

**Tewksbury Zoning Board of Appeals
Comprehensive Permit Rules
Adopted April 24, 2002
Revised May 25, 2006 and August 31, 2006**

ARTICLE VI- COMPREHENSIVE PERMITS

SECTION 6.0-PURPOSE

- 6.0.1 These Rules set forth substantive and procedural requirements for review of applications by the Zoning Board of Appeals (ZBA) for comprehensive permits granted under M.G.L. c. 40B, §§20-23 (the Act). These Rules are required by M.G.L. c. 40B, §21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02. Other requirements are set forth in the Act. These Rules must 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. It is also advisable to read the Guidelines for Local Review of Comprehensive Permits published from time to time by the Massachusetts Department of Housing and Community Development (DHCD).
- 6.0.2 The ZBA's general rules of 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.
- 6.0.3 These Rules apply to all applications for all projects requiring a comprehensive permit. Additional rules and requirements which apply **only** to New England Fund (NEF) projects are described herein below in Sections 6.8 through 6.12.

SECTION 6.1- DEFINITIONS

- 6.1.1 **ZBA** means the zoning board of appeals established under M.G.L. c. 40A, §12.
- 6.1.2 **Local Board** means any local board or official, including, but not limited to any board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen. 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.
- 6.1.3 **Local Housing Partnership (LHP)** means a committee formed by the Board of Selectmen to promote the growth of Affordable Housing in accordance with State mandates and to serve as the initial screening authority for proposed Comprehensive Permits under Chapter 40B.

SECTION 6.2-COMLETE APPLICATION

- 6.2.1 A complete application for a comprehensive permit shall include (760 CMR 31.02):
- A. An application form;
 - B. A site approval letter from the subsidizing agency;
 - C. Documentation of site control (e.g., preliminary determination by the subsidizing agency that the applicant has a sufficient interest in the site or a purchase and sale agreement or deed);
 - D. Evidence that the project applicant is a nonprofit organization, a public agency or a limited dividend organization;
 - E. Preliminary site development plans (signed by a registered architect or other pertinent design/engineering professional) showing the location and footprints of all proposed buildings, changes in grading and topography, parking, landscaping, roads, walkways and driveways (including building materials), open space, wetlands, and infrastructure and utilities;
 - F. An existing conditions plan showing the location of all existing buildings, streets, metes and bounds description of the site, open spaces, topography, wetlands and buffer areas, on-site infrastructure, parking, roads, driveways, stormwater facilities, street elevations, traffic patterns and the character of open areas, if any, in the neighborhood;
 - G. Preliminary architectural drawings (scaled and signed by a registered architect) including the location and use of all buildings, typical floor plans, elevations, sections, construction type and exterior finish;
 - H. Building tabulations (including the number and type of buildings, number and size of units, number of bedrooms per building, floor area of units, building and impervious surface coverage);
 - I. Preliminary subdivision plan (if applicable);
 - J. Preliminary utilities plan showing the proposed location and types of water, wastewater and stormwater facilities, including hydrants;
 - K. List of waivers and exceptions sought by applicant from any and all local regulations, policies and by-laws;
 - L. Payment of filing fee:
 - (i) Limited dividend organizations that are using the Local Initiative Program (LIP) (760 CMR 45.00) and nonprofit organizations and governmental entities: \$300;
 - (ii) Limited dividend organizations utilizing any other type of subsidy, (i.e. New England Fund, Mass Housing programs, Mass Development, etc): Base fee of \$500 plus 8-20 market rate units \$100 per market rate unit and for 21 and more market rate units, \$110 per market rate unit.
 - M. Advertising costs and postage for abutter notification shall be borne directly by the applicant;
 - N. Documentation that the applicant has notified DHCD (per 760 CMR 31.01) within 10 days of filing its application with the subsidizing agency for preliminary approval of the project;

- O. Documentation that the applicant has notified DHCD (per 760 CMR 31.01) within 10 days of receipt of a written determination of project eligibility (or site approval) from the subsidizing agency;
- P. First level hazardous waste assessment (M.G.L. 21E) (if applicable);
- Q. List of state or other local approvals necessary to be sought and granted prior to the issuance of a building permit for the project;
- R. Additional information the ZBA reasonably determines is necessary to make a decision.
- S. First Level Environmental Assessment (MGL Chapter 21E).

