

6/17/10

Rules of the Zoning Board of Appeals Of the Town of Lincoln

- 1) General. These rules prescribe the general procedures which will be followed by the Zoning Board of Appeals in all matter which come before it. They shall be construed in a manner calculated to result in just, speedy and informed decisions.
- 2) Guidelines. Prior to submitting an application to the Board, it would be helpful if the applicant, in addition to reviewing the Rules which follow, would obtain from the Board's clerk the Board's list of "Guidelines" which pertain to the type of application the applicant is filing. Among other things, those "Guidelines" list the information required in order to process an application. Consideration of the application will be expedited if all of that information is made available to the Board prior to or at the hearing described in Rule 8. The "Guidelines," however, are intended to assist the applicant and do not constitute Rules binding on the Board.
- 3) Parties in Interest. As used in these Rules, the term "parties in interest" shall mean the petitioner or applicant, abutters, owners of land directly opposite on any public way or private street or way, and abutters to the abutters within 300 feet of the property line of the petitioner or applicant as they appear on the most recent applicable tax list, even if the land of any such owners is located in another city or town, the Planning Board of the Town of Lincoln and the Planning Board of any city or town which abuts the property of the petitioner or applicant.
- 4) Applications. Applications for variances, special permits or other relief which the Board is empowered to grant must be made in writing on a form prescribed by the Board. Such forms are available from the Board's Clerk at Town Hall. Completed forms, along with the appropriate filing fee, shall be submitted to the Clerk.
- 5) Filing Fee.
 - (a) At the time an application is filed with the Clerk, the filing fee prescribed from time to time by the Board must be paid to the Clerk. No application will be accepted for filing until the filing fee has been paid unless the Board, for good cause shown by the applicant, waives in writing the requirements of this Rule 5.
 - (b) The Board imposes a review fee to cover its expenses in reviewing an application for a variance or special permit for a Wireless Communication Facility located outside of the WCF District set forth in Section 12.6 of the

Zoning Bylaw. The initial review fee shall be in the amount of \$7500 payable by certified check to the Town of Lincoln, to cover expenses, including without limitation any engineering, planning or technical consulting services employed in reviewing the application. The Board may also impose additional review fees during the process to cover expenses in addition to those covered by the initial fee. A variance or special permit shall not be issued until all fees due and owing shall be paid.

- 6) Notice. After the filing fee is paid, the Board will schedule a hearing on the application. Notice of the hearing will be given to parties in interest and to the public in accordance with the requirements of Massachusetts General Laws, ch. 40A (the “Zoning Enabling Act”) and ch. 39, Section 23B (the “Open Meeting Law”).
- 7) Continuances: The Board may, either on its own motion or at the request of a party in interest, continue the hearing on an application from day to day or adjourn such hearing to a later date by announcement made at the date and time originally set for the hearing or by other appropriate notice. In the event that only four out of the five members of the Board are present at the time set for the hearing on the application, all parties in interest present at said time will be afforded an opportunity to request a continuance until such time as five members can be present. If the parties in interest elect to proceed in the presence of four members, approval of the application will require a unanimous vote of those four.
- 8) Hearings.
 - a) All hearings shall be held at Town Hall, unless some other place is properly designated by the Board, and shall be open to the public.
 - b) Subject to the direction and control of the Board, all hearings will proceed in the following fashion: the Board will announce the substance of the petition on which the meeting is being held together with the substance of applicable provisions of the Massachusetts General Laws and the zoning by-law. The applicant will then be afforded an opportunity, individually or through a designated representative, to describe the relief sought from the Board together with the reasons for which that relief is desired. Those in attendance at the hearing who favor the application, in whole or in part, then will be afforded an opportunity to express their views concerning the application. Those in attendance who oppose the application, in whole or in part, then will be afforded an opportunity to express their views concerning the application.
- 9) Evidence. In proceedings before the Board, adherence to the rules of evidence observed in the courts is not required. All relevant and material evidence, oral

or written, will be received by the Board. Hearsay evidence will be rejected only if a party in interest objects to its reception and demonstrates to the Board that there are reasonable grounds for believing it to be highly likely that the proffered hearsay testimony is unreliable.

- 10) Closing the hearing. After all persons in attendance at the hearing have had a reasonable opportunity to present their views in accordance with Rule 8 hereof, the Board will announce that the hearing is closed. Thereafter, no oral or written material bearing on the subject matter of the application will be received by the Board except in accordance of Rules 11 – 13 hereof.
- 11) Submissions after Closing. Except as permitted by Rules 12 and 13 hereof,
 - a) No oral material bearing on the subject matter of an application will be received by the Board after the hearing on the application is closed;
 - b) No written material bearing on the subject matter of an application will be received by the Board after the hearing on the application is closed unless (i) the person who intends to proffer such material makes known to the Board during the hearing both his or her intention to do so and general description of the material to be proffered; (ii) all parties in interest in attendance at the hearing agree that said material may be received by the Board after the hearing is closed and (iii) the person proffering such material complies with the conditions, if any, the Board imposes at the hearing with respect to its receipt of such material.
- 12) Views. From time to time, after the hearing has been closed, the Board may view the property with respect to which an application has been filed. Such views are taken solely for the purpose of acquainting members of the Board with the characteristics of the property under consideration. During such views, communications between members of the Board and any other person will be limited to identifying various physical characteristics of the property in question. No communications will be received concerning the merits, or lack thereof, of the application with respect to which the view is being taken.
- 13) Reopening the hearing. For good cause and to the extent permitted by law, the Board may, on its own motion or on the application of a party in interest, reopen a hearing after it has been closed. In the event that a hearing is reopened in accordance with Rule 13, appropriate notice will be given to all parties in interest and, to the extent practicable, to all other persons who were in attendance at the original hearing.
- 14) Decisions.
 - a) At the conclusion of all hearings scheduled for an evening on which the Board meets, the Board will confer and attempt to reach a tentative decision with

