



Comprehensive Permit Rules of the Scituate Zoning Board of Appeals

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1.00: Purpose

These Rules establish procedures for applications to the Zoning Board of Appeals (the "Board") for comprehensive permits, as contemplated under G.L. c. 40B, §§ 20-23 (c. 40B). These Rules are required under G.L. c. 40B, § 21 and 760 CMR 31.02. These rules are also adopted under the Home Rule Amendment to the Massachusetts Constitution. The purpose of c. 40B and these Rules are to facilitate the development of affordable housing that is consistent with local needs and concerns.

These Rules alone are insufficient to describe c. 40B procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with c. 40B. In addition, the Board's general rules and policies for conventional applications under G.L. c. 40A shall apply to c. 40B applications. In the event of an inconsistency between these Rules and the Board's general rules, these Rules shall govern c. 40B applications.

2.00: Definitions

(a) *Board* means the Scituate Zoning Board of Appeals established under 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, board of selectmen or any other local board, committee, commission, department or official that possesses jurisdiction over purely local requirements that may relate to the property that is the subject of an application submitted under c. 40B. Under c. 40B, the Board may assume the duties of local boards. However, any duties of a local board that do not relate to purely local requirements that may relate to the property that is the subject of an application submitted under c. 40B shall not be assumed by the Board.

(c) *Limited Dividend Organization* means any for-profit applicant that proposes to sponsor housing under c. 40B and is eligible to receive a qualifying subsidy from a state or federal agency and which agrees to limit the profit on its actual costs of construction. For home-ownership projects, a Limited Dividend Organization shall not be permitted to earn a profit in excess of 20% its actual and demonstrable costs of development. For rental projects a Limited Dividend Organization shall not be allowed an Internal Rate of Return in excess of 10% per year, as measured against its actual costs of development and management. All excess profits shall be paid directly to the Town for the purposes of facilitating the development of affordable housing.

3.00: Filing, Time Limits, and Notice

3.01: The application for a comprehensive permit 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. All site development plans shall be signed and stamped by a registered Professional Engineer or Land Surveyor;

(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. The applicant shall also provide a representative list of materials and interior amenities;

(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) plan details required under local bylaws:

(i) where a subdivision of land is involved, a Subdivision Plan conforming to all of the applicable requirements of the Scituate Regulations for Definitive Subdivision Plans;

(ii) where a condominium or apartment complex is proposed, a plan conforming to all details required under Scituate By-laws for applications for special permits for multifamily development;

(iii) where site plan review would otherwise be required, a plan conforming to all details required under such process, as delineated in the Scituate Zoning By-laws;

(iv) where wetlands, buffer zones or other resource areas as defined under the Scituate Wetland Protection By-law are on the subject property, a plan and memorandum

containing all details that would otherwise be required by the Scituate Conservation Commission

(f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent. Mass DEP Guidelines shall apply to the entire site, not just those portions of the site that contain wetlands;

(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. The Board shall not be bound by any “project eligibility determination” from a subsidizing agency and may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 31.01.

(iii) the applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application.

(h) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations, along with a memorandum supporting the need for such requested exceptions;

(i) a complete *pro-forma*, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall limit its costs to actual investment in the property. Acquisition costs shown in the pro-forma shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm’s length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally, the Applicant shall fully disclose any costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs;

(j) a complete copy of any and all materials and applications submitted by the applicant to any prospective subsidizing agency or source, including, but not limited to all applications for site eligibility;

(k) a list of each member of the development and marketing team and their professional qualifications, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities;

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

(m) evidence of local need for the type and number of housing units being proposed by this Application.

(n) a memorandum (or memoranda) on the project's compliance with any and all state or federal environmental, historical, archeological, housing or other standards, regulations, statutes that apply to the project. This memorandum shall address the means by which the project shall comply with such standards, regulations and statutes.

