

# **Town of Tolland, MA**

## **Board of Appeals**

### **Comprehensive Permit Rules and Regulations**

#### **Section**

- 1.0 Purpose and Context
- 2.0 Definitions
- 3.0 Filing, Time Limits, and Notice
- 4.0 Review of Applications and Review Fee
- 5.0 Public Hearing and Decision
- 6.0 Construction Fees and Performance Guarantees
- 7.0 Appeals
- 8.0 Amendments
- 9.0 Tolland Zoning Board of Appeal's Comprehensive Permit Application

#### **1.0 Purpose and Context**

These rules establish procedures for Applications to the Zoning Board of Appeals for the comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c.40B, Sections 20 to 23. They are required by M.G.L. c. 40B, 21, as amended by Stat. 1989, c.593, and by proposed amendments to 760 C.M.R. 31.02.

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 regulations of the Housing Appeals Committee, 760 C.M.R. 30.01.

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 the complete regulations of the Housing Appeals Committee, 760 C.M.R. 30.00 and 31.00 and with Guidelines for Local Review of Comprehensive Permits, published by the Executive Office of Communities and Development. In addition, the 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.

#### **2.0 Definitions**

- (a) Board means the Tolland Board of Appeals established under M.G.L. c.40A, 12.
- (b) Local official means any member of or the complete Tolland Board of Survey, if any; Board of Health; Historic Commission; Water, Sewer, or other District; Fire, Police, Traffic, or other department; Building Inspector or similar official or Board; Board of Selectmen; or other local official or board.

#### **3.0 Filing, Time Limits and Notice**

**3.01** In addition to the requirements found elsewhere in the Zoning By-Law and the regulations of this Board, the Application for a comprehensive permit shall also consist of the requirements of 760 C.M.R. 31.02(2):

- (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. An Applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in 760 C.M.R. 31.02(2)(a) and 31.02(2)(c) which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;

- (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 architectural, scaled drawings for buildings plans including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed by a registered architect;
- (d) a tabulation of proposed building by type, size (number of bedrooms, floor area) and ground coverage, occupied by buildings, by parking and other paved vehicular areas, and by open areas;
- (e) where a subdivision of land is involved, a preliminary subdivision plan;
- (f) a preliminary utilities plan showing the proposed location and types of water, waste water, and storm water facilities including hydrants;
- (g) documents showing that the Applicant fulfills the jurisdictional requirements of 760 C.M.R 31.01, that is,
  - (i) that the Applicant is a public agency, a non-profit organization, or a limited dividend organization,
  - (ii) that the project is fundable under a low and moderate income housing program, or it is a local initialized proposal pursuant to 760 C..M.R. 45.04 as amended;
  - (iii) that the Applicant controls the site; and
- (h) a list of requested exceptions to local codes, ordinances, by-laws or regulations, including the zoning by-laws or ordinances;
- (i) a project eligibility or site approval letter issued by each subsidizing agency;
- (j) a certified list of abutters within three hundred feet of the Applicant's property line including across a public or private way as they appear on the most recent applicable tax list even if the land is in another city of town must be submitted including owners of land directly opposite on any public or private street or way, and abutters within three hundred feet of the property line of the petitioner as they appear on the most recent local tax list (even if such owner is in another town). A fee for notification shall reflect the cost of postage, based on the cost of postage rates for certified notification to be sent to each abutter.
- (k) Fifteen copies of every document and plan for the Application must be submitted with all applicable fees at the time of filing.
- (l) Tolland Zoning Board of Appeals – Comprehensive Permit Application Form

**3.02 The Application shall be accompanied by a filing fee based upon the number of proposed housing units of:**

- |       |                                    |                  |
|-------|------------------------------------|------------------|
| (i)   | for Limited Dividend Organizations | \$12.00 per unit |
| (ii)  | for Non-Profit Organizations       | \$6.00 per unit  |
| (iii) | for Public Agencies and Local      | \$3.00 per unit  |

