

**Rules Of Board Of Appeal, City Of Beverly,
Massachusetts**

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BEVERLY, MASSACHUSETTS

I. GENERAL

The following Rules are adopted in accordance with Massachusetts General Laws, Chapter 40A, Section 12.

1. Regular and special public meetings of the Board shall be held at the call of the Chairman. Public hearings are scheduled at the call of the Chairman. Applications shall be scheduled for hearing at the direction of the Chairman. The regular meeting time of the Board shall be 7:00 p.m. on the fourth Tuesday of every month, except for December when no regular meeting shall be held.
2. In the event of the absence, refusal, or incapacity of the Chairman, public meetings may be called and public hearings scheduled by the written concurrence of three (3) members or associate members. Such concurrence may be made orally prior to the public meetings and public hearings so long as a writing to record the concurrence is signed by the three (3) members at the resulting public meetings. A copy of the Board's agenda duly signed will satisfy this requirement.

The Chairman shall preside or designate another member or an associate member to preside at each meeting and each hearing. The member or associate member presiding shall also vote and be recorded on matters coming before the Board. Subject to the General Laws, the Zoning Bylaw and these rules, and unless and until overruled by a majority of the Board sitting at the time, the person presiding shall decide all points of order and matters of procedure.

The responsibilities of the Chairman shall be shared by two Board members, who shall be Co-Chairs. One Co-Chair shall be primarily responsible for calling and presiding at each meeting. The other Co-Chair shall be primarily responsible for long-range planning, to strengthen the functioning of the Board and to propose and address changes to the zoning ordinance. The provisions of this paragraph shall automatically expire at the conclusion of the Board's regular January 2006 public meeting, unless the Board votes to extend them.

3. A One Hundred Fifty dollar filing fee or check made payable to the City of Beverly shall be filed together with official application forms for each special permit, variance petition, Section Six Finding, and Administrative Appeal. A Two Hundred dollar filing fee or check made payable to the City of Beverly shall be filed for each application for an Appeal of an Administrative Decision of the Building Inspector. One application form shall be filed for each presently sitting member of the board (no less than five applications, with the exact number provided by the building inspectors' office), plus four additional application forms (one each for the planning department and the city clerk's office, and two for the building inspectors office. Each application must be signed separately by the petitioner, duplicated signatures will not suffice. The application forms shall require the petitioner to state:
 - a. the name and address of the petitioner;
 - b. which type, or types, of relief are being requested: an appeal from an administrative decision, a request for a special permit, a variance, a finding concerning a non-conforming use or structure;
 - c. the specific provisions of the zoning ordinance involved;
 - d. the use for which a special permit or finding is sought;
 - e. in the event of an appeal from an administrative determination, the interpretation claimed by the applicant;
 - f. a description of the type of relief sought and the grounds on which relief could be granted;
 - g. a description of the land to be affected;
 - h. the name and address of the owner of the land;
 - i. if the petitioner is not the owner, then petitioner shall state: (1) a declaration that the owner has authorized the petitioner to file the application; (2) the status or interest of the petitioner in the land; and (3) the petitioner shall attach written authority from the owner authorizing the application of the petitioner;
 - j. the date the current owner acquired title and the name of the person from whom the land was acquired;
 - k. a disclosure as to whether the land to be affected by the relief sought is contiguous to other land either owned by (or subject to an option to purchase or lease that is held by) the petitioner or the owner; and
 - l. Any facts not specifically requested in the application, which may be material to the relief being sought.
4. Each application shall be accompanied by copies of a certified plot plan of the land affected meeting every one of the specifications stated below. The plot plan shall be dated within two years of the date of the application and shall show all improvements or alterations on the lot made after the date of the plot plan. In the case of elevation plans the requirements of (c) and (d) shall not apply.
 - a. The plot plan shall be drawn to the scale of no smaller than one inch to twenty feet, unless the Building Commissioner shall permit or direct the use of another scale. The scale used shall (i) be stated and (ii), illustrated by a calibrated line marked at five (5) foot intervals.

