

TOWN OF WAYLAND ZONING BOARD OF APPEALS

**SUPPLEMENTAL RULES FOR
COMPREHENSIVE PERMITS
PURSUANT TO MGL CH. 40B, SECTIONS 20-23**

At a meeting of the Wayland Zoning Board of Appeals, held on February 14, 2006 the following motion was made, duly seconded, and approved unanimously by all those present:

MOVED: To adopt the attached supplemental rules for comprehensive permits of the Zoning Board of Appeals of Wayland, under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40B, Section 21. These SUPPLEMENTAL RULES are effective immediately upon their filing with the Wayland Town Clerk, and they supersede any previously filed with the Clerk or otherwise in effect by default.

So voted,

Members:

Jerry Boos

Steven Fugarazzo

James Grumbach

Eric Goldberg (Chair)

E. Michael Thomas

Associate Members:

Shaunt Sarian

Aida Gennis

(Associate Member Linda Segal not present)

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TOWN OF WAYLAND ZONING BOARD OF APPEALS

SUPPLEMENTAL RULES FOR COMPREHENSIVE PERMITS PURSUANT TO MGL CH. 40B, SECTIONS 20-23

These Supplemental Rules For Comprehensive Permits are adopted by the Zoning Board of Appeals of Wayland under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40B, Section 21, which requires boards- to adopt rules governing applications for comprehensive permits. These Supplemental Rules, as amended from time to time, become effective upon their filing with the Wayland Town Clerk and supersede any previously filed with the Clerk.

CP 1. PURPOSE AND CONTEXT

CP1.1 *Purpose.* These Supplemental Rules establish procedures for applications to the Wayland Zoning Board of Appeals for comprehensive permits granted under Chapter 40B, Sections 20-23, of the Massachusetts General Laws. They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02 (3), *Local Action Prerequisite*¹.

CP1.2 *Context.* These Supplemental Rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read and implemented in conjunction with the Board's general rules for the conduct of hearings under M.G.L. c. 40A-titled *Town of Wayland Zoning Board of Appeals Rules And Regulations* [hereafter, the General Rules]. In case of an inconsistency or conflict between those General Rules and these, these rules shall govern.²

CP 2. DEFINITIONS

CP2.1 *Board* means the Wayland Zoning Board of Appeals.

CP2.2 *Local board* refers to any local board or official in Wayland, including but not limited to: the Town Surveyor's Department; Board of Health; Planning Board; Conservation Commission; Historical Commission; Board of Road Commissioners; Water, Sewer, or other commission or district; Fire and Police Departments; Building Commissioner; Board of Selectmen; and any other board, regardless of its geographical jurisdiction or source of authority (that is, including boards created by special acts of the legislature or by other legislative action) will be deemed a local board if it performs functions usually performed by locally created boards.

CP 3. APPLICATION MATERIALS, FILING, TIME LIMITS, AND NOTICE

CP3.1 *Filing procedure.* Each application for a comprehensive permit must be made on the official form (which is available from the Building Department) and filed with the

¹ According to the Model Rules promulgated by the Housing Appeals Committee, 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 Committee's regulations, 760 CMR 30.01.

² The General Rules, as amended from time to time, are on file with the Town Clerk, and copies are available at the Building Department.

Town Clerk in one signed original, with a copy submitted to the Building Department. The applicant is responsible for ensuring that all relevant boxes on the form are completed and all required information has been inserted.

CP3.1 *Materials to be submitted with the application.* The application must be accompanied by a complete description of the proposed project and by the materials designated below (instead of the materials listed in Rule 2.4 of the Board's General Rules).³

CP3.1.1 *Preliminary site development plans.* Site plans must be dated and manually signed by a Massachusetts-registered/licensed engineer, land surveyor, or architect (whichever is applicable, based on state statute and regulation).⁴ Site plans must be drawn to the scale of 40 feet (or fewer) to the inch. The Board may, when necessary, require the site plans to be an instrument survey. The site plans must show ALL of the following:

- (a) *Boundaries:* the boundaries and dimensions of the applicant's lot or lots
- (b) *Streets:* the name and, where available, the width of all abutting streets or ways
- (c) *Setbacks:* the measurement of all existing (if any) and proposed setbacks (i.e., from the front property line, center of the right of way, all side property lines, and the rear property line)
- (d) *Buildings:* the location and dimensions of all existing and proposed buildings, structures, accessory structures, and driveways
- (e) *Hardscape:* the proposed locations, general dimensions, and materials proposed for streets, drives, parking areas, service areas, walks, and paved areas
- (f) *Topographical plan:* two separate plans showing the existing and proposed grade lines, with significant spot elevations in relation to mean sea level
- (g) *Signs and lighting:* the location and details of all proposed signs and exterior lighting
- (h) *Landscape:* all principal existing landscape features, including fences, stone walls, planting areas, walks, tree lines, open areas; and all principal proposed landscape features, including fences, stone walls, planting areas, walks, tree lines, open areas, and other improvements or changes from the existing features

