review
<b>ARTICLE VI</b>	Issuance of Certificates of Appropriateness
<b>ARTICLE VII</b>	Compliance with Certificate of Appropriateness
<b>ARTICLE VIII</b>	Issuance of Permits
<b>ARTICLE IX</b>	Enforcement
<b>ARTICLE X</b>	Appeals
<b>ARTICLE XI</b>	Severability
<b>Appendix "A"</b>	Area of Jurisdiction: Established boundaries of Local Historic Districts
<b>Appendix "B"</b>	Application of Certificate of Appropriateness / Administrative Approval
<b>Appendix "C"</b>	Application of Certificate of Hardship
<b>Appendix "D"</b>	Sign Application
<b>Appendix "E"</b>	Commission Membership

### ARTICLE I - Authority; Historical Information; Purpose

#### A. Authority

These rules and regulations governing the Local Historic Districts in the Town of Falmouth have been adopted pursuant to 36-5B of Chapter 36 Falmouth Historic District of Falmouth's code.

Formerly: Section 7 of Chapter 654 of the Acts of 1975 and its amendments (hereinafter referred to as the Historic District Act or "Act") and are published to assist property owners, contractors and architects in complying with the provisions of the Act. Reference should be made to the Act for applicable provisions not set out in these regulations.

#### B. Historical information

Regulation of local historic districts was initiated in Falmouth 1975 when the Town Meeting voted to petition the General Court to enact the Historic District Act. The Historic District Act

was approved by the General Court in October 1975. The General Court's recent petition to amend the Act was approved by Town Meeting in November 2013, approved by the General Court in May 2014 and was approved by the Governor on May 23, 2014.

M.G.L Chapter 40C adopted by the Town of Falmouth Annual Fall Town Meeting 11-12-2015, Art. 18, approved 2-29-2016. Amendments noted where applicable. Town Charter amended on May 17 at Annual Election to include Chapter 36 Falmouth Historic District.

### **C. Purpose**

The Falmouth Historic District Bylaw and local historic districts were established to promote the general welfare of the inhabitants of the Town of Falmouth through the:

- i. preservation and protection of historical buildings, places and districts of historical interest;
- ii. development and preservation of appropriate settings for such buildings, places and districts;
- iii. and through the benefits resulting to the economy of Falmouth by preserving and enhancing the amenities and historical aspects of the villages and areas of Town which make Falmouth a desirable place to live and for tourists to visit.
- iv. managing and maintaining the List of Significant Buildings
- v. advising the Planning Board, Zoning Board of Appeals and Board of Selectmen on issues relating to historic preservation
- vi. maintaining and publishing The Book of Falmouth
- vii. making nominations to the National Register of Historic Places

## **ARTICLE II - Definitions**

### **A. Definitions**

For the purpose of these regulations, the following terms shall have the meaning here-in-under assigned to them:

**APPLICANT** – The person who applies for a Certificate of Appropriateness, Administrative Approval, or Hardship application from the Historical Commission. An “applicant” must be the owner of record of all the property subject to the Certificate. An agent of his assigns may act for an owner provided that written evidence of such a fact is submitted.

**AS-BUILT PLAN** – A plan/profile with sections showing the actual location and elevations of all improvements installed on the site.

**CERTIFICATE OF ADMINISTRATIVE REVIEW (Non-applicability)** – A written decision issued by the Historical Commission to document that a proposed building alteration is considered regular maintenance or repair, or is not considered visible from any public way within the historic district. Signs may be considered for administrative review if they replicate a previously approved design i.e. a ladder sign.

**CERTIFICATE OF APPROPRIATENESS** – A written decision issued by the Historical Commission to document that a proposed sign, building alteration, new construction or demolition are considered by the HC to contain appropriate exterior design and appearance that is reasonably consistent with the general character of other buildings and structures in the vicinity within an historical district.

