

**CODE OF THE TOWN OF BOXFORD, MASSACHUSETTS, v13 Updated 12-15-2007  
/ DIVISION 3 MISCELLANEOUS REGULATIONS / Chapter 382, ZONING BOARD OF  
APPEALS RULES AND REGULATIONS**

**Chapter 382, ZONING BOARD OF APPEALS RULES AND  
REGULATIONS**

[HISTORY: Adopted by the Zoning Board of Appeals of the Town of Boxford 6-27-2002.  
Amendments noted where applicable.]

**GENERAL REFERENCES**

**Zoning -- See Ch. 196.**

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APPEALS RULES AND REGULATIONS / § 382-1. Authority and purpose.**

**§ 382-1. Authority and purpose.**

- A. Authority. These rules and regulations of the Boxford Board of Appeals are adopted pursuant to and under the authority of § 196-44 of the Boxford Zoning Bylaw; Chapter 40A ("The Zoning Act") and other applicable provisions of the Massachusetts General Laws.
- B. Purpose. The purpose of these rules and regulations is to establish uniform standards and procedures for conducting the business of the Board of Appeals. These shall apply to all matters over which the Board of Appeals has jurisdiction, including:
- (1) To hear and decide appeals from any decisions of the Inspector of Buildings;
  - (2) To hear and decide applications for special permits as authorized by the Boxford Zoning Bylaw;
  - (3) To hear and decide petitions for variances as authorized by the Boxford Zoning Bylaw;
  - (4) To hear and decide applications seeking authorization and a comprehensive permit to build low- and moderate-income housing contemplated by MGL c. 40B, § 21;
  - (5) To hear and decide upon all matters otherwise legally within the jurisdiction of the Board of Appeals.

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APPEALS RULES AND REGULATIONS / § 382-2. Organization.**

**§ 382-2. Organization.**

- A. Members and officers. The Board of Appeals shall consist of three regular members appointed by the Board of Selectman. The Board of Appeals shall annually, at their first meeting in July, elect officers consisting of a Chairperson, Vice Chairperson and Clerk from its regular members, and may engage, subject to appropriation, a Secretary and such other assistance as is necessary.
- B. Alternate members. Alternate members of the Board of Appeals shall be appointed by the Board of Selectmen. Alternate members shall sit on the Board of Appeals in the case of absence, inability to act or conflict of interest on the part of any regular member. Alternate members shall not participate in elections of officers.
- C. Chairperson's power and duties.
  - (1) The Chairperson shall preside over all hearings and meetings of the Board of Appeals. Subject to the rules as stated herein, the Chairperson shall decide all points of order unless overruled by a majority of the Board in session at the time. The Chairperson shall designate associate members to sit on the Board as may be deemed necessary and in the event of a vacancy on the Board shall designate an associate member to act as a member until the vacancy is filled by appointment of the Board of Selectmen.
  - (2) In addition to powers granted by Massachusetts General Laws and the Boxford Zoning Bylaw, and subject to these rules and regulations and further instruction of the Board of Appeals, the Chairperson shall supervise the work of the Secretary, arrange for necessary help and exercise general supervision over the Board's activities. The Vice Chairperson shall preside over any hearing or meeting, or perform all duties and exercise all powers of the Chairperson in the absence of the Chairperson.
- D. Secretary. A Secretary shall be appointed by the Board of Selectmen and, subject to the direction of the Board and its Clerk, shall undertake all of the clerical work of the Board including all correspondence, sending of all notices required by law or the rules and regulations or orders of the Board, receive and scrutinize all petitions and applications for compliance with the rules and regulations of the Board, keep dockets, minutes and records of the Board's proceedings, compile all required documents, and maintain necessary files and indices.

- E. Quorum. A quorum for the purpose of conducting public hearings and transacting other business of the Board of Appeals shall consist of three members.
- F. Regular hearing dates. The regular hearing dates of the Board of Appeals shall be held as necessary at 7:30 p.m. on the fourth Thursday of each month, or at other times determined by the Board. If a regular hearing is cancelled, it shall be held on the next regular hearing date unless otherwise provided.
- G. Meetings of the Board. Meetings of the Board of Appeals may be called by the Chairperson or at the request of two members. Notice thereof shall be given to each member at least 48 hours before the time set, not including Sundays and holidays, except that announcement of a meeting at any hearing or other meeting of the Board attended by all members shall be sufficient notice. Notices shall be posted publicly as required by law for all meetings.

