



Town of Randolph

OFFICE OF

Zoning Board of Appeals

41 South Main St. Randolph, MA 02368

www.randolphzba.com

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Revised April 26, 2007

Rules and Regulations of the Zoning Board of Appeals

1. Chairman, vice-Chairman, Secretary, and Treasurer

Chairman, vice-Chairman, Secretary, and Treasurer shall be elected annually by a majority vote of the Board, and shall hold office until their successors are chosen. The election shall take place at the first meeting of the Board held in each year, or at any subsequent meeting.

The Chairman shall have the powers and duties vested in them by law or specified herein, as well as the powers and duties not inconsistent therewith generally incident to the position of Chairman.

The vice-Chairman shall serve as Chairman in the absence or inability of the Chairman to carry out the function of Chairman, and shall have all the powers vested to the Chairman. The vice-Chairman shall also assist the Chairman in special matters as needed.

The secretary shall take the attendance at each meeting, read aloud any documents that the chairman requests be read, and maintain the board's processed files. The treasurer shall keep a record of the board's financial accounts, and transfer all fee checks that are received by the ZBA to the office Town Treasurer.

2. Staff

Staff may be hired by the ZBA from time to time to receive requests for action by the Board, process applications, record the testimony at hearings and meetings, prepare decisions, transmit and file decisions and minutes of meetings. They shall be responsible for correspondence, and notifications to board members and any other duties deemed necessary by the Chairman.

3) Compensation

The staff shall be compensated on such a basis as may be decided by the Board from time to time.

A member of the ZBA required to appear in court shall receive compensation as voted by the Board at a rate of \$125.00 per 4-hour appearance.

4) Meetings

Meetings of the ZBA may be called by the Chairman, vice-Chairman, Secretary, Treasurer, or by vote of the board. Notice of such meetings shall be given to the Town Clerk as per State Statute and to each board member at least five days prior to the meeting.

Three members of the board shall constitute a quorum necessary for transacting business, except where the State Statutes or Town By-laws require a four-fifths vote. A hearing may be adjourned for any reason by the Board or by any member in case of the absence of a quorum to a date and time certain, by a statement to that effect at the hearing. A hearing so adjourned may be re-scheduled without further notice, unless the Board shall vote that notice shall be given. Any hearing, which is continued, shall have the same members sitting on that continued meeting. All meetings shall be held in the Town Hall unless otherwise stated in the call and notice.

5) Fees, Appeals, Applications, Petitions

The Board shall have the authority to determine and set fees as necessary. A fee shall accompany each appeal, application, and petition.

Fee Schedule:

Up to 12,000 square foot lot	\$225.00
12,001 to 20,000 square feet	\$300.00
20,001 to 44,000 square feet	\$400.00
Each additional half-acre	\$150.00
Continued Hearing	\$125.00
Modification/Section 8	\$250.00

The petitioner shall pay for all abutters being notified by certified mail, return receipt, at the time of the hearing, at the current certified mail, return receipt rate. The legal notice will be placed by the Board and paid by the petitioner at the beginning of the hearing. Non-payment constitutes a continued hearing date and an additional fee.

- a) Pursuant to Chapter 593 of the Acts of 1989 where specific conditions arising from the land or the nature of the proposal necessitate the assistance of experts i.e., planning, engineering, traffic, soils, hydrologic or other consultants, the ZBA may engage such consultant services to assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, by-laws and regulations. The Board may require that applicants pay a "review fee" consisting of the reasonable costs incurred by the ZBA for the employment of these outside consultants engaged by the Board in review of the application.
- b) Funds pursuant to this section shall be deposited with the Town of Randolph Treasurer who shall establish a special account for this purpose. Expenditures from this special account shall be made only in connection with the review of a specific project for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for a denial of the application or permit.
- c) At the completion of the Boards review, any excess amount in the account, including interest, shall be repaid to the applicant or the applicant's successor in interest. Any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
- d) Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen, providing that such appeal is taken within 14 days of notification of the Board's appointment of the consultant. 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 qualifications. The minimum qualifications shall consist of an educational degree in, or related to, the field at issue or three or more years of practice in the field of issue or a closely 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 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.

- e) The Chairman, vice-Chairman, Secretary or Treasurer, shall upon the filing with the Town Clerk of a proposal of the scope of work which in their judgment shall require the filing of a consultant fee shall set the amount of the fee and hire a consultant, advising the applicant prior to the hearing. In the event that the Chairman, vice-Chairman, Secretary or Treasurer is unavailable, the chairman or vice-Chairman shall select a member to ensure a majority of members make the decision.

6) Fees, Town of Randolph Policy as set by the Board of Selectmen

Consultant fees shall be a bankbook with a special withdrawal slip in the name of the Town of Randolph.

7) Cash Sureties

The Board may from time to time vote to condition of a proposal or any part of a proposal with a performance guarantee called a cash surety. Which shall be a bankbook with a signed withdrawal slip shall be posted with the Town Treasurer prior to the start of work.