SECTION 6.3-REVIEW FEES

- 6.3.1 The ZBA may employ outside consultants to provide technical or legal assistance in reviewing a comprehensive permit application in the event municipal staff cannot provide these services in-house. Whenever feasible, as determined by the ZBA, the ZBA will work cooperatively with the applicant to identify appropriate consultants. The ZBA may require the applicant to pay all or part of the consultant's fees. Consultants shall include special counsel to the ZBA, traffic consultants, design review consultants, and/or, financial reviews (for New England Fund projects only).
- 6.3.2 A review fee may be imposed only if:
- A. The work is in connection with the applicant's project
 - B. All written results and reports are made part of the ZBA's record
 - C. The ZBA has complied with the Uniform Procurement Act (M.G.L. c. 30B, §§1-19, where applicable).
- 6.3.3 All fees assessed pursuant to this Section 6.3 shall be reasonable in light of the:
- A. Complexity of the proposed project,
 - B. Complexity of the particular issues,
 - C. Number of dwelling units proposed, and
 - D. Size and character of the site.

SECTION 6.4- PROCEDURES

- 6.4.1 Negotiation/Mediation
Applicant should meet with the Local Housing Partnership to review and negotiate the proposal for a Comprehensive Permit before an application is filed with the ZBA.
- 6.4.2 The ZBA shall notify all Local Boards of the application for a Comprehensive Permit upon receipt of the application and forwards copies of the application and the ZBA should request that representatives of Local Boards attend the public hearing(s) to provide input and advice to the applicant.
- 6.4.3 The ZBA give public notice, beginning at least 14 days prior to the date of the hearing, by (1) advertising the Comprehensive Permit hearing in a local newspaper of general

circulation, (2) notifying interested parties, and (3) posting a copy of the hearing notice in the Town Hall.

SECTION 6.5- DECISIONS

- 6.5.1 The ZBA shall render a decision based on a majority vote, within 40 days of the close of the public hearing, unless such time period is extended by written agreement of the ZBA and the applicant.
- 6.5.2 Any decision approving a comprehensive permit shall, at minimum, contain the following conditions:
- A. For condominium projects, legal review and approval by the Town of final condominium documents;
 - B. For all projects, legal review and approval by the Town of deed riders;
 - C. A requirement that the units remain affordable for 99 years or the maximum time period allowed by law, whichever is greater.
 - D. The project has the written support of the Local Housing Partnership.
 - E. A requirement that the project qualify under State Laws and Regulations such as Wetlands Protection Act, Title 5, and the State Building Code prior to construction.
- 6.5.3 The ZBA may deny a comprehensive permit as not consistent with local needs. “Consistent with local needs” is defined in M.G.L. c. 40B, §20. Evidentiary standards, presumptions and the balancing of housing need and local concerns are described in 760 CMR 31.07.
- 6.5.4 The burdens of proof for ZBA decisions (denial, approval or approval with conditions) are described in 760 CMR 31.06 (5)-(8).

SECTION 6.6- CONDOMINIUM DOCUMENTS

- 6.6.1 All condominium documentation shall state that:
- A. Unit owner’s percentage interest in the condominium shall be based on unit sales price (not square footage of the unit).
 - B. There shall be one vote per unit owner, unless M.G.L. c. 183A requires otherwise.
 - C. Condominium documents shall prohibit amendments to affordability provisions.
 - D. Affordable units shall not be rented without the approval of the Town.

SECTION 6.7- AMENDMENTS TO APPROVED PERMIT

- 6.7.1 If after the issuance of a comprehensive permit a applicant seeks to change its proposal as approved by the ZBA, it shall promptly notify the ZBA in writing, describing such change. Within 20 days the ZBA shall determine and notify the applicant whether it

deems the change substantial or insubstantial (see 760 CMR 31.03(2) for Examples of substantial and insubstantial changes).