**3.03 In Addition to, or in conjunction with, the requirements of 3.01, the Applicant must submit:**

- 1) Existing Site and Site Area
  - (a) Plan(s) showing: scale, open spaces and topography, existing buildings and structures, metes and bounds, existing streets, public and private, wetland resource areas and buffers under both M.G.L. c. 131,40, and local wetlands by-laws, if any, and existing on-site infrastructures.
  - (b) Narrative information: potential alternative site uses under present zoning (as of right, under special permit), if available, first level assessment under Massachusetts General Laws, Chapter 21e, identification of any features of historic or archeological significance; identification of any significant natural resource or wildlife habitat. The level of detail must equal or exceed that which is already available to the public from another agency, or which the Applicant will otherwise be required to provide to another public agency.
- 2) Proposed Site Development
  - (a) Plan(s) showing: scale; all proposed structures including parking, roads, drainage features, open space, building footprints; typical drawings for each housing type; rough sketch of utilities; infrastructure improvements; subdivision of land if applicable.
  - (b) Narrative Information: ground coverage data; proposed landscaping/buffers; 21e remedial action, if applicable; housing type and bedroom mix data; project type (Homeownership Opportunity Program (HOP), State Housing Assistance for Rental Production (SHARP), etc.); project funding Application copy; proposed affordable / market rate ratios; project density.
  - (c) List of State or other Local approvals necessary to be sought and granted prior to the issuance of a building permit for the project.

- 3) Project Impacts
  - (a) Impacts: traffic (on-site circulation, site entrance and exit, trip generation data, sight and stopping distance existing and proposed levels of service); loss of historical, archeological, open space, wildlife habitat, or recreational resource(s); municipal services: public safety, water supply, sewer and / or wastewater treatment; construction impacts: noise, dust, erosion /siltation, potential releases: the benefits a project might provide (contributions to the statutory minimum of 10% percent, tax revenue, new amenities and infrastructure or traffic benefits, and the like)
  - (b) all financial information of the developer and its principals which has been provided to the subsidiary agency.
- 4) The Application shall be accompanied by a filing fee to be determined at the time of the Application.
- 5) Within seven days of filing of the Application, the Board shall notify each affected local board or official of the Application by sending such board or official a copy of the list required by section 3.01(h), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has a substantial interest in the Application by providing such official with an entire copy of the Application. The Board shall notify each affected local board or official of the hearing when scheduled.

## **4.00 Review Fees**

### **4.01 Intent when reviewing an Application,**

The Board may determine that the assistance of outside professional expertise and / or consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts.

The Board may require that Applicants pay a "review fee" consisting of the reasonable costs incurred by the Board for employment of outside professional expertise and / or consultants engaged by the Board to assist in the review of an Application.

### **4.02 Professional Expertise / Consultants**

In hiring outside professional expertise and/or consultants, the Board may engage engineers, planners, lawyers, urban designers, regional planning agencies or other appropriate professionals who are qualified and capable of assisting the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, by-laws, and regulations.

All consultants selected by the Board must meet minimum qualifications consisting of:

- a. an educational degree in, or related to the field at issue, from a recognized public or private college or university,
- or
- b. three or more years of practice in the field at issue or related field.

The selection made by the Board shall be recorded with the Office of the Town Clerk within five (5) business days of the Board's final selection(s).

### **4.03 Establishment of Special Account**

A review fee maybe imposed only after the Town has complied with the Uniform Procurement Act M.G.L. c. 30B, sec 19 and with Special Accounts Procedures set forth in M.G.L. c. 44, sec 53g.

#### **Deposit of Funds**

Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer in a special account for this purpose.

### **Minimum Fee Advances**

The following fee advance schedule shall be adhered to in determining the review fee required for the establishment of the special account. This is required at time of Application submittal to the Town of Tolland Zoning Board of Appeals along with submittal of the applicable filing fee; this amount will be dependent upon the type of proposed development.

