



TOWN OF SHREWSBURY

Richard D. Carney Municipal Office Building
100 Maple Avenue
Shrewsbury, Massachusetts 01545-5398

A TRUE COPY ATTEST:

Andrea E. Wright
TOWN CLERK

SHREWSBURY ZONING BOARD OF APPEALS RULES RELATIVE TO THE SUBMISSION AND REVIEW OF A COMPREHENSIVE PERMIT APPLICATION (2014)

Adopted: May 5, 2003

Amended: November 24, 2014

Section

- 1.00 Purpose and Context
- 2.00 Definitions
- 3.00 Filing Requirements, Fees and Notices
- 4.00 Review of Application
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1.00 PURPOSE AND CONTEXT

These Rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive Permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, Sections. 20-23, and the regulations promulgated thereunder, at 760 CMR 56.00, *et seq.* They are required by M.G.L. c.40 B, Section 21 and by 760 CMR 56.05(1). The purpose of the 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 Zoning Board of Appeals. They must be read in conjunction with, and implemented in a manner consistent with the Act and 760 CMR 56.00. 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.

2.00 DEFINITIONS

- a) **Board** means the Zoning Board of Appeals established under M.G.L. c. 40A, Section 12.
- b) **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.

- c) **Local Board** means any local board or official, including, but not limited to: the Board of Selectmen, the Board of Health, the Planning Board, the Conservation Commission, the Historic District Commission; the Sewer Commission, or other commissions; fire, police, traffic, or other municipal departments; and the Building Inspector or similar official or board. All boards, regardless of their geographical jurisdiction or their source of authority (that is, including boards created by special acts of the legislature or by other legislative action), shall be deemed local boards if they perform functions usually performed by locally created boards.

3.00 FILING REQUIREMENTS, FEES AND NOTICES

3.01 These Rules identify plans and other reports required to be submitted to the Board in support of a completed Comprehensive Permit application. The materials listed below shall be submitted to the Board simultaneously with the application. The Board recognizes that for many proposed projects, plans may not be at a definitive stage of development when the application is filed. However, the Board needs to receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing information and materials promptly with the application will result in a quicker process and enable the Board to become better informed.

- a) **Required Materials:** An application for a Comprehensive Permit shall be accompanied by 15 collated copies of the following:
- i) Preliminary Site Development Plans: An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(i) and 3.01(iii), below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered professional engineer. A set of 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. Plans should also include the following:
 - (1) North arrow;
 - (2) Names of existing and proposed streets;
 - (3) Zoning district boundaries that fall within the locus of the plan;

- (4) Names and addresses of abutters;
 - (5) Property lines and location of buildings within 200 feet of the subject property on abutting properties and properties directly across any street or way;
 - (6) Dimensions of the subject property boundaries including bearings & distances and verified distances from buildings, structures, and uses on abutting properties;
 - (7) Location of all existing or proposed uses, structures, and buildings on the subject property, principal or accessory along with the perpendicular distances from all property lines to the nearest point of the proposed building, structure, or use;
 - (8) Zoning analysis table listing required, existing, and proposed conditions;
 - (9) Parking analysis for all uses other than single family and two family residences;
 - (10) Location of all building entrances or exits, drives, ways, parking lots, and loading areas;
 - (11) Elevations and locations on the plan of all existing and proposed signs on the subject property;
 - (12) Location of all prominent vegetated areas;
 - (13) Location of trash disposal areas for all uses other than single family and two family residences;
 - (14) Drainage calculations, as necessary to demonstrate there will be no adverse impacts to adjacent properties or roadways;
- ii) Project Narrative: A narrative describing the nature and location of the project and the site, including:
- (1) A legal description of the property
 - (2) Name and address of the property owner and the applicant, if different from the owner
 - (3) Complete dimensions and area

- (4) Zoning classification(s) that apply to the property
 - (5) Assessor's map and lot numbers
 - (6) Size of the proposed building(s)
 - (7) A description of measures the applicant proposes to prevent soil erosion and storm water runoff during construction
 - (8) Estimated cost of all site improvements
 - (9) Projected public water and sewer demand, if any
 - (10) Projected parking spaces required for the development
 - (11) Discussion of how the proposed development conforms to the most recent Shrewsbury Housing Production Plan and Shrewsbury Master Plan
- iii) Report on Existing Site Conditions: 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.
- iv) Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building 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.
- v) Tabulation of Proposed Buildings: A tabulation of the proposed buildings by type, size (number of bedrooms, floor area, ground coverage), the number of affordable and market rate units of each type and size, 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.
- vi) Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under M.G.L. c. 41, Section 81K.

