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Town of West Newbury  
Comprehensive Permit Rules

Adopted by the Board of Appeals on June 11, 2020 and amended by the  
Board of Appeals on July 2, 2020

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**1.0 Purpose and Intent**

These Regulations, enacted pursuant to G.L. c.40B, s.21 prescribe the West Newbury Zoning Board of Appeals requirements for the review of comprehensive permit applications ("applications" or "project"). These requirements list, supplement or clarify requirements set forth in M.G.L. c.40B §§20-23 (the Act) and the comprehensive permit regulations (760 CMR 56.00 et seq.). These regulations supplement various other rules, policies, and regulations governing land development in West Newbury. Nothing in these Regulations shall be deemed to limit the right of the Zoning Board of Appeals to require the Applicant to provide additional relevant information and/or documents or to limit the obligation of the Applicant to provide such additional information and/or documents.

An applicant for a comprehensive permit project is encouraged to review carefully these regulations, in addition, it is highly recommended that the Applicant meet with the Town Manager, Building Inspector, Town Planner, Conservation Agent, Health Agent and other relevant Town staff members prior to submitting an application for a comprehensive permit.

Strict compliance with these Regulations may be waived if the Board finds that, but for the grant of the waiver, the proposed project would be rendered uneconomic and that granting the waiver is in the public interest and is not inconsistent with the intent and purpose of the law and these Regulations, and is otherwise in accordance with G.L.

c.40B, s.20-23. Any request by an applicant for a waiver from these Regulations must be submitted to the Zoning Board of Appeals in writing as part of the application. Such requests shall identify the specific sections of these Regulations from which waivers are sought and shall include a statement setting forth the reasons why the applicant believes a waiver should be granted.

These rules alone are not sufficient to specify the Comprehensive Permit process before the West Newbury 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: with the *Guidelines for Local Review of Comprehensive Permits*, published periodically by the Department of Housing and Community Development. In addition, the Zoning Board of Appeal's general rules for conduct of hearings under M.G.L. c. 40A apply to Comprehensive Permit applications.

## **2.0 Definitions**

**2.1** "Board" means the Zoning Board of Appeal, established by G.L. c. 40A, sec. 12, and Section 8.A.1 of the Town of West Newbury Zoning Bylaws, and acting in its capacity to issue a comprehensive permit under the powers granted by the Act (M.G.L. c.40B).

**2.2** "Bylaws" means any and all bylaws, policies or regulations adopted by the Board or any "local board", including the West Newbury Subdivision Rules and Regulations, even when the proposed comprehensive permit proposal does not include the division of land into two or more lots.

**2.3** "Local Board" means any local board, department or official, including but not limited to the Board of Health; Conservation Commission; Historical Commission; Town Manager; Fire Department, Police Department; Inspectional Services; the Board of Selectmen; Planning Department, and all boards and commissions performing functions usually performed by locally-created boards and commissions.

**2.4** "Local Preference" To the maximum extent allowable by law, comprehensive permit developments shall provide for local preference tenant or homeowner selection procedures. "Local preference" tenants or homeowners include current town residents or their immediate family members (such as adult children or elderly parents), employees of the town or the school district, and non-residents who either work for private business or non-profit establishments within the town or whose children are enrolled in the West Newbury public schools.

**2.5** "Member", as used in these rules, mean the ZBA member or associate member duly appointed by the Board of Selectmen and sworn in by the Town Clerk.

**2.6** "Project" means any comprehensive permit development proposed pursuant to

and in conformance with, these Regulations and G.L. c.40B, s.20-23. A Project shall not include and the Board shall not approve any non-residential component of said development unless the West Newbury Zoning Bylaws authorize the non-residential use(s) on the locus.

### **3.0 Pre-Submission Conference**

**3.1** Prior to filing an application, a prospective applicant is encouraged to have a discussion of the filing requirements and these Regulations in general with the Town of West Newbury Building Inspector, who is the primary staff liaison to the ZBA. Discussion of the proposed Project is also strongly encouraged during a “pre-submission” conference with Town of West Newbury staff and the various boards, departments and commissions that are relevant to a successful development project.