**CERTIFICATE OF HARDSHIP** – A written decision issued by the Historical Commission when construction or alteration is deemed inappropriate yet the Commission has determined that denial of a Certificate would constitute a hardship, financial or otherwise, on the property owner. In each case, the proposed work should not conflict substantially with the purposes of the bylaw or the design guidelines. Furthermore, it should not relate generally to other property owners in the district. It should be a specific hardship to an individual property owner based on unique circumstances affecting the owner's property. Hardship means the application of Chapter 36 of the Code of Falmouth to a particular piece of property, evaluated in its totality, owing to the unique characteristics of the property that is unduly oppressive, arbitrary or confiscatory and would involve substantial economic loss to the applicant because of the literal enforcement of the By-law provided that the conditions and characteristics of the property are not the result of the actions of the applicant, or owner, or their agents, predecessors, successors or assignees. No hardship exists where there is established under the Code of Falmouth a right to transfer development rights.

**COMMISSION** – The Historical Commission of the Town of Falmouth.

**EXTERIOR ARCHITECTURAL FEATURE** – Such portion of the exterior of a building or structure as is open to view from a public street or way<sup>1</sup>, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of the exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior features.

**LOCAL HISTORIC DISTRICT** – areas established through the Falmouth Historic District Commission Act now known as the Falmouth Historic District Bylaw, which are under the jurisdiction of the Historical Commission.

**PUBLIC STREET OR WAY** – A road, high way, waterway, passage or path established, accepted and/or maintained under public authority or a privately maintained road, passage or path that is subject to a public access; not including bicycle paths.

**SIGN** – Any display of lettering, logos, colors, lights, flags, banners, pennants, ribbons, spinners (or similar devices) three dimensional objects or illuminated neon tubes visible to the public from outside of a building or from a travelled way, which either conveys a message to the public or intends to advertise, direct invite, announce or draw attention to, directly or indirectly, a use conducted, goods, products, services or facilities available, either on the lot or on any other premises, This shall not include vending machine signage or temporary holiday displays or dingle signs under two (2) square feet.

**STRUCTURE** – Anything constructed or erected, the use of which requires fixed location on the ground or attachment to something located on the ground, including tennis courts, swimming pools, gas or storage tanks if principally aboveground, stonewalls, retaining walls, fences of any height, gates, memorials and paved driveways or other paved areas.

**TEMPORARY SIGN** – A sign intended to be used for a period of no more than thirty (30) days.

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<sup>1</sup> The public view from the waterway is included in the instance of the Quissett Harbor District

NATIONAL REGISTER DISTRICT – areas established by the National Park Service that are deemed important in American history, culture, architecture or archaeology and are administered by the Secretary of the Interior through the Massachusetts Historical Commission. {Note: in some instances National Register Districts are inclusive of the Local Historic Districts. Only those properties that are included in the Local Historic District are within the jurisdiction of the Historic District Commission. See maps available online at <http://www.falmouthmass.us/405/Documents> or in the Planning Office.

### **ARTICLE III – HC Administration: Conduct of Meetings and Commission Membership**

#### **A. Conduct of Meetings**

1. There shall be at least one regular meeting each month. Additionally, the Commission shall meet as necessary, but in no case more than forty five (45) days after submission of an application for Certificate of Appropriateness or to demolish (§7.4).
2. At least fourteen (14) days before the public hearing notice shall be given by posting in a conspicuous place in Town Hall and in a newspaper of general circulation. Such notice shall identify the time, place, and purpose of the public hearing.
3. Notice of all meetings shall be duly posted with the Town Clerk in compliance with the Open Meeting Law (MGL Chapter 39 §23A). Additionally, notice of all public hearings shall be posted with the Town Clerk 7 days before the meeting.
4. A quorum of at least three voting members (which may include alternate members) is necessary to hold a meeting.
5. In the absence of one or more permanent members, alternate members shall be appointed by the Chairman, to vote at the meeting. Alternate members who are present and who are not appointed to vote in place of an absent permanent member shall be entitled to otherwise participate in all meetings and hearings.
6. All meetings shall have minutes with records of vote that shall be filed with the Town Clerk.