- 6.7.2 If the ZBA determines the change is insubstantial, the comprehensive permit shall be modified to incorporate the change.
- 6.7.3 If the ZBA determines the change is substantial, it shall hold a public hearing within 30 days of its determination and issue a decision within 40 days of the close of the hearing, in accordance with Section 6.5 of these Rules. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

SECTION 6.8- NEW ENGLAND FUND PROJECTS

- 6.8.0 The Federal Home Loan Bank Board of Boston (FHLBB) and its member banks (a member bank is hereinafter referred to as “the Bank”) provide comprehensive permit applicants with construction financing at below-market interest rates through the New England Fund (NEF). The Housing Appeals Committee (HAC) in *Stuborn v. Town of Barnstable* determined that NEF qualifies as a subsidy for purposes of the Act and outlined the type of issues that should be considered by towns when reviewing comprehensive permit applications.
- 6.8.1 The Rules set forth herein below in Sections 6.9 through 6.18 apply to NEF projects only and are in addition to those Rules listed herein above and below, which apply to all comprehensive permit projects. These Rules are consistent with the framework established by HAC in the *Stuborn* decision.
- 6.8.2 Where these Rules do not answer a particular question, the ZBA will refer for guidance to the Department of Housing and Community Development Local Initiative Program guidelines for homeownership projects and to the Massachusetts Housing Finance Agency 80/20 program for rental projects.

SECTION 6.9-NEF APPLICATIONS

- 6.9.1 A complete application for a project receiving New England Fund financing, in addition to the requirements for a complete application listed herein above in Section 6.2, shall include:
 - A. A project eligibility letter that provides the following information:
 - 1. Name of applicant;
 - 2. Address of site;
 - 3. Number of units proposed;
 - 4. Type of housing proposed (ownership or rental);
 - 5. Name of housing program under which project eligibility letter or site approval letter is sought;
 - 6. Relevant details of the proposed project (e.g., percentage of affordable units, income-eligibility standards, duration of the affordable housing restrictions, how the applicant will comply with the limited dividend aspect of the program, etc.);

7. A statement that the proposed project is generally eligible under the requirements of the NEF program, pending final review and approval;
8. A statement by the Bank that it has not exceeded its lending limits with the FHLBB;
9. A statement by the Bank that it has performed an on-site inspection of the property as well as a review of the project-eligibility application and has found that:
 - (a) The proposed housing design is generally appropriate for the site on which it is located;
 - (b) The proposed project appears financially feasible within the
 - (c) housing market in which it will be situated (based on comparable rental or sales figures);
 - (d) An initial pro forma has been reviewed and that the project appears viable from a development cost perspective; and
 - (e) The applicant meets the general eligibility standards of the NEF program.
- B. A statement that the entity issuing the project eligibility letter has (1) notified the ZBA and Board of Selectmen, (2) provided a 30-day review period for local comment and (3) provided a list of comments from Local Boards and officials and neighbors;
- C. The information provided by the applicant to the entity issuing the project eligibility letter;
- D. Project pro forma (for “allowable acquisition costs” see Section 6.11 of these Rules; for “reasonable profits” see Section 6.10 of these Rules);
- E. Proposed regulatory agreement;
- F. Proposed monitoring agreement;
- G. Market feasibility report;
- H. General information on the applicant and projects that the applicant has completed, including comprehensive permit projects.

SECTION 6.10- NEF REASONABLE PROFITS

6.10.1 The applicant’s profits shall be reasonable and shall be limited as follows:

- A. Homeownership Projects:
20% of total development costs (TDC) –TDC does not include overhead, profits and management consulting fees. Overhead shall not be more than 5% of the total development costs (net of profits, management consulting fees and overhead).
- B. Rental Projects:
Annual return of 10% of equity (equity being the difference between TDC, as defined by the NEF construction loan documents, and the amount of the construction loan. This difference may not be equal to the applicant’s cash invested. TDC includes an allowable fee for applicant’s overhead (5% of TDC, excluding site acquisition and applicant overhead and fee) and applicant fees (20% of TDC, excluding site acquisition and applicant overhead and fees)).

