



ZONING BOARD OF APPEALS STERLING MASSACHUSETTS 01564

RULES & REGULATIONS FOR COMPREHENSIVE PERMIT APPLICATION

A. PURPOSE AND CONTEXT

These rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under MGL Chapter 40B, Sections 20 through 23. They are required by MGL Chapter 40B, Section 21, and by 760 CMR 56.05, and are adopted pursuant to said references and MGL Chapter 40A, Section 12. The purpose of these rules is to facilitate the development of affordable housing in Massachusetts, and to govern the procedures to be followed in connection with the filing and consideration by the Board of an application for a comprehensive permit.

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 760 CMR 56.00, and with the Guidelines for Local Review of Comprehensive Permits published periodically by the Department of Housing and Community Development.

B. DEFINITIONS

1. "Board" means the Zoning Board of Appeals established under MGL Chapter 40A, Section 12.
2. "Local Board" means any local board or official, including, but not limited to, the Board of Selectmen, the Board of Health, Planning Board, Conservation Commission, Police Department, Fire Department, Department of Public Works, Building Inspector, or similar official or board, as further defined in 760 CMR 56.02.

C. FILING, TIME LIMITS AND NOTICE

1. The Application for a comprehensive permit shall consist of twelve (12) sets of paper plans (plans should be 24"x 36" with a scale 1" to 40') and documents and 1 digital copy of plans and documents in PDF of the following:
 - a) Application form
 - b) 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 760 CMR 56.05(2)(a) and (c) which need not have an architect's signature. All Projects of five or more units must have site development plans prepared by a registered architect or engineer

- c) 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
 - d) 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
 - e) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas
 - f) Where a subdivision of land is involved, a preliminary subdivision plan
 - g) A preliminary utilities plan showing the proposed locations of electric service, septic plans, drainage and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate compliance with the Town's Stormwater Management Bylaws. If a waiver from full compliance is requested, the nature and reasons for the waiver shall be specified in detail.
 - h) Documents showing that the Applicant fulfills the jurisdictional requirements of 760 CMR 56.04, 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
 - i) A list of requested waivers or exceptions to local requirements and regulations, including local codes, ordinances, bylaws and regulations
 - j) Complete certified list of all abutters and abutters of abutters, in accordance with MGL Chapter 40A, Section 11.
 - k) "Site approval letter" from the State, Federal, or other qualified funding agency indicating acceptability of site.
2. The Application shall be accompanied by an application filing fee of \$500.00. There shall be no filing fee for any project proposed as a Local Initiative Project pursuant to 760 CMR 56.04.
3. Within seven (7) days of receiving a complete Application, the Board shall notify each Local Board of the Application by sending such Local Board a copy of the Application materials required by Section C, item 1 above. The Board shall also, within the same seven (7) days,

invite the participation of each Local Board as is deemed necessary by the Board for it to render a decision on the Application.

D. REVIEW FEES

1. When reviewing an application for, or when conducting inspections in relation to a comprehensive permit application, the Board may determine that it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site due to the size, scale or complexity of a proposed project; because of a project's potential impacts; or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the Applicant to identify appropriate consultants and scopes of work and to negotiate payment of the consultant fees by the Applicant. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone in accordance with 760 CMR 56.05 (5)(b). The Board may also require that an Applicant deposit a lump sum in order to retain said consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits. If the Applicant fails to pay any review fee within twenty-one (21) days of request by the Board, the Board may deny the Comprehensive Permit.
2. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, urban designers, or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, by-laws, and regulations. Such assistance may include, but not be limited to, analyzing an application, and, to the extent permissible under the State Law Requirements, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.
3. The procedures for inviting proposals by qualified outside consultants are as follows:
 - a) For services exempt from MGL Chapter 30B, the Board shall issue a Request for Quotations to a minimum of three (3) qualified consultants.
 - b) For services subject to MGL Chapter 30B, the Board shall follow the procedures of MGL Chapter 30B.
 - c) A quote or proposal shall include, at a minimum, the following:
 - i. The name of each person performing the work
 - ii. The educational and professional credentials of each person performing the work
 - iii. A description of the work to be performed
 - iv. The hourly rate charged by each person performing the work, and
 - v. All other expenses to be billed

4. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of MGL Chapter 44, Section 53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the Applicant. Accrued interest may also be spent for this purpose. Failure of an Applicant to pay a review fee shall be grounds for denial of the Comprehensive Permit Application.
5. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
6. Any Applicant may make an administrative appeal from the selection of an outside consultant to the Board of Selectmen. Such appeal must be made in writing within twenty (20) days after the Board has mailed or hand-delivered notice to the Applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue, or three or more years of practice in the field at issue or a related field. The required time limit for acting upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.
7. If the Applicant asserts that a condition imposed by the Board will render the project uneconomic and the pre-conditions set forth in 760 CMR 56.05(6)(a) have been satisfied, the Applicant shall submit a complete pro-forma, detailing the projected costs and revenues of the proposed project and an explanation of the basis and sources for the projections, and otherwise in compliance with 760 CMR 56.05(6)(b). An additional fee or fees may be imposed pursuant to 760 CMR 56:05(6)(b) for the retention of a financial expert and engineers or other consultants to assist the Board in its analysis of this claim. Alternatively, the Applicant may opt to pay for the Board's financial consultant or peer review in the manner prescribed by MGL Chapter 44, Section 53G and this Section D. The Board, in its sole and unfettered discretion, may waive any or all of the additional fees if it is determined that a financial review or other review is not necessary.

E. PUBLIC HEARING AND DECISION

1. The Board shall hold a public hearing within thirty (30) days of its receipt of a complete application. A hearing shall not extend beyond one hundred eighty (180) days from the date a complete application is filed, presuming that the Applicant has made timely submissions of materials in response to reasonable requests of the Board, except with the written consent of the Applicant. The Board may request the appearance at the hearing of such representatives of Local Boards as it considers necessary or helpful in reviewing the Application. In making its decision, the Board shall take into consideration the recommendation of Local Boards. The applicant may, at his or her expense, hire a stenographer or otherwise cause a transcript of proceedings to be made, provided such transcription does not interfere with the conduct of the hearing. If the applicant hires a stenographer, a copy of the transcript shall be provided to the ZBA, at the applicant's expense.
2. The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the Applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.
3. The Board may dispose of the Application, by majority vote, 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 if the Board finds that there are no conditions that will adequately address local concerns; or
 - c) Approve a Comprehensive Permit with conditions, with respect to, height, site plan, size, shape or general appearance of the proposed buildings, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. . In the event that the pre-conditions of 760 CMR 56.05(6)(a) have been met and the applicant insists that the imposition of a condition or refusal of a requested waiver renders the project uneconomic, the Board may require that the Applicant provide a pro-forma, revised as necessary to reflect the additional cost of meeting the condition(s) or denied waiver(s) during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. Determination as to whether a condition renders a project uneconomic shall be made consistent with the definition of "Uneconomic" in 760 CMR 56.02 and otherwise in accordance with State Law Requirements.

F. CHANGES IN APPLICATION DURING THE PUBLIC HEARING

1. In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans which would affect the project eligibility requirements set forth in 760 CMR 56.04(1), the Applicant shall comply with 760 CMR 56.04(5).
2. In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in the Section C hereof that is deemed by the Board to be necessary to evaluate such changes.
3. In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the Local Boards identified in Section C, above.
4. If the Applicant submits a revised plan for the Board's consideration, and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised to reflect such revised plans, subject to the foregoing provisions.

G. APPEALS

1. If the Board approves the Comprehensive Permit, any person aggrieved may appeal within the time period and to the court provided in MGL Chapter 40A, Section 17.
2. If the Board denies the Comprehensive Permit or approves the permit with conditions or requirements considered by the Applicant to be unacceptable, the Applicant may appeal to the Housing Appeals Committee as provided in MGL Chapter 40B, Section 22.