### **ARTICLE IV – Application Requirements**

#### **A. Application Requirements**

1. Any person who submits an application for Certificate of Appropriateness, Hardship, or Administrative Review shall file with the Commission the items listed in the relevant subsection below. Any application which omits any of the required items may not be accepted at the discretion of the Commission. Applications shall be filed in the Planning Office of Town Hall during regular business hours.
2. All applications requiring a public hearing shall submit the required filing fee.
3. All applications requiring a public hearing shall submit a certified list of abutters and 1 set of mailing labels from the Assessing Department. The list shall identify all property owners within 100' of the subject property whose property is also within a local historic district.
  - a. New Building Construction
    - i. A completed “Application for Certificate of Appropriateness”
    - ii. A completed “Addendum 1 – Certificate of Appropriateness Specification Sheet”
    - iii. A plot plan showing proposed building, dimensions and setbacks
    - iv. Plans and elevations
    - vi. Photographs of lot from the public way showing adjacent properties \

- b. Existing Building Alterations, Additions, Renovations
  - i. A completed “Application for Certificate of Appropriateness”
  - ii A completed “Addendum 1-“Certificate of Appropriateness Specification Sheet”
  - iii Photographs of existing conditions of areas to be altered; photos from public way
  - iv Elevation plans, if changed
  
- c. Demolition – As well as a completed “Application for Certificate of Appropriateness” and “Addendum 1-Certificate of Appropriateness Specification Sheet” and photographs, the Commission will take into consideration the significance of the structure and contribution to the district. Expert certification, i.e architect or engineer, if demolition is a result of structural deficiencies. The Commission may request additional information, as may be necessary and reasonable including a narrative description of the structure, including year built, architect, current conditions and existing materials.
  
- d. Signs – In addition to the “Application for Certificate of Appropriateness” a Town of Falmouth Sign Permit Application must be filled out. Include photos of the building and sign location, size, materials, lighting and color.
  
- e. Stone walls, Fences, Hardscapes
  - i. A completed “Application for Certificate of Appropriateness”
  - ii. A completed “Addendum 1 – Certificate of Appropriateness Specification Sheet”
  - iii Plot plan, drawings, elevations and photographs
  
- f. Hardship
  - i. A completed “Application for Certificate of Hardship”
  - ii. A completed “Addendum 1 – Certificate of Hardship Specification Sheet
  - iii. Plot plan, drawings, elevations and photographs
  - iv. Current level of economic return
  - v. Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased
  - vi. Annual gross and net income from the property for the previous three years; itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period
  - vii. Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years
  - viii. Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations
  - ix. All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property.
  - x. Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation limited partnership, joint venture, or other; Any state or federal income tax returns relating to the property for the last two years.

## Article V—Criteria for Review

### A. Criteria for Review by the Commission at a Public Hearing

1. The applicant will have an allotted time of thirty minutes for the review of each application, i.e. presentation, public comment, Commission discussion and decision with the possibility of extension by a vote of the Commission.
2. The Commission shall consider the appropriateness of exterior architectural features of buildings and structures or signs. The Commission shall consider the general exterior design, arrangements and appearance of the proposed building, structure or enlargement, extension or external structural alteration thereof. The Commission shall issue a *Certificate of Appropriateness* if such features are of appropriate exterior design and appearance reasonably consistent with the general character of other buildings and structures in the vicinity within a historic district.
  - a. The Commission shall not make any recommendation or requirements except for the purpose of preventing structural developments obviously incongruous to the area and to the purposes set forth in this act.
3. In their review, the Commission shall only consider those architectural features that are subject to public view from a public street or way.
4. In their review of applications, appropriateness will be considered under the “Falmouth Historic District Design Review Guidelines” (effective December 2014), enclosed herein as Appendix “D” and incorporated here and made part of these regulations.
5. In cases of demolition, the Commission shall consider the permissibility of the razing or demolishing of any building or structure within a historic district or are on the List of Significant Buildings.

