

**Comprehensive Permits Rules, As Amended
(Chapter 18, Article VI of the Stoneham Town Code)
As Voted By The Stoneham Board of Appeals
June 27, 2013**

Sec. 18-30. Authorization

These Rules are authorized by G.L. c. 40B, sec. 21, 760 CMR 56.00, et seq., and G.L. c. 44, sec. 53G.

These 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 G.L. c. 40B, secs. 20-23 (the "Act"). In addition, the Board's general rules and policies 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. Nothing in these Regulations shall be deemed to limit the right of the Board to require the Applicant to provide additional relevant information and/or documents or to limit the obligation of the Applicant to provide such additional information and/or documents.

These Rules, as amended, take effect on passage and supersede any other Chapter 40B rules that may have been adopted by the Board.

Sec. 18-31. Definitions

(a) "Board" means the Zoning Board of Appeal, established by G.L. c. 40A, sec. 12, and Section 7.1 of the Town of Stoneham Zoning Bylaws, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.

(b) "Local Board" means any local board or official, including but not limited to the Board of Health; Planning Board; Conservation Commission; Historical Commission; Town Administrator (including, but not limited to the authority of the former Board of Public Works); Fire Department, Police Department; Building Inspector or similar official or board; the Board of Selectmen; and all boards and commissions performing functions usually performed by locally-created boards and commissions shall be deemed local boards.

(c) "Limited Dividend Organization" means any entity which proposes to sponsor housing under the Act, is not a public agency or a nonprofit, is eligible to receive a subsidy from a state or federal agency after a comprehensive permit has been issued and which, unless otherwise governed by a federal act or regulation, agrees to comply with the requirements of said subsidizing agency relative to a reasonable return for building and operating its proposed housing project.

Sec. 18-32. Complete Application and Documentation.

It is the intent of the Board to have a complete application ("Application") and full documentation provided with the Application. The Board may deny a comprehensive permit

if material information is missing. In addition, the Board may require additional information during the review process, as it deems appropriate.

Sec. 18-33. Submittal Requirements.

The Applicant for an original comprehensive permit or for any substantial modification shall be required to submit the following with its Application:

(a) Preliminary Site Development Plan(s) - preliminary site development plan(s) (“Plan”) showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area, walks and paved areas; and proposed landscaping improvements and open areas within the site. All structures of five or more units must have site development plans signed and stamped by a registered architect. Structures of less than five units may submit a sketch of the matters referenced herein and in Subparagraph (c) below, which need not have an architect’s signature and stamp, subject, however, to the Board’s right to require architectural plans, at any time prior to or during the hearing, if deemed necessary by the Board. Said Plan shall include the following information:

- (i) existing wetlands area, including vernal pools, whether certified or not, within 100 feet of the site;
- (ii) existing and proposed topography at two-foot intervals;
- (iii) existing structures on adjacent properties within one hundred feet (100’) of the nearest property line;
- (iv) existing significant environmental features such as ledge outcrops, scenic views and large trees (i.e. greater than 24” dbh);
- (v) proposed stormwater management system;
- (vi) proposed entrance(s) and egress(es) to the property; and
- (vii) proposed lighting and a photometric analysis.

Additionally, a certified plan of land prepared, by a registered land surveyor or a registered professional engineer shall be submitted by the Applicant, if the above referenced Plan is not prepared by a registered land surveyor or a registered professional engineer;

(b) Report on Existing Site Conditions - a report, together with a plan(s) if applicable, regarding 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. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown.);

(c) Preliminary Scaled Architectural Drawing - preliminary architectural scaled drawings for building plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by the architect;

(d) Tabulation of Proposed Buildings - a tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and summary showing the

percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and by open areas;

(e) Subdivision Plan - where a subdivision of land is involved, a preliminary or a definitive subdivision plan shall be submitted. If a preliminary plan is submitted, the Board shall have the right to require the Applicant to submit any and all information required on a definitive plan or a definitive subdivision plan, if deemed necessary by the Board;

(f) Utility Plans – a utilities plan showing the proposed location and types of sewage, water (including hydrants) and draining facilities. Adequate supporting information shall be provided to demonstrate that all utilities and related infrastructure shall meet all applicable federal and state laws and regulations (including, but not limited to all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection or best management practices, whichever is more stringent), as well as Town regulations and requirements or if a waiver of the Town requirement is being sought by the Applicant, evidenced of the standard that will be met. (See also Section 18-33(m) below.) Additionally, the utility plan or a separate utility plan shall show the location and type of electric, gas utilities and telecommunication(s) facilities.

(g) Project Eligibility - documents specified in 760 CMR 31.01 to show the status of the Applicant and the acceptability of the site, including:

- (i) evidence that the Applicant is a public agency, non-profit organization or a limited dividend organization;
- (ii) evidence that 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 insure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 56.04; and
- (iii) evidence that 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 access to develop the project as proposed in the Application;

(h) Applicant's Control of Site - Appropriate documentation evidencing the Applicant's control of the site. If the Applicant owns the property, the Applicant shall provide a copy of the deed showing the Registry of Deeds book and page number(s) (and registered land recording information, if applicable). If the property is under a purchase and sale agreement or other agreement regarding ownership and/or control, a copy of said agreement shall also be provided;

(i) Materials Submitted to Subsidizing Agency – a complete copy of the Application and any materials submitted by the Applicant to the subsidizing agency. 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);

(j) Project Eligibility Letter – written documentation of project eligibility by a subsidizing agency containing all of the findings required by 760 CMR 56.04(4);

(k) *Pro Forma* - a complete financial *pro forma*, detailing the projected costs and revenues of the proposed project. The pro forma shall itemize all development costs and all profits and distributions, in accordance with applicable law, regulations and requirements, including the requirements and guidelines of the Commonwealth's Department of Housing and Community Development. In preparing its *pro forma*, the Applicant shall limit its costs to actual arm's length expenses in purchasing and developing the property. The Applicant shall fully disclose, in writing, to the Board all related party transactions. 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, if applicable, the amount of the last arm's length sale (with all reasonable and demonstrable carrying costs). Additionally, the Applicant shall fully disclose any land or development 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;

(l) Evidence of Local Housing Need – evidence of local need for the type and number of housing units being proposed by the Applicant.

