

Town of Winchester
Comprehensive Permit Rules of the Board of Appeals

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TOWN CLERK
TOWN OF WINCHESTER

Section 1.0 Purpose and Context

These Comprehensive Permit Rules (the "Rules") establish procedures for the submittal and review of an application to the Winchester Board of Appeals (the "Board") for a comprehensive permit (an "Application") under G.L. c. 40B, §§ 20-23 (the "Act") and the regulations promulgated thereunder, at 760 CMR 56.00, *et seq.* They are required by G.L. c. 40B, § 21 and by 760 CMR 56.05(1). The purpose of the Rules is to facilitate the processing of any application for affordable housing in Winchester.

The Rules alone are not sufficient to describe comprehensive permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with the Act. In addition, the Board's general rules for the conduct of hearings under G.L. c. 40A apply to all Applications. In the event of inconsistency or conflict between those general rules and these Rules, these Rules shall govern.

Section 2.0 Definitions

Board means the Winchester Board of Appeals, established by G.L. c. 40A, § 12, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act.

Local Board means any local board or official, including but not limited to the Board of Health, Planning Board, Conservation Commission, Historical Commission, Department of Public Works, Fire Department, Police Department, Building Inspector and Board of Selectmen. All boards and commissions performing functions usually performed by locally-created boards and commissions shall be deemed local boards.

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.

Section 3.0 Filing Applications

3.1 Submittal of Materials

The Rules list plans and other reports required to be submitted to the Board in support of an 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 must receive the following information from which it can determine the impact(s) of the proposed development on the Town and the surrounding area. Providing this information and materials promptly with the Application will result in a quicker process and enable the Board to become better informed.

a. Twenty (20) copies of the following materials shall be submitted simultaneously with an Application to the Board:

1. Preliminary Site Development Plans: 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; open areas within the site; and other improvements. The plans shall also have a north point, names of streets, zoning districts, property lines, dimensions of the subject lot, rights of way and easements and names of abutting property owners. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of the foregoing, which need not bear an architect's signature and seal. All projects of five (5) or more units must have site development plans signed and sealed by a registered architect or engineer.
2. Report on Existing Site Conditions: A report on and summary of existing site conditions and those in the surrounding area.
3. Preliminary, Scaled Architectural Drawings: A set of preliminary, scaled architectural drawings for each building, which shall be prepared by a registered architect and, for projects of five (5) or more units, sealed by said architect. Said drawings shall include typical floor plans, typical elevations and sections, and shall identify construction type and exterior finishes.
4. Tabulation of Proposed Buildings: A tabulation of proposed buildings by type, size (e.g. number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the site to be occupied by buildings, by parking and other paved vehicular areas, by open areas and by other improvements.
5. Preliminary Subdivision Plan: A preliminary subdivision plan, but only where a subdivision of land is involved under G.L. c. 41, ss. 81K - 81GG.
6. Utilities Plan: A preliminary utilities plan showing the proposed location and types of sewage, drainage and water facilities, including hydrants.

- b. Application for Project Eligibility & Project Eligibility Letter: The applicant shall submit the written determination of project eligibility by the subsidizing agency containing all of the findings required by 760 CMR 56.04(4).
- c. List of Requested Exceptions to Local Requirements and Regulations: The applicant shall submit 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 exception is required.
- d. Additional Materials. The following materials may also be required by the Board:
 - 1. 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.
 - 2. 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, 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.
 - 3. 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.
 - 4. Tenant/Owner Selection Plan: A plan identifying the governmental agency or other entity that will be responsible for the marketing of the project and the selection of tenants or owners.
 - 5. 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.

6. 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 development costs, and all profits and distributions, in accordance with the Department of Housing and Community Development's (DHCD) "Comprehensive Permit Guidelines," (the "Guidelines") dated February 22, 2008, as amended. The applicant shall fully disclose to the Board all related party transactions, as defined by the Guidelines.