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**§ 382-3. Procedure for application.**

- A. General procedure.
  - (1) All applications for hearing must be date stamped by the Town Clerk and filed with the Board's Secretary. All applications shall be made by the owner of the property noted in the request or with the owner's written permission attached.
  - (2) Prior to filing any application it shall be reviewed with the Board's Secretary to assure its completeness, and each such application shall be accompanied by all applicable site plans, building plans and such other information as may be required by the Boxford Zoning Bylaw or as may reasonably be deemed necessary by the Board's Secretary. Failure to provide all applicable site plans, building plans and other required information, including the specific reference(s) to all applicable sections of the Zoning Bylaw, may result in either rejection of the application for incompleteness or the need for a new application and hearing.
- B. Application requirements. Any person who wishes to make an application for hearing shall file twelve copies of the following:
  - (1) Application for hearing. Every application for action by the Board of Appeals shall be made on an official application form entitled "Board of Appeals - Application for Hearing" which is hereby made part of the rules and regulations and shall be furnished by the Inspector of Buildings or the Board's Secretary upon request. Any other

communication purporting to be an application or petition shall be treated as mere notice of intention to seek Board action until such time as it is made on the official application form. All information called for by the application form shall be furnished by the applicant in the manner therein prescribed together with all information specified in the applicable provisions of the Boxford Zoning Bylaw.

- (2) Plans and specification. The applicant shall file seven prints of all applicable plans and specifications, which shall clearly show the nature of the specific request being made. Insofar as practicable all plans shall be drawn to scale, shall not exceed 24 inches x 36 inches and shall indicate as applicable:
  - (a) The title of the plan, including assessor's map and parcel number;
  - (b) Plot plan, including all required setbacks and property boundaries;
  - (c) The scale;
  - (d) The date, name and address of the owner and the applicant; the name, seal and address of the designer, engineer or surveyor;
  - (e) The zoning classification and the location of any zoning district boundaries including floodplain;
  - (f) The location of all existing and proposed buildings or parts thereof, structures, signs, parking and loading spaces;
  - (g) The limits of all paving and storage areas;
  - (h) All required landscaping; and
  - (i) Such other information as is necessary to ensure the purposes of the Boxford Zoning Bylaw and these rules.
- (3) Filing fee.
  - (a) Application for a special permit or an appeal hearing shall be accompanied by two checks payable to the Town of Boxford for \$100 for the application and a separate one to cover the cost of mailing. The newspaper will bill the applicant directly for advertising.
  - (b) Application for a variance hearing shall be accompanied by two checks payable to the Town of Boxford for \$150 for the application and a separate one to cover the cost of mailing. The newspaper will bill the applicant directly for advertising.
  - (c) In the event that an application to the Board involves more than one of the above

matters, the filing fee for each application shall be paid. In addition, all applications for a repetitive petition shall be accompanied by a new check payable to the Town of Boxford in the same amount as if it were an original application.

C. Information to be furnished to the Board of Appeals.

- (1) Special permits. In the case of a special permit, the following points, at a minimum, based on the Zoning Act, MGL c. 40A, § 9, shall be identified and both factually and legally supported on the application form and again verbally at the hearing:
  - (a) That the proposed use (conditions and character of operations) is in harmony with the general purpose and intent of the Boxford Zoning Bylaw;<sup>EN(1)</sup> and
  - (b) That the use complies with all requirements of the Boxford Zoning Bylaw.
- (2) Variances. In the case of a variance, the following points, at a minimum, based on the Zoning Act MGL c. 40A, § 10, shall be identified and both factually and legally supported on the application form and again verbally at the hearing:
  - (a) That there are circumstances relating to the soil conditions, shape or topography of the land or structure and especially affecting such land or structure in question, but which do not affect generally the zoning district in which the land or structure is located;
  - (b) That due to those circumstances especially affecting the land or structure, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise to the petitioner;
  - (c) That desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this bylaw; and
  - (d) That desirable relief may be granted without substantial detriment to the public good.
- (3) Appeals. In the case of an appeal, the following points, at a minimum, based on the Zoning Act, MGL c. 40A, § 8, shall be identified and both factually and legally supported on the application form and again verbally at the hearing:
  - (a) The specific nature and the grounds for the appeal; and
  - (b) All evidence supporting the grounds for the appeal; and
  - (c) All documents and papers constituting the record of the case.