- vii) Utilities Plan: A preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants, and a photometric map showing on-site footcandle information and lighting installations.
 - viii) Application for Project Eligibility & Project Eligibility Letter: A copy of the application for project eligibility submitted to the subsidizing agency, as well as the written determination of project eligibility by said subsidizing agency containing all of the findings required by 760 CMR 56.04(4), as may amended.
 - ix) List of Required Exceptions to Local Requirements & Regulations: A detailed list of requested exceptions to local requirements and regulations, which shall include an analysis of each requirement or regulation for which an exception is sought, the location on the plans for which the exception is sought (if applicable), and an explanation of why the project will not be economic unless the Board grants the requested exception.
- b) **Additional Materials**: The following materials are required by the Board for a project with 10 units or greater.
- i) Environmental Impact Analysis: 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. 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.
 - ii) Traffic Impact Report: 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, projected total and peak-hour trip generation, level of service, proposed traffic controls, sight lines, safety and overall convenience of the roadway system providing access to the proposed project. Impacts on both vehicular and pedestrian travel shall be addressed. Road intersections to

be studied shall be mutually agreed upon by the Board, its consultants, and the applicant.

- iii) Stormwater Management Report: A Stormwater Management Report displaying stormwater management systems designed in accordance with the Massachusetts Department of Environmental Protection (DEP) Stormwater Management Policy Handbook, as most recently amended.
 - iv) Public Service and Fiscal Impacts Report: A Public Service and Fiscal Impact Report including, but not limited to, projections of costs rising from increased demand for public services and infrastructure, benefits from increased tax revenues, employment and infrastructure improvements, and impacts on adjacent property values.
 - v) Community Impact Report: A Community Impact Report analyzing the project's impact on the surrounding neighborhood in terms of, but not limited to, architectural character, pedestrian movements, overall character, and nearby historic structures or sites. Evaluation of the proposed project's consistency and compatibility with local and regional plans should also be included.
 - vi) Affordable Unit Analysis: An Affordable Unit Analysis report showing the location of the affordable units in the project and how the units are comparable to the market rate units in terms of exterior building materials and finished, overall construction quality, energy efficiency measures, mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.
 - vii) Long Term Monitoring: A Long-term Monitoring Plan identifying the governmental agency or other entity which shall be responsible for project monitoring for the duration of the project's affordability. A cost estimate to implement the long-term monitoring plan shall be submitted
 - viii) Tenant/Owner Selection: A plan identifying the governmental agency or other entity that will be responsible for marketing the project and selecting tenants or owners.
 - ix) Landscape: A preliminary plan of proposed landscaping of the project site. The Board will normally include a condition in a Comprehensive Permit requiring approval of a definite landscaping plan prior to issuance of a building permit and maintenance of the landscaping by the owner(s) of the project.
- c) **Pro Forma**: A complete *pro forma* detailing the projected costs and revenues of the proposed project may be required if, following consultant review of the project, the Board proposes modification of the project or imposition of a condition that the

applicant contends renders the proposed project uneconomic. The *pro forma* shall itemize all development costs, including hard costs, soft costs and site developments costs, and all profits and distributions, in accordance with the Department of Housing and Community Development's (DHCD) "Comprehensive Permit Guidelines," (the Guidelines) dated May 2013, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

3.02 Fees: The following fees are to be filed with an application, as detailed below.

- a) **Administrative Fee:** The application for a Comprehensive Permit shall be accompanied by a filing fee of One Thousand Dollars (\$1,000.00) plus One Hundred Dollars (\$100.00) per unit proposed. The Board may, at its discretion, waive all or part of the filing fee upon written request of the applicant.
- b) **Consultant Fee:** An applicant may be required to pay an amount into an escrow account established pursuant to M.G.L. c. 44, Section 53G, said amount to be determined by the Board and to be used for consultant review of the application in accordance with 760 CMR 56.05(5), as may be amended, and Section 4.00, below. If necessary, the Board may require that the escrow account be replenished during the Board's review of the application.

3.03 Notification: Upon receipt of an application for a Comprehensive Permit, the Board shall notify each Local Board of the application by sending such official a copy of the list required by CMR 56.05(3), as may be amended. Based upon that list, it may 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. The Board shall also notify abutters within 300 feet of the project site. The Board will also place the legal advertisement in the local newspaper for circulation.

4.00 REVIEW OF APPLICATION

4.01 Consultant Review: If, after receiving an application for a Comprehensive Permit, the Board determines that in order to review that application it requires technical advice in such areas as civil engineering, transportation, environmental resources, design review of buildings and site, and, in accordance with 760 CMR 56.05(6), as may be amended, review of financial statements, that is unavailable from municipal employees, it may employ outside consultants. Review and selection of the application shall be in accordance with 760 CMR 56.05, as may be amended, and Section 4.02, below. The Board may, by majority vote, require that the applicant pay a review fee into the escrow account referenced in Section 3.02(b) above, for the employment of outside consultants chosen by the Board alone.

