

TOWN OF BOXBOROUGH



BOARD OF APPEALS
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Comprehensive Permit Rules of the Zoning Board of Appeals

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1.00: Purpose and Context

These Rules establish procedures for applications to the Boxborough Zoning Board of Appeals for comprehensive permits granted under Massachusetts General Laws c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 31.02. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.

These Rules alone are not sufficient to describe comprehensive permit procedures before the Boxborough Zoning Board of Appeals. They must be read in conjunction with, and implemented in a manner consistent with, G.L. c. 40B, §§20-23. In addition, the Zoning 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, these Rules shall govern.

2.00: Definitions

(a) *Board* means the Boxborough Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

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(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; water, sewer, 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; and is not a public agency; and 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)).

3.00: Filing, Time Limits, and Notice

3:01: Except where submission of any item is specifically waived by a majority vote of the Board, the application materials and information described below shall be delivered to the Board during normal office hours or at a hearing of the Board. Normal office hours and Board hearings are posted at Town Hall.

3.02: Except where submission of any item is specifically waived by a vote of the majority of the Board, the application for a comprehensive permit shall consist of the following:

(a) If the applicant is a corporation, certified corporate vote identifying the individual authorized to act on behalf of the corporation; if the applicant is a Trustee or the Trustees jointly, a certified copy of the Declaration of Trust describing the power of the Trustees to act;

(b) A certificate from the Massachusetts Commissioner of Corporations and Taxation that the applicant is registered as a non-profit or a limited dividend corporation, as applicable;

(c) Two copies of a letter identifying the subsidizing federal or state agency to which application has been made and identifying the subsidy program;

(d) 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. The site development plans shall be certified by a registered professional engineer or architect, registered landscape architect or other licensed or registered professional, as appropriate;

(e) A plot plan of the entire housing development showing distances, bearings, radii and tangents of all lot or property lines, all streets, rights of way, easements and the names of all abutting owners and of all easement rights' holders. The plot plan shall also show delineation's of any and all Wetlands and Watershed Protection District,

100 foot Buffer Zone to the W-District, vegetative wetlands, Riverfront Areas, Aquifer Protection District and Zoning Designations;

(f) 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 3.02(d), above. The traffic pattern analysis shall include the following information:

(i) traffic counts on arterial streets that provide access to the site showing data on Average Daily Traffic and a.m. and p.m. peak periods (conducted for two hours divided into fifteen-minute segments);

(ii) intersection turning movement counts on intersections likely to be affected by the proposed development showing two-hour counts for the a.m. and p.m. periods divided into fifteen-minute time segments;

(iii) an inventory of roadway characteristics showing the width of the principal approach streets, the presence or absence of curbing and its conditions;

(iv) estimated trip generation showing the projected inbound and outbound vehicular trips for the a.m. and p.m. peak periods and a typical one-hour off-peak trip generation;

(v) the estimated distribution of new trips by approach streets;

(vi) the effect of additional traffic generated by the development on traffic "levels of service" on each approach street (the term "level of service" means level of service as defined by the Highway Capacity Manual issued by the Highway Resource Board of the U. S. Department of Transportation); and

(vii) estimated off-street parking and loading requirements and time of peak accumulation;

(g) 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;

(h) 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;

- (i) Where a subdivision of land is involved, a preliminary subdivision plan;
- (j) 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;
- (k) 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 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;
- (l) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations;
- (m) 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;
- (n) 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.

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

(a) for Limited Dividend Organizations - \$1500.00 flat fee plus \$100.00 per unit

(b) for Non-Profit Organizations - \$1500.00 flat fee plus \$100.00 per unit

(c) for Boxborough Municipal Agencies - \$0

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. The Board, in its discretion may waive any or this entire fee. Alternatively, the applicant may opt to pay for the Board's legal counsel in the manner prescribed by G.L. c. 44, §53G or Section 4.00 hereof.

3.04: 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 §3.02(k), 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. Each local officer who receives a copy of the application shall be invited to prepare a report or to make recommendations on, among, other things (1) the adequacy of the data and the methodology employed; (2) the effects of the additional traffic on adjacent streets; and (3) remedial measures, if any, to accommodate the additional traffic on the adjacent streets, such as the location of highways, limitation on left turns, hours of operation, and the like.

3.05: In order to allow review by local officials, **the Applicant shall initially provide the Town Clerk with twelve (12) copies** of the complete application so that the following boards, officials and departments may review the same: Board of Selectmen, Planning Board, Board of Health, Building Inspector, Conservation Commission, Town Counsel, Fire Department, Police Department, Housing Committee, Historical Commission; and one unbound copy for copying purposes. Upon its review of the application, the Board may, in its discretion, require the Applicant to provide the Town Clerk with additional applications. Additionally 11"x17" copies of all plans (with matchlines) shall be made available to the Town Clerk for copying purposes.

3.06: The completed application, including all accompanying plans, shall be submitted to the Board in PDF form. The PDF document(s) shall be sent to the Board at the following email address: "mary.nadwairski@town.boxborough.ma.us".

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.