D. Public hearing and notice.

(1) Notice.

- (a) The notice shall contain the name of the applicant; the name of the owner of property, if different; a description of the area or premises (street address or other adequate identification of the location of the area or premises); the date, time and place of the public hearing; and the subject matter or the application with specific reference to all applicable sections of the Boxford Zoning Bylaw or General Laws.
- (b) Notice of hearings shall be advertised as required by the provisions of MGL c. 40A, § 11, or MGL c. 41, § 81AA. In addition, copies of the notice shall be sent by mail at least seven days prior to the date of the hearing, postage prepaid, to all parties in interest, and provided to the Planning Board, Inspector of Buildings, Board of Health, Conservation Commission, Fire Department, Board of Selectmen, Assessor's Office and where applicable, other Town Boards and departments. In the event of the failure to give timely notice to parties in interest, the Board of Appeals may continue the hearing until such notice requirement has been satisfied.

(2) Hearings to be public. All hearings shall be open to the public and shall be conducted in accordance with the Massachusetts Open Meeting Law, MGL c. 39, § 23B.

(3) Representation and absence. An applicant may appear in his/her own behalf or be represented by a qualified agent or attorney. In the absence of an appearance, the Board of Appeals may, in its discretion, decide the matter using the information it has received, dismiss the petition with or without prejudice or continue the hearing to a later date. All petitioners will be asked to sign an agreement to extend the time for a decision in all cases that are continued beyond the second hearing.

(4) Hearing procedure.

- (a) The Chairperson shall call the hearing to order and open each hearing by requesting the Clerk to read the notice as advertised.
- (b) The petitioner or representative will then present the case, stating fully the reason(s) why the petition or application should be granted.
- (c) The Chairperson may ask the Inspector of Buildings to further explain the application or may ask another Town Official or representative thereof (Planning Board, Town Engineer, etc.) for their comments and recommendations.
- (d) When the petitioner or representative and the Inspector of Buildings or other Town officials have concluded, the Chairperson will allow all abutters of the matter under consideration to speak on material facts on the case. Those who wish to speak will rise, address the Board of Appeals, give their names and addresses and then proceed.

- (e) When all abutters have spoken, the Chairperson will then allow other interested parties a similar opportunity to speak on material facts on the case.
- (f) Rebuttals may only be allowed at the discretion of the Chairperson.
- (g) As directed by the Chairperson, any regular or alternate member of the Board of Appeals may direct appropriate questions during the hearing. In addition, the Board may choose to retain any record that has been introduced in evidence for reference in the consideration of the case. All cases will require a review process and a recommendation by the Planning Board.
- (h) When the case has been presented, the Chairperson will close the hearing and inform the petitioner or representative and others present of the time requirements involved and the applicable appeals procedures.
- (i) Decisions will generally be made at the conclusion of the hearing but may be postponed, prior to the close of evidence, to permit submission of written material or other documents requested by the Board; to permit viewing the property with respect to which an application has been filed; or to enable the Board to fully consider all records which have been introduced in evidence.

E. Actions by the Board of Appeals.

- (1) Voting requirements. A unanimous vote of all three sitting members of the Board of Appeals shall be necessary to reverse any order or decision of the Inspector of Buildings; or to decide in favor of a special permit or variance or on any matter legally within the jurisdiction of the Board. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member or if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions and of its other official actions, copies of all of which shall be filed in the Office of the Town Clerk.
- (2) Withdrawal. An application may be withdrawn without prejudice by notice in writing to the Board's Secretary at any time prior to the publication of notice of a public hearing by the Board of Appeals. Withdrawal of an application thereafter with or without prejudice requires Board approval and, in either event there shall be no return of any fee paid.
- (3) Repetitive petition. No appeal of a decision by the Inspector of Buildings, nor request for a special permit or variance which has been unfavorably and finally acted upon by the Board of Appeals shall be acted upon within two years after the date of final unfavorable action unless at least five members of the Planning Board and a unanimous vote of the Zoning Board agree that new evidence presented indicates that the reapplication is substantially altered from the original petition and the Board of Appeals finds specific and material changes in the conditions upon which the previous unfavorable action was

based and describes such changes in its records prior to scheduling a new hearing.

(4) Limitation of approval.