4.02 Consultant Selection:

- a) **Technical Consultants:** The Board may engage, as outside consultants, engineers, scientists, architects, environmental consultants, planners, urban designers and/or other appropriate professionals to assist the Board in analyzing a proposed project and the effect(s) on the project of all applicable laws, bylaws and rules and regulations. Such assistance may include, but not be limited to, reviewing an application, monitoring or inspecting a project or site for compliance with the Board's decision or applicable laws, bylaws and rules and regulations or inspecting a project during construction or implementation. Additionally, the Board may engage legal counsel to provide non-general representation including, but not limited to, review of legal documents and opinions submitted by the applicant.
- b) **Financial Analyst:** Where a pro forma is required by the Board, it may engage a financial analyst to perform the same consultant review permitted in connection with other technical information submitted to the Board.
- c) **Notification to the Applicant:** Upon selection of consultants as aforesaid, the Board shall provide notice thereof to the applicant, by hand or via first-class mail.

4.03 Special Account:

Funds received by the Board for consultant review shall be deposited with the Town Treasurer, who shall establish the Escrow Account. Expenditures from the Escrow Account may be made at the direction of the Board without further appropriation, but only for services rendered in connection with the specific project or projects for which the consultant 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 any review fee requested by the Board within ten (10) days of such request shall be grounds for denial of the application.

4.04 Remaining Funds:

Thirty (30) days after the issuance of a Comprehensive Permit, any remaining funds in the escrow account attributable to said project, including any accrued interest, shall be repaid to the applicant or the applicant's successor in interest. A final accounting shall be made available to the applicant or applicant's successor in interest. For the purpose of the Section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with all reasonably-requested documentation establishing the same. The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official of the municipality for their review. This report shall be published in the town annual report.

4.05 Appeals:

An applicant may appeal the selection of any outside consultant by the Board to the Board of Selectmen, pursuant to CMR 56.05(5)(d), as may be amended. Such appeal must be made in writing within twenty (20) days from the date the Board mailed or hand-delivered

notice to the applicant of the selection of the consultant. 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 (3) or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one (1) month from the date of filing of the appeal, the selection made by the Board shall stand.

5.00 PUBLIC HEARING AND DECISION

5.01 Conduct and Scope of Hearing: The Board shall hold a public hearing on the application, conducting the same in accordance with 760 CMR 56.05(3)–(4), as may be amended. 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.

5.02 Decision: The Board shall render a decision, based on a majority vote of the Board, within forty (40) days of the close of the hearing, as specified by 760 CMR 56.05(8), as may be amended. The Board may dispose of the application in the following manner:

- a) **Approval:** The Board may approve a Comprehensive Permit on the terms and conditions set forth in in the application.
- b) **Approval with Conditions:** The Board may approve a Comprehensive Permit subject to conditions and limitations, including but not limited to those necessary to protect the health or safety of the occupants of the proposed project or of the residents of the Town, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning and to preserve open spaces (the “Local Concerns”). A Comprehensive Permit issued by the Board may be subject to the grant of a subsidy by the applicant’s subsidizing agency, the issuance of final approval by said subsidizing agency, the receipt of permit(s) or approval(s) required from any state or federal agency and/or the receipt of any waiver(s) ordered by the Board from fees normally imposed by Local Boards
- c) **Denial:** The Board may deny a Comprehensive Permit as not consistent with local needs if the Board finds there are no conditions that will adequately address Local Concerns, or for any other reason which may be provided for by the Act or the Regulations as amended from time to time. Additionally, an application may be denied if any of the grounds set forth in 760 CMR 56.03(1), as may be amended, have been met, in which event it shall provide notice of the same to the applicant in accordance with 760 CMR 56.03(8), as may be amended.