### **Comprehensive Permit Subdivision Applications Review Fee Advance Schedule:**

(i)	1-5 Lots:	\$1,500.00
(ii)	6-15 Lots:	\$ 3,000.00
(iii)	16-25 Lots:	\$ 5,250.00
(iv)	26-50 Lots:	\$ 7,500.00
(v)	51 or more:	\$ 11,500.00

### **Comprehensive Permit Multi-Family, Condominium and/or Townhouse Units Review Fee Advance Schedule:**

(i)	Enclosed gross floor area 5000 square feet or less or 1-5 units:	\$ 1,500.00
(ii)	Enclosed gross floor area 5001-15000 square feet or 6-15 units:	\$ 3,000.00
(iii)	Enclosed gross floor area 15001-30000 square feet or 16-25 units:	\$ 5,250.00
(iv)	Enclosed gross floor area 30001-50000 square feet or 26-50 units:	\$ 7,500.00
(v)	Enclosed gross floor area 50001 square feet or more or 51+ units:	\$ 11,500.00

### **Additional Review Fee or Advance:**

If review funds charged are or appear that they may be insufficient to cover the costs of outside professional expertise and/or consultant review, the Board may require the Applicant to pay an additional review fee or advance to cover these costs provided these costs are reasonable and directly related to the project undergoing review.

### **Expenditures:**

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 concerning the review of a specific Application or Applications for which a review fee has been, or will be, collected from the Applicant.

### **Failure to Pay:**

Failure of an Applicant to pay a review fee or advance shall be considered as an incomplete Application and therefore not allow the Application to go forward.

## **4.04 Use of Funds**

### **Use of funds:**

Review fees or advances may only be spent for services rendered concerning the specific Application for which they were collected. These services shall include, but are not necessarily limited to: Application reviews, document review, and Application-related inspections and evaluations. Accrued interest may also be spent for this purpose.

### **Special Account to cover initial review costs:**

If the outside consultant review begins and expenses are generated prior to the filing of a formal administrative Appeal, all such expenses, up to the time of Appeal, shall be paid out of the special account for that particular project.

### **Excess Funds Returned:**

At the completion of the Board's review of a proposed project, or after final disposition of the Application or permit, any excess amount in the account including interest attributable to a specific Application, shall be repaid to the Applicant or the Applicant's successor in interest.

### **Report of Account:**

A final report of the status of said account shall be made available to the Applicant or the Applicant's successor in interest.

### **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 that legally establishes this succession in interest.

## **4.05 Method of Appeal – Technical Review**

### **Appeal body:**

Any Applicant may take an administrative Appeal from the selection of the outside professional expert and/or consultant to the Board of Selectmen.

### **Grounds:**

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.

### **Seven days to file Appeal:**

Any Applicant aggrieved by a selection of an outside consultant may Appeal to the Board of Selectmen; if such Appeal is entered within seven days after such selection has been made as recorded in the Office of the Town Clerk. An Appeal will not be considered valid unless it is formally filed with the Office of the Town Clerk with a copy given to the Board of Selectmen.

### **Waiver of Appeal:**

The Applicant shall notify the Board of Appeals of its intention to seek a waiver at the earliest possible time in the review and consultant selection process. If the Applicant fails to sign and/or file a formal waiver of Appeal, this action will be then viewed as an intention to Appeal on the part of the project Applicants. Failure to inform the Board of such intention of Appeal may result in the delay of start-up of the Town outside review services.

### **Action on an Appeal:**

In acting on an administrative Appeal, the Board of Selectmen may determine that:

- a) a conflict of interest does exist, and/or the consultant does not meet the minimum qualifications, therefore the Board must select another consultant, or
- b) a conflict of interest does not exist, and/or the consultant does meet the minimum qualifications, therefore the selection made by the Board stands.

## **Review Period Extended**

The required time limit for action upon an Application by the Board shall be extended by the duration of any administrative Appeal, beginning from the date of filing of such Appeal.

## **No decision on Appeal**

In the event that no decision is made within one month (30 days) following the filing of the Appeal, the selection made by the Board shall stand.