CP3.1.2 *Report on existing conditions.* The report must include (but is not limited to) topography; zoning districts; existing buildings, driveways, streets; existing septic systems; wetlands, water bodies, and other natural features. It must also summarize existing conditions in the surrounding areas, showing the location and nature of existing buildings, street elevations, traffic patterns,

³ The materials designated in General Rule 2.4 are required for applications for special permits, variances, appeals, and similar requests. The materials designated in these supplemental rules (and specified in 760 CMR 31.02) are required for comprehensive-permit requests.

⁴ HAC regulations indicate that for all applications comprising five or more units, the site development plans must be signed by a registered architect, although an applicant proposing to construct or rehabilitate four or fewer units may submit a sketch, which does not need an architect's signature. See 760 CMR 31.02(2)(a).

and character of open areas (if any) in the neighborhood. This submission may be combined with the plans required in CP3.1.1.

CP3.1.3 *Preliminary, scaled, architectural drawings.* Drawings must be signed by a Massachusetts-licensed architect and scaled no smaller than 1/4"=1 foot.

(a) *Typical elevations:* of all existing and proposed structures, showing each typical building's dimensions and including the height from grade to the roof ridge and to the highest architectural element (if higher). If any existing buildings will remain on the site, include elevations and details.

(b) *Typical floor plans:* showing the location, dimensions, and use of rooms within buildings, for every unit type proposed

(c) *Materials:* identification of construction type and exterior finish

CP3.1.4 *Tabulation of proposed buildings.* The tabulation must indicate type, size (e.g., number of bedrooms, floor area) and ground coverage, and it must include a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas.

CP3.1.5 *Preliminary subdivision plan* (necessary only when a subdivision of land is involved).

CP3.1.6 *Preliminary utilities plan.* The utilities plan must show the proposed location and types of sewage, drainage, and water facilities, including hydrants.

CP3.1.7 *Jurisdictional documentation.* The application must include documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01. In particular, the documents must include:

(i) *Proof of limited-profit status:* documentation showing that the applicant is a public agency, a non-profit organization, or a limited dividend organization;

(ii) *Project eligibility letter:* documentation showing that the project is fundable by a subsidizing agency under a low- and moderate-income housing subsidy program⁵, and

(iii) *Site control evidence:* documentation showing that the applicant controls the site (e.g., a deed, a signed purchase-and-sale agreement, a signed option agreement) and has authority from the site owner,

CP3.1.8 *Waivers and exceptions requested.* The application must include a list of the requested exceptions to local requirements, codes, bylaws, and regulations, including t

CP3.1.9 *Other relevant materials.* The applicant may submit any other relevant materials that will assist the Board in its duties.

CP3.2 *Inadequate plans or forms; additional submissions.* The Board may in its discretion reject any plan as inadequate and may dismiss, with or without prejudice, or deny the application for the failure to file adequate plans or to complete the application

⁵ Local Initiative Proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy this jurisdictional requirement.

form. The Board may also ask the applicant to supplement the submission with additional information and may, from time to time, request additional materials from the applicant, as the need becomes evident during the public hearing process.⁶

- CP3.3 *Number of copies.* The application and all materials designated above must be submitted initially in 25 counterparts (the original for the file; 8 copies for distribution to the regular and associate Board members; 11 copies for distribution to the local boards making recommendations to the Zoning Board.⁷ Materials submitted after the initial application, whether by the applicant or by other interested parties, can be submitted in 9 counterparts (one for each Board member and one for the file), unless the Board or its agent indicates otherwise.
- CP3.4 *Subsequent submissions.* Materials submitted after the initial application, whether by the applicant, residents, or other interested parties, must be submitted to the Building Department no later than seven calendar days before a continued hearing on the application, so they will be available for the public's review. Original photographs, however, may be submitted to the Board during a public hearing, and additional duplicates are not required. The originals will be filed by the Board and retained in the Building Department records.
- CP3.5 *Filing fee.* A filing fee based on a flat fee and the number of housing units proposed, shall accompany the application: \$500.00 base fee, plus \$100.00 per unit proposed.
- CP3.6 *Notice to local boards.* Within 10 days after the application is filed, the Board will notify local officials and boards of the application by sending a copy of the list of requested waivers and exceptions (see CP3.1.8 above). Based upon that list, it will also invite each local official and board with a substantial interest in the application to attend the hearing and make recommendations to the Board, as required by the statute.