- 5.03 Finality of Permits:** A Comprehensive Permit shall become final on the date that the written decision of the Board is filed in the office of the municipal clerk, if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of, provided however that if a Comprehensive Permit is issued by the Board or the Housing Appeals Committee and is subsequently subject to legal appeal, an applicant may elect to proceed at risk with construction of the Project. A Comprehensive Permit that is issued by constructive grant pursuant to 760 CMR 56.07(5)(d), as may be amended, shall be deemed final upon the expiration of the applicable deadline.
- 5.04 Appeals of Board Decisions:** Appeals to decisions by the Board should be taken pursuant to 760 CMR 56.05(9), as may be amended.
- a) **Appeal by Aggrieved Party:** 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 Section 17.
- b) **Appeal by Applicant:** 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, Section 22 and 760 CMR 56.06.
- 5.05 Transfer of Permits:** Prior to substantial completion of a project or a phase thereof, a Comprehensive Permit may be transferred to a person or entity other than the applicant, upon written confirmation from the subsidizing agency that the transferee meets the requirements of 760 CMR 56.04(1)(a) and (b), and upon written notice to the Board and the Housing Appeals Committee (in the case of a project granted a Comprehensive Permit under 760 CMR 56.07). Transfer of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4). After substantial completion, a Comprehensive Permit shall be deemed to run with the land.
- 5.06 Lapse of Permits:** If construction authorized by a Comprehensive Permit has not begun within three (3) years of the date on which permit becomes final except for good cause, the permit shall lapse. This time period shall be tolled for the time required to pursue or await the determination on any appeal on any other state or federal permit or approval required for the project. The Board or the Housing Appeals Committee may set a later date for lapse of the permit, and it may extend any such date. An extension may not be unreasonably denied or denied due to other projects built or approved in the interim. Extension of a permit shall not, by itself, constitute a substantial change pursuant to 760 CMR 56.07(4).

6.00 PROJECT MODIFICATIONS

6.01 Changes to an Application During Hearing Process

- a) **Project Eligibility:** Should an applicant propose any change(s) to its application or any other aspect of its proposal that may affect the project eligibility requirements of 760 CMR 56.04(1), as may be amended, it shall immediately notify its subsidizing agency of said change(s). In the event the Board finds that the change(s) may be substantial, the Board may request that the subsidizing agency review said change(s) and reaffirm, amend or deny its determination of project eligibility.
- b) **Additional Information:** In the event that an applicant proposes change(s) to a project while review of its application is pending before the Board, the Board may require submittal of revised version(s) of the materials specified in Section 3.00, above, to the extent said materials are pertinent to the proposed change(s). For the purpose of determining deadlines for Board action, a substantial change to a project shall constitute a new application to the Board.

6.02 Changes After the Issuance of a Comprehensive Permit

If an applicant desires to change the details of a project approved by the Board, it shall promptly notify the Board, in writing, of the details of said change(s). Within twenty (20) days, the Board shall determine and notify the applicant as to whether the change(s) are insubstantial or substantial.

- a) **Insubstantial Changes:** If, in the opinion of the Board, the change(s) are insubstantial, or if the Board fails to respond within twenty (20) days following notification by the applicant of said change(s), the Comprehensive Permit granted by the Board shall be deemed modified to incorporate said change(s). Matters generally characterized as insubstantial changes are set forth in 760 CMR 56.07(4)(d), as may be amended.
- b) **Substantial Changes:** If, in the opinion of the Board, the change(s) are substantial, the Board shall hold a public hearing on said change(s) and review the same all in accordance with 760 CMR 56.05(11)(c), as may be amended. For the purpose of said review, the Board may require submittal of any of the materials specified in Section 3.00, above, to the extent said materials are pertinent to the proposed change(s), and payment of the fee(s) specified in said Section 3.00. Matters general characterized as substantial changes are set forth in 760 CMR 56.07(4)(c), as may be amended.

7.00 VIOLATIONS

Either the Building Inspector or the Board may issue a “stop work order,” so-called, in the event that there is any violation of the Comprehensive Permit conditions, noncompliance with the plan(s) of record or serious environmental damage due to erosion, sedimentation or other site conditions. Said order shall remain in effect until such time as the violation(s) or damage(s) are corrected.

8.00 MISCELLANEOUS

8.01 Policies and Advice:

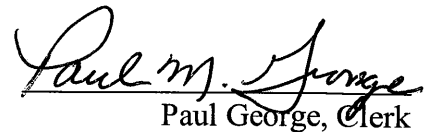
Any advice, opinion or information given by any Board member or any other official or employee of the Town shall not be binding on the Board. It is the declared policy of the Board to discourage any personal communication with Board members. All communications to the Board outside of a convened meeting, whether concerning proposed or pending matters, shall be submitted through the Board's clerk.

8.02 Amendments:

These Rules may be amended by a majority vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting of the Board and action thereafter taken on the amendment at a subsequent, regular meeting

8.03 Effective Date:

These Rules were adopted at a regular meeting of the Board on November 24, 2014, and became effective upon filing a copy of the same with the Town Clerk. All Rules previously adopted, inconsistent herewith and not expressly incorporated herein by reference are hereby repealed; provided, however, that no action taken under said Rules shall be affected by said repeal.


Paul George, Clerk

11-24-2014

Date