

**TOWN OF ASHBY
ZONING BOARD OF APPEALS
RULES AND REGULATIONS GOVERNING COMPREHENSIVE PERMITS
Adopted**

1.0: AUTHORITY

These rules establish procedures for applications to the Ashby Zoning Board of Appeals for comprehensive permits under M.G.L. Chapter. 40B, § 21 as amended. 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 G.L. c. 40B, §§20-23. In addition, the Board's general Rules and policies 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.

1.1 These rules and regulations may be adopted and from time to time amended by majority vote of the Ashby Zoning Board of Appeals members present and voting.

1.2 These rules and regulations are effective when voted, and a copy filed with the office of the Town Clerk, with appropriate endorsements.

2.0 DEFINITIONS

2.1 "Board" means the Ashby Zoning Board of Appeals (ZBA.) established under M.G.L. Chapter 40A, Section 12.

2.2 "Local board" means any local board or official performing a purely local function for the Town of Ashby, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission; fire, police, traffic, or other department; building inspector or similar official or board; board of selectmen.

2.3 "Limited Dividend Organization" means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency or non-profit organization; and is eligible to receive a subsidy from a state or federal agency; and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program.

3.0 APPLICATION FOR COMPREHENSIVE PERMIT

3.1: The application for a comprehensive permit shall consist of:

(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. All plans in the Application shall be

drawn at a scale of 1" = 40', unless another scale is previously requested by the applicant and found suitable by the Board. The plans shall exhibit existing and proposed topographical lines at two-foot contour intervals on the tract and within 50' thereof. The site plans shall also include a locus plan at 1" = 100', 200' or 400' scale showing the location, names, and present widths of the Secondary Streets bounding, approaching or within reasonable proximity of the site, and including the tracts of land, ownership, and topography taken from assessor's plans or field survey if available, or properties therein. In addition to a stamp of a registered professional engineer, the site plan shall be stamped by the Massachusetts registered land surveyor who performed the instrument boundary survey and who shall certify the accuracy of the locations of the buildings, setbacks and all other required dimensions, elevations and measurements, adjacent property wells and septic systems.

(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. The plans shall exhibit the location of existing wetlands (and other resource areas), unique vegetation, water bodies, wells, one-hundred year flood plain elevation, and other natural features; streams, wetlands, vistas, slope areas, geological features, unique vegetation, historic features, and others features that may be important to the site;

(c) 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;

(d) 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;

(e) where a subdivision of land is involved, a preliminary subdivision plan conforming to the plan requirements of the Ashby Planning Board;

(f) a utilities plan showing the proposed location and types of sewage/septic facilities, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;

(g) documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is,

(i) the applicant shall be a public agency, a non-profit organization, or a limited dividend organization.

(ii) the project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program. The Board may review this documentation to ensure that the applicable subsidizing agency has performed the due diligence required under 760 CMR 31.01.

(iii) the applicant shall control the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application.

(h) a detailed list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations. Requests for *blanket* waivers are not permitted.

(i) a complete preliminary *pro-forma*, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall limit its costs to actual investment in the property. Acquisition costs shown in the *pro-forma* shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm's length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally, the Applicant shall fully disclose any costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs.

(j) a complete copy of any and all materials and applications submitted by the applicant to any prospect subsidizing agency or source, including, but not limited to applications for site approval.

(k) a list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities.

(l) a list of all prior development project completed by the Applicant, along with a brief description of each such project.

(m) Official Application Form: Application for Comprehensive Permits shall be made on an official form, furnished by the Clerk of the Zoning Board of Appeals.

(n) A landscape plan, including the total square footage of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings.

(o) A certified list of abutters as defined under M.G.L. 40A Section 11, as obtained from the Town Assessors.

3.2: The application shall be accompanied by a filing fee based upon the number of proposed housing units of:

- (a) for Limited Dividend Organizations - \$2000 flat fee plus \$100.00 per unit
- (b) for Non-Profit Organizations - \$1000 flat fee plus \$50.00 per unit
- (c) for Public Agencies and Local - \$0

Additionally, the application fee shall include \$5,000.00 to pay for the services of legal counsel for assistance in any project of 25 units or less, and \$7,500.00 for any project in excess of 25 units but not exceeding 75 units and \$10,000.00 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs for counsel retained to assist the Board with the multitude of legal issues that must be explored in the c. 40B process. Furthermore, in order to assist the Board in the determination of whether or not any proposed conditions will render the project uneconomic, as required under G.L. c. 40B, §§20-23, the application fee shall include an additional \$5,000.00 for the retention of a financial expert. The Board, in its sole and unfettered discretion may waive any or all of these additional fees if it is determined that legal and/or financial review is not necessary. Alternatively, the applicant may opt to pay for the Board's legal counsel or financial consultant in the manner prescribed by G.L. c. 44, §53G and Section 4.00 hereof.