### B. Criteria for Administrative Review

1. The Commission may authorize the chairman, or the vice-chairman (in the chair’s absence) to review and approve certain applications, as defined in paragraphs 2 and 3 below.
  - a. The chairman must evaluate the proposal based on the existing conditions of the property and find that a *determination of non-applicability* is appropriate. Absent such a finding by the chairman, the applicant must appear before the Commission at a public hearing.
2. If the applicant represents that the proposed work is not visible from the public way, he or she may request that the chairman review the application administratively. Any administrative review would only apply to the work described at the time of application.
  - a. The burden of proof is on the applicant to demonstrate that an architectural feature or building elevation is not visible from a public street or way. In reviewing visibility, the chairman shall consider plot plans and photographic documentation. The chairman will conduct site visits as necessary. The chairman will issue a *determination of non-applicability* for any proposed work that is not visible from the public way.

- b. All work approved administratively by the chairman shall be identified by the applicant's name and property address on the next public meeting agenda of the Commission. Furthermore, a letter describing the scope of approved work shall be filed with the Town Clerk.
- 3. The Commission shall not consider, nor be required to issue Certificates of Appropriateness for details of design, interior arrangements, ordinary repairs to and maintenance of existing buildings or structures.
  - a. If the applicant represents that the HC is not required to issue a Certificate of Appropriateness based on paragraph B.3 above, he or she may request that the chairman review the application administratively. Any administrative review would only apply to the work described at the time of application.
    - i. The burden of proof is on the applicant to demonstrate that the proposed work is either a: design detail, interior arrangement, ordinary repair, or maintenance.
    - ii. The application for administrative review must contain photographic documentation of the existing condition of the building.
    - iii. The scope of work must clearly define and specifically list all proposed items, including, but not limited to: materials, dimensions, colors, and manufacturer (if applicable).
    - iv. The chairman will issue a *determination of non-applicability* for any proposed work that is found to be warranted under paragraph B.3 above.
    - v. All work approved administratively by the chairman shall be identified by the applicant's name and property address on the next public meeting agenda of the Commission. Furthermore, a letter describing the scope of approved work shall be filed with the Town Clerk.

**Article VI – Issuance of Certificate of Appropriateness**

- A. The Commission shall take final action on an application and notify the applicant in writing of their decision within sixty (60) days after the date of filing. This time period may be extended by mutual agreement between the Commission and the applicant. The number of days in the extension period shall be specified and documented in writing and filed with the Town Clerk. If the Commission fails to take final action on any application within the specified timeframe, the application shall be deemed to have been approved and a constructive approval for a Certificate of Appropriateness or permission to demolish shall be issued by the Town Clerk.
- B. Certificates of Appropriateness are issued by the Historical Commission following approval of an application which may include conditions and exhibits to be made a part thereof.
- C. Each Certificate shall be signed by the Commission chairman or his/her designee. The list of authorized signatories shall be kept on file with the Town Clerk.
- D. Each Certificate shall be filed with the Town clerk and a copy shall be sent to the applicant and Building Commissioner. A copy shall also be on file with the Commission.
- E. A Certificate is valid for a period of two years from the date of issuance.

- F. After a Certificate has been issued, any changes shall be considered as a modification and shall require a new application.
- G. In the case that an application has been disapproved, the Commission shall record the reasons for the disapproval and shall send notice of these reasons to the applicant, Building Commissioner and Town Clerk. See §7(l) of the Historic District Bylaw.
- H. A majority vote shall be required for approval of an application.
- I. The Town Clerk shall keep a permanent record of all applications, Certificates of Appropriateness, disapprovals and constructive approvals granted.

**Article VII – Issuance of Permits**

The following apply to the issuance of permits within Historic Districts, per the Code of Falmouth, Chapter 36 Falmouth Historic District §36-11 Enforcement and Penalties.