SECTION 6.11- NEF ALLOWABLE ACQUISITION COSTS

- 6.11.1 The development pro forma must list a land value that is the lower of the (i) last “arm’s length transaction” (if within 3 years) plus reasonable carrying and/or maintenance costs or (ii) the value under the pre-existing zoning regulations, plus reasonable carrying costs.
- A. “Last arm’s length transaction” shall not involve an identity of interest between the seller and the buyer or any party related to the buyer.
 - B. “Pre-existing zoning regulations” concerns the time the option or purchase and sale agreement is executed.
 - C. “Reasonable carrying costs” include interest, taxes, insurance and the costs related to option agreements. These costs plus the acquisition costs cannot exceed the appraised value of the land under the density permitted by a comprehensive permit.

SECTION 6.12- NEF DECISIONS

- 6.12.1 Any decision by the ZBA regarding a comprehensive permit application for an NEF project shall comply with the Rules set forth herein above in Section 6.5.
- 6.12.2 A decision by the ZBA approving a comprehensive permit application for an NEF project shall also contain , but not be limited to, the following conditions:
- A. The applicant shall provide documentation that NEF funding has been obtained.
 - B. Legal review and approval by the Town of the regulatory and monitoring agreements.

SECTION 6.13- REGULATORY AGREEMENTS

- 6.13.1 The purpose of the regulatory agreement is to provide legal assurances that the applicant will (i) construct and maintain the units in accordance with these Rules and (ii) be limited to a reasonable profit for the project (as set forth in Section 6.10 herein above) subject to the regulatory agreement.
- 6.13.2 The regulatory agreement shall:
- A. Include a definition of “profit;”
 - B. Limit profits on homeownership projects to 20% (see Section 6.10.1(A) herein above);
 - C. Limit profits on rental projects to an annual return of 10% of equity (see Section 6.10.1(B) herein above);
 - D. Require a full compilation and certification of total development costs (net of related-party expenses) and total revenue, on a federal income tax basis, prepared and certified by a CPA, acceptable to the monitoring agent and the Town; and

- E. Be executed by the Town, the lending Bank, and the applicant.
- F. Establish re-sale and re-rental controls to preserve long term affordability and to ensure its availability to Low or Moderate Income Households.

SECTION 6.14- MONITORING AGREEMENTS

- 6.14.1 The purpose of the monitoring agreement is to provide legal assurances that there is a public entity (or a private entity responsible to a public entity) to oversee compliance with the terms of the regulatory agreement.
- 6.14.2 The Tewksbury Housing Authority shall be the monitoring agent under any monitoring agreement.
- 6.14.3 The per unit fees for monitoring the affordable units shall be set by the Tewksbury Housing Authority.

SECTION 6.15- AFFORDABILITY RESTRICTIONS-all applications

- 6.15.1 Restrictions for Homeownership Projects:
 - A. The formula for determining resale price shall be the lesser of (i) the appraised value of the unit multiplied by a discount rate (established by a ratio between the original sales price of the affordable unit compared to the sales price of a market-rate unit), or (ii) a price based on an annual debt service on a mortgage plus taxes, insurance and condominium fees (assuming a 10% down payment) that does not exceed 30% of the annual income of a household earning 70% of the median income for the Boston Metropolitan area.
 - B. Upon resale, the owner of the affordable unit shall be required to actively market the affordable unit to eligible purchasers for up to 120 days.
 - C. The Town shall have a right of first refusal to purchase the affordable units.
 - D. Excess profits shall be returned to the Town to be used for affordable housing purposes.
 - E. Approval by the Department of Housing and Community Development of deed riders shall be required.
 - F. There shall be a deed restriction that the affordable unit shall remain affordable for 99 years or the maximum time period allowed by law, whichever is greater.
- 6.15.2 Restrictions for Rental Projects:
 - A. Affordable rents shall be limited to 30% of the annual income of a renter whose income is 70% of the median income or established pursuant to a rent schedule set by the Town.
 - B. Tenant selection, income guideline changes, and annual verification of income shall be by Tewksbury Housing Authority Rules.

