

COMPREHENSIVE PERMIT RULES
OF THE
MASHPEE ZONING BOARD OF APPEALS

Comprehensive Permit Rules
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1.00: Purpose and Context

These Rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive Permits granted under M.G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 56.00, et seq. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.

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 M.G.L. c. 40B, §§20-23. 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.

These rules take effect on passage and supersede any other c. 40B rules that may have been adopted by the Board.

2.00: 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 of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen.

(c) *Limited Dividend Organization* means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 3.01(i)).

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. 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 3.01(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 other paved vehicular areas, and by open areas;

(e) where a subdivision of land is involved, a Preliminary Subdivision Plan conforming to all of the applicable requirements of the Mashpee Regulations for the Subdivision of Land;

(f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;

(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. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 31.01.

(iii) the applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary

control over the site and the site access to develop the project as proposed in the Application.

(h) a concise list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations, along with an explanation of the reasons for seeking such exceptions;

(i) a complete *pro-forma*, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall limit its costs to actual expenses in purchasing and developing the property. Acquisition costs shown in the pro-forma shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm's length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally, the Applicant shall fully disclose any land or development costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs;

(j) a complete copy of any and all materials and applications submitted by the applicant to any prospect subsidizing agency or source, including, but not limited to applications for site approval;

(k) a list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities;

(l) a list of all prior development projects completed by the Applicant, along with a brief description of each such project;

(m) evidence of local need for the type and number of housing units being proposed by this Application.

(n) if the project requires work that would, in conventional circumstances, require a filing with the Mashpee Conservation Commission under any local wetlands bylaw, the Applicant shall provide any and all information that would normally be required for such a filing with the Conservation Commission.

3.02: The application shall be accompanied by a filing fee based upon the number of proposed housing units of:

(a) for Limited Dividend Organizations - \$1000 flat fee plus \$50.00 per unit

(b) for Non-Profit Organizations - \$1000 flat fee plus \$25.00 per unit

(c) for Public Agencies or governmental entities - \$0

These fees are applicable for both original applications as well as for applications for permit modifications that are deemed to be substantial by the Board.

Additionally, the application fee shall include \$5,000.00 to pay for the services of legal counsel for assistance in any project of 25 units or less, and \$7,500.00 for any project in excess of 25 units but not exceeding 75 units and \$10,000.00 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the c. 40B process. Furthermore, in order to assist the Board in the determination of whether or not any proposed conditions will render the project uneconomic, as required under M.G.L. c. 40B, §§20-23, the application fee shall include an additional \$5,000.00 for the retention of a financial expert. The Board, in its sole and unfettered discretion may waive any or all of these additional fees if it is determined that legal and/or financial review is not necessary. Alternatively, the applicant may opt to pay for the Board's legal counsel or financial consultant in the manner prescribed by M.G.L. c. 44, §53G and Section 4.00 hereof. Upon request by the applicant, the Board may, for good cause shown, waive the legal or consulting fees contemplated under this paragraph for non-profit or public applicants.

3.03: Within seven days of filing of the application, the Board shall notify every pertinent local official, board or department of the application by sending such official a copy of the application. Based upon that information, it shall also invite the participation of each local official who has an interest in the application. In order to allow review by local officials, the Applicant shall provide the Town Clerk with twenty-five copies of the complete application so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with match-lines) shall be made available to the Town Clerk for copying purposes

4.00: Review Fees

4.01: When reviewing an application for, or when conducting inspections in relation to, a Comprehensive Permit application, the Board may determine that the assistance of outside consultants is warranted 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 to negotiate payment of the consultant fees. 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. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

4.02: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 3.00 hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to,

analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

4.03: 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 M.G.L. c. 44, §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.

4.04: 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.

4.05: Any applicant may make an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 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 process 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 action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

5.00: Public Hearing and Decision

5.01: The Board shall hold a public hearing on the application within thirty days of its receipt, unless such time period is extended by written agreement of the Board and the Applicant. 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.

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 in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or

(c) approve a Comprehensive Permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.

5.04: It shall be the applicant's burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, ordinance or regulation will adversely affect local concerns.

5.05: If a subdivision of land is involved, the following shall apply: 1.) No construction is permitted until a Definitive Subdivision Plan has been submitted to and approved by the Board; 2.) The Definitive Subdivision Plan shall be prepared and submitted in accordance with Mashpee's regulations governing the Subdivision of Land. The Zoning Board and not the Planning Board is the permit granting agency.

5.06: No Comprehensive Permit shall take effect until a copy of the decision, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeals have been filed, is recorded in the Registry of Deeds and is indexed under the name of the owner of record of the land.

6.00 Changes in Application

6.01: In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated subsidizing agency.

6.02: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.00 hereof that is deemed by the Board to be necessary to evaluate such changes.

6.03: In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 3.03, above.

6.04: 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, subject to the foregoing provisions.

7.00: Appeals

7.01: 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.

7.02: 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 M.G.L. c. 40B, § 22.

Upon motion duly made and seconded at the Public Hearings on March 24, 2010, the Mashpee Zoning Board of Appeals voted unanimously to adopt the revised Comprehensive Permit Rules.

This was duly filed on March 25, 2010 with the Town Clerk of Mashpee.