- (a) A special permit shall lapse if a substantial use thereof has not commenced except for good cause or in the case of a permit for construction, if construction has not commenced except for good cause within two years from the date of the grant thereof.
- (b) Any rights authorized by a variance, which are not exercised within one year from the date of grant of such variance, shall lapse and may be reestablished only after notice and a new hearing.

(5) Decisions.

- (a) Decisions of the Board of Appeals shall be made in writing and shall contain the following:
  - [1] Case number, name and address of the applicant and identification of the land affected;
  - [2] Name and address of the owner of the land affected if not the applicant;
  - [3] Place, time and date of the public hearing;
  - [4] Dates hearing was advertised and name of paper and a statement that the applicant and parties in interest were notified;
  - [5] Brief account of the hearing and relief requested;
  - [6] Date the decision was rendered, the vote of the Board stating specifically which members voted for and which voted against, whether the application was granted or denied in whole or in part and the reasons therefor and the conditions, if any imposed.
- (b) The Board's Secretary will send a copy of its decision forthwith to the owner, the applicant if other than the owner, the Planning Board, the Town Clerk, the Inspector of Buildings, the Board of Health, Conservation Commission and, where applicable, other Town Boards and departments, and will send notices of its decision to parties in interest and every person present at the hearing who requests that notices be sent and states the address to which such notice is to be sent. In addition, the Board will send a copy of decision for a shared driveway to the Fire Department and for accessory apartments to the Board of Assessors.
- (c) A variance or special permit does not become effective until the Town Clerk certifies



that no appeal of the decision has been filed in Superior Court within the twenty-day statutory appeal period or that if an appeal has been filed, it has been dismissed or denied. A certified copy of the decision shall be recorded in the Essex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or recorded and noted on the owner's certificate of title (for registered land.)

- (d) The applicant or petitioner is responsible for filing the certified decision in the Registry of Deeds, paying the recording fees and delivering said copy to the Zoning Board of Appeals office.

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**§ 382-4. Procedure for comprehensive permit to build low- and moderate-income housing. [Added 5-22-2003]**

**A. Purpose.**

- (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 MGL c. 40B, §§ 20-23 (the Act). These Rules are required by M.G.L. c. 40B, § 21, as amended by State Acts of 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).
- (2) The ZBA's general rules of conduct of hearings under MGL 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.
- (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 Subsections I through M.

**B. Definitions.** As used in this section, the following terms shall have the meanings indicated:

**ZBA** -- The Zoning Board of Appeals established under MGL c. 40A, § 12.

**LOCAL BOARD** -- Any local board or official, including, but not limited to any board of health; planning board; conservation commission; historical commission; fire, police, public works department, 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.

**LOCAL HOUSING PARTNERSHIP (LHP)** -- 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 MGL c. 40B, § 21.

**C. Complete application.**

- (1) A complete application for a comprehensive permit shall include (760 CMR 31.02):
  - (a) An application form;
  - (b) A determination of project eligibility (site approval) by the subsidizing agency [See 760 CMR 31.01(2)];
  - (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, exterior lighting, signs, 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, trails and trails network, topography, wetlands and buffer areas, on-site infrastructure, parking, roads, driveways, storm water 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, and building and impervious surface coverage);
  - (i) Where a subdivision of land is involved, a preliminary subdivision plan;
  - (j) Preliminary utilities plan showing the proposed location and types of water, wastewater and stormwater facilities, including hydrants;
  - (k) Payment of filing fee:
    - [1] Limited dividend organizations, nonprofit organizations and governmental entities utilizing the New England Fund Program: \$500 and \$50 per individual residential unit; or
    - [2] Limited dividend organizations that are using the Local Initiative Program (LIP) (760 CMR 45.00): \$250 and \$25 per individual residential unit;
  - (l) Advertising costs and postage for abutter notification shall be borne directly by the applicant;
  - (m) 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;
  - (n) 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;
  - (o) First level hazardous waste assessment (MGL 21E) (if applicable);
  - (p) List of state or other local approvals necessary to be sought and granted prior to the issuance of a building permit for the project;
  - (q) A geohydrologic study on the impact of public water supply and irrigation needs on the local aquifer, nearby private wells, and surface water tributaries to the Ipswich River, Parker River and Merrimack River;
  - (r) List of waivers, variances and exceptions sought by applicant from any and all local regulations, policies and by-laws; and
  - (s) Additional information the ZBA reasonably determines is necessary to make a decision.
- (2) In order to allow review by local officials, the Applicant shall provide the Town Clerk

with 20 copies of the complete application so that the local boards, officials and departments may review the same and that one copy may be placed on file at each library. In addition there shall be one unbound copy for copying purposes and eleven-inch-by-seventeen-inch copies of all plans (with matchlines) shall be made available to the Town Clerk for copying purposes.