**3.2** Prospective applicants for a Comprehensive Permit are strongly encouraged to contact and work with Town officials, staff, and local boards (but not the ZBA), to identify suitable locations for development and building designs that fit the neighborhood. It is recommended that this be done prior to seeking a Project Eligibility (Site Approval) letter and filing an application for a Comprehensive Permit with the ZBA. The suitability of a location should be evaluated in relation to the following criteria:

- a) Land that is suitable for a septic system that complies with Title 5 or utilizes another compliant method of wastewater treatment;
- b) Land that is directly accessible from a collector or arterial street and which permits points of entry and egress in a safe manner;
- c) Land that has open or recreational space within or nearby;
- d) Land that is free of soil and engineering problems that would make the development unduly difficult or costly;
- e) Land that has an adequate drinking water supply;
- f) Land that presents minimal impact on wetlands and conservation land;
- g) Land that presents minimal impact on Town services (e.g., police, fire, school bus routes);
- h) Land that is suitable for development at a higher density than allowable by the underlying zoning; and
- i) Creative land use designs which reduce infrastructure costs and minimize adverse environmental impacts and/or maximize residents’ recreational areas, including by preserving meaningful amounts or tracts of open land whenever reasonably practicable.

**3.3** Where a comprehensive permit application includes a portion of a parcel that lies, in whole or in part, in an abutting municipality, and any portion of said parcel or adjoining parcel(s) within the Town of West Newbury is proposed for use for ingress, egress,

access or development, including but not limited to use for stormwater disposal, wastewater disposal or water supply, these Rules shall apply to said parcel(s) as if the entire project was proposed within the Town of West Newbury.

#### **4.0 Application and Documentation**

**4.1** Application for a Comprehensive Permit: It is the responsibility of the applicant, when applying for a Comprehensive Permit, to submit a complete application and full documentation as required herein. The Application shall be submitted to the Board, as more fully described in these Regulations, before the Application will be deemed properly filed. The detail included in such documentation shall be commensurate with the scale of the project and the project's associated impacts to the built and natural environment. In addition, the Board may require additional information during the review process, as it deems reasonably appropriate. However, the Board may also waive any of the items noted below, after written request from the Applicant noting which items it believes are not relevant for the Project review, with such request(s) accompanied by substantive reasons why such items will not assist the Board in its responsibility to evaluate the Project.

**4.2** Submittal Requirements. The Applicant for a comprehensive permit or for any substantial modification of a previously issued comprehensive permit shall submit the following with its application for a comprehensive permit:

**4.2.1** Project Eligibility documentation: documents specified in 760 CMR 56.04 to show the status of the Applicant and the acceptability of the site, including:

- a) Evidence that the Applicant is a public agency, non-profit organization or a limited dividend organization;
- b) Evidence that 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 56.04;
- c) Evidence that 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 access to develop the project as proposed in the Application, and the Board reserves the right to require applicant submittal of a purchase and sale agreement, and/or such other documentation as it may require to demonstrate site control for the entirety of the proposed development site;
- d) All materials, including correspondence to and from, the subsidizing agency, upon which the Project Eligibility letter was issued.
- e) If the applicant is seeking funding under the Local Initiative Program (LIP), the Board of Selectmen and the applicant shall work together and jointly submit an application for a Project Eligibility (Site Approval) letter. If such letter is issued, the applicant must still file an application for a Comprehensive Permit with the ZBA. The ZBA retains

separate jurisdiction under Chapter 40B to review the development in its entirety, pursuant to these Rules and Regulations.

- f) Preliminary Site Development Plan(s) - preliminary site development plan(s) ("Site Plan") showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking area, walks and paved areas; and proposed landscaping improvements and open areas within the site including street, trees, seating areas and landscape buffers. The Site Plan shall be signed and stamped by a registered professional engineer and professional land surveyor licensed in the Commonwealth of Massachusetts.