3.2 Fees

- a. Administrative Fee. An Application shall be accompanied by an administrative fee in the amount of Two Thousand Dollars (\$2,000.00) plus One Hundred Dollars (\$100.00) per unit proposed. Said fee shall be paid by check made payable to the Town of Winchester.
- b. Peer Review Fee. In addition to the administrative fee above, an applicant may be required to pay an amount into an escrow account established pursuant to G.L. c. 44, § 53G (the "53G Account"), said amount to be determined by the Board in its sole discretion and to be used for consultant review of the Application in accordance with 760 CMR 56.05(5) and Section 4.0, below. No review shall take place until sufficient funds are in hand to pay for the work of the consultant. Failure to submit this fee shall be grounds for denial of the application. If necessary, the Board may require that the 53G Account be reasonably replenished during the Board's review of the application. Failure to replenish this fee shall be grounds for denial of the application.

3.3 Notice

Upon receipt of a complete application, the Board shall provide notification and a copy of the same to each Local Board as required by 760 CMR 56.05(3), as may be amended.

Section 4.0 Outside Consultants and Fees

- a. Pursuant to G.L. c. 44, s. 53G, the Board may hire outside consultants for review and analysis of any application when the Board determines it appropriate. The cost for the review by the outside consultant(s) shall be borne by the applicant. The Board shall follow the requirements of the Uniform Procurement Act, G.L. c.

30B, §4, and the guidance documents of the Commonwealth's Office of the Inspector General in making such selections.

- b. The Board will select the consultant after reviewing both the responses and any comments received from the petitioner or applicant pursuant to these Rules, but it normally will not formally award any contract until the review fee has been paid. If the applicant fails to pay the review fee(s) into escrow within ten days of receiving written notification of selection of a reviewer, the Board may deny the petition or application.
- c. The Board will generally consider the following when making a decision to engage a peer reviewer under this Section 4.0:
 - 1. the size, scale or complexity of the proposal;
 - 2. the complexity of particular technical issues;
 - 3. the number of housing units or square feet proposed; and
 - 4. the size and character of the site,
- d. In hiring outside consultants, the Board may engage engineers, planners, traffic consultants, attorneys, housing specialists and financial analysts, and/or other appropriate outside consultants who can assist the Board in reviewing and analyzing the proposal. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue of three or more years of practice in the field as issue or a related field.
- e. Funds received by the Board pursuant to this section shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of Chapter 44, Section 53G of the General Laws. Expenditures from this special account may be made at the directions of the Board in connection with the hearing of a specific proposal for which a review fee has been collected from the applicant without further appropriation. Failure of an applicant to pay a review fee shall be grounds for denial of the application.
- f. Review fees may only be spent for services rendered in connection with the specific proposal from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a proposal, any excess amount in this 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 the 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.

- g. Prior to paying the review fee, the applicant may appeal the selection of an outside consultant(s) to the Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum, required qualifications.
- h. The written appeal should specify the nature of the conflict of interest and detail the lack of required qualifications. A copy of the appeal shall be simultaneously provided to the Board.
- i. The time limit for the Board's action on the proposal shall be extended by the duration of any administrative appeal to the Board of Selectmen. In the event that the Board of Selectmen makes no decision regarding the appeal within thirty days following the filing of such appeal, then the selection of the Board of Appeals shall stand.

Section 5.0 Public Hearing and Decision

5.1 Conduct and Scope of Public 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. The deadlines for Board action, as therein established, shall be applicable only to the extent that the applicant has made timely submittal of all materials required by these Rules and/or reasonably requested by the Board hereunder.

5.2 Decision

The Board shall render a decision, by majority vote, in the manner and within the time specified by 760 CMR 56.05(8), as may be amended. The Board may vote to approve, approve with conditions or deny a comprehensive permit to the applicant.

5.3 Approval

The Board may approve a comprehensive permit on the terms and conditions set forth in the Application.

5.4 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.

5.5 Denial

The Board may deny a comprehensive permit if it finds that 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.

Section 6.0 Project Modifications

6.1 Changes to an Application

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.

6.2 Changes During Hearing

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 Article III 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.

6.3 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 3.0, above, to the extent said materials are pertinent to the proposed change(s), and payment of the fee(s) specified herein. Matters generally characterized as substantial changes are set forth in 760 CMR 56.07(4)(c), as may be amended.

Section 7.0 Appeals

If the Board approves an Application and issues a comprehensive permit to the applicant, appeals shall be taken pursuant to 760 CMR 56.05(9), as may be amended.

Section 8.0 Violations

In the event there is any violations of the conditions of a comprehensive permit, either the Building Inspector or the Board may issue a "stop work order" to abate or suppress such violation. Violations may include failure to comply with the plan(s) of record, environmental damage due to erosion or sedimentation, or other detrimental site conditions not foreseen in the approval process. Said order shall remain in effect until such time as the violation(s) or damage(s) are corrected.