## **4.06 Other Fees See sections 3.01 (J) and section 3.02**

## **5.0 Public Hearing and Decision**

1. The Board shall advertise the Application in a local newspaper of general circulation at least 14 days prior to the hearing, shall notify parties in interest as defined by the Zoning Act M.G.L. c. 40A, and shall post a copy of the hearing notice at least 14 days prior to the hearing with the Town Clerk.
2. The Board shall hold a Public Hearing on the Application within thirty days of its receipt. It 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 recommendation of local officials.
3. If the Application lacks any required information, the Board may:
  - (1) delay the opening of the hearing until the required information is submitted,
  - (2) open the hearing, state its objection to the lack of information and request the Applicant to complete the Application before the hearing is closed, or
  - (3) permit the Application to be withdrawn without prejudice.
4. Hearings may be continued for a reasonable time with the Applicant's consent if additional time is needed to address substantive questions.
5. 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 is deemed terminated when all public testimony has been received and all information requested by the Board has been received.
6. 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 with conditions with local needs, or
  - (c) approve a comprehensive permit with conditions with respect to height, site plan, size, shape, or building materials, or such other conditions as the Board deems appropriate, that do not render the construction or operation of such housing uneconomic.

Decisions under M.G.L. c. 40B require a simple majority vote of the Tolland Zoning Board of Appeals

## **7. Notice of Decision**

Notice of the Decision shall be filed with the Tolland Town Clerk within fourteen (14) days.

Any Appeal from this Decision must be within twenty days after it is filed with the Tolland Town Clerk to the court as provided in M.G.L. c. 40A sec 17 or the Applicant may Appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B sec 22.

## **6.0 Construction Fees**

The following fees will be payable after the permit has been granted and before construction can begin.

### **Construction / Inspection**

- |      |                                  |             |
|------|----------------------------------|-------------|
| (i)  | Up to 1000 linear feet of road   | \$ 2,500.00 |
| (ii) | For every linear foot thereafter | \$ 5.00     |

### **Restoration Guaranty**

- (i) Deposit / performance bond for the restoration / repair of existing public streets, bridges, utilities and systems disturbed or damaged as a result of construction activities, as determined by the Board.

### **Street Signs**

Including but not limited to street names, speed limits, and other signs required by the Town.

- (i) \$ 150.00 / sign

## **6.01 Performance Guarantees**

In accepting the Board's approval of a comprehensive permit, the Applicant agrees to complete the required improvements. The required improvements are to be secured by one of the following methods which may from time to time be varied by the Applicant:

### **Approval with Bonds or Surety**

- (i) The Applicant shall either file a primary surety company performance bond or provide a deposit of money or negotiable securities in an amount determined by the Board, (which may consult with appropriate Town departments and / or consultants) to be sufficient to cover the cost of all or any part of the improvements not covered by a covenant under (ii) below. The Board shall approve such bond, deposit of money or negotiable securities as to the form and manner of execution.

### **Approval with Covenant**

- (ii) Instead of filing a bond or depositing money, the Applicant may fulfill a covenant executed and duly recorded by the owner of record, running with the land, that no lot in the subdivision shall be sold and no building erected until such ways, services, and whenever applicable, temporary turnarounds are constructed and installed, in accordance with the plans and conditions as may be set by the Board.

Such covenants shall be inscribed on the Plan or on a separate document referred to on the Plan and delivered to the Board. The Board shall turn over the covenant to the Town Counsel who shall review its content and forward his comments in writing to the Board. Upon approval of the covenant by the Board, the Applicant shall note the Board's action on the plan and shall record the covenant, endorsed plan, and other appropriate documents at the Hampden County Registry of Deeds. A recorded copy of the covenants, endorsed plans needs to be filed with Board within ten (10) working days of recording.

## **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, s. 17.

- 7.02** If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the Applicant may Appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, s. 22.

## **8.00 Amendments**

These rules may be amended by a simple majority vote of the board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereon, and written amendments submitted to the Town Clerk of Tolland, Massachusetts.

**9.00 Tolland Zoning Board of Appeals Application for Comprehensive Permit –  
See Attached.**

**Voted to adopt January 28, 2004**

David Barney voted in favor

Steve Bartels voted in favor

Richard Pustinger voted in favor