(m) List of Requested Exemptions - a detailed list of requested exemptions to local bylaws, regulations, codes and requirements (hereinafter "requirement", which shall include an analysis of each requirement for which an exception is sought, the location on the plans for which the exception is sought (if applicable) and a complete explanation of why the exception is required;

(n) Environmental Impact Analysis (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - 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 adjacent thereto. Such analysis shall include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts on:

- (i) surface and groundwater quality;
- (ii) groundwater recharge;
- (iii) open space;
- (iv) recreational areas and space;
- (v) wildlife habitats and corridors;
- (vi) wetlands and bodies of water, including streams and rivers, both localized and general;
- (vii). species of special concern in Massachusetts; and
- (viii) historic structures or historic areas.

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.

(o) Traffic Impact Report (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - 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, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the Town of Stoneham or located in an adjacent municipality. Impacts on both vehicular and pedestrian travel must be addressed.

(p) Statement of Impact On Municipal Facilities and Services – a detailed statement on the impact of the proposed project on municipally facilities and services shall be provided by the Applicant in order to further the understanding of the Town and for planning purposes. This requirement and the provision of information in response hereto shall not affect (either increase or decrease) the Board's scope of review under applicable law or regulations for comprehensive permits, nor shall this information request or the information provided in response hereto be construed to be a basis of the Board's decision.

(q) Roster of Development Team Members/List of Prior Developments – (i) a list of all members of the development team, including all contractors and subcontractors to the extent known at the time of the Application; and (ii) a list of all prior development projects (regardless of whether residential or commercial, etc.) over the last ten (10) years;

(r) Twenty-five (25) copies of said Application with attachments and exhibits shall be submitted to the Town Clerk upon filing (to be distributed to the Board Members, the Board Recording Secretary, and to all of the Town departments). Up to ten (10) additional copies shall be provided to the Board upon request. Additionally, 11" x 17" copies of all plans (with match-lines) shall be provided to the Board for copying purposes by the Board or the Town Clerk;

(s) An abutters list certified by the Town's Assessor's Office listing all "abutters" as defined in G.L.c. 40A, sec. 11.

Section 18-34. Filing Fee.

The Application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed:

\$3,000 base fee, plus
\$ 100 per unit proposed.

The fees are reflective of the significant and unique administrative expenses required to process an Application that involves approvals that would normally be before multiple boards. Significant staff time and energy is expended on Comprehensive Permit proceedings.

These fees are applicable for both original applications as well as for applications for permit modifications that are deemed to be substantial by the Board, provided however that the Board may waive part of a fee for a project change.

Section 18-35. Outside Consultants.

See Section 18-21 of the Board of Appeals Regulations.

Section 18-36. Written Authorization.

(a) If the Applicant is not the owner of the property, the owner(s) shall provide written authorization for the subject Application by the Applicant on the Application.

(b) If the individual signing the Application is unable to attend any hearing on the Application, the Board shall require written authorization from the applicant that the designated representative has consent to represent the Applicant or to withdraw the Application.

Section 18-37. Public Hearing and Decision

(a) Public Hearing - the Board shall hold a public hearing on the Application within thirty (30) 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 shall take into consideration the recommendations of local officials.

(b) Decision - the Board shall render a decision, based on a majority vote of the Board as provided in G.L. c. 40B, sec. 21. The Board may dispose of the Application in the following manner:

(i) approve a comprehensive permit on the terms and conditions set forth in the Application,

(ii) 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

(iii) 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 issues arising under zoning, wetlands, planning or other local concerns while not rendering the construction or operation of such housing uneconomic. The scope of conditions may include any matter that would normally be addressed by a Local Board in review of a conventionally proposed project. 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, including during the latter stages of the public hearing after the parties have had an opportunity to

review the proposed project and any revisions thereto, and to require the applicant to submit a reasonable detailed written explanation in support of said contention; and

(iv) It shall be the applicant's burden to demonstrate that the waiver of any particular local bylaw, regulation or other requirement is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, regulation or requirement will adversely affect local concerns.

(c) Changes in Application

(i) In the event that, that, during the public hearing, the applicant proposes any changes in its Application or project plans that, in the Board's determination constitutes a material or substantial change to the project, the applicant shall provide a new site-eligibility letter from the designated subsidizing agency or otherwise reaffirm, amend or deny its prior determination of project eligibility;

(ii) In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Sec. 18-33 above that is deemed by the Board to be necessary to evaluate such changes; and

(iii) In the event of a material or substantial change, any and all plans and supporting information shall be provided to the Board in the same manner and numbers as for the original Application, unless otherwise waived in writing by the Board.

(iv) If the applicant submits a revised plan for the Board's consideration and said plan is the plan that is then the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions of this Section 18-37(c).