

TOWN OF MARBLEHEAD - BOARD OF ZONING APPEALS
RULES AND REGULATIONS*

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8. COMPREHENSIVE PERMITS RULES – 40B ADDITIONAL RULES

COMPREHENSIVE PERMITS RULES

(a) Purpose and Context: This Rule establishes the procedures for applications for comprehensive permits under M.G.L. c. 40B, §§ 20-23, (Chapter 774 of the Acts of 1969 - also known as “Anti-Snob Zoning Act”). The Rule shall be interpreted 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.

The Board's other Rules and Regulations apply to comprehensive permit applications, provided that in case of any inconsistency or conflict between the other Rules and Regulations and this Rule, this Rule shall govern.

(b) Definitions

- (i) *Board* means the Marblehead Board of Appeals.
- (ii) *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 Old and Historic Districts Commission, the Water and Sewer Department, the Fire Chief, the Police Chief, the Traffic and Safety Advisory Committee, the Building Commissioner, the Town Planner, and the Town Administrator.

(c) Filing, Time Limits, and Notice

- (i) The application for a comprehensive permit shall consist of:
 - (1) site plan showing existing conditions, including topography, structures, roads and streets, utilities, wetlands, matters of historic and/or archeological significance;
 - (2) preliminary site development plans signed by a registered architect 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;

(3) 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 subsection (2) above;

(4) preliminary, scaled, architectural drawings. For each building the drawings 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;

(5) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, 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;

(6) where a subdivision of land is involved, a preliminary subdivision plan;

(7) a preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants;

(8) documents, including but not limited to the project eligibility letter, 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 will be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and
- the applicant has control of the site, including any deeds, options, agreements or similar documents;

(9) a list of requested exceptions, exemptions or deviations to and/or from local requirements and regulations, including local by-laws or regulations.

(ii) The application shall be accompanied by the application fee of \$75.00 and twenty-five copies of the application.

(iii) Within seven days of filing of the application, the Board shall notify each local board listed above of the application and send each such local board a copy of the application.

In addition, a copy of the application shall be placed on display and made available to the general public at the Town Engineers Office. A copy of the application shall also be made available to any neighborhood association whose members may, in the opinion of the Board, be directly impacted by the proposed project.

(d) Review Fees

(i) If, after receiving an application, the Board determines that in order to review the application it requires technical advice and/or professional advice unavailable from town employees, it may employ outside consultants, including legal counsel. Whenever possible it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone.

(ii) A review fee may be imposed only if:

(1) with respect to technical advice, the work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board,

(2) the work is in connection with the applicant's specific project, and

(3) all written results and reports (except those of legal counsel) are made part of the record before the Board.

(iii) A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, G.L. c. 30B.

(iv) All fees assessed pursuant to this section shall be reasonable in light of:

(1) the complexity of the proposed project as a whole,

(2) the complexity of particular technical issues,

(3) the number of housing units proposed,

(4) the size and character of the site,

(5) the projected construction costs, and

(6) fees charged by similar consultants in the area.

As a general rule, the Board will not assess any fee greater than the amount which might be appropriated from town funds to review a similar town project.

(v) Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of a consultant, the Board may deny the comprehensive permit.

(vi) Prior to paying the review fee, the applicant may appeal the selection of the consultant to the Board of Selectmen.

(1) 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.

(2) The minimum qualifications shall consist either of an educational degree in or related to the field at issue or three or more years of practice in the field at issue or a related field.

(3) The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

(vii) Each review fee shall be deposited in a special account established by the Town Treasurer pursuant to G.L. c. 44, § 53G.

(1) Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, G.L. c. 30B, §§ 1-19.

(2) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of funds in the special account and shall be paid any unspent excess in the account, including accrued interest.

(3) The Town Accountant shall submit annually a report of the special account to the Board of Selectmen for their review. This report shall be published in the Town Report.

(e) Public Hearing and Decision

(i) The Board shall hold a public hearing within thirty days of its receipt of a complete application. In addition to the usual notices and advertisements required by G.L. c 40A, the Board shall notify all local boards of the date and time of the hearing and may request the appearance at the hearing of such representatives of the local boards as it may consider necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the written recommendations of the local boards.

(ii) The Board shall file a written decision, based on a majority vote of the Board, with the Town Clerk 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.

(iii) The Board may dispose of the application in any one of the following manners:

(1) approve a comprehensive permit on the terms and conditions set forth in the application,

(2) deny a comprehensive permit as not consistent with local needs, or

(3) approve a comprehensive permit with conditions with respect to height, site plan, size, shape or building materials, landscaping, parking and traffic that do not render the construction or operation of such housing uneconomic.

The Board may also impose conditions that eliminate and/or mitigate any adverse impacts of the proposed development.

(f) Appeals

(i) If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in G.L. c. 40A, § 17.

(ii) 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 G.L. c. 40B, § 22.

Supplement to Rules and Regulations dated May 2011
Issued by the Marblehead Board of Zoning Appeals

***The Rules and Regulations are provided to assist the applicant with the Hearing process and procedures. In the event of a conflict between these Rules and Regulations and any law of the Commonwealth or the Town , the laws of the Commonwealth and the Town shall prevail.**