- b. The plan shall be at least 8 ½ x 11 inches, shall be dated and contain the name of the petitioner or owner, and the person who drew the plan.
- c. The plan shall show all distances between existing structures on the land affected and the front, side and rear lot lines, frontages, areas and any proposed lot lines.
- d. The plan shall show the length of boundary lines, distances, lot areas, any proposed new boundary lines in the case of a sub-division, and the compass point showing the direction of north.
- e. The plan shall show in addition to the lot in question a sufficiently large area surrounding the lot so that at least the property adjoining and opposite (when the latter is reasonably affected by the proposal) the owner's land will be shown and such further detail as may reasonably be necessary to give a picture of the area in which the lot lies and the size and location of all buildings located on the several lots in the area.
- f. Each application that proposes to (i) change the use of existing structures , (ii) alter an existing structure, or (iii) build a new structure shall include (a) such floor plans of the structure(s) in question at a scale of no less than one inch to four feet and (b) such elevation plans (showing affected views of the structure(s)) as are sufficient to disclose in detail the existing structure(s) and any and all proposed alterations or new construction. Elevations must show at a minimum the following dimensions: (i) finished grade to roof ridge line (highest point); (ii) finished grade to eaves; (iii) eaves to roof ridge line; (iv) foundation length, width, height. All proposed new structures shall be indicated in red (by highlighter or otherwise). For applications concerning signs, the Building Commissioner may waive the requirements for floor plans as appropriate.
- g. All applications that propose to erect a new sign or alter an existing sign shall: (1) require its elevation plans to be in color, showing all proposed signs; (2) depict on a plot plan the proposed location of free-standing signs; (3) show all proposed copy and graphics; and (4) for each sign show graphically the size that would be allowed as of right and as proposed.
- h. All applications that involve parking requirements shall include a plan, drawn to a scale that is listed on the plan, depicting all setbacks, the measurements and location of all design features required under the city zoning bylaw, and a "legend" or chart showing: (i) the proposed use(s) for the affected land; (ii) the number of parking spaces PER SQUARE FEET required by the bylaw for the proposed use(s); (iii) the resulting number of spaces that required under the bylaw for the use(s) that the petitioner proposes; and (iv) the actual number of spaces the petitioner proposes to provide. A copy of a sample "legend" or chart to illustrate this requirement is attached. It is the applicant's responsibility to determine whether an application involves a parking requirement and the number of applicable parking spaces.

- i. Under no circumstances will a free-hand sketch be acceptable as a plan. At the Builder Commissioner's discretion, a full instrument survey may be required instead of a certified plot plan.
 - j. All applications that include "over-sized" plans (commonly three by four feet) shall include a reduced size of every sheet of such plans submitted to the board (both originally filed and as they may be revised from time to time). Acceptable reduced sizes will be 8.5 x 11 inches; 8.5 x 14 inches; or 11 x 17 inches.
 - k. In the Builder Commissioner's discretion, when an application is submitted, certain plan requirements may be waived when such requirements would not appear to be helpful or relevant to the board's review. This discretion may not be delegated. (For example, waiving exterior elevations if no exterior changes are proposed might be reasonable.) However, by a vote of three members of the board, any such waiver may be reversed during the board's hearing on the application. An applicant's request for such a waiver, if granted by the Building Commissioner, shall not be considered a prejudicial factor in the Board's consideration of the application.
5. Each application shall include a copy of the portion of the assessor's map that shows the property in relation to the surrounding neighborhood.
 6. Each application shall be accompanied by at least six color photographs, taken from different locations on the parcel, that considered together, fairly and accurately show the premises affected by the application, the location of any structural change being requested, and the streetscape or neighborhood in which the parcel is located.
 7. No application which fails to meet the above requirements shall be assigned for hearing by the Chairman, in his or her sole discretion.
 8. In the event that the Chairman or the Board deems a filed application or plan inadequate to a proper understanding of the matter, the applicant shall be advised and given an opportunity to submit additional information, revise the plan or substitute a new one. An application may be dismissed by a vote of four members of the Board for failure to comply with these rules.
 9. The Zoning Office shall distribute such handouts as are approved by this Board that explain the nature and procedure of the various zoning relief that may be sought.
 10. The Board of Appeals, at the expense of the applicant, will publish a notice of the hearing on all applications assigned for hearing in a newspaper of general circulation in the City of Beverly and will send notices to the Petitioner and to those owners of the surrounding property who, in the opinion of the Board, are deemed to be particularly affected. The Building Commissioner and any other administrative department whose decision is being appealed or who has interest in the matter will also be notified. Between the date of first publication of the hearing and the date of the hearing there shall be an interval of at least fourteen (14) days. One copy of the application, the plan

and any other documents shall be transmitted to the Planning Board.