respect to each application on which a hearing was held that evening. The Board will then assign to one of its members the task of writing a final decision with respect to that application. During the period between the time the tentative decision is made and the time the final decision is approved in accordance with Rule 14(b) hereof, the tentative decision, and the votes of each member thereon, may be obtained upon inquiry to the Board's Clerk. The tentative decision reached by the Board, however, is not binding on the Board and may be revised, altered, modified or changed, without limitation, in the Board's final decision.

- b) The final decision of the Board with respect to an application will be in writing and will contain a statement of the reasons for the Board's granting or denying, in whole, in part or with conditions, the relief sought in the application along with the vote of each participating Board member with respect to the decision.
- c) No person is empowered to alter or modify, orally or in writing, the Board's final decision. However, the Board itself, with the concurrence of not less than four of its members, may in writing alter or modify a prior decision of the Board to the extent permitted by law.

15. Notice of Decisions. A copy of the Board's final decision will be mailed to the applicant as soon as practicable after the final decision has been rendered. A postcard stating that a final decision has been made will be mailed to all other parties of interest as soon as practicable after the decision has been rendered. The final decision itself will be available for public inspection during normal business hours at the office of the Board's Clerk in Town Hall and copies thereof may be obtained from the Board's Clerk upon payment of customary copying charges.

16. Records of the Board.

- a) Minutes consisting of a record of each final action taken by the Board shall be kept by the Clerk of the Board.
- b) Proceedings of the Board in connection with matters in which the Board renders a written opinion shall be reflected in the opinion itself.
- c) The Clerk of the Board will keep a file with respect to each application made to the Board. That file will contain all documentary material concerning the application which is generated by a party in interest, a member of the public or the Board's Clerk during the course of the proceedings concerning the application.
- d) The Clerk of the Board will also keep in chronological order, a book containing all final decisions rendered by the Board during a calendar year. At the end of each calendar year, the Clerk will have the contents of that book bound in a manner suitable for permanent storage and will place the bound volume in a place in Town Hall suitable for permanent storage.

- e) Except to the extent permitted or required by a statute of the Commonwealth, the records described in this paragraph 16 shall be public records and shall be available for public inspection at the office of the Board's Clerk at Town Hall during normal business hours. All records described in this Rule 16 shall be retained for a period required by law except that the bound volume described in Rule 16(d) will be retained permanently.

17. Comprehensive Permit Rules and Regulations

1.00: **Purpose and Context**

These Rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under M.G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c. 40B, § 21 and by 760 CMR 56.05. The purpose of that Act and these Rules is to facilitate the development of affordable housing in Massachusetts.

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 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.

2.00: **Definitions**

(a) *Board* means the zoning board of appeals established under M.G.L. c. 40A, § 12.

(b) *Local board* means any local board or official, including, but not limited to any Board of Health; Planning Board; Conservation Commission; Historical Commission; Historic District Commission; Water Board; fire, police, traffic, or other department; building inspector or similar official or board; Board of Selectmen.

(c) *Limited Dividend Organization* means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; 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 (see Section 3.01(i)).

3.00: **Filing, Time Limits, and Notice**

3.01: 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. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in sections 3.01(a) and 3.01(c), below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect;

(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;

(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 definitive subdivision plan, conforming to all of the requirements of the Planning Board's Rules and Regulations for the Subdivision of Land;

(f) a utilities plan showing the proposed location and types of sewage, 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 list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.

(i) a complete *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.

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

(a) for Limited Dividend Organizations - \$1000 flat fee plus \$50.00 per unit

(b) for Non-Profit Organizations - \$1000 flat fee plus \$25.00 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 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.

3.03: 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 list required by § 3.01(h),

above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, it 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

4.00: Review Fees

4.01: 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.

4.02: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers (see Section 3.00 hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, 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.

4.03: 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.

4.04: 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.

4.05: 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 possess 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.

5.00: Public Hearing and Decision

5.01: The Board shall hold a public hearing on the application within thirty days of its receipt. 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 terminated when all public testimony has been received and all information requested by the Board has been received.

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.

5.04: 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

6.01: 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, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated subsidizing agency.

6.02: In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 3.00 hereof that is deemed by the Board to be necessary to evaluate such changes.

6.03: In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section 3.03, above.

6.04: 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.