

## **Zoning Board of Appeals**

### **Comprehensive Permit Application Guidelines**

#### **I. Background and Purpose:**

Under Chapter 774 of the Acts of 1969 the Massachusetts Legislature created a mechanism whereby local zoning could be overridden in order to create more housing for low and moderate-income people. The statute is called the Anti-Snob Zoning Act, M.G. L. c. 40B. §§ 20-23.

The Legislature noted: "...there is an acute shortage of decent, safe low and moderate cost housing throughout the Commonwealth...necessary land is often unavailable because of restrictive zoning controls or similar regulation. Moreover, where land is available, the process for obtaining local approval is so protracted as to discourage all but the most determined and well-financed developers who may not necessarily have the interests of the community at heart." Report of the Committee on Urban Affairs (June, 1969). Further explanation of the background and purpose of the Anti-Snob Zoning Act can be is provided in the regulations of the Housing Appeals Committee, 760 CMR 30.01.

These guidelines should be read in conjunction with and implemented in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development. In addition, the Board's general rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications.

The Comprehensive Permit limits the length of the permit process as well as the number of boards or agencies from which the applicant must seek approval.

#### **II. Process:**

##### **A. Preliminary Review**

An applicant may apply to the Newton Zoning Board of Appeals ("ZBA") at any time for a comprehensive permit. An applicant is encouraged to first meet with neighbors prior to submission of an application and to keep neighbors apprised of all proceedings with City Departments. Next an applicant is encouraged to meet with the Inspectional Services Department to determine the relief to be requested, then the Planning Department to review the plans for completeness, accuracy and compatibility with good planning and development practices, including traffic, housing and land use objectives. The Planning Department may suggest ways that the plans and the application might be improved. The applicant can gain information about the history or physical features of the site, as well as the Department's professional expertise. The applicant is also encouraged to meet early with the Newton Housing Partnership for their review and recommendations concerning the proposal. An applicant is also encouraged to inform their local Aldermen prior to submitting the application to the ZBA.

The applicant is advised to contact the City Engineer to review the adequacy of utilities and roadways in the area; the Fire Department to review safety, including emergency

access and applicable fire codes; Public Works Department to review traffic, trash removal and approve necessary curb cuts; Inspectional Services Department to review zoning and building code issues; and the Environmental Planner (staff person to the Conservation Commission) in the Planning Department to review wetlands and environmental issues. The Planning Department shall include a notice of the application in its Friday report to the Mayor, Board of Aldermen and interested citizens.

It is suggested that the applicant refer to the Zoning Ordinance as a guideline to the development the areas around the site can sustain. This particularly applies to setback, F.A.R., build factor, height and stories and parking requirements provided in Section 30-15, parking requirements of Section 30-19, as well as any pending amendments which may be in front of the Board of Aldermen at the time of submission. The Planning Department shall submit a report to the ZBA providing a technical and planning analysis of the application.

Zoning requirements may be overridden by the ZBA if inconsistent with local needs as defined in M.G.L. c. 40B, § 20. The ZBA may impose conditions that do not make the project uneconomic as defined in M.G.L. c. 40 B, §20.

#### B. Other Required Reviews

Other regulations required by state law that may apply must still be adhered to, such as Massachusetts Environmental Policy Act Regulations, 310 CMR 11.00 *et seq.* ("MEPA") and the Wetlands Protection Act Regulations, 310 CMR 11.00 *et seq.* An Environmental Notification Form under MEPA is required if a Comprehensive Permit application proposes more than 100 housing units.

If there are wetlands or water bodies on or near the site, the applicant is advised to contact the Environmental Planner for the Conservation Commission as early as possible to identify any potential environmental problems.

### III. Submission Requirements

The application for a comprehensive permit shall include:

1. Preliminary site plan stamped and signed by a registered land surveyor depicting:

Location and footprint of all proposed buildings.