SECTION 6.16- BUYER/ TENANT SELECTION- all applications

6.16.1 Buyers of affordable units shall:

- A. Be first time homebuyers and not have had an ownership interest in a residence in three years preceding the date of the closing of the loan except that a single parent, with one or more children living with him or her, who has been divorced or widowed within the preceding three years and who no longer owns a home, or, who in the case of a divorced person, is subject to a court order or separation agreement to sell the home and divide the proceeds, or, in the case of a widowed person, whose home is subject to a binding purchase and sale agreement for sale, will be considered a first time homebuyer, notwithstanding prior home ownership during those preceding three years, provided such widowed or divorced person is eligible in other respects.
- B. Have a household income of less than 80% of the median income of the Boston Metropolitan Area.

6.16.2 Renters of affordable units shall:

- A. Have a household income of less than 80% of the median income of the Boston Metropolitan Area.

6.16.3 Applicants shall have a Town-approved affirmative marketing plan for sale and rental of the affordable units.

SECTION 6.17- OWNER-OCCUPANCY REQUIREMENTS-all applications

6.17.0 These requirements shall apply to Homeownership Projects.

6.17.1 All units shall be owner-occupied.

6.17.2 Rentals of owner-occupied affordable units shall be limited to two years and to “renters of affordable units” (see Section 6.16.2 herein above) and are subject to approval by the Town.

SECTION 6.18- AFFORDABLE UNIT DESIGN AND LOCATION- all applications

6.18.1 The exterior of the affordable units shall be indistinguishable from the exterior of the market-rate units.

6.18.2 Affordable units shall be dispersed throughout the project.

SECTION 6.19-APPEALS

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

6.19.2 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 as provided in M.G.L. c. 40B, §22.

SECTION 6.20-LAPSE OF PERMITS

6.20.1 If construction authorized by a comprehensive permit has not begun with three years of the date on which the permit becomes final, the permit shall lapse. The permit shall become final on the date of the ZBA decision if no appeal is filed. Otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of.

6.20.2 The ZBA may set an earlier or later expiration date for the permit and may extend any expiration date. An extension may not be unreasonably denied.

SECTION 6.21-TRANSFER OF PERMITS

6.21.1 No comprehensive permit shall be transferred to a person or entity other than the applicant without the written approval of the ZBA.

SECTION 6.22 CONVERSION FROM AFFORDABLE RENTAL TO AFFORDABLE HOME OWNERSHIP PROJECT

6.22.1 Any change in ownership of comprehensive permit issued by the Zoning Board of Appeals requires approval by the Board as discussed in Section 6.21. Should an owner of a comprehensive permit that has been issued as an affordable rental project seek to convert the project to an affordable home ownership project (selling the units instead of leasing the units) a noticed public hearing will be reopened on the permit.

6.22.2 The applicant is responsible for all costs of the legal notice and notification to abutters.

6.22.3 Prior to reaching a decision allowing for a requested conversion, the Zoning Board of Appeals will require the following:

- A. Verification that the cost certification and all appropriate audits have been received by the Town in accordance with the Comprehensive Permit and or the Regulatory Agreement.
- B. A certified public accountant review of the financial information on behalf of the Board.
- C. The Board may seek an appropriate escrow amount to review the financial information provided.
- D. The proposed agreement to allow for the conversion.
- E. The draft condominium association documents.
- F. The new marketing plan.
- G. The new proforma.
- H. The new monitoring agreement.
- I. The new proposed deed riders.

6.22.4 The Zoning Board of Appeals will use the following criteria in evaluating a request to convert an existing rental comprehensive permit to an ownership project:

- A. Impact of the loss of units on the Subsidized Housing Inventory.
- B. Impact on affordable housing strategy and needs within the community.
- C. Certified Public Accountant's review of the project.
- D. Owner/ applicant's good faith effort to sell the project to either another rental company or not-for-profit housing organization.
- E. Marketability Report describing the regional market for comparable rental projects.
- F. The possibility of keeping all of the units on the SHI by allowing for the sale of the units at the affordable unit price and include a deed rider to keep all of the units affordable in perpetuity.