11. The Board may retain any record, document, or plot plan introduced in evidence, for reference in the consideration of the case.
12. All applications shall be stamped by the Clerk with the date received.
13. The decision of the Board shall be made within one hundred (100) days from the date of filing an application for a variance with the City Clerk. M.G.L. c40A §15. The decision of the Board shall be made within ninety (90) days of the closing of the final public hearing on an application for a special permit. M.G.L. c40A §9. The Board shall hold a hearing on any Variance, Special Permit, "Section 6" Finding request, or Appeal from a written decision of the Zoning Officer (i.e. the Building Commissioner, Beverly does not have a c40A §13 "zoning administrator") within 65 days of the date the application is filed with the City Clerk. Failure to act on the application of a petition by the Board within these time periods may constitute constructive approval. These deadlines may be extended by the applicant signing a waiver in a form approved by the Board. The Board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decision, and of its other official actions, copies of all of which shall be promptly filed with the office of the City Clerk and shall be a public record, and notice of decisions shall be mailed forthwith, to parties interested. Decisions shall be signed by the Chairman, or a Board member designated by the Chairman. Decisions may be signed also, upon the designation of the Chair, by the City Planner Director or an Assistant Planner in the name of the Chair or member. Immediately after filing of a decision with the City Clerk, the Clerk of the Board shall send notices stating that a decision has been filed either granting or denying the application, with the date of the filing, to those owners of surrounding property who had been notified of the hearing, to the Planning Board, and to each person at the public hearing who specifically requests such a notice and states his name and address to the Board.
14. Special Permit petitions granted shall lapse within two (2) years of the date of the recorded decision filed with the City Clerk unless substantial use or construction has been commenced by the petitioner.
15. Variance petitions granted shall lapse within one (1) year of the date of the recorded decision filed with the City Clerk unless the rights authorized by the Board are commenced or exercised by the petitioner.
16. No building permit based on any relief granted by the Board shall be issued without the petitioner providing proof to the Zoning Office that the Board's decision has been recorded at the registry of deeds.
17. The proceedings at public hearings may be recorded by tape recorder or other suitable device. Such tape or record of a particular hearing shall be held for at least thirty (30)

days following the date of filing in the City Clerk's office of the last decision filed on matters taken up at the meeting recorded. . After expiration of the aforesaid thirty (30) day period or final disposition of the appeal, tapes or other records of the hearings may be erased or disposed of.

18. The Board may by majority vote to waive any provision of these rules for good cause shown, provided that such waiver shall not be inconsistent with any provision of the Zoning Ordinances or the General Laws.
19. Review Fees, set forth in Section II of these *Rules Of Board Of Appeal*, shall apply to all applications filed with the Board including Comprehensive Permit applications.