- A. No building permit for the construction of a building or structure or for the alteration of an exterior architectural feature which is subject to public view from a public street or way shall be issued by the Town or any department thereof until a Certificate of Appropriateness has been issued by the Commission.
- B. No permits for demolition, razing or removal of a building or structure within a Local Historic District shall be issued by the Town or any department thereof until Certificate of Appropriateness has been issued by the Commission (§4)
- C. The erection or display of an occupational or other sign exceeding two square feet in area or the erection or display of more than one such sign, irrespective of size, on any lot, building or structure located within a historic district must be approved in advance by the Commission. Evidence of such approval shall be a Certificate of Appropriateness issued by the Commission.

**ARTICLE VIII – Compliance with Certificates of Appropriateness**

As per §9 as amended by Chapter 41 of the Acts of 2009  
 As per §36-11 Enforcement and Penalties.

- A. Before issuing a Certificate of Appropriateness, the Commission may require that construction or other authorized site activities be secured by one of the following methods which method may be selected and from time to time varied by the applicant upon receiving written approval from the Commission.
  - 1. By a proper bond or deposit of money sufficient in the opinion of the Commission to secure performance of the conditions of its decision as noted in the Certificate of Appropriateness or accompanying plans.
  - 2. By a covenant executed and duly recorded by the owner of record, running with the land, whereby the conditions of its decision as noted in the Certificate of Appropriateness or accompanying plans shall be accomplished prior to the issuance of occupancy permits or any conveyance, sale, rental or similar disposition of property.

**B. Release of bond or covenant**

1. Guarantees may be released in whole or, from time to time, in part when the required work has been satisfactorily completed in accordance with the rules and regulations of the Commission.
2. Requests for all releases shall be by letter to the Commission and shall be accompanied by an “as built” plan along with the engineer or architect’s certification that the work has been done in accordance with these rules and regulations.
3. The Commission shall then release the interest of the Town in such bond and return the bond or deposit to the person who furnished the same or release the covenant by the appropriate instrument, duly acknowledged, which shall be recorded.

**ARTICLE IX – Enforcement**

As per §9 as amended by Chapter 41 of the Acts of 2009

As per §36-11. Enforcement and penalties Chapter 36 Code of Falmouth

- A.** The Building Commissioner is authorized to enforce the provisions of Chapter 36 Falmouth Historic District, subject to a vote of the Commission that determines that construction, alteration, demolition or moving of any building or structure would be in violation of the Historical Commission rules and regulations. The Building Commissioner is authorized to withhold any permit for construction, alteration, demolition or the moving, use or occupancy of any building or structure until the Commission has issued a determination that compliance with Certificate of Appropriateness has been accomplished or that the Commission has received either a proper bond or covenant, described in Article 8, items A 1 and 2 above.
- B.** Furthermore, the superior court has jurisdiction to enforce the provisions of Chapter 36 Falmouth Historic District bylaw and may restrain violations by injunction. Any person violating any of the provisions of the Historic District Act shall be guilty of a misdemeanor and upon conviction, fined no more than \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

**ARTICLE X – Appeals**

As per §10 of Chapter 654 of the Acts of 1975, as amended

As per §36-7 (L). Falmouth Historic District, Procedures for review of applications.

- A.** Any appeal of a decision of the Commission or any appeal of a constructive approval must be made pursuant to Chapter 36 Falmouth Historic District and must be filed with superior court within twenty (20) days of the filing of the decision with the Town Clerk.
- B.** No application which has been denied by the commission shall be approved within one year, unless the commission finds by a 4/5 vote, specific and material changes in the conditions upon which the previous denial was based.

**ARTICLE XI – Severability**

As per §36-13. Falmouth Historic District, Validity and separability.

**A.** The provisions of these rules and regulations are separable from each other and the invalidity of any provision or section shall not invalidate any other provision or section thereof.