



MEMORANDUM

To: Town Clerk
From: Zoning Board of Appeals
Date: December 15, 2005
RE: **ZONING BOARD OF APPEALS' RULES & REGULATIONS,
MGL ch. 40B**

Enclosed please find the Rules and Regulations for Comprehensive Permits that the Zoning Board of Appeals adopted on Dec. 10, 1997 and revised on November 16, 2005. The signatures of the current Board members appear on this page.

These Comprehensive Permit Regulations are being submitted to you pursuant to MGL ch. 40B, §§ 21, and MGL ch. 40A, §12, which states, "The Board of Appeals shall adopt rules for the conduct of its business . . . and shall file a copy of said rules with the . . . Town Clerk."

Members of the Zoning Board of Appeals:

William J. Cadogan, Chair

Darlene Sodano, Vice Chair

David R. Chenelle, Clerk

David Funaiolo, Member

John Giunta, Member

Signed: _____
(date)

VERSION 1: ADOPTED December 10, 1997; VERSION 2: Revised November 16, 2005

Section

- 1.00 Purpose and Context
- 2.00 Definitions
- 3.00 Filing, Time Limits, and Notice
- 4.00 Review of Applications and Review Fee
- 5.00 Public Hearing and Decision
- 6.00 Appeals

1.00: Purpose and Context

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

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

2.00: Definitions

- (a) Board means the Zoning Board of Appeals established under MGL ch.40A §12.
- (b) Local board means any local board or official, including, but not limited to any board of survey; Board of Health; Planning Board; Conservation Commission; Historical Commission; Water, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council or Board of Selectmen. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

3.00: Filing, Time Limits, and Notice

3.01: The application for a comprehensive permit shall consist of:

- (a) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c) below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;

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- (b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in section 3.01(a), above;
- (c) Preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;
- (d) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and by other paved vehicular areas, and by open areas;
- (e) Where a subdivision of land is involved, a preliminary subdivision plan;
- (f) A preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants, cisterns and/or fire ponds;
- (g) Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is:
 - (i) the applicant shall be a public agency, a non-profit organization, or a limited dividend organization
 - (ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and
 - (iii) the applicant shall control the site;
- (h) A list of requested exceptions to local requirements and regulations, local codes, ordinances, by-laws or regulations.

3.02: The application shall be accompanied by a flat filing fee of \$7,500 plus an amount based upon the number of proposed housing units as follows:

Number of Units	Cost per Unit
1-5	\$135.00
6-15	\$300.00
16-30	\$400.00
31 or more	\$450.00

These fees apply to Limited Dividend Organizations, Non-Profit Organizations, and Public Agencies.

There shall be no filing fee for any project proposed as a Local Initiative pursuant to 760 CMR 45.00.

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

4.00: Review Fees

4:01: If, after receiving an application, the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants. Whenever possible it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part of or all of consultant fees by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

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4.02: A review fee may be imposed only if:

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

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

- (a) For services in an amount less than \$10,000.00, the Board shall issue an invitation for bids conforming to the requirements of MGL ch. 30B, §5 or a request for proposals conforming to the requirements of MGL ch. 36B, §6.
- (b) For services in an amount of \$10,000.00 or more, the Board shall issue a request for proposals conforming to the requirements of MGL ch. 30B, §6.
- (c) For all services, whether in amounts less than or greater than \$10,000.00,
 - (i) the applicant shall be given five days notice and opportunity to attach written comments to the invitation for bids or request for proposals,
 - (ii) at least three bona fide bids or proposals shall be received, and
 - (iii) the applicant shall be given five days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract.
- (d) A bona fide bid or proposal shall include:
 - (i) the name of each person performing the work,
 - (ii) the educational and professional credentials of each person performing the work,
 - (iii) the work experience of each person performing the work,
 - (iv) a description of the work to be performed,
 - (v) the hourly rate charged by each person performing the work, and
 - (vi) all other expenses to be incurred.

4.04: All fees assessed pursuant to this section shall be reasonable in light of:

- (a) the complexity of the proposed project as a whole,
- (b) the complexity of particular technical issues,
- (c) the number of housing units proposed,
- (d) the size and character of the site,
- (e) the projected construction costs, and
- (f) fees charged by similar consultants in the area.

As a general rule, the Board will not assess any fee greater than the amount that might be appropriated from town funds to review a similar town project.

4.05: Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a bidder or offeror, the Board may deny the Comprehensive Permit.**

4.06: Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Board of Selectmen.

- (a) The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
- (b) The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.
- (c) The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that the Board of Selectmen makes no

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decision within one month following the filing of the appeal the selection made by the Board shall stand.

- 4.07: Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to MGL ch.44 § 53G.
- (a) Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, M.G.L. ch. 30B, §§ 1-19.
 - (b) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.
 - (c) The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review. This report shall be published in the town annual report.

5.00: Public Hearing and Decision

- 5.01: The Board shall hold a public hearing on the application within thirty days of its receipt. It may request the appearance at the hearing of such representatives of local officials, as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.
- 5.02: The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.
- 5.03: The Board may dispose of the application in the following manner:
- (a) Approve a Comprehensive Permit on the terms and conditions set forth in the application,
 - (b) Deny a Comprehensive Permit as not consistent with local needs, or
 - (c) Approve a Comprehensive Permit with conditions with respect to height, site plan, size, shape or building materials that do not render the construction or operation of such housing uneconomic.

6.00: Appeals

- 6.01: If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court as provided in M.G.L. ch. 40A, §17.
- 6.02: If the Board denies the Comprehensive Permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. ch. 40B, § 22.

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GENERAL NOTES

1. These rules are based on model rules prepared by the Massachusetts Housing Appeals Committee Department of Housing and Community Development.
2. These requirements are restated from 760 CMR 31.02(2).
3. Local Initiative proposals eligible for Comprehensive Permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.

FOOTNOTES

* The provisions of this section are not literally consistent with MGL ch. 40B, § 21, sentence two. This section is a practical and necessary administrative interpretation of the statutory provision by the Housing Appeals Committee. It is permitted under the Supreme Judicial Court's doctrine of administrative interpretation stated in Levy v. Bd. of Registration and Discipline in Medicine, 378 Mass. 519, 392 N.E.2d 1036 (1979) and Grocery Mfgs. of America v. Dept. of Public Health, 379 Mass. 70, 393, N.E.2d 881 (1979).

** The Board will select the consultant after reviewing both the bid or proposal and any comments received from the applicant pursuant to rule 4.03 (c) (iii), but it normally will not formally award the contract until the review fee has been paid.