

Town of Hamilton
Comprehensive Permit Rules of the Zoning Board of Appeals

Contents

- 1.00 Purpose & Context
- 2.00 Filing, Fees & Notice
- 3.00 Review of Applications & Review Fees
- 4.00 Affordability
- 5.00 Public Hearing & Decision
- 6.00 Changes in Application
- 7.00 Appeals
- 8.00 Construction
- 9.00 Completion

1.0 Purpose & Context

The Comprehensive Permit Rules (the “Rules”) establish procedures for submittal and review of an application to the Zoning Board of Appeals for a comprehensive permit (an “Application”) granted under G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder (the “Act”).

They are required by G.L. c. 40B, § 21 and by 760 CMR 56.05(1). The purpose of the Act and the Rules is to facilitate the development of affordable housing in Massachusetts.

The 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 Act. In the event of inconsistency or conflict between the Act and these Rules, the Act governs.

2.00 Filing, Fees & Notice

2.01 Submission Materials

The materials listed below shall be submitted to the Board with the Application. The Board recognizes that for many proposed projects, plans may not be at a definitive stage of development when the Application is filed. However, the Board needs to receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing information and materials promptly with the Application will result in a quicker process and enable the Board to become better informed.

(a) Required Materials

The following materials shall be submitted simultaneously with an Application to the Board. An Application shall not be complete until all Required Materials have been received by the Board:

- (i) Preliminary Site Development Plans: A set of 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; landscaping and open areas within the site; and other improvements. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the matters in §§ 2.01(a)(i)(a-j) and 2.01(a)(iii), below, which need not bear an architect’s signature and seal. All structures of five (5) or more units must have site development plans signed and sealed by a registered architect or engineer.

The following information shall be shown on the site development plans:

- a. zoning district boundaries;
- b. flood plain and aquifer protection overlay district boundaries;
- c. existing wetland areas, including vernal pools, whether certified or not, within 100 feet of the site;
- d. existing and proposed topography at two-foot intervals;
- e. existing structures on adjacent properties within 50 feet of the property line;
- f. existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24"dbh);
- g. proposed stormwater management system, in a general manner;
- h. proposed property lines and rights of way of any proposed streets;
- i. proposed location of utilities; and
- j. proposed lighting and photometric analysis.

(ii) Report on Existing Site Conditions: A report on and summary of existing site conditions and those in the surrounding areas.

(iii) Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building, which shall be signed and sealed by a registered architect. Said drawings shall include typical floor plans, typical elevations and sections, and shall identify construction type and exterior finishes.

(iv) Tabulation of Proposed Buildings: A tabulation of proposed buildings by type, size (e.g. number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the site to be occupied by buildings, by parking and other paved vehicular areas, by open areas and by other improvements.

(v) Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under G.L. c. 41, § 81K;

(vi) Utilities Plan: A utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants, together with electricity and/or gas. Adequate supporting information shall be provided to demonstrate that the drainage system meets either the Stormwater Management Standards promulgated by the Massachusetts Department of Environmental Protection, the Town's Stormwater Management Bylaw, Rules and Regulations, or other best management practices, whichever are most stringent;

(vii) Project Eligibility Letter: A written determination of project eligibility by a subsidizing agency containing all of the findings required by 760 CMR 56.04(4);

(viii) Materials Submitted to Subsidizing Agency: A complete copy of the application and any and all materials submitted by the applicant to the subsidizing agency, except that a *pro forma* detailing the projected costs and revenues of the proposed project shall only be required in accordance with § 2.01(c), below. Said application and materials shall allow the Board to periodically confirm that the applicant continues to fulfill the project eligibility requirements of 760 CMR 56.04(1);

(ix) List of Requested Exceptions to Local Requirements and Regulations: A detailed list of requested exceptions to local requirements and regulations, which shall include an analysis of each requirement or

regulation for which an exception is sought, the location on the plans for which the exception is sought (if applicable) and an explanation of why the exception is required. In the event an applicant contends that denial of any such exception renders the proposed project uneconomic, the applicant shall submit a *pro forma* in accordance with § 2.01(c), below, together with an explanation of the financial impact on the proposed project of adhering to each requirement or regulation from which an exception is sought.