II. REVIEW FEES

1. The ZBA may employ outside consultants to provide technical or legal assistance in reviewing applications. Whenever feasible, as determined by the ZBA, the ZBA will work cooperatively with the applicant to identify appropriate consultants. The ZBA may, by majority vote, require that the applicant pay a reasonable review fee for the employment of outside consultants chosen by the Board alone. Consultants shall include but not be limited to special counsel to the ZBA, and traffic, design review, engineering, hydrology and/or real estate consultants.
2. A review fee may be imposed only if:
 - a. The work of the consultant consists of review of studies prepared on behalf of the applicant, and not of independent studies on behalf of the Board. The scope of a consultant's review may include plans or analysis prepared by the consultant that provides examples of alternative designs or solutions to issues the consultant identifies in the project application;
 - b. The work is in connection with the applicant's project;
 - c. All written results and reports are made part of the ZBA's record;
3. In securing the services of outside consultants, the ZBA shall comply with the Uniform Procurement Act (M.G.L.c.30B§§1-19) and the following additional requirements;
 - a. For all services, whether in amounts less than or greater than \$10,000.00:
 - (i) The applicant shall be given 5 days notice and opportunity to attach written comments to the invitation for bids or request for proposals;
 - (ii) At least three bona fide bids shall be received;
 - (iii) The applicants shall be given five days notice and opportunity to comment on all bids or proposals prior to the selection of the consultant and the award of a contract;
 - (iv) The Board shall have attended a meeting with the City Solicitor's office and other appropriate municipal staff, if any, on the requirements of the Uniform Procurement Act and the City Solicitor's office shall have reviewed all invitations for bids or for proposal prior to notice or publication of same.
 - b. A bona fide bid or proposal shall include:
 - (i) Name of each person performing the work;
 - (ii) The educational and professional credentials, and work experience of each person performing the work;
 - (iii) The hourly rate charged by each person performing the work; and all other expenses incurred;
 - (iv) A description of the work to be performed.

4. All fees assessed pursuant to this Section shall be reasonable in light of:
 - a. Complexity of the proposed project as a whole;
 - b. Complexity of the particular issues presented;
 - c. Number of dwelling units proposed;
 - d. Size and character of the site;
 - e. Project construction costs; and
 - f. Fees charged by similar consultants in the area.
5. As a general rule, the Board will not assess any fee greater than the amount, which might be appropriated from City funds to review a similar City project.
6. An invitation for bids or request for bids for proposals shall indicate that award of the contract is contingent upon payment of a review fee. If the applicant fails to pay a review fee within ten days of receiving notification of selection of a bidder, the Board may deny the application. The board will select the consultant after reviewing both the bid or proposal and any comments received from the project applicant concerning same, but it will not formally award the contract until after the review fee is paid.
7. Prior to paying the review fee, the applicant may appeal the selection of the consultant to the City Council.
 - 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 related 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 within one month following the filing of an appeal, the selection of the Board shall stand.
8. 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 II.2. 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 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 City Council and the Mayor for their review. The report shall be published in the City's annual report.

III. Comprehensive Permit Rules of the Board of Appeal, Beverly, Massachusetts

A. Purpose and Context

1. These rules set forth substantive and procedural requirements for applications to the Beverly Zoning Board of Appeals (ZBA) for comprehensive permits granted under Chapter M.G.L. c. 40B, §§ 20-23 (the Act). These rules are required by M.G.L. c. 40B, § 21, as amended by Stat. 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 interpreted in a manner consistent with the complete regulations of the Housing Appeals Committee, 760 CMR 30.00 and 31.00 and the Guidelines for Local Review of Comprehensive Permits published from time to time by the Massachusetts Department of Housing and Community Development (DHCD). 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, 760 CMR 30.01.
2. In addition, the ZBA'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.

B. Definitions

1. Board (or ZBA) - The Zoning Board of Appeals established under M.G.L. c. 40A, § 12.
2. Local Board - Any local board or official, including, but not limited to any board of survey; board of health; planning board; conservation commission; historical commission; water, sewer, or other commission or district; fire, police, traffic, or other department; building inspector or similar official or board; city council 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 legislative action) shall be deemed local boards if they perform functions usually performed by locally created boards.

C. Complete Application

A complete application for a comprehensive permit shall include (see 760 CMR 31.02):