CP 4. REVIEW FEES

- CP4.1 *Payment of consulting fees.* As provided in MGL ch. 44, Section 53G, and Rule 5 of the Board's General Rules, the Board may require the applicant to pay for the employment of an outside consultant to assist the Board in reviewing the application and the project. These review fees are imposed in addition to any other fees assessed under these Supplemental Rules.
- CP4.2 *Procedure.* Whenever the Board determines that it needs technical advice, it may employ outside consultants. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the total fee,

⁶ Additional materials may be requested to enable the Board to make a sound decision; grant waivers; formulate reasonable conditions; analyze the impact of the proposed development upon the natural resources, on- and off-site environs water supply, wetlands, infrastructure, drainage systems, municipal facilities, health and safety of future occupants and current residents alike, or otherwise comply with its duties under the statute and the HAC guidelines.

⁷ As the hearing proceeds, the Board or its agent (generally the Building Commissioner) may request additional copies of the application materials, as needed for distribution to other local boards in whose stead the Board must serve in the comprehensive permit process.

and the amount and due date of the initial deposit.

- CP4.2.1 *Means of appeal.* The applicant may appeal the Board's selection to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within 14 days of the applicant's receipt of the designation.
- CP4.2.2 *Grounds for appeal.* Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications under the statute. The required time limits for the Board to act on the underlying application are extended by the duration of this appeal.
- CP4.2.3 *Delivery of initial deposit.* If the applicant does not file an appeal within the time period specified above, the applicant must deliver the initial deposit, in the form of a certified or bank check, to the Building Commissioner for deposit with the Town Treasurer, within the time limits set in the designation letter.
- CP4.2.4 *Amount of deposit.* Before or during the public hearing process, the Board will determine the amount of the initial deposit for review fees and, from time to time, of supplementary deposits if the initial deposit is depleted. The initial deposit may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board can ask the applicant for supplemental deposits, which shall be due and payable within 14 days of the written or oral request.
- CP4.2.5 *Grounds for dismissal.* Failure to pay the initial or any supplemental deposit is grounds for the Board to deny the comprehensive permit.
- CP4.2.6 *Return of unused funds.* The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit and will return any interest earned by the deposited funds and any funds remaining unused at the conclusion of the applicant's matter, upon direction by the Board.
- CP4.3 *Criteria for seeking assistance.* When reviewing the application or conducting inspections in relation to the application, the Board may seek the assistance of outside consultants if the Town lacks the necessary expertise to perform the review or inspection work related to the application, considering the size, scale, or complexity of the proposed project or its potential impacts.
- CP4.4 *Scope of assistance.* In hiring outside consultants, the Board may engage professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, "good design" principles, and regulations. Assistance may include, but is not limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

CP 5. PUBLIC HEARING AND DECISION

- CP5.1 *Hearing.* The Board must open a public hearing on the application within 30 days of its receipt, unless the time for opening is extended by written agreement of the Board and the applicant. It may request the appearance at the hearing of such local boards as it considers necessary or helpful in reviewing the application. In making its

decision, the Board shall take into consideration the recommendations of local boards.

CP5.2 *Vote required.* The Board must render a decision, based on a majority vote of the Board, within 40 days after the termination of the public hearing, unless the time for filing the decision 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.

CP5.3 *Action.* The Board may act upon the application in the following manner:

CP5.3.1 Approve a comprehensive permit on the terms and conditions set forth in the application;

CP5.3.2 Deny a comprehensive permit as not consistent with local needs, or

CP5.3.3 Approve a comprehensive permit with conditions with respect to height, site plan, size, shape, or building materials that do not render the construction or operation of such housing uneconomic.

CP 6. APPEALS

CP6.1 *Parties aggrieved.* If the Board approves the comprehensive permit, any person aggrieved may appeal to the court and within the time period provided for in M.G.L. c. 40A, Section 17.

CP6.2 *Applicant's remedy.* If the Board denies the comprehensive permit or approves the permit with conditions or requirements the applicant considers unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, Section 22.

Adopted by unanimous vote (7-0) of the Zoning Board of Appeals of the Town of Wayland on February 14, 2006. Filed with Town Clerk on February 16, 2006.