

**COMPREHENSIVE PERMIT LAW (CHAPTER 40B)
MODEL REGULATION
June 2002**

COMMENTS

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 and by 760 CMR 31.02. 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 30.01.

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 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) *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 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: Filing, Time Limits, and Notice

3.01: The application for a comprehensive permit shall consist of: (see note 1)

1. These requirements are restated from 760 CMR 31.02(2).

(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 3.01(a) and 3.01(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 3.01(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;

(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 (see note 2), 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.

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

2. Local Initiative proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.

(a) for Limited Dividend Organizations - \$9 per unit

(b) for Non-Profit Organizations - \$3 per unit

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

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(h), 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. (see note 3) In order to allow review by local officials, the Applicant shall provide the Town Clerk with ___ copies of the complete application so that the following boards, officials and departments may review the same: *list those boards here*; and 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. The Board may require that applicants pay a "project review fee" consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of a proposed project.

4.02: In hiring outside consultants, the Board may engage engineers, 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

3. 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

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 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. 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 or building materials, that do not render the construction or operation of such housing uneconomic.

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 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.

This model regulation was adapted from information provided by Kopelman and Paige P.C., Boston, MA. For additional information on this model regulation, please contact the Berkshire Regional Planning Commission.