

TOWN OF SUDBURY ZONING BOARD OF APPEALS

**SUPPLEMENTAL RULES FOR
COMPREHENSIVE PERMITS
PURSUANT TO MGL CH. 40B, SECTIONS 20-23**

At a meeting of the Sudbury Zoning Board of Appeals, held on January 23, 2007 the following motion was made, duly seconded, and approved unanimously by all those present:

MOVED: To adopt the attached supplemental rules for comprehensive permits of the Zoning Board of Appeals of Sudbury, under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40B, Section 21. These SUPPLEMENTAL RULES are effective immediately upon their filing with the Sudbury Town Clerk, and they supersede any supplemental comprehensive permit rules previously filed with the Clerk or otherwise in effect by default.

So voted,

Members:

Associate Members:

TOWN OF SUDBURY ZONING BOARD OF APPEALS

SUPPLEMENTAL RULES FOR COMPREHENSIVE PERMITS PURSUANT TO MGL CH. 40B, SECTIONS 20-23

These Supplemental Rules For Comprehensive Permits (Supplemental Rules) are adopted by the Zoning Board of Appeals of Sudbury under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40B, Section 21, which requires boards to adopt rules governing applications for comprehensive permits. These Supplemental Rules, as amended from time to time, become effective upon their filing with the Sudbury Town Clerk and supersede any supplemental comprehensive permit rules previously filed with the Clerk.

1. PURPOSE AND CONTEXT

1.1 Purpose. These Supplemental Rules establish procedures for applications to the Sudbury Zoning Board of Appeals for comprehensive permits granted under Chapter 40B, Sections 20-23, of the Massachusetts General Laws. These rules are authorized by M.G.L. Chapter 40B, Section 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02 (3), Local Action Prerequisite.¹

1.2 Context. These Supplemental Rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read and implemented in conjunction with the Board's general rules for the conduct of hearings under M.G.L. Chapter 40A titled "Town of Sudbury Zoning Board of Appeals Rules And Regulations" [hereafter, the General Rules]. In case of an inconsistency or conflict between those General Rules and these Supplemental Rules, these rules shall govern.²

2. DEFINITIONS

2.1 Board means the Sudbury Zoning Board of Appeals.

2.2 Local board refers to any local board or municipal department in Sudbury, and its duly authorized representatives, including but not limited to: Board of Selectmen; Board of Health; Planning Board; Conservation Commission; Historical Commission; Design Review Board; Fire and Police Departments; Planning Department, Department of Public Works; Building Inspector and any other board, regardless of its geographical jurisdiction or source of authority (that is, including boards created by special acts of the legislature or by other legislative action) will be deemed a local board if it performs functions usually performed by locally created boards.

¹ According to the Model Rules promulgated by the Housing Appeals Committee, 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 Committee's regulations, 760 CMR 30.01.

² The General Rules, as amended from time to time, are on file with the Town Clerk, and copies are available at the Building Department.

3. APPLICATION MATERIALS, FILING, TIME LIMITS, AND NOTICE

3.1 Filing procedure. Each application for a comprehensive permit must be made on the official form (which is available from the Building Department), and must be filed with the Town Clerk in one signed original, with copies as stated below. The applicant is responsible for ensuring that all relevant boxes on the form are completed and all required information has been inserted.

3.2 Materials to be submitted with the application. The application must be accompanied by a complete description of the proposed project and by the materials designated below:

3.2.1 Preliminary site development plans. Site plans must be dated and manually signed by a Massachusetts-registered licensed engineer, land surveyor, or architect (whichever is applicable, based on state statute and regulation). Site plans must be drawn to the scale of 40 feet (or fewer) to the inch. The Board may, when necessary, require the site plans to be an instrument survey. The site plans must show

ALL of the following:

- (a) *Boundaries*: the boundaries and dimensions of the applicant's lot or lots
- (b) *Streets*: the name and, where available, the width of all abutting streets or ways
- (c) *Setbacks*: the measurement of all existing (if any) and proposed setbacks (i.e., from the front property line, center of the right of way, all side property lines, and the rear property line)
- (d) *Buildings*: the location and dimensions of all existing and proposed buildings, structures, accessory structures, sewage disposal systems, and driveways
- (e) *Hardscape*: the proposed locations, general dimensions, and materials proposed for streets, drives, parking areas, service areas, walks, and paved areas
- (f) *Topographical plan*: two separate plans showing the existing and proposed grade lines, with significant spot elevations in relation to mean sea level
- (g) *Signs and lighting*: the location and details of all proposed signs and exterior lighting
- (h) *Landscape*: all principal existing landscape features, including fences, stone walls, planting areas, walks, tree lines, open areas; and all principal proposed landscape features, including fences, stone walls, planting areas, walks, tree lines, open areas, and other improvements or changes from the existing features
- (i) *Stormwater*: stormwater flow and direction from all disturbed areas of the property, and all proposed stormwater protection features