(x) List of All Prior 40B Development Projects: A list of all prior 40B development projects completed by the applicant, any related entity or any principal of either of the foregoing, along with a brief description of each such project and contact information for each lead municipal representative.

(xi) List of Prior Non-40B Development Projects: A list of all non-40B development projects completed in the last twenty (20) years by the applicant, any related entity or any principal of either of the foregoing, along with a brief description of each such project.

(b) Requested Materials

The following materials are requested to be submitted to the Board:

- (i) Environmental Impact Analysis: An “Environmental Impact Analysis” prepared by a qualified environmental scientist, professional wetland scientist (PWS), certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Environmental Impact Analysis shall assess the impact of the development on the environment within the development and within 150 linear feet thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts on:
- a. surface and groundwater quality;
 - b. groundwater recharge of upper aquifers and perched groundwater layers;
 - c. wildlife habitats and corridors;
 - d. wetlands and bodies of water, including streams and rivers, both localized and general;
 - e. existing and potential domestic water supplies;
 - f. species of special concern in Massachusetts;
 - g. historic structures or historic areas; and
 - h. road salt and fertilizer loading.

Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Environmental Impact Analysis.

- (ii) Traffic Impact Report: A Traffic Impact Report prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project’s impact on the congestion, safety and overall convenience of the roadway system providing access to the proposed project. Impacts on both vehicular and pedestrian travel shall be addressed. Road intersections to be studied shall be mutually agreed upon by the Board, the Hamilton Police Department, the Director of Public Works, the Director of Planning and Development, the Town’s consultants and the applicant.

- (iii) Long-Term Monitoring: A long-term monitoring plan identifying the governmental agency or other entity which shall be responsible for project monitoring for the duration of the project's affordability. A cost estimate to implement the long-term monitoring plan shall be submitted.

(c) *Pro Forma*

A complete *pro forma* detailing the projected costs and revenues of the proposed project shall be required if, following consultant review of the project, modification of the project by the applicant as necessary, and discussion by the Board of both the applicant's requested exceptions from local requirements and regulations and possible conditions to mitigate project impacts, the applicant contends that denial of any requested exception or inclusion of any condition contemplated by the Board 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's (DHCD) "Comprehensive Permit Guidelines," (the "Guidelines") updated December 2014, and as amended from time to time. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

2.02 Fees

(a) Administrative Fee

An Application shall be accompanied by an Administrative Fee, which shall be (a) in the case of single-family detached dwellings, the same fee as set forth in the Planning Board Regulations governing single-family detached residential subdivisions and (b) in the case of multi-family dwellings, the same as that set forth in the Planning Board Regulations governing multi-family residential developments. No Administrative Fee shall be required of public agencies.

(b) Consultant Fee

In addition to the administrative fees above, an applicant shall pay \$20,000.00 into a revolving account established pursuant to G.L. c. 44, § 53G (the "53G Account"), to be used for consultant review of the Application in accordance with 760 CMR 56.05(5) and § 3.00, below. If, during the Board's review of the Application, the initial payment of \$20,000 is deemed insufficient to complete said review, the applicant shall pay into the 53G Account such additional funds as are determined by the Board to be necessary to cover consultant review. Two (2) separate checks shall be made payable to the Town of Hamilton for the administrative fee and the consultant fee.

(c) Waiver

The Board, in its sole and unfettered discretion, may waive any or all of the aforesaid fees.

