

**Comprehensive Permit Rules of the Board of Appeals
For MGL Chapter 40B Projects
Town of Hopkinton, Massachusetts**

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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 the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23. They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 56. 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 56.

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 56.06 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.

The rules and requirements of the Hopkinton Planning Board, Conservation Commission, Board of Health and Department of Public Works are incorporated by reference in these Comprehensive Permit Rules of the Board of Appeals for MGL Chapter 40B Projects and as may hereinafter be amended.

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 the Board of Health; Planning Board; Conservation Commission; Historical Commission; Department of Public Works; Fire, Police, traffic, or other department; Director of Municipal Inspections; 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.

- (c) Complete filing means the filing with the Clerk for the Town of Hopkinton an Application for a Comprehensive Permit which shall include all the items listed under paragraph 3.01(a) through (k) inclusive, along with payment in full of the appropriate application fee as specified under paragraph 3.02, with the original application signed by the applicant under the pains and penalties of perjury, twenty (20) complete sets of photocopies and electronic copies.

3.00: Filing, Time Limits, and Notice

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

- (a) An “Existing Conditions Plan” showing natural topography to a suitable scale and contour interval related to the National Geodetic Vertical Datum showing all relevant natural and cultural site conditions including but not limited to wetlands, rock outcrops, vernal pools, wooded areas, cart paths, ways, buildings, and utilities.
- (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; proposed grading and all areas subject to construction or other disturbance; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units in total may submit a sketch of the matters in sections 3.01(b) and 3.01(d), 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;
- (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. This submission may be combined with that required in section 3.01(b), above;
- (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 as specified by the Hopkinton Planning Board Rules and Regulations Relating to the Subdivision of Land;

- (g) A preliminary utilities plan showing the proposed location and types of sewerage, drainage, and water facilities, including hydrants; which shall include a statement that such plan complies with all local rules and regulations of the Hopkinton Board of Health and the Hopkinton Department of Public Works, or a statement that expressly lists the exceptions thereto.
- (h) Documents showing that the applicant has received a written determination of Project Eligibility as specified in 760 CMR 56.
- (i) A list of requested waivers of local requirements and regulations, including local codes, ordinances, bylaws or regulations.
- (j) Copies of all proposed regulatory agreements and restrictive covenants including any requirements of the lender or of the Department of Housing and Community Development;
- (k) Copy of proposed deed riders.

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

There shall be a \$1,000.00 flat filing fee plus an additional \$100.00 per unit fee.

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 the application by sending such official a copy of the list required by § 3.01(i), above. Based upon that list, it 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.

3.04: The Applicant is encouraged to file concurrently with the Conservation Commission under the Wetlands Protection Act and Board of Health under Title 5 of the State Sanitary Code so that there may be a simultaneous review.

3.05: Upon receipt of a notice that an Application for Comprehensive Permit shall have been filed with the Clerk for the Town of Hopkinton, the Board of Appeals shall, as soon as may be practical in light of pending scheduled hearings and business, docket the matter for a hearing, give appropriate public notice, and conduct a preliminary review of such Application and determine by majority vote whether such Application constitutes a “complete filing” as defined under paragraph 2.00 (c) above, and whether a filing fee shall have been paid to the Town in accordance with paragraph 3.02 above. If the Board finds that the Application does not constitute a “complete filing” or the filing fee is not paid in full, or that there are outstanding and delinquent real estate taxes or other municipal assessments with respect to the real estate subject of the Application or any other real estate in the Town owned by the Applicant, it shall reject the Application without prejudice to the Applicant’s right to re-file a “complete filing” and so notify

the Applicant in writing of the Board's action with a list of such items lacking or insufficient. Such preliminary review of the Application shall not be deemed to be a review of the Application on its merits.

3.06: If the Board shall determine by a majority vote pursuant to Paragraph 3.05 that the Application constitutes a "complete filing", the chairman of the Board of Appeals, or his or her designee, shall consult with the full Board and within seven days after such vote notify each local official of the filing of the Application by sending copies of appropriate portions of the Application including the list required by 3.01 (h) above. The Chairman, or his or her designee, shall also within seven days invite the participation of each local official who has a substantial interest in the Application.

4.00: Review Fees

4.01: If, after receiving an application, the Board determines that in order to review the 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 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.

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 the 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 applicable law and the Board's rules. It is anticipated that:

- (a) For services in an amount less than \$5,000.00, sound business practices shall be used;
- (b) For services in an amount between \$5,000 and \$24,999.00, the Board shall obtain three oral or written quotes.
- (c) For services in an amount of \$25,000.00 or more, the Board shall issue a request for Proposals or an Invitation for Bid conforming to the requirements of M.G.L. c. 30B.
- (d) For all services, whether in amounts less than or greater than \$25,000.00,
 - (i) The applicant shall be given five days notice and opportunity to attach written comments to the invitation for bids or request for proposals, and

(ii) 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.

(e) 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 which 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 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.

4.07: 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 4.02, above, and applicable law.
- (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.

5.00: Public Hearing and Decision

5.01: The Board shall hold a public hearing on the application within thirty days of receipt of a complete application. It may request the appearance at the hearing of such 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. A hearing shall not extend beyond 180 days from the date of the opening of the public hearing, presuming that the applicant has made timely submissions of materials requested by the Board. It is the intent of the Board that the hearing will be closed 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 if the Board finds that there are no conditions that will adequately address local needs.
- (c) Approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials that address matters of local concern.

5.04: The Board may make the comprehensive permit subject to the following conditions or requirements:

- (a) The grant of a subsidy by the subsidizing agency;
- (b) Issuance of final approval by the subsidizing agency pursuant to 760 CMR 56.04(7);

- (c) The securing of the approval of any state or federal agency with respect to the project which the applicant must obtain before building;
- (d) Complete or partial waiver ordered by the Board of fees otherwise assessed or collected by local boards; or
- (e) Any other condition consistent with MGL c.40B §§ 20-23 and with 760 CMR 56.

5.04: The Board shall not issue any order or impose any condition that would cause the building or operation of the project to be uneconomic as defined in 760 CMR 56.02.

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 provided in M.G.L. c. 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. c. 40B, § 22 and 760 CMR 56.06.

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