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TOWN OF NEWBURY
ZONING BOARD OF APPEALS
COMPREHENSIVE PERMIT RULES AND REGULATIONS

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1.00 Purpose and Context

These Rules establish procedures for an application 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, 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. These Rules must be read in conjunction with, and implemented in a manner consistent with, 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 for Comprehensive Permits, 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 Health; Planning Board; Conservation Commission; Historical Commission; Water, Sewer Department, 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; is not a public agency nor a non-profit; 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)).

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3.0 Filing and Notice

3.1 The application for a comprehensive permit shall be delivered to the Zoning Board of Appeals at a regularly scheduled hearing and 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. 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 definitive subdivision plan, conforming to all of the requirements of the Planning Board's Rules and 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, including pre-construction and post-construction drainage calculations and soil test results (which result shall have been witnessed by an appropriate and qualified Town Official or a qualified Town consultant) shall be provided to demonstrate that the proposed drainage system shall meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent, and shall result in no net increase in the rate or volume of stormwater runoff;

(g) a Project Eligibility Letter that satisfies all of the requirements of 760 CMR 56;

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

(i) 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;

(j) 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, with disclosure of the Applicant's relationship to all such entities; and

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

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

(a) for Limited Dividend Organizations - $2,000.00 flat fee plus $500.00 per unit

(b) for Non-Profit Organizations - $2,000.00 flat fee plus $500.00 per unit

(c) for Public Agencies and Local Agencies - $2,000.00 flat fee plus $500.00 per unit

3.3 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 of the list required by § 3.01(h) above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, the Board shall also 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. In order to facilitate review by local officials, the Applicant shall provide the Zoning Board of Appeals with twenty-five (25) copies of the completed application so that all boards, officials and departments may review the same. The twenty-five (25) copies will all include plan sets sized 11"X17". Additionally, the applicant will submit fifteen (15) sets of full-size plans and one (1) complete electronic submittal.

4.0 Consultants, Review and Consultant Fees

4.1 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 because of the size, scale, complexity of a proposed project, or a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application.

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4.2 In hiring outside consultants, the Board may engage engineers, scientists, 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, ordinances, 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.

4.3 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. 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 Zoning Board of Appeals shall stand.

4.4 Consultant Fees

(a) The Board may impose project review fees for those applications which require the services of such outside consultants.

(b) Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

(c) 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 sum sufficient to enable the Board to retain consultants chosen by the Board alone, and 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.

4.5 Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer, who shall establish a special account for this purpose, consistent with the terms and provisions of 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.

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Accrued interest may also be spent for this purpose.

4.6 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.

4.7 The Town Treasurer shall submit annually a report of any special Review Fee account to the Board of Selectmen and the Town Administrator. The Town Treasurer shall cause said report to the published in the Annual Report of the Town. The Town Treasurer shall submit annually a copy of said report to the Town Accountant.

5.0 Public Hearing and Decision

5.1 The Board shall open the public hearing on the application within thirty (30) days of its receipt of an application, but opening the hearing shall not waive the Board's right to contest the completeness of the application, nor shall a constructive grant result if the Board does not open the hearing within 30 days if the application is not complete. To be deemed complete, the application must include all of the information detailed above. The Board 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.

5.2 Pro Forma

A complete pro forma detailing the projected costs and revenues of the proposed project may be required if, following consultant review of the project, the Board proposes modification of the project or imposition of a condition that the applicant contends renders the proposed project uneconomic. The pro forma shall itemize all development costs, including hard costs, soft costs and site development costs, and all profits and distributions, in accordance with the Department of Housing and Community Development (DHCD) "Comprehensive Permit Guidelines," (the "Guidelines") dated February 22, 2008, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

5.3 The Board shall, within fifteen (15) days of the initial opening of the public hearing, determine if a safe harbor exists and give written notice to Applicant and the Department of Housing and Community Development (DHCD). Any challenge by Applicant to the Zoning Board of Appeals' safe harbor claim must be made within fifteen (15) days of

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Applicant's receipt of such claim.

5.4 The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

5.5 The Zoning Board of Appeals must close the public hearing no later than one hundred eighty (180) days from the opening of the public hearing, unless an extension exists.

5.6 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.

5.7 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. Conditions may include but not be 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.

(d) There shall be a presumption that the waiver of any local by-law, ordinance, or regulation will adversely affect local concerns. 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.

5.8 The Zoning Board of Appeals shall, within twenty (20) days from making its decision, file such decision with the Town Clerk.

6.0 Changes in Application

6.1 In the event that, during the public hearing, the Applicant proposes any change in the Application or project plans that, in the Board's determination, constitutes a material or substantial change, the Applicant shall forthwith notify its designated subsidizing agency.

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6.2 In the event of material or substantial changes in the Application or project plans, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.00 hereof that the Board deems to be necessary to evaluate such changes.

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

6.4 In the event the Board determines that a change in the Application or project plans is substantial, the Board must open a public hearing on the substantial modification request within thirty (30) days.

6.5 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.

6.6 Within twenty (20) days of notification of the Board's determination of a substantial change, the Applicant may object to the determination and give notice whether Applicant elects to continue before the ZBA and preserve Applicant's right to appeal to the Housing Appeals Committee after a decision on the merits is made, or to appeal the determination directly to the Housing Appeals Committee.

6.7 In the event that, during the public hearing, the Applicant proposes any change in the Application or project plans that, in the Board's determination, is an insubstantial modification, the Board must so determine within twenty (20) days, reduce that determination to writing, and notify the Applicant. Failure to do so shall result in a constructive grant.

7.0 Appeals

7.0 If the Board approves the comprehensive permit, any person aggrieved may appeal within the twenty (20)-day required time period as provided in M.G.L. c. 40A, § 17.

7.1 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 or M.G.L. c.40A, §17, as appropriate.

Approved by the Board of Zoning Appeals, Town of Newbury, 10/20/2016
Effective 10/24/2016