2.03 Notification Requirements

Within seven (7) days of receiving a complete Application, the Board shall notify each Local Board of the Application by sending each such Local Board notice thereof, together with a copy of the list of requested exceptions to local requirements and regulations required by § 2.01(a)(ix),

above. Based upon said requested exceptions, the Board shall invite the participation of each Local Board as is deemed necessary or helpful in making its decision upon the Application by providing such Local Board with a copy of the complete Application, including the items required by § 2.01(a), above.

In order to allow review by Local Boards, an applicant shall provide the Town Clerk with 20 bound hard copies of its complete Application, plus one (1) digitized copy utilizing Microsoft Office software and one (1) unbound copy. Additionally, 11" x 17" plans, with match lines, shall be made available to the Board or its designee.

3.00 Review of Application & Consultant Fees

3.01 Selection & Assistance of Consultants

(a) Technical Consultants

The Board may engage as outside consultants engineers, scientists, architects, environmental consultants, planners, urban designers and/or other appropriate professionals to assist the Board in analyzing any and all studies prepared on behalf of the applicant. Additionally, the Board may engage legal counsel to provide non-general representation including, but not limited to, review of documents, reports and items of a similar nature that require subject matter expertise, *e.g.*, environmental reviews submitted by the applicant.

(b) Financial Analyst

Where a pro forma is required by § 2.01(c), above, the Board may engage a financial analyst to perform the same consultant review permitted in connection with other technical information submitted to the Board. Said financial analyst shall be compensated in accordance with § 3.01, above.

3.02 Failure to Pay

Failure of an applicant to pay any initial or additional consultant fee requested by the Board within thirty (30) days of such request shall be grounds for denial of the Application.

3.03 Remaining Funds

A final accounting shall be made available to the applicant or applicant's successor in interest. For the purpose of this Section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with all reasonably requested documentation establishing same.

3.04 Appeals

An applicant may appeal the selection of any outside consultant by the Zoning Board of Appeals to the Board of Selectmen. Such appeal must be made in writing within twenty (20) days from the date the Zoning Board of Appeals mailed or hand-delivered notice to the applicant of the selection of said consultant(s). 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 (3) or more years of practice in the field at issue or a related field. The required time limits for action upon an Application by the Zoning Board of Appeals shall be extended by the duration of this administrative appeal. In the event that the Board of Selectmen makes no decision within one (1) month from the date of filing of the appeal, the selection made by the Zoning Board of Appeals shall stand.

4.00 Affordability

4.01 Number of Affordable Units

Comprehensive permit developments shall include at least 25% affordable units as defined by the Act. Affordable units shall be comparable to the market rate units in floor area, interior and exterior finishing and bedroom mix, unless the Board decides otherwise.

4.02 Restrictions on Affordability

Restrictions not in conflict with the restrictions of the Subsidizing Agency shall be imposed on record title to the project, specifying that said units shall remain affordable in perpetuity. For affordable homeownership units, the restrictions shall include provisions granting the Town a right of first refusal in the event that an income-qualified buyer is not found. Such restrictions shall also include a provision that if the Town does not exercise its right of first refusal, the difference between the price which an income-qualified buyer would have paid and the market price actually paid shall be deposited with the Town into an account to be used for affordable housing programs. Units shall be owner-occupied.

4.03 Local Preference

The development plan shall reflect all legally permissible efforts to provide up to 70% of the affordable units to eligible residents of the Town of Hamilton, eligible Town employees, and eligible employees of Town businesses (the "Local Preference"). The Local Preference shall not have a disparate impact on protected classes, as defined by the Guidelines. The applicant shall obtain approval from its subsidizing agency and/or DHCD (if required), prior to issuance of a comprehensive permit by the Board of the Local Preference for a project. The applicant is responsible for all studies and other documentation necessary to support the Local Preference, including submittals to DHCD.

4.04 Subsidized Housing Inventory

The Applicant is responsible for providing all documentation necessary to support inclusion of the affordable units on the Subsidized Housing Inventory.