**4.2.2** Said Site Plan (drawn at a scale of no greater than 1" = 40') shall include the following information:

- a) Delineation of existing wetland resource areas protected under the Massachusetts Wetlands Protection Act and West Newbury Wetlands Protection Bylaw and regulations, including delineation of 25' and 100' buffer areas, and including all land subject to flooding based on the most recent Flood Insurance Rate Maps (FIRMs) issued pursuant to the National Flood Insurance Program (NFIP). Wetlands shall be delineated by a professional wetland scientist;
- b) Delineation of any proposed impacts to and replication of wetland resource areas protected under the Massachusetts Wetlands Protection Act and West Newbury Wetlands Protection Bylaw and regulations, and including all land subject to flooding based on the most recent FIRMs issued pursuant to the NFIP, as approved by or proposed to the Conservation Commission, including a statement regarding the status of permitting of any such proposed impacts and wetlands replication;
- c) Existing and proposed topography of the proposed development site at two-foot contour intervals; and existing topography within one hundred feet (100') of the nearest property line, based on elevations of established vertical datum (NGVD 29 or NAVD 88);
- d) Existing structures on the proposed development site, and on adjacent properties within one hundred feet (100') of the locus property line;
- e) Delineation, with hatch-marks, of existing significant environmental features such as ledge outcrops, scenic views, areas with grades greater than 20%, and large trees (i.e. greater than 18" diameter at breast height (DBH));
- f) Location of test pits and perc tests that have been completed within the project locus, including the results of same;
- g) Proposed stormwater management system;
- h) Proposed method of wastewater conveyance and disposal;
- i) Proposed entrance(s) and egress(es) to the property;
- j) Locations within the project locus that have been identified as actually or potentially including historical artifacts including but not limited to burial grounds;
- k) Proposed lighting and a photometric analysis;

- l) Any proposed on-site power generation facilities (such as a solar panel array);
- m) Any proposed wireless communication facilities;
- n) Zoning districts, including delineation of setback requirements applicable pursuant to the underlying zoning, and municipal boundaries;
- o) A summary table of existing zoning and applicable setbacks, dimensional and lot coverage requirements, including whether the proposed development adheres to or is seeking a waiver from such requirements; and
- p) Proposed open space and/or recreational areas, including a summary of the method of proposed protection of such areas (i.e. conservation restriction, deed restriction).

**4.3 Report on Existing Site Conditions** - a report, together with a plan(s) using two (2) foot or smaller contour elevations of established vertical datum (NGVD 29 or NAVD 88), regarding existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, any existing rights-of-way, any existing access or utility easements, existing structures and utilities (above ground or subsurface), any wetlands or vernal pools, mature trees, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. The zoning district or districts, if more than one (1) district is involved, shall also be shown on the plan. (If the abutting land is in another district or town, this shall also be shown.).

**4.4 Preliminary Scaled Architectural Drawings** - preliminary architectural scaled drawings (with a minimum scale of 1/8" = 1'0) including typical floor plans, typical elevations and sections, and identifying construction type and exterior finish, signed and stamped by an architect. If one of the requested waivers is for relief from lot line setbacks or building height limitations, documentation shall include a street elevation showing the proposed new construction and existing buildings to at least 100 feet adjacent to the requested waiver area. For proposed structures taller than that allowed by the underlying zoning, and/or seeking a waiver from applicable setback requirements, the Board may additionally request a sun shading study after review of the streetscape elevation.

**4.5 Proposed Buildings, Roadways and Open Space** - a tabulation of proposed buildings by type, size (number of bedrooms, floor area), and ground coverage, and summary showing the percentage of the tract to be occupied by buildings, parking and other paved vehicular areas, and by open areas (including a breakdown of usable, open areas that will be open to the public, and unusable open areas including those that would not be open to the public). A site plan showing the location and outline of proposed buildings. Proposed locations, and general dimensions and materials of all impervious surfaces including but not limited to streets, drives, parking areas, walks and other paved areas, and trails and traveled ways (paved or unpaved). Proposed landscaping improvements, proposed screening of neighboring properties, open areas within the site, and common areas.

**4.6 Utility Plans** – a utilities plan at a scale of no greater than 1"= 40' showing the

proposed location and types of wastewater conveyance and disposal facilities; public and private drinking water facilities (including wells, piping and hydrants) including any proposed hydrants and/or cisterns, and the location of existing drinking water wells, wastewater disposal systems, and fire hydrants, ponds and cisterns within two hundred (