

# Town of Hamilton, Massachusetts

## Comprehensive Permit Rules of the Zoning Board of Appeals

As adopted May 7, 2003

### **Section**

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#### **1.00: Purpose and Context**

These Rules have been adopted to set forth requirements and procedures for the review of applications made to the Town of Hamilton Zoning Board of Appeals (hereafter the "Board") for comprehensive permits under the provisions of M.G.L. c. 40B, §§ 20-23 (the "Act"). These Rules have been promulgated in compliance with the requirements of M.G.L. c. 40B, § 21 and 760 CMR 31.02. The purpose of that Act 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.

The procedures set forth in these Rules and the information required hereby are necessary for the Board to determine whether a project proposed in an Application for Comprehensive Permit (a "Project") should be classified as "Low or Moderate Income Housing," whether the Project will adversely affect the health, safety or quality of life of the occupants of the Project, the residents of the surrounding neighborhoods or the Town and whether any conditions or restrictions that the Board considers imposing on the Project would render the Project uneconomic without serving a valid local purpose sufficient to outweigh the benefit of additional Low or Moderate Income Housing to be developed in that location through the Project. In making its determinations hereunder, the Board shall consider the impact of the Project on the community, the existence, density and location of other Low or Moderate Income Housing in the Town and the neighborhood as well as the health, safety, environmental, infrastructure and financial impacts of the Project, to avoid discriminating placement or disproportionate burdening of areas by concentration of large or multi-unit projects.

These Rules alone are not sufficient to describe comprehensive permit procedures before the zoning board. 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 Department of Housing and Community Development. 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.

## **2.00: Definitions**

(a) *Application* means an Application for Comprehensive Permit filed by a public agency, non-profit organization or limited dividend organization under the provisions of M.G.L.c. 40B and subject to review under the Rules.

(b) *Board* means the zoning board of appeals established under M.G.L. c. 40A, § 12.

(c) *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 or district; fire, police, traffic, or other department; building inspector or similar official or board; 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: Application, Filing, Time Limits, and Notice**

3.01: The application for a comprehensive permit shall consist of a completed form of application as promulgated by the Board together with the following information:

(a) 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 two 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 three or more units must have site development plans signed by a registered architect or civil engineer;

(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 including the location of other Low and Moderate Income Housing Projects in the surrounding areas.

(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) preliminary driveway, traffic, ingress and egress plans for the Project including all connections to existing roadways and any required improvements to existing roadways to safely accommodate the Project.

(h) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

(i) evidence that the Applicant is a public agency, a non-profit organization, or a limited dividend organization, including certified copies of the organizations governing documents and a list of the parties interested in the organization if the organization is not a public agency.

(ii) evidence that the Project is fundable by a subsidizing agency under a low and moderate income housing subsidy program (see footnote 1), and

(iii) evidence that the applicant controls the site;

(i) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.

(j) a statement by the Applicant as to how the Project will satisfy the need for Low or Moderate Income Housing in the Town and locality.

(k) projected financial and budget information showing detailed cost of the Project and any required improvements to surrounding roadways, utilities and other Town infrastructure.

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 - \$250.00 flat fee plus \$9.00 per unit

(b) for Non-Profit Organizations - \$100.00 flat fee plus \$3.00 per unit

(c) for Public Agencies and Local - \$0

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

3.03: Within seven days of filing of a completed application with all exhibits and attachments required under § 3.01 above, the Board shall notify the Board of Selectmen, the Town Clerk, the Planning Board, the Conservation Commission, the Board of Health, the Department of Public Works, the Building Inspector and the Fire/Police Department of the Application by sending each such official, board or department a copy of the Application with all exhibits and attachments. Based upon that list, the Board shall also, within the same seven days, invite the participation of each such local official, board or department (see footnote 2). In order to allow review by local officials, the Applicant shall provide the Town Clerk with fourteen (14) copies of the complete Application for distribution to the members of the Board and the above enumerated local officials, boards and departments, along with one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with matchlines) 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, financial analysts, planners, lawyers, 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. 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 take 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 possess the minimum, required qualifications to effectively carry at the intended duties. 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 the receipt of the Completed Application 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, including but not limited to height, site plan, size, shape and building materials, location and number of buildings, and traffic control and safety plans, that do not render the construction or operation of such housing uneconomic.

## 6.00: Appeals

6.01: If the Board approves the comprehensive permit (with or without conditions), any person aggrieved may appeal within the time period and to the court provided in M.G.L. c. 40A, § 17.

6.02: 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.

## FOOTNOTES

1. Local Initiative proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.
2. The provisions of this section are not literally consistent with M.G.L., c. 40B, s. 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).