5.00 Public Hearing & Decision

5.01 Initial Public Hearing

The Board shall hold an initial public hearing on the complete Application within thirty (30) days from the date of its filing. The Board may request the appearance at the hearing of each Local Board, or representative(s) thereof, as is deemed necessary or helpful in making its decision upon the Application. In making its decision, the Board shall consider the recommendations, if any, of said Local Boards.

5.02 Limited Initial Denial

The Board may deny an Application within fifteen (15) days of opening the public hearing on a completed Application and will provide written notice to the applicant of the grounds for its denial within that time, with a copy to DHCD, if:

- (1) The Town has achieved one (1) or more of the statutory minima, as per 760 CMR 56.03(3);
- (2) The Town has obtained from the DHCD certification of compliance with its

- Housing Production Plan, as per 760 CMR 56.03(4);
- (3) The Town has made recent progress toward the statutory minima, as per 760 CMR 56.03(5);
 - (4) The project qualifies as a “large project,” as defined by 760 CMR 56.03(6), or
 - (5) A related application has previously been received, as per 760 CMR 56.03(7).

Any appeal by the applicant of the Town’s denial on one of these bases shall be in accordance with the procedures set forth in 760 CMR 56.03(8).

5.03 Length of Public Hearing

Presuming that the applicant has made timely submissions of materials in response to reasonable requests of the Board, in the Board’s determination, the public hearing on an Application shall not extend beyond 180 days from the date of the initial public hearing; provided, however, that said 180 days may be extended with the written consent of the applicant.

5.04 Decision

The Board shall render a decision by majority vote 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 shall be deemed terminated when all public testimony has been received and all information requested by the Board has been received. The Board’s decision shall be filed with the City/Town Clerk within fourteen (14) days from the date of said decision. The Board may vote to approve, approve with conditions or deny a comprehensive permit to the applicant.

(1) Approval

The Board may approve a comprehensive permit on the terms and conditions set forth in the Application.

(2) Approval with Conditions

The Board may approve a comprehensive permit subject to conditions and limitations necessary to protect the health or safety of the occupants of the proposed project or of the residents of the Town, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning and to preserve open spaces (the “Local Concerns”). A comprehensive permit issued by the Board may be subject to the grant of a subsidy by the applicant’s subsidizing agency, the issuance of final approval by said subsidizing agency, the receipt of permit or approval required from any state or federal agency and/or the receipt of any waiver ordered by the Board from fees normally imposed by Local Boards.

(3) Denial

The Board may deny a comprehensive permit if it determines that there is a valid health, safety, environmental, design, open space, or other Local Concern which supports denial and the Local Concern outweighs the Housing Need.

5.05 Burden of Proof

It shall be the applicant's burden to demonstrate that the waiver of any particular local requirement or regulation is necessary to maintain the project's economic viability, except a condition imposed by the Board to decrease the number of units in a Project by 5% or more shall create a rebuttable presumption that the applicant will not be able to achieve a reasonable return. There shall be a presumption that the waiver of any such local requirement or regulation will adversely affect legitimate municipal interests and Local Concerns.

6.00 Changes in Application

6.01 Project Eligibility

Should an applicant propose any change(s) to its Application or any other aspect of its proposal that may affect the project eligibility requirements of 760 CMR 56.04(1), it shall immediately notify its subsidizing agency of said change(s). In the event the subsidizing agency finds that the change(s) is/are substantial, the Board may request that the subsidizing agency review said change(s) and reaffirm, amend or deny its determination of project eligibility.

6.02 Additional Information

In the event that an applicant proposes substantial change(s) to its proposed project, the Board may request, and the applicant shall submit, any and all information and fees specified in §§ 2.00 and 3.00, above, deemed by the Board to be necessary to evaluate said change(s). Such information shall be submitted to the Town Clerk as provided in § 2.03, above.

6.03 Project Deemed Revised

If the Applicant submits for the Board's consideration the information required by § 6.02, above, and said information is the subject of the Board's hearings and deliberations on the proposed project, the Application shall be deemed to be revised.