8) Linkage

The Board may vote a cash surety bankbook with a signed withdrawal slip in the name of the Town of Randolph be posted with the Town Treasurer to pay for any part of the Town's infrastructure which is deemed to be necessary for the health, safety and welfare of the residents and land users and would not be needed if a project had not obtained a permit. Said linkage cash surety bankbook may be required to pay for a part of an improvement so may be held by the Town Treasurer until the Town's share is voted by Town Meeting or obtained elsewhere. It shall be posted prior to the start of work and if the project is abandoned the bankbook could be returned after application and affirmative vote by the Board, with the revocation of the permit.

9) Fraud and Revocation of a Permit

If after the issuance of a permit, fraud is determined by the Board, after consultations with Town Counsel and other departments having jurisdiction, the Board may take legal steps to revoke the permit.

10) Procedures Relating to Applications, Appeals and Petitions

- a) Preparation of forms: The Board may from time to time prepare, keep a supply of printed forms for use in connection with various kinds of appeals.
- b) Proper forms: Every appeal, and or petitions shall be on the proper applicable form.
- c) Appropriate methods: Applications shall be picked up and filed at the Town Clerks office.
- d) Documents Required
 - i) Fifteen copies of the application
 - ii) Check for fees
 - iii) Building Commissioners letter
 - iv) 15 certified plans of the premises
 - v) One mylar plan suitable for recording at the Registry of Deeds
 - vi) Plans, deeds, maps referred to in the application
 - vii) Letter Authorizing Agent to speak on your behalf

- e) Hearing transcripts: Shall contain the names of all members present, the members who will be making the decisions, the names and addresses of all persons who make a statement or speak.
- f) Decisions: Shall state the reasons, which the ZBA may cite, amend, and vote upon, and the limitation and or waiver of requirements. At the time a decision is made an issue date will be announced.

11) **Time Limits for Action**

- a) Variances: Public hearing must be held within 65 days, acted upon within 100.
- b) Special Permits: Public hearing must be held within 65 days, acted upon within 90 days after close of hearing.
- c) Building Commissioner decision appeal: Shall be made to the Board within 30 days.
- d) Decisions: Shall be filed with the Town Clerk within 14 days from the close of the hearing.

The foregoing may be amended at any time by vote of the Board. No prior notice need be given. Any Rule or Regulation not in conformity with any State Statute, Town By-Law, or Town Zoning By-Laws shall be null and void. Adopted by the Randolph Zoning Board of Appeals June 14, 1984; Revised: March 5, 1985; May 11, 1989; March 21, 1991; May 28, 1992; June 4, 2002; April 14, 2004; February 24, 2005, March 9, 2006, and April 26, 2007.

Comprehensive Permit Rules of the Zoning Board of Appeals

13. Purpose and Context

13.1. These rules establish procedures for applications to the Zoning Board of Appeals for Comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 4013, S 20-23. They are required by M.G.L. c 4013, S 21, as amended by Stat. 1989, c593, and by 760 CMR 31.02. The purpose of that act and these rules is to facilitate the development of affordable housing in Massachusetts. Further explanation of the background and purpose is provided in the regulations of the Housing Appeals Committee, 760CMR 30.01. 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 the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Executive Office of Communities and Development. In addition, The Boards general rules for conduct of hearings under M.G.L. c. 40 A apply to Comprehensive Permit applications. In case of inconsistency or conflict between the general rules for conduct and these rules, these rules shall govern.

14. Definitions

14.1. Board means the Zoning Board of Appeals established under M.G.L. c. 40 A, S 12.

14.2. Local Board means any local board or official, including, but not limited to any board or survey; Board of Health; Planning Board; Conservation Commission; Historical Commission; Water, Sewer, or other commissions or district; Fire, Police, traffic, or other departments; Building Inspector or similar official or board; City Counsel or 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 Legislature action) shall be deemed local boards if they perform functions usually performed by locally created boards.

15. Filing, Time Limits, and Notice

15.1. The application for a comprehensive permit shall consist of:

15.1.1. Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and material 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.

15.1.2. 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.

15.1.3. 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.

15.1.4. 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.

15.1.5. Where a subdivision of land is involved, a preliminary subdivision plan.

15.1.6. Preliminary utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants.

15.1.7. Documents showing the applicant fulfills the jurisdictional requirements of 760 CMR 31.01, that is;

15.1.7.1. The applicant shall be a public agency, a non-profit organization, or a limited dividend organization.

15.1.7.2. The project shall be fundable by a subsidizing agency under a low and moderate-income housing subsidy program.

15.1.7.3. The applicant shall control the site. A list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws, or regulations.

15.2. The application shall be accompanied by a filing fee as in Section 5 of these Rules and Regulations. There shall be no fee for any project proposed as a Local Initiative pursuant to 760 CMR 45.00. 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 15.01 (h), above. Based upon that list, it shall also, within the same seven days, invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of entire application.

16. Review Fees

16.1. If, after receiving an application, the Board determines that in order to review that application it requires technical advice unavailable from municipal employees, it may employ outside consultants. Whenever possible it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of consultants fees by the applicant. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultant chosen by the Board alone.