D. Review fees.

- (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, but not be limited to special counsel to the ZBA, traffic consultants, design review consultants, and/or financial reviews (for New England Fund projects only).
- (2) In hiring outside consultants, the Board may engage engineers, 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.
- (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 MGL 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) 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.
- (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 the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Board shall stand.

- (6) All fees assessed pursuant to this Subsection D 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.

E. Procedures.

- (1) Negotiation/mediation. The applicant shall meet with the Local Housing Partnership to review and negotiate the proposal for a comprehensive permit before an application is filed with the ZBA.
- (2) The ZBA shall hold a public hearing on the project within 30 days of receipts of the completed application. 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. In making its decision the ZBA shall take into consideration the recommendations of the local boards. These recommendations shall include the reasons why any local bylaws or regulations of those boards should not be waived.
- (3) The ZBA will give public notice, beginning at least 14 days prior to the date of the hearing, by advertising the comprehensive permit hearing in a local newspaper of general circulation, notifying interested parties by certified mail as defined in MGL c. 40A § 11 to include the petitioner, direct abutters, owners of land directly opposite on any public or private street or way, abutters to abutters within 300 feet of the property line of the proposed project, the Planning Board of Boxford, the Planning Board of every abutting city or town, and posting a copy of the hearing notice in the Town Hall.
- (4) In the event that, during the public hearing, the applicant proposes any changes in its

application or project plans that in, the ZBA's judgement, constitute a material or substantial change in the project, the applicant shall provide a new determination of project eligibility (site approval) from the subsidizing agency, and the ZBA may request, and the Applicant shall provide, any and all changes to the information specified in Subsection C(1) that is deemed by the ZBA to be necessary for the ZBA and other local boards to evaluate such changes.

F. Decisions.

- (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. The public hearing is deemed closed when all public testimony has been received and all information requested by the ZBA has been received. The ZBA 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 as not consistent with local needs;
  - (c) Approve a comprehensive permit with conditions, including but not limited to height, site plan, size, shape, or building materials, that do not render the construction or operation of such housing economic.
- (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 as long as the housing is not in compliance with local zoning.
  - (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, Subdivision Control Law, State Health Code and the State Building Code prior to construction.
- (3) The burdens of proof for ZBA decisions (denial, approval or approval with conditions) are described in 760 CMR 31.06 (5)-(8). "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.

G. Condominium documents. All condominium documentation shall state that:

- (1) Unit owner's percentage interest in the condominium shall be based on unit fair market value (not square footage of the unit).
- (2) There shall be one vote per unit owner, unless MGL c. 183A requires otherwise.
- (3) Condominium documents shall prohibit amendments to affordability provisions.
- (4) Affordable units shall not be rented without the approval of the Town, as determined by the Boxford Housing Partnership.

H. Amendments to approved permit.

- (1) If after the issuance of a comprehensive permit an 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.]
- (2) If the ZBA determines the change is insubstantial, the comprehensive permit shall be modified to incorporate the change.
- (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 Subsection D(5) of these rules. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

I. New England Fund projects. 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.

- (1) The rules set forth herein below in Subsections J through S apply to NEF projects 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.
- (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.

J. NEF applications.

- (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 Subsection C, 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 housing market in which it will be situated (based on comparable rental or sales figures);
      - [c] An initial pro forma has been reviewed and that the project appears viable from a development cost perspective; and



[d] The applicant meets the general eligibility standards of the NEF program.

- (b) A statement that the entity issuing the project eligibility letter has notified the ZBA and Board of Selectmen, provided a thirty-day review period for local comment and 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 Subsection B(1) of these rules; for reasonable profits, see Subsection K 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.

K. NEF reasonable profits. The applicant's profits shall be reasonable and shall be limited as follows:

- (1) 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).
- (2) 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).

L. NEF allowable acquisition costs. The development pro forma must list a land value that is the lower of the last arm's length transaction (if within three years) plus reasonable carrying and/or maintenance costs or the value under the pre-existing zoning regulations, plus reasonable carrying costs.

- (1) 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;
- (2) Pre-existing zoning regulations concerns the time the option or purchase and sale

agreement is executed.