Section 9.0 Miscellaneous

9.1 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.

9.2 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.

9.3 Effective Date

These Rules were adopted at a regular meeting of the Board on 4/27, 2015, 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.

TOWN OF WINCHESTER
BOARD OF APPEAL
71 MOUNT VERNON STREET
WINCHESTER, MASSACHUSETTS 01890
(781) 721-7115

APPLICATION FOR
ZONING HEARING

FORM 2

Application Date _____

The undersigned hereby petitions the Board of Appeals for the following:

- Appeal Variance Special Permit Use Special Permit/Site Plan Review
 Special Permit Sign Special Permit (Pre-existing non-conforming structure)

Property Address _____ Zoning District _____

Area of Lot _____ Frontage _____

Street Frontage is Public Way Subdivision Control Way Private Way

Petitioner's Name _____ Address _____

Name _____ Address _____

Name _____ Address _____

Brief Description of Work:

Applicants for an Appeal must complete Form 2A

Applicants for a Variance must complete Form 2B

Applicants for a Special Permit Use must complete Form 2C

Applicants for a Special Permit/Site Plan Review must complete Form 2D

Applicants for a Special Permit Sign must complete Form 2E

Applicants for a Special Permit Pre-existing Nonconforming 1 or 2 Family must complete Form 2F

Applicants for a Special Permit Pre-existing Non-conforming Other must complete Form 2G

FORM 2

The undersigned is () the owner of the subject property; or () the holder of a written option to purchase the subject property, or () the holder of a valid lease to the subject property. (Written authorization from the property owner must be submitted with the other application documents when the applicant is not the record owner of the property).

Record title to the subject property stands in the name (s) _____

Address of owner of record _____

Title Reference:

(Unregistered land) Middlesex County Registry of Deeds; Book _____, Page _____

(Registered land) Land Court Certificate of Title No. _____ Book _____, Page _____

Date of Recording: _____

State briefly what building and structures currently exist on the premises:

Attorney, agent, or other representative acting for petitioner:

Name _____ Address _____

Name _____ Address _____

Written evidence of agent's standing to represent petitioner may be requested.

Signed as a statement of fact under the pains and penalties of perjury, this _____ day of _____, 20____.	
SIGNATURE _____ (Petitioner/Agent)	SIGNATURE _____ (Property Owner/Agent)
Address _____	Address _____
Tel No. _____	Tel No. _____

Note: Do not attempt to discuss the merits of your case with any member of the Board of Appeal at any time after filing this application and prior to the hearing thereon.



Town of Winchester

FORM 2D

MIDDLESEX COUNTY, MASSACHUSETTS

TOWN HALL
71 MOUNT VERNON STREET
WINCHESTER, MASSACHUSETTS 01890
(617) 721-7115

BOARD OF APPEALS

Date: _____

To the Board of Appeal of the Town of Winchester:

The undersigned hereby petitions the Board of Appeal for the relief specified below.

Property Location _____ Lot # _____

Zoning District: _____ Area of Lot: _____ Frontage: _____

Street Frontage is: (X) Public Way () Subdivision Control Way () Private Way

Owner of Record: _____

Mailing Address: _____ Tel. _____

Date Deed Recorded: _____ (Complete Deed Reference Below)

Middlesex South Registry of Deeds: Book _____ Page _____

Middlesex South Registry District of the Land Court as Cert. of Title No. _____

Present Use: _____

Proposed Use: _____

Relief Desired:

- () Appeal (MGL Chp. 40A, Sect. 8), attach copy of decision or order being appealed.
- () Special Permit in accordance with Zoning By-Law Sect. _____
- () Special Permit/Site Plan Review in accordance with Zoning By-Law Sect. _____
- () Dimensional Variance (MGL chp. 40A, Sect. 10) from Zoning By-Law Sect. _____
- () Sign Permit under Chp. 9 of the General By-Laws of the Town of Winchester

Describe change, extension, alterations or modifications, etc. requested.

Petitioner: _____ Signature: _____

Mailing Address: _____ Tel. _____

Petitioner is: () Owner () Tenant () Licensee () Binding Optionee

Petition must be fully completed, typewritten or plainly printed in ink.