

**ZONING BOARD OF APPEALS
STOW, MASSACHUSETTS 01775**

**RULES & REGULATIONS
FOR COMPREHENSIVE PERMIT APPLICATION**

The following Rules and Regulations are in addition to any other Rules and Regulations of the Board of Appeals which shall continue to apply to the extent not inconsistent with this regulation, Chapter 40B of the Mass. General Laws or any rules and regulations adopted thereunder.

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A. 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), Mass. General Laws Chapter 40B, Sections 20 through 23. They are required by M.G.L. Chapter 40B, Section 21, as amended by Stat. 1989, Chapter 593 and by 760 CMR 31.02, and are adopted pursuant to said references and M.G.L. Chapter 40A, Section 12. The purpose of these rules is to facilitate the development of affordable housing in Massachusetts, and to govern the procedures to be followed in connection with the filing and consideration by the Board of an application for a comprehensive permit. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01, as amended.

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 Executive Office of Communities and Development, or other relevant successor or additional publication. In addition, the Board's general rules for conduct of hearings under M.G.L. Chapter 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these, these rules shall govern.

B. Definitions

1. "Board" means the Zoning Board of Appeals established under M.G.L. Chapter 40A, Section 12.
2. "Local Board" means any local board of official, including, but not limited to, the Board of Selectmen; the 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.

C. Filing, Time Limits and Notice

1. The application for a comprehensive permit shall consist of fifteen (15) sets of the following:
 - (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 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.
 - (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 3I.01, that is,
 - (1) the applicant shall be a public agency, a non-profit organization or a limited dividend organization;
 - (2) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
 - (3) the applicant shall control the site.
 - (h) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations.
 - (i) Complete list of all abutters and abutters of abutters, in accordance with M.G.L. Chapter 40A, Section 11, within 300 feet.
 - (j) "Site approval letter" from State, Federal or other qualified funding agency indicating acceptability of site.
 - (k) Draft of Notice of Public Hearing, leaving the date and time blank.
2. The application shall be accompanied by an application filing fee of \$500.00, plus \$50.00 for each unit of housing. There shall be no filing fee for any project proposed as a local initiative pursuant to 760 CMR 45.00.
3. Within seven (7) days of filing of the application, the Board shall notify each local official of the application by sending such official a copy list required by paragraph (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.

D. Review Fees

1. If after receiving an application the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants, pursuant to M.G.L. Chapter 44, Section 53F, or otherwise. 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.
2. A review fee may be imposed for
 - (a) review of studies prepared on behalf of the applicant or the preparation of independent studies on behalf of the Board, as reasonably required by the applicant's submission;
 - (b) the work is in connection with the applicant's specific project;
 - (c) all written results and reports are made part of the record before the Board; and
 - (d) such other reasonable use of consultants for engineering, legal or other purposes as may be required.
3. The Board may, on the applicant's request, comply with the Uniform Procurement Act, M.G.L. Chapter 30B, Sections 1 through 19, for the purpose of seeking consultant services to which the act would otherwise apply.
4. 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.
5. Any invitation for bids, request for proposals or consulting agreement otherwise entered into by the Board 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 (10) days of receiving written notification of selection of a bidder, offerer or consultant, the Board may deny the comprehensive permit.
6. Prior to paying the review fee, except in the circumstances when the applicant has requested and the Board has followed the provisions of M.G.L. Chapter 40B, the applicant may appeal the selection of the consultant to the Board of Selectmen as set forth in M.G.L. Ch. 44, s. 53.
7. Each review fee shall be deposited in a special account established by the Treasurer-Collector pursuant to M.G.L. Ch. 44, s. 53G.

- (a) Funds from the special account may be expended only for the purposes described in section 4 above and in compliance with the Uniform Procurement Act, M.G.L. Chapter 30B, Sections 1 through 19.
- (b) Within thirty (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 Town Accountant shall submit annually a report of the special account to the Board of Selectmen for its review. This report shall be published in the annual town report.

E. Public Hearing and Decision

1. The Board shall hold a public hearing on the application within thirty (30) days of its receipt, in accordance with the provisions of M.G.L. Chapter 40B, Section 21. 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. In the event of incomplete applications, i.e., not filed in accordance with these Rules and Regulations or the provisions of Chapter 40B, Sections 20-23 or 760 CMR 30.01, et seq., then the Board may open and continue the hearing until such filing is complete.
2. The Board shall render a decision based on a majority vote of the Board within forty (40) 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, and unless otherwise determined, at the date determined and stated by the Board at a public hearing.
3. If at any session of the public hearing on the application a quorum of the Board is not present, the hearing will be opened solely for the purpose of scheduling a date, time and place for the hearing or any continued session thereof to commence. In the event that less than a full five (5) member board shall be present on any night, whether known in advance of said hearing date or at the date, time and place of said session of the public hearing, the applicant will be afforded an opportunity to request, in writing, that the Board continue said hearing and schedule a date, time and place for such hearing or any continued session thereof. In such event, the hearing shall only be opened and immediately thereafter adjourned to another day, for the purpose of continuing the hearing and scheduling a date, time and place for such continued hearing, without any evidence, documents or comments being received by the Board at such time. The Board shall make reasonable efforts to notify the applicant, the abutters or other interested parties of such circumstances as far in advance of any hearing date scheduled and of the new date scheduled, so as to minimize the inconvenience to any applicant, abutter or interested party.
4. 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;
 - (c) Approve a comprehensive permit with conditions with respect to height, site plan, size, shape, building materials, or other appropriate subject matter and considerations as may properly apply. To the extent possible, the Board shall identify and specify such conditions to the applicant in advance of closing the public hearing and give the applicant the opportunity to consider such proposed condition(s) and comment thereon, in particular as to whether such condition is reasonable and consistent with local needs, render the

construction or operation of such housing uneconomic or such other comment as the applicant deems appropriate prior to the decision of the Board.

F. Appeals

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. Chapter 40A, Section 17.
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. Chapter 40B, Section 22.

G. Final Plans, Permits, etc.

Any final or as-built plans, permits, certificates of approval, certificates of action, orders of condition or other like documents shall be filed with the Board of Appeals immediately upon receipt by the applicant, as a condition of any decision by the Board.

H. Effective Date

These Rules and Regulations shall take effect immediately upon adoption by the Board and filing a copy thereof with the Town Clerk pursuant to M.G.L. Chapter 40A, Section 12 and Chapter 40B, Section 21.

Adopted November 4, 2002
Zoning Board of Appeals
Stow, Massachusetts

Amended Sept. 2010

**ZONING BOARD OF APPEALS
STOW, MASSACHUSETTS**

**REGULATION
COMPREHENSIVE PERMIT APPLICATION**

The Zoning Board of Appeals voted on August 5, 2002 to amend its regulation adopted September 9, 1992, such amended regulation to become effective immediately. The amended regulation follows.

Pursuant to Chapter 44, Section 53G of the Massachusetts General Laws, the Board of Appeals may impose reasonable fees for the employment of outside consultants upon the applicants for a comprehensive permit, which may be deposited in a special account for such purpose. Such amount shall not exceed \$10,000 plus one percent (1%) of the estimated cost of the total proposed project, as the Board may in its discretion determine from the applicant's estimates, applications for funding or financing, or such other evidence as may be available to the Board for such determination. An administrative appeal from the selection of the outside consultant may be taken to the Board of Selectmen pursuant to the provisions of said law.