1. An application form;
2. A site approval letter from the subsidizing agency;

3. Evidence of site control (e.g., preliminary determination by the subsidizing agency that the applicant has sufficient interest in the site or a purchase and sale agreement or deed). The project applicant may be required to support this determination by a lawyer's title opinion and/or a title insurance company commitment (not a specimen title policy);
4. Evidence that the project applicant is a nonprofit, a public agency or a limited dividend organization;
5. Preliminary site development plans (signed by a registered architect or other pertinent design/engineering professional) showing the locations and footprints of all proposed buildings, changes in grading and topography, parking, landscaping, roads, walkways and driveways (including building materials, open space, wetlands, and infrastructure and utilities);
6. An existing conditions plan showing the location of all existing buildings, streets, metes and bounds description of the site, open spaces, topography, wetlands and buffer areas, on-site infrastructure, parking, roads, driveways, stormwater and facilities, if any, in the neighborhood, and an existing conditions report describing the impacts the applicant thinks the project will have on existing conditions;
7. Preliminary, scaled, architectural drawings (signed by a registered architect) including the location and use of all buildings, typical floor plans, elevations, sections, construction type and exterior finish;
8. Building tabulations including the number and type of proposed buildings, number and size of units, number of bedrooms per building, floor area of units, building and impervious surface 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;
9. Preliminary subdivision plan (if applicable);
10. Preliminary utilities plan showing the proposed location and types of water, wastewater and stormwater facilities, including hydrants;
11. List of waivers and exceptions sought by applicant from any and all local regulations, policies and ordinances;
12. Applicants shall pay advertising costs and postage for abutter notification and a filing fee which fee shall be eighty percent of the site plan review filing fee required pursuant to Section 29-28.C. of the Beverly Zoning Ordinance;

13. Proof showing that the applicant has notified the Massachusetts Department of Housing and Community Development (DHCD) (per 760 CMR 31.01) within 10 days of filing its application with the subsidizing agency for preliminary approval of the project;
14. Proof showing that the applicant has notified the Massachusetts Department of Housing and Community Development (DHCD) (per 760 CMR 31.01) within 10 days receipt of a written determination of project eligibility (or site approval) from the subsidizing agency;
15. List of state or other local approvals necessary to be sought and granted prior to the issuance of a building permit for the project;
16. A brief report on both the consistencies and inconsistencies of the proposed project with the City's Master Plan and the action plan of the City's Open Space and Recreation Committee.
17. Additional information the ZBA reasonably determines is necessary to make a sound decision.

D. Procedures

1. Pre-application Meetings – Prior to submitting an application to the ZBA, the applicant is encouraged to first meet with the Ward Councilor and neighbors and to keep them apprised of all proceedings with City Departments. The applicant should also organize pre-application meetings with the City Planner or his/her designee, the Chairman of the ZBA or his/her designee, the City Solicitor or his/her designee, the Building Inspector or his/her designee, the City Engineer or his/her designee, the Fire Chief or his/her designee, the Police Chief or his/her designee and a representative of the Beverly Housing Authority to review and negotiate the proposal for a Comprehensive Permit before an application is filed with the ZBA.
2. It is suggested that the applicant refer to the Beverly Zoning Ordinance as a guideline to the development that the areas surrounding the site can sustain. This includes, but is not limited to setback, lot size, lot coverage and parking requirements.
3. It is advised that the applicant contact the Conservation Agent early in the development stages to determine the existence of protected wetlands or water bodies on or near the site.
4. The ZBA shall open a public hearing on the Comprehensive Permit application within 30 days of receipt of the application. The ZBA does not meet in December and no applications shall be accepted for filing for a hearing in that month.

5. The ZBA shall notify and send copy of application to all local boards and officials of the application for a Comprehensive Permit upon the receipt of the application. The ZBA should request that representatives of the local boards and officials attend the public hearing(s) to provide input and advice to the applicant. These Boards and officials include but are not limited to: Mayor, City Council, Beverly Housing Authority, Salem/Beverly Water Supply Board, Planning Board, Conservation Commission, Historic District Commission, City Planner, City Engineer, Conservation Commission Agent, Health Department Director, Building Commissioner, Public Works Director, Police Chief, Fire Chief and City Arborist. Applicant shall provide adequate copies of application to accommodate this notification.
6. The ZBA give public notice, beginning at least 14 days prior to the date of the hearing, by (1) advertising the Comprehensive Permit hearing in a local newspaper of general circulation, (2) notifying interested parties, and (3) posting a copy of the hearing notice in City Hall.