3.2.2 Report on existing conditions. The report must include (but is not limited to) topography; zoning districts; existing buildings, driveways, streets; existing septic systems; wetlands, water bodies, and other natural features. It must also summarize existing conditions in the surrounding areas, showing the location and nature of existing buildings, street elevations, traffic patterns, and character of open areas (if any) in the neighborhood. This submission may be combined with the plans required in 3.2.1.

3.2.3 Preliminary, scaled, architectural drawings. Drawings must be signed by a Massachusetts-licensed architect and scaled no smaller than 1/4"=1 foot.

- (a) *Typical elevations*: of all proposed structures, showing each typical building's dimensions and including the height from grade to the roof ridge and to the highest

architectural element (if higher). If any existing buildings will remain on the site, include elevations and details.

(b) *Typical floor plans*: showing the location, dimensions, and use of rooms within buildings, for every unit type proposed

(c) *Materials*: identification of construction type and exterior finish

3.2.4 ***Tabulation of proposed buildings***. The tabulation must indicate type, size (e.g., number of bedrooms, floor area) and ground coverage, and it must include a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas. Calculation of total impervious surface must be provided.

3.2.5 ***Preliminary subdivision plan*** (necessary only when a subdivision of land is involved).

3.2.6 ***Preliminary utilities plan***. The utilities plan must show the proposed location and types of sewage, drainage, and water facilities, including hydrants.

3.2.7 ***Jurisdictional documentation***. The application must include documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 3 1.01. In particular, the documents must include:

(i) *Proof of limited-profit status*: documentation showing that the applicant is a public agency, a non-profit organization, or a limited dividend organization;

(ii) *Project eligibility letter*: documentation showing that the project is fundable by a subsidizing agency under a low- and moderate-income housing subsidy program³, and

(iii) *Site control evidence*: documentation showing that the applicant controls the site (e.g., a deed, a signed purchase-and-sale agreement, a signed option agreement) and has authority from the site owner.

3.2.8 ***Waivers and exceptions requested***. The application must include a list of the requested exceptions to local requirements, codes, bylaws, and regulations, including the specific citations to each requirement for which a waiver is requested. General waiver requests to entire bylaws will not be sufficient; specific citations are necessary.

3.2.9 ***Certified List of Abutters***. A list of abutters to the property, including those separated from the property by only a street, together with the address of each as determined from the most recent local tax list, certified by the Assessing Department. A map of the area indicating abutters is also required.

3.2.10 ***Other relevant materials***. The applicant may submit any other relevant materials that will assist the Board in its duties.

³ Local Initiative Proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.

3.3 Inadequate plans or forms; additional submissions. The Board may use its discretion to reject any plan as inadequate and may dismiss, with or without prejudice, or deny the application for the failure to file adequate plans or to complete the application form. The Board may also ask the applicant to supplement the submission with additional information and may, from time to time, request additional materials from the applicant, as the need becomes evident during the public hearing process.⁴

3.4 Number of copies. The application and all materials designated above must be submitted to the Town Clerk, initially in 25 counterparts (the original for the file; 8 copies for distribution to the regular and associate Board members; 11 copies for distribution to the local boards making recommendations to the Zoning Board).⁵ Materials submitted after the initial application, whether by the applicant or by other interested parties, can be submitted in 15 counterparts, unless the Board or its agent indicates otherwise. One set of 11” by 17” plans shall also be submitted.

3.5 Subsequent submissions. Materials submitted after the initial application, whether by the applicant, residents, or other interested parties, must be submitted to the Board via the Town Clerk’s Office no later than seven (7) calendar days before a continued hearing on the application, so they will be available for the public’s review. Original photographs, however, may be submitted to the Board during a public hearing, and additional duplicates are not required. The originals will be filed by the Board.

3.6 Filing fee. A filing fee based on a flat fee and the number of housing units proposed, shall accompany the application: \$2,000.00 base fee, plus \$100.00 per unit proposed. The filing fee will be waived for the Sudbury Housing Authority and may be waived by vote of the Board for any non-profit organization whose primary mission is to promote affordable housing.