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, 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.

4.03: Funds received by the Board pursuant to this section shall be deposited with the municipal 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 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 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 twenty (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 the Board of Selectmen makes no decision 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 hold a public hearing on the application within thirty (30) days of its receipt of a completed application. Such a hearing shall be advertised in the local newspaper twice, the first notice not being less than fourteen (14) days prior to the date of the hearing. The notice of the hearing shall conform with all applicable statutes. Copies of the notice of hearing shall be sent by mail, postage prepaid, to all parties in interest as defined in G.L. c. 40A, §11, and to all local boards and agencies to whom the Board has transmitted copies of the application.

5.02: 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. The hearing may be continued by the Board to gather more information, to give the applicant time to provide further information, to retain consultants, or for other reasons specified by the Board.

5.03: The Board shall proceed with the hearing in accordance with the Boxborough Zoning By-Law, the Board's Rules and Regulations and G.L. c. 40A. 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.

5.04: The Board may act upon and dispose of an application in the following manner:

- (a) the Board may approve a comprehensive permit on the terms and conditions set forth in the application,
- (b) the Board may 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) the Board may 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 reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. 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 the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.

5.05: 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.

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, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated 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 3.05, 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: Copies of the Board's decision, including any reasons or conditions, shall be given to the Town Clerk, to the applicant, and to the local boards which had received copies of the application.

7.02: If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in G.L. c. 40A, § 17.

7.03: 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 G.L. c. 40B, § 22.

8.00: Construction

8.01: The construction of housing developments under the comprehensive permits shall be subject to inspection at all reasonable times to ensure compliance with the permit, the plans, the applicable Standard Specifications of the Town of Boxborough and with any other applicable laws, rules and regulations. Such inspection may be carried out by the board and by its agents and representatives, including without limitation the Building Inspector and members of his department, the Planning Board and its staff, and the Board of Health and its staff.

8.02: Not less than 48 hours (excepting Saturday and Sunday) prior to commencement of each phase of site development, the applicant shall give notice thereof to the Planning Board and not less than 48 hours (excepting Saturday and Sunday) prior to the commencement of each phase of building construction, the applicant shall give notice thereof to the Building Inspector. If material or work shall be covered without the approval of the Planning Board or its agents as regards the site development and of the Building Inspector or his agents as regards the building construction, the applicant may be required to uncover, open, disconnect and replace any work or materials covered in violation hereof.

8.03 The Board may, following a public hearing thereon, revoke the permit of any housing development violating Town requirements, obstructing inspections by duly authorized Town personnel, or where the workmanship or the materials are repeatedly found to be not in conformance with the approved plans and specifications.

9.00: Planning Design and Construction Standards

9.01: As provided for in §20 of Chapter 40B of General Laws, requirements and regulations consistent with local needs shall apply as equally as possible to both subsidized and unsubsidized housing. To the extent consistent with said §20, housing development shall be designed to comply with zoning, building and sign by-laws of the Town of Boxborough, the rules and regulations of the Board of Health and the Rules and Regulations Governing the Subdivision of Land in the Town of Boxborough and the standard specifications of the Department of Public Works. Variances or waivers from local by-laws and regulations may be granted by the Board of Appeals only where such variances or waivers are consistent with local needs, that is where the regional housing need outweighs the health, safety, environmental, design, open space, or other local concern supporting the by-law or regulation to be varied or waived, or where the applicant has proposed sufficient preventative or corrective measures to mitigate the local concern.

9.02: All housing developments shall be located in a manner compatible with the “long range comprehensive town and financial plan for Boxborough, Massachusetts”, except as otherwise recommended by the Planning Board. The suitability of a site for housing development will also be evaluated in relation to the following:

1. Land served by a septic system or other means of handling sanitary wastes;
2. Accessibility from a collector or arterial street;
3. Safety and convenience of vehicular access;
4. Open or recreational space within or nearby;
5. Accessibility to stores carrying convenience goods and to services;
6. Convenience to public transportation;
7. Free of soil and engineering problems making the development unduly difficult or costly.
8. Availability of adequate drinking water supply.
9. Impact on wetlands and aquifer protection areas.
10. Impact on town services.

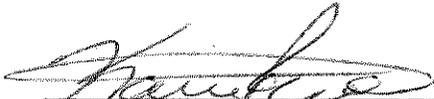
The importance of the above factors depends on the age and income groups to be served by the development and increases with the increased concentration of dwelling units.

10.00: Severability

10.01 The invalidity of any provision of these regulations shall not invalidate any other section or provision herein.

Dated this 15th of February 2005.

Boxborough Zoning Board of Appeals:



Karim Raad, Chairman

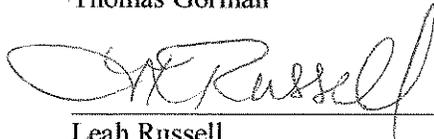


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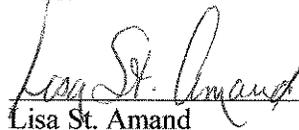


Thomas Gorman

Peggy Molander



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Lisa St. Amand