Other Administrative Costs and Expenses: The applicant is responsible for preparing notices and associated costs of mailing to abutters and any parties in interest (as referenced in the Comprehensive Permit Application) by certified mail, return receipt requested. The prepared notice shall be reviewed by the Zoning Board of Appeals or its agent before being mailed. Return receipts are to be addressed to the Zoning Board of Appeals. The prepared notices/certified mailing shall be delivered to the Zoning Board of Appeals agent not less than twenty one (21) business days before the date of the public hearing.

3.3: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the application. The Board shall 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. In order to allow review by local officials, the Applicant shall provide the Town Clerk with twenty-five copies of the complete application so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. Additionally 11"x17" copies of all plans (with matchlines) shall be made available to the Town Clerk for copying purposes. Additional copies shall be provided by the Applicant, upon the request of the

Board.

3.4 LAYOUT AND DESIGN STANDARDS

The Board considers the following layout and design standards to be consistent with local needs and vital for the protection of local welfare. In reviewing applications, it shall be presumed that the following standards shall apply. It shall be the Applicant's burden to rebut this presumption.

- (a) All streets, drainage, water system, sewerage, utilities, grading, and other improvements shall be made in accordance with the Rules and Regulations by the recommendations of other boards, committees, officials and state regulations.
- (b) Fencing or plantings as required by the Board for safety and or screening.
- (c) An upkeep and maintenance plan with supporting legal documents.
- (d) All exterior lighting shall be limited to 15 feet in height and shall cast a maximum of 8 foot candles of light on the ground. Lighting shall also be directed so as not to blind vehicle or pedestrian traffic, adjacent buildings or dwellings within or abutting the site.
- (e) All rubbish and trash containers shall be screened from view by fencing or landscaping. Said containers shall have heavy duty plastic tops to reduce noise when being serviced.
- (f) Buildings shall be a maximum mean height of thirty five (35) feet.
- (g) For attached unit buildings the minimum setback from the property lines shall be two (2) times the height of the building. The setback between separate unit buildings shall be equal to or greater than the height of the highest building.
- (h) Utilities shall be underground, starting from the property line. All streets shall have granite curbs.
- (i) No parking lot or building construction shall be allowed within 100 feet of a wetland area or within 200 feet of a wetland protected by the Rivers Act (310 CMR 10.00)
- (j) All storm water runoff from impervious surfaces shall be recharged on-site unless, in conducting its review, the Board determines that either recharge is not feasible because of unique site conditions or is undesirable because of uncontrollable risks to water quality from such recharge. Such recharge shall be by surface infiltration through vegetated surfaces unless otherwise approved by the Board during the site plan review. If dry wells or leaching basins are approved for use, they shall be constructed after oil, gas and sediment traps have been installed. Drainage from loading areas for toxic or hazardous materials shall be separately collected for safe disposal. All drainage structures including outlets shall have a minimum thirty (30) foot vegetated buffer to

wetlands.

(k) Soil shall not be lowered to finished exterior grades less than five (5) feet above maximum groundwater elevation, unless technical evidence is provided to the Board's satisfaction that groundwater quantity or quality will not be detrimentally affected. Technical evidence may include, without limitation, a determination of soils and geologic conditions where evaporation/transpiration occurs.

(l) A paved secondary access roadway shall be provided, if deemed necessary or required by the ZBA.

(m) A safety and evacuation plan shall be prepared that shall anticipate the needs of ambulance, civil defense, fire, police, and rescue services.

(n) The exterior of the affordable units shall be indistinguishable from the exterior of the market rate units; and the interiors shall be comparable with respect to base fixtures, finishes and amenities.

(o) Affordable units shall be dispersed throughout the project.

4.0: Review Fees

4.1: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

4.2: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be 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.

4.3: Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G.. 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 for services rendered in connection with a specific project or projects for which a project review 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 a review fee shall be grounds for denial of the comprehensive permit application.

4.4: At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's 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 establishing such succession in interest.

