



**Zoning Board
of Appeals**

ZONING BOARD OF APPEALS

221 Main Street
Boylston, Massachusetts 01505
Telephone 508-869-0143

COMPREHENSIVE PERMIT RULES FOR THE ZONING BOARD OF APPEALS OF THE TOWN OF BOYLSTON Version A

Contents

- 1.0 Purpose and Context
- 2.0 Definitions
- 3.0 Filing, Time Limits, and Notice
- 4.0 Review Fees
- 5.0 Public Hearing and Decision
- 6.0 Appeals
- 7.0 Amendments to Approved Permits
- 8.0 Lapse of Permits
- 9.0 Transfer of Permits
- 10.0 Affordable Unit Design and Location

1.0 Purpose and Context

These Rules set forth substantive and procedural requirements for the review of comprehensive permit applications by the Board granted under M.G.L. c. 40B, §§20-23 (the Act). These Rules are required by M.G.L. c. 40B, §21, as amended by Stat. 1989, c. 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. Other requirements are set forth in the Act. These rules 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. It is also advisable to read the Guidelines for Local Review of Comprehensive Permits published from time to time by the Massachusetts Department of Housing and Community Development (DHCD).

In addition, the Board's general rules for conduct of hearings under M.G.L. c. 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.

2.0 Definitions

- (a) Board means the Zoning Board of Appeals established under M.G.L. c. 40A, §12.
- (b) Local Board means any local board or official, including, but not limited to, any board or survey; board of health; planning board; conservation commission;

historical commission; water, sewer, 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.

3.0 Filing, Time Limits, and Notice

- 3.1 An applicant for a comprehensive permit shall deliver thirty (30) copies of its complete application, including all supporting documentation, and the filing fee as set forth in Section 3.4 below made payable to the Town, to the Zoning Board of Appeals (the “Board”) at a scheduled meeting of the Board. Immediately thereafter a dated stamped copy of the filing letter shall be given to the Town Clerk.
- 3.2 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 3.2(a) and 3.2(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;
 - (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 3.2(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 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;
 - (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, including local codes, ordinances, by-laws or regulations.
 - (i) List of state or other local approvals necessary to be sought and granted prior to the issuance of building permits for the project;
 - (j) Additional information the Board reasonably determines is necessary to make a decision following its review of the initially submitted application material (items (a) through (i) above).
- 3.3 No application shall be deemed to have been filed until all requisite components of it as set forth in Section 3.1(a) through (i) have been received by the Board, and the filing fee set forth in Section 3.4 has been received.
- 3.4 The application shall be accompanied by a filing fee based upon the number of proposed housing units of.
 - (a) for Limited Dividend Organizations - \$100 per unit
 - (b) for Non-profit Organizations - \$ 50 per unit
 - (c) for Public Agencies and Local - \$ 0 per unit

There shall be no filing fee for any project proposed as a Local Initiative pursuant to 760 CMR 45.00.
- 3.5 Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official, a copy of the list required by §3.2(h), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has expressed an interest in the application by providing such official with a copy of the entire application, or such portion thereof as requested by such local official for review.

4.0 Review Fees

- 4.1 The Board may employ outside consultants to provide technical or legal assistance in reviewing a comprehensive permit application. Whenever feasible, as determined by the Board, the Board will work cooperatively with the applicant to identify appropriate consultants. The Board may require the applicant to pay all or part of the consultant's fees. Consultants shall include but not be limited to special counsel to the Board, Traffic, Environmental, Engineering, Design Review, and/or, other Real Estate consultants.
- 4.2 A review fee may be imposed only if.
 - (a) The work is in connection with the applicant's project.
 - (b) All written results and reports are made part of the Board's record.
 - (c) The Board has complied with the Uniform Procurement Act (M.G.L. c.30B §§1-19) where applicable and as required.
- 4.3 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 and project.
- (e) The projected construction costs.
- (f) Fees charged by similar consultants in the area.

As a general rule, the Board will not assess any fee greater than the amount which might be appropriated from town funds or imposed on an applicant/petitioner pursuant to M.G.L. c. 44, Sec. 53G and the rules promulgated pursuant thereto, to review a similar project.

- 4.4 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.
- 4.5 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 decision within one-month following the filing of the appeal, the selection made by the Board shall stand.
- 4.6 Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c. 44 §53G.
 - (a) Funds from the special account may be expended only for the purposes described in Section 4.2, above, and in compliance with the Uniform Procurement act, M.G.L. c. 30B, §§ 1-19, where applicable and as required.
 - (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.

5.0 Public Hearing and Decision

- 5.1 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 or 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. The board and the applicant may, by mutual written agreement, extend the thirty day time period in which to hold the hearing
- 5.2 The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received. The Board and the applicant may, by mutual written agreement, after the close of the hearing, extend the time period in which to render a decision.
- 5.3 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, or
 - (b) Deny a comprehensive permit as not consistent with local needs (“consistent with local needs” is defined in M.G.L. c. 40B, §20), or
 - (c) Approve a comprehensive permit with conditions.
- 5.4 The burdens of proof for Board decisions (denial, approval or approval with conditions) are described in 760 CMR 31.06 (5)-(8).

6.0 Appeals

- 6.1 If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, §17.
- 6.2 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. c. 40B, §22.

7.0 Amendments to Approved Permits

- 7.1 If after the issuance of a comprehensive permit an applicant seeks to change its proposal as approved by the Board, it shall promptly notify the Board in writing, describing such change. Within 20 days the Board shall determine and notify the applicant whether it deems the change substantial or insubstantial (see 760 CMR 31.03(2) for Examples of substantial and insubstantial changes).
- 7.2 If the Board determines the change is insubstantial, the comprehensive permit shall be modified to incorporate the change.
- 7.3 If the Board determines the change is substantial, it shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of the

close of the hearing, in accordance with Section 5.2 of these Rules. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

8.0 Lapse of Permits

- 8.1 If construction authorized by a comprehensive permit has not begun with three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date of the Board decision if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of.
- 8.2 The Board may set an earlier or later expiration date for the permit and may extend any expiration date. The Board shall not unreasonably deny a request for an extension of the permit expiration date by an applicant.

9.0 Transfer of Permits

- 9.1 No comprehensive permit shall be transferred to a person or entity other than the applicant without the written approval of the Board.

10.0 Affordable Unit Design and Location

- 10.1 The exterior of the affordable units shall be substantially indistinguishable from the exterior of the market-rate units, and shall be of substantially the same type, size and quality of the market-rate units.
- 10.2 Affordable units shall be evenly dispersed throughout the project.

Revision Record

Revision	Date	Reason
-	1/27/2004	Issued
A	3/08/2004	Change to para. 3.1 - Approved by ZBA 3/8/04