3.7 Notice to local boards. Within 10 days after the application is filed, the Board will notify local officials and boards of the application by sending a copy of the list of requested waivers and exceptions (see CP3.1.8 above). Based upon that list, it will also invite each local official and, board with a substantial interest in the application to attend the hearing and make recommendations to the Board, as required by the statute.

4. REVIEW FEES

4.1 Payment of consulting fees. As provided in M.G.L. Chapter 44, Section 53G, and Rule A.6 of the Board’s General Rules, the Board shall require the applicant to submit an initial deposit of \$10,000 to pay for the employment of outside consultants to assist the Board in reviewing the application and the project, if needed. These review fees are imposed in addition to any other fees assessed under these Supplemental Rules.

4.2 Procedure. Whenever the Board determines that it needs technical advice, it may employ outside consultants. Once it designates an outside consultant, it will inform the applicant in

⁴ Additional materials may be requested to enable the Board to make a sound decision; grant waivers; formulate reasonable conditions; analyze the impact of the proposed development upon the natural resources, on- and off-site environs water supply, wetlands, infrastructure, drainage systems, municipal facilities, health and safety of future occupants and current residents alike, or otherwise comply with its duties under the statute and the HAC guidelines.

⁵ As the hearing proceeds, the Board or its agents may request additional copies of the application materials, as needed for distribution to other local boards in whose stead the Board must serve in the comprehensive permit process.

writing, giving the consultant's name, an estimate of the total fee, and the amount and due date of the initial deposit.

4.2.1 **Means of appeal.** The applicant may appeal the Board's selection of a consultant to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within 14 days of the applicant's receipt of the designation.

4.2.2 **Grounds for appeal.** Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications required pursuant to M.G.L. c.44, Section 53G. The required time limits for the Board to act on the underlying application are extended by the duration of this appeal.

4.2.3 **Delivery of initial deposit.** If the applicant does not file an appeal within the time period specified above, the applicant must deliver the initial deposit, in the form of a certified or bank check, to the Board via the Town Clerk for deposit with the Town Treasurer, within the time limits set in the designation letter.

4.2.4 **Amount of deposit** If prior to Board action on the plan the Board finds that the initial deposit is not sufficient to cover actual costs incurred by the Town during the review of the plan, the applicant shall be required to submit forthwith such additional amount as is deemed required by the Board to cover such costs. The Board shall notify the applicant of such additional amount in writing by certified mail. Failure to submit such additional amount as required by the Board within fourteen (14) days of receipt of said notice shall be deemed reason by the Board to deny said plan. If the actual cost incurred by the Town for review of said plan is less than the amount on deposit as specified above, the Board shall authorize that such excess amount be refunded to the applicant concurrently with final Board action on said plan.

4.2.5 **Grounds for dismissal.** Failure to pay the initial or any supplemental deposit within the time frames required by these rules is grounds for the Board to deny the comprehensive permit application.

4.2.6 **Return of unused funds.** The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit and will return any interest earned by the deposited funds and any funds remaining unused at the conclusion of the applicant's matter, upon direction by the Board.

4.3 Scope of assistance. In hiring outside consultants, the Board may engage professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, "good design" principles, and regulations. Assistance may include, but is not limited to, analyzing all or part of 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.

5. PUBLIC HEARING AND DECISION

5.1 Hearing. The Board must open a public hearing on the application within 30 days of its receipt, unless the time for opening is extended by written agreement of the applicant. It may request the appearance at the hearing of such local boards as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local boards.

5.2 *Vote required.* The Board must render a decision, based on a majority vote of the Board, within 40 days after the closing of the public hearing, unless the time for filing the decision 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.

5.3 *Action.* The Board may act upon the application in the following manner:

5.3.1 Approve a comprehensive permit on the terms and conditions set forth in the application;

5.3.2 Deny a comprehensive permit as not consistent with local needs, or

5.3.3 Approve a comprehensive permit with conditions that do not render the construction or operation of such housing uneconomic.

6. APPEALS

6.1 *Parties aggrieved.* If the Board approves the comprehensive permit, any person aggrieved may appeal to the court and within the time period provided for in M.G.L. c. 40A, Section 17.

6.2 *Applicant's remedy.* If the Board denies the comprehensive permit or approves the permit with conditions or requirements the applicant considers unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, Section 22.