4.5: Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not process the minimum, required qualifications. 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. The required time limit 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 month following the filing of the appeal, the selection made by the Board shall stand.

5.0: Public Hearing and Decision

5.1: In addition to submission of application materials to the ZBA, the Applicant shall also submit a complete application package to the Town Clerk. The Board shall hold a public hearing on the application within thirty days of its receipt of an application, unless such time period is extended by agreement. 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 recommendations of local officials.

5.02: 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 closed when the Board determines that all public testimony has been received and all information requested by the Board has been received and evaluated.

5.03: 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 in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or

(c) approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.

5.4: It shall be the applicant's burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, ordinance or regulation will adversely affect local concerns.

6.00 Changes in Application

6.1: In the event that, during the public hearing, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion, constitute a material or substantial change to the project, the Applicant shall, at the Board's request, provide a new site-eligibility letter from the designated subsidizing agency.

6.2: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.0 hereof that is deemed by the Board to be necessary to evaluate such changes. Sufficient copies of such supplementary materials shall be provided so as to allow other interested Ashby officials and boards to comment thereon.

6.3: If the Applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions.

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, § 17.

7.02: If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to be unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22.

8.0 SEVERABILITY OF PROVISIONS

The provisions of these Rules and Regulations are severable. If any provision of these Rules and Regulation is held invalid, the other provisions shall not be affected thereby. If the application of these Rules and Regulations, or any of its provisions to any person or circumstances is held invalid, the application of these Rules and Regulations and their provisions to other persons and circumstances shall not be affected thereby.

**TOWN OF ASHBY
APPLICATION FOR APPROVAL OF COMPREHENSIVE PERMIT PLAN**

Date: _____, _____

To the Zoning Board of Appeals of the Town of Ashby:

The undersigned, being the applicant as defined under Chapter 40B, Sections 20-23, applies for approval of a proposed comprehensive permit shown on a plan entitled: _____

By: _____ Dated: _____

and described as follows:

Located: _____ Assessor's Map Number: _____

Lot number: _____ Book: _____ Page: _____

Purchase date of property: _____ # of lots proposed: _____

Total acreage of tract: _____ Frontage: _____ Depth: _____

Lot Area: _____ (Sq Ft) Total feet of proposed roadway: _____

_____, hereby submits said plan in accordance with the Rules and Regulations of the Ashby Zoning Board of Appeals and makes application to the Board for approval of said plan.

The undersigned title to said land is derived from _____ by deed

dated _____ and recorded in the South Middlesex Registry of Deeds Book _____, Page _____

registered in the _____ Registry of Land Court

Certificate of Title No. _____; and said land is free of encumbrances

except for the following:

Have you previously filed an application with the Zoning Board of Appeals for this property? **YES NO**

If so, what was the filing date: _____ File #: _____ Hearing Date: _____

What is the Federal funding source or sources?

What is State funding sources?

Are there any other funding sources?

Do you have a letter of support from the selectmen? **Yes No**

If so, please attach copy of the Selectmen letter of support
Date of letter? _____

The undersigned hereby applies for the approval of said plan by the Board, in belief that the plan conforms to the Board's Rules and Regulations. Permission is hereby granted to the Zoning Board of Appeals or any other municipal official or their agent, acting on official business, to enter and inspect the premises.

Zoning Board of Appeals
Comprehensive Permit Application

NOTE: APPLICANT OR DESIGNEE MUST BE PRESENT AT ZONING BOARD HEARING!

ALL STATEMENTS MADE HEREIN, ARE UNDER THE PAINS AND PENALTIES OF PERJURY AND ARE CORRECT. SIGN BELOW AFTER READING THE PERJURY STATEMENT.

(FALSE STATEMENTS SHALL BE CAUSE FOR REVOCATION OF THIS PERMIT, AND IT WILL BECOME NULL AND VOID!)

Applicant's signature: _____

Print applicant's name: _____

Applicant's address: _____

Applicant's phone: _____

Applicant's Fax: _____

Owner's signature and address if not the applicant or applicants authorization if not the owner:

Received by Town Clerk on Date: _____

Signature _____

A DETAILED DRAWING WITH ALL DIMENSIONS, TO SCALE, AND ALL OTHER SUBMITTAL REQUIREMENTS UNDER SECTION 3.0 OF THE ZONING BOARD OF APPEALS COMPREHENSIVE PERMIT REGULATIONS, MUST BE ATTACHED TO THIS APPLICATION AT THE TIME IT IS FILED.