- (3) 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.

M. NEF decisions.

- (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 Subsection F.
- (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.

N. Regulatory agreements.

- (1) The purpose of the regulatory agreement is to provide legal assurances that the applicant will construct and maintain the units in accordance with these rules and be limited to a reasonable profit for the project (as set forth in Subsection K herein above) subject to the regulatory agreement.
- (2) The regulatory agreement shall:
  - (a) Include a definition of "profit";
  - (b) Limit profits on homeownership projects to 20% [See Subsection K(1) herein above.];
  - (c) Limit profits on rental projects to an annual return of 10% of equity [See Subsection K(1) 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 certified public accountant, acceptable to the monitoring agent and the Town; and
  - (e) Be executed by the Town, the lending bank, and the applicant.
  - (f) Establish resale and rental controls to preserve long-term affordability and to ensure its availability to low- or moderate-income households.

O. Monitoring agreements.

- (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.
- (2) The Boxford Housing Partnership shall be the monitoring agent under any monitoring agreement.
- (3) The per unit fees for monitoring the affordable units shall be set by the Boxford Housing Partnership.

P. Affordability restrictions-all applications.

- (1) Restrictions for homeownership projects.
  - (a) The formula for determining resale price shall be the lesser of 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 a price based on an annual debt service on a mortgage plus taxes, insurance and condominium fees (assuming a down payment of 10%) that does not exceed 30% of the annual income of a household earning 70% of the area median income for the local statistical area as defined by the United States Department of Housing and Urban Development.
  - (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 in perpetuity.
- (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 area median income for the local statistical area as defined by the United States Department of Housing and Urban Development 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 the Boxford Housing Partnership.

Q. Buyer/tenant selection-all applications.

(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 area median income for the local statistical area as defined by the United States Department of Housing and Urban Development.

- (2) Renters of affordable units shall have a household income of less than 80% of the area median income for the local statistical area as defined by the United States Department of Housing and Urban Development.

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

R. Owner-occupancy requirements-all applications.

- (1) These requirements shall apply to homeownership projects.
- (2) All units shall be owner-occupied.
- (3) Rentals of owner-occupied affordable units shall be limited to two years and to renters of affordable units [See Subsection Q(2) herein above.] and are subject to approval by the Town as determined by the Boxford Housing Partnership.

S. Affordable unit design and location-all applications.

- (1) The exterior of the affordable units shall be indistinguishable from the exterior of the market-rate units.

- (2) Affordable units shall be dispersed throughout the project.

T. Appeals.

- (1) If the ZBA approves a comprehensive permit, any person aggrieved may appeal within the time period and to the court provided in MGL c. 40A, § 17.
- (2) If the ZBA 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 MGL c. 40B, § 22.10

U. Lapse of permits.

- (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.
- (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.

V. Transfer of permits.

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

**CODE OF THE TOWN OF BOXFORD, MASSACHUSETTS, v13 Updated 12-15-2007  
/ DIVISION 3 MISCELLANEOUS REGULATIONS / Chapter 382, ZONING BOARD OF  
APPEALS RULES AND REGULATIONS / § 382-5. Administration.**

**§ 382-5. Administration.**

A. Advice and policies.

- (1) Any advice, opinion or information given to an applicant by any Board of Appeals member, the Inspector of Buildings, the Board's Secretary or any other official or employee of the Town prior to a public hearing shall not be binding on the Board. Individuals are discouraged from appealing personally to members of the Board prior to a public hearing.
- (2) The Board may, at its discretion, develop policies to further define or interpret provisions of their Zoning Bylaw in these rules and regulations.

B. Waivers. The Board of Appeals may waive strict compliance with any of these rules and

regulations if it deems it in the public interest and if a written record is kept of such waivers, and the reasons for them.

- C. Amendments to rules and regulations. These rules and regulations may be amended by a unanimous vote of the members of the Board of Appeals, provided that such amendment shall be presented in writing at a regular meeting and action taken thereof at a subsequent regular meeting.
- D. Effective date. These rules and regulations were adopted at a regular meeting of the Board of Appeals on June 27, 2002, and become effective as of July 1, 2002. The rules previously adopted and subsequently amended are hereby repealed. No action taken under said Rules shall be affected by said repeal.

## **Endnotes**

### **1 (Popup - Popup)**

Editor's Note: See Ch. 194, Zoning.