Proposed location, general dimensions and materials for streets, drives, parking areas, walks and paved areas.

Existing and proposed topography, including landscaping improvements and open areas.

2. A report on existing conditions and a summary of conditions in the surrounding areas, showing:

Location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood.

A neighborhood plan showing abutting lots and listing the owners of those properties.

3. Preliminary architectural, scaled drawings for building plans stamped and, signed by a registered architect illustrating:

Typical floor plans.

Typical elevations and sections.

Identification of construction type and exterior materials.

4. Table of the proposed buildings by type, size (number of bedrooms and, floor area) and ground coverage.
5. Summary showing the lot area in square feet and percentage of the tract to be occupied by buildings, parking and other paved areas, and areas to remain as open space.
6. Preliminary utilities plan showing the location and types of sewage, water and drainage facilities including hydrants.
7. Where a subdivision of land is involved, a preliminary subdivision plan.
8. Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is:
  - The applicant is a public agency, a non-profit organization, or a limited dividend organization;
  - The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program; and
  - The applicant shall control the site.
9. A list of requested exceptions to Newton's ordinances.
10. A statement showing why any housing units greater than the maximum density allowed by the zoning are economically necessary.
11. Local supply of affordable housing and current projects to add to supply.
12. A filing fee according to the following schedule:

Comprehensive permit petitions:	\$2,000.00 plus \$50.00 per unit
Non-profit – 7 or more units:	\$1,000.00 plus \$50.00 per unit
Non-profit – 6 or less units:	\$350.00

#### **IV. Criteria for Decision**

In considering the application for a Comprehensive Permit, the ZBA shall consider the following:

1. The health and safety of the residents of the proposed housing and the current residents of the City.
  - Structural soundness of the proposed buildings.
  - Adequacy of sewage disposal.
  - Adequacy of handling water runoff.
  - Adequacy of fire protection.
  - Adequacy of handling traffic generated by the project on adjacent streets.
  - Proximity of the site to industrial activities which might affect the health of the proposed residents.
2. Height, bulk and placement of the proposed buildings, accessory structures and improvements.
  - Physical characteristics of the proposed housing.
  - Physical characteristics of the surrounding land.
  - Adequacy of access to the site and adequacy of parking arrangements.
  - Adequacy of open areas.
3. The economic need to require additional housing units.
  - General feasibility of the project.
  - Limitations imposed by the financing agency with respect to size or character of the development, amount or nature of the subsidy and permissible rentals and tenant limits.
  - Changes in rents and units sizes of the development which would be necessary to accommodate the requirements and regulations sought to be imposed.
4. Local supply of affordable housing and current projects to add to supply.

#### **V. Public Hearing and Decision**

A complete application for a comprehensive permit shall be submitted to the ZBA.

Within seven days of the filing of the application, the ZBA shall notify local officials of the requested exceptions to Newton's ordinances and inviting that official's participation. application by sending such official a copy of the list required by Section III (9) above as to requested exceptions to Newton's ordinances and inviting that official's participation.

The ZBA shall hold a public hearing for a complete application within 30 days. The Chairman of the ZBA shall be responsible for the proper conduct of the hearing. The following is a general guideline to the order of proceeding:

- (a) applicant's presentation
- (b) local officials
- (c) those appearing in favor of the application
- (d) those appearing in opposition to the application.

The ZBA 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 is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

The ZBA may dispose of the application in the following manner:

- . approve a comprehensive permit on the terms and conditions set forth in the application,
- . deny a comprehensive permit as not consistent with local needs, or
- . approve a comprehensive permit with conditions with respect to height, siteplan, size, shape or building materials that do not render the construction or operation of such housing uneconomic.

## **VI. Appeals**

If the ZBA approves the comprehensive permit, any person aggrieved may appeal within the 20 day time period and to the court provided in M.G.L. c. 40A, § 17.

If the ZBA denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee within the 20 day time period as provided in M.G.L. c. 40B, §22.