7.00 Appeals

7.01 Approval

Any person aggrieved by the issuance of a comprehensive permit may appeal as set forth in G.L. c. 40A, § 17.

7.02 Approval with Conditions; Denial

If the Board approves the Application and issues a comprehensive permit with conditions or requirements unacceptable to the applicant, or denies the Application and does not issue a comprehensive permit to the applicant, the applicant may appeal to the Housing Appeals Committee as provided in G.L. c. 40B, § 22.

8.00 Construction

8.01 Commencement of Construction

The applicant shall notify the Board, the Planning Board and the Building Commissioner/Inspector of the construction start date at least two (2) weeks prior to

commencement of construction. "Commencement of construction" shall include site preparation, including removal of vegetation or altering the earth. The Town shall thereafter retain the services of a consulting engineer to inspect the construction work. Required inspections shall be as outlined in the Subdivision Rules and Regulations for the Town of Hamilton, together with any other details or conditions which may be imposed by the Board. Prior to the commencement of construction, the applicant shall deposit with the Town sufficient funds to cover the cost of such inspections, in accordance with §§ 2.02(b) and 3.01, above.

8.02 Performance Guarantee

Prior to the issuance of any building permit for a project, the applicant shall provide a performance guarantee of a type agreed upon by the Board and the applicant from among those supplied by G.L. c. 41, § 81U. Said performance guarantee shall allow the Town to complete remaining public improvements associated with a development in the event that the applicant fails to do so or refuses to address public safety hazards caused by the project.

The Board may, from time to time, increase or reduce the performance guarantee held by it to reflect additional work required to correct or address problems arising subsequent to the establishment of said performance guarantee, or to reflect work already completed by the applicant.

8.03 Modifications

If an applicant desires to change the details of a project approved by the Board, it shall promptly notify the Board, in writing, of the details of said change(s). Within twenty (20) days, the Board shall determine and notify the applicant as to whether the change(s) is/are insubstantial or substantial, according to the following:

(1) Insubstantial Changes

If, in the opinion of the Board, the change(s) is/are insubstantial, or if the Board fails to respond within twenty (20) days following notification by the applicant of said change(s), the comprehensive permit granted by the Board shall be deemed modified to incorporate said change(s). Matters generally characterized as insubstantial changes are set forth in 760 CMR 56.07(4)(d).

(2) Substantial Changes

If, in the opinion of the Board, the change(s) is/are substantial, the Board shall hold a public hearing on said change(s) within thirty (30) days of its determination and proceed in accordance with § 5.00, above. The Board may request, and the applicant shall submit, any and all information and fees specified in §§ 2.00 and 3.00, above, deemed by the Board to be necessary to evaluate said change(s). Matters generally characterized as substantial changes are set forth in 760 CMR 56.07(4)(c).

8.04 Violations

Either the Building Commissioner/Inspector or the Board may issue a “Stop Work Order” in the event that there is any violation of the comprehensive permit conditions, noncompliance with the plan(s) of record or serious environmental damage due to erosion, sedimentation or other site conditions. Said Stop Work Order shall remain in effect until such time as the violation(s) or damage(s) is/are corrected.

9.00 Completion

9.01 Plans

Upon completion of the project, the applicant shall submit to the Board three (3) hard copies and one (1) digitized copy of as-built plans. Said as-built plans shall be signed and sealed by a registered architect or engineer.

9.02 Public Ways; Municipal Property

If any portion of the project is proposed to become a public way or other municipal property, the applicant shall submit three (3) hard copies and one (1) digitized copy of a street acceptance plan and a legal description of the roadways or other property. All accepted easements shall be recorded with the Southern Essex Registry of Deeds at the applicant’s expense, with copies evidencing proof of recording submitted to the Board.

9.03 Release

Upon determination by the Board that the public improvements associated with a development have been completed in accordance with the approved plan(s) and to its satisfaction, it shall release any performance guarantee held pursuant to § 8.02, above.