(o) a traffic memorandum prepared by a qualified engineer or other professional analyzing impacts relating to traffic volume, emergency vehicle access, intersection safety and adequacy of internal circulation.

3.02: The application shall be accompanied by a filing fee. A current schedule of fees is available in the office of the Building Commissioner.

Additionally, the application fee shall include \$5,000.00 to pay for the services of legal counsel for assistance in any project of 25 units or less, and \$7,500.00 for any project in excess of 25 units but not exceeding 75 units and \$10,000.00 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the c. 40B process. Furthermore, in order to assist the Board in the determination of whether or not any proposed conditions will render the project uneconomic, as required under G.L. c. 40B, §§20-23, the application fee shall include an additional \$5,000.00 for the retention of a financial expert. The Board, in its sole and unfettered discretion may waive any or all of these additional fees if it is determined that legal and/or financial review is not necessary. Alternatively, the applicant may opt, in writing, to pay for the Board's legal counsel or financial consultant in the manner prescribed by G.L. c. 44, §53G and Section 4.00 hereof.

3.03: The Application shall be filed with the Town Clerk who shall retain a copy and forthwith transfer the remaining copies to the Board. Within seven days of filing of the application, the Board shall endeavor to notify each local official or local board of the application by sending such official or board 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, it 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 allow review by local officials, the Application shall include twenty copies of the complete application so that all boards,

officials and departments may review the same; and one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with match-lines) shall be made available by the Applicant 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. 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 sufficient sum to enable the Board to retain consultants chosen by the Board alone. 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. Whenever payments under such a fund result in a balance of less than \$10,000.00, the Board may require an additional deposit so as to expedite consultant review.

4.02: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 3.00 hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, regulations, policies and standards. 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 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. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee within 30 days of receipt of the request to do so 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 make 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 commence a public hearing on the application within thirty days of its receipt unless such time period is extended by written agreement of the Board and the Applicant. It may request the appearance at the hearing of such representatives or local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board may take into consideration the recommendations of local officials. The Board may request such additional documentation and information from the applicant as the Board deems reasonable and necessary. Failure to adequately respond to such requests may be grounds for denial.

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 shall be closed when all public testimony has been received and all information requested by the Board has been received. In the event that an applicant is of the opinion that the hearing should be closed, and the Board disagrees, the Applicant must request, in writing, filed with the Town Clerk, that the Board close the public hearing. No constructive approval may be sought by the Applicant until forty days has elapsed from the filing of such written request without a decision on the Application being made by the Board.

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 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, including but not 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 condition that is necessary to address local concerns. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to any

reliable statistical information including the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.

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

5.05: If a subdivision of land is involved, no construction is permitted until a Definitive Subdivision Plan has been submitted to and endorsed by the Board and the Applicant has recorded the same. The Zoning Board and not the Planning Board is the permit granting authority for subdivision approval.

5.06: If wetlands, as defined under the Scituate Wetland Protection By-law are affected by the proposed project in any manner, it shall be the burden of the Applicant to demonstrate that the Project can meet the performance standards set forth under the By-law, as enforced by the Scituate Conservation Commission.

5.07: No comprehensive permit shall take effect until a copy of the decision, bearing the certification of the Town Clerk, that twenty (20) days have elapsed after the filing of the decision and no appeals have been filed, is recorded in the Registry of Deeds and is indexed under the name of the owner of record of the land.

5.08: In the event that any approval by the Board is not based upon fully detailed plans, the Board may condition such approval on subsequent review and approval by the Board.

5.09: Any approval by the Board shall include adequate security for the construction and inspection of project infrastructure.

5.10: Any approval by the Board shall include provisions for profit monitoring of Limited Dividend Organizations so as to ensure that any excess profits are paid to the Town.

6.00 Changes in Application

6.01: In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitute a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from a qualifying subsidizing agency.

6.02: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.00 hereof that is deemed by the Board to be necessary to evaluate such changes.

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

6.04: 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.

7.00: Appeals

7.01: 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.

7.02: 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.