E. Criteria for Decisions

1. Health, Safety and the Environment – The criteria for the Board’s decisions shall be safeguarding the health and safety of the residents of the proposed housing and the current residents of the City and of the environment including, but not limited to, the following factors:
 - a. Structural soundness of the proposed buildings.
 - b. Adequacy of sewage disposal.
 - c. Adequacy of handling water runoff.
 - d. Adequacy of fire protection.
 - e. Adequacy of water pressure.
 - f. Adequacy of the applicant’s proposed arrangements for dealing with the traffic circulation within the site and impact of additional traffic generated by the project on adjacent streets.
 - g. Manner in which the development recognizes and addresses the need for alternative modes of transportation for its residents.
 - h. Proximity of the proposed site to airports, industrial activities or other activities, which may affect the health and safety of the occupants of the proposed housing.

- i. Existence of significant natural, cultural, historical or archaeological resources and how the development addresses them.
 - j. Adequacy of measures designed to minimize pollution from noise, lighting, pesticide application, water consumption.
2. Site and Building Design – The criteria for the Board’s decisions shall include consideration of the height, bulk, and placement of the proposed buildings, accessory structures, and improvements including, but not limited to, the following factors:
- a. Physical characteristics of the proposed buildings and accessory structures.
 - b. Physical characteristics of the surrounding land.
 - c. Adequacy of access to the site and adequacy of parking arrangements.
 - d. Adequacy of and impact on open areas and green space.
3. The criteria for the Board’s decisions shall include consideration of the economic need to require additional units including, but not limited to, the following factors:
- a. General feasibility of the project.
 - b. Limitations imposed by the financing agency with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant limits.
 - c. Manner in which the project responds to the current supply of affordable housing and current need.

F. Public Hearing and 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 Board’s standard time waiver form may be used as such an agreement). The public hearing shall be deemed closed when the Board has completed its deliberations on the public testimony and information received and its vote of final determination is made.
- 2. Any decisions approving a Comprehensive Permit shall, at a minimum, contain the following conditions:
 - a. For condominium projects, legal review and approval by the City Solicitor of final condominium documents;

- b. For all projects, legal review and approval by the City Solicitor of deed riders;
- c. A requirement that all units remain affordable in perpetuity;
- d. The ZBA may deny a Comprehensive Permit as not consistent with local needs. "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.
- e. The burdens of proof for ZBA decisions (denial, approval or approval with conditions) are described in 760 CMR 31.06 (5)-(8).

G. Amendments to Approved Comprehensive 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. At the next regularly scheduled meeting of the ZBA, or a specially scheduled continuation of said meeting, 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 Section D. of these Rules. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing.

H. Buyer/Tenant Selection

- 1. Buyers of affordable units shall:
 - a. Be first time home buyers 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 home buyer, notwithstanding prior

2. If the ZBA denies a Comprehensive Permit or approves a Comprehensive Permit with conditions or requirements as to make the building or operation of such housing uneconomic, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c.40B§22.

K. Lapse of Permits

1. If construction authorized by a Comprehensive Permit has not begun within 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 Comprehensive Permit and may extend any expiration date. An extension may not be unreasonably denied.

L. 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.

M. Housing Programs in Which Funding is Provided Through a Non-Governmental Entity

1. Housing programs where funding is provided by a non-governmental entity in accordance with 760 CMR 31.01 2(g) and 31.09 (3) for the administration of low and moderate income housing that is developed with a comprehensive permit using the program of a subsidy agency that uses non-governmental entities to provide the funding shall be governed by the “*Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity*” published by the Massachusetts Department of Housing and Community Development, and is in addition to those guidelines which apply to all comprehensive permit projects.
2. The “*Guidelines for Housing Programs in Which Funding is Provided Through a Non-Governmental Entity*” are intended to facilitate production of such housing subsidized by eligible subsidy agencies that do not offer funding or financing directly, but that provide funding through private financial institutions. The Federal Home Loan Bank of Boston is one such eligible subsidy agency, which at this time provides funding through member banks for its New England Fund for production of low or moderate-income housing.

N. Review Fees, set forth in Section II of these *Rules of Board of Appeal*, shall apply to all applications filed with the Board including Comprehensive Permit applications.

**Revised and adopted on June 24, 2008 by a majority vote of a quorum of the Board,
effective immediately.**