16.2. A review fee may be imposed only if:

16.2.1. The work of the consultant consist of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board.

16.2.2. The work is in connection with the applicant's specific project.

16.2.3. All written results and reports are made part of the record before the Board.

16.3. A review fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30 B 1-19, and the following additional requirements.

16.3.1. For services in an amount less than \$10,000.00, the Board shall issue an invitation for bids conforming to the requirements of M.G.L. c. 3013, 6.

16.3.2. For services in an amount of \$10,000.00 or more, the Board shall issue a request for proposals conforming to the requirements of M.G.L. c. 30B.6.

16.3.3. For all services, whether in amounts less or greater than \$10,000.00.

16.3.3.1. The applicant shall be given 5-day notice and opportunity to attach written comments to the invitation for bids or request for proposals.

16.3.3.2. At least three bona fide bids or proposals shall be received.

16.3.3.3. The applicant shall be given 5 days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract.

16.3.4. A bona fide bid or proposal shall include:

16.3.4.1. The name of each person performing the work.

16.3.4.2. The educational and professional credentials of each person performing the work.

16.3.4.3. The work experience of each person performing the work.

16.3.4.4. A description of the work to be performed.

16.3.4.5. The hourly rate charged by each person performing the work.

16.3.4.6. All other expenses to be incurred.

16.4. All fees assessed pursuant to this section shall be reasonable in light of:

16.4.1. The complexity of the proposed project as a whole.

16.4.2. The complexity of particular technical issues.

16.4.3. The number of housing units proposed.

16.4.4. The size and character of the site.

16.4.5. The projected construction costs.

16.4.6. And fees charged by similar consultants in the area.

As a general rule, the Board will not assess any fee greater than the amount, which might be appropriated from town or city funds to review a similar town or city project.

16.5: Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay the review fee within ten days of receiving written notification of selection of bidder or offerer, the Board may deny the comprehensive permit.

16.6: Prior to paying the review fee, the applicant may appeal the selection of the consultant to the city council or board of selectmen.

- (a) 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.
- (b) 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 relate field.
- (c) The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event that no decision is made by the city council or board of selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

16.7: Each review fee shall be deposited in a special account established by the municipal treasurer pursuant to M.G.L. c.44, 53G

- (a) Funds from the special account may be expended only for the purposes described in section 4.02, above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, §1-19.
- (b) Within 30 days of the completion of the project or of such time as the applicant formally withdraws the proposal, the applicant shall receive a final report of the funds in the special account and shall be paid any unspent excess in the account, including accrued interest.
- (c) The municipal accountant shall submit annually a report of the special account to the chief elected body and chief administrative official on the municipality for their review. This report shall be published in the city or town annual report.

17.00: Public Hearing and Decision

17.01: 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.

17.02: 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.

17.03: 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 as not consistent with local needs, or
- (c) Approve a comprehensive permit with conditions with respect to height, site plan, size, shape, or building materials that do not render the construction or operation of such housing uneconomic.

18.00: Appeals

18.01: 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.

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

These model rules have been prepared by the Massachusetts Housing Appeals Committee, executive Office of Communities and Development, to assist local zoning boards of appeals.

These requirements are restated from 760 CMR 31.01(2)

Local Initiative proposals eligible for comprehensive permits pursuant to 760 CMR 45.04 also satisfy these jurisdictional requirements.

The amounts in this section of the Model Local Rules are purely advisory. The Board may adopt a fee schedule based upon an entirely different approach, using higher or lower amounts, or it may choose not to access any filing fee. The most important consideration should be that any fee approach adopted be consistent with fees accessed elsewhere in town or city government. In particular, the fee schedule should be consistent with any subdivision or cluster zoning fees, taking into consideration that comprehensive permit fees should be reduced to encourage affordable housing development. Also see Guidelines for Local Review of Comprehensive Permits, p.15.

The provisions of this section are not literally consistent with M.G.L., c40B, and § 21 sentence two. This section is a practical and necessary administrative interpretation of the statutory provision by the Housing Appeals Committee. It is permitted under the Supreme Judicial Court's doctrine of administrative interpretation stated in *Levy v. Bd of Registration and Discipline in Medicine*, 378 Mass. 519, 392 N.E.2d 1036 (1979) and *Grocery Mfgs. of America v. Dept. of public Health*, 379, Mass. 70,393, N.E. 2d 881 (1979)

The Board will select the consultant after reviewing both the bid or proposal and any comments received from the applicant pursuant to rule 4.03 (c) (iii), but it normally will not formally award the contract until the review fee has been paid.

Boards of Appeals have found that it is most useful to enter into a hearing and decision-drafting process assuming that a comprehensive permit will be approved. In that case, if there are significant local health, safety, environmental, or planning concerns, it can focus its attention on drafting conditions to address these concerns. Only if it ultimately finds that there are no conditions, which will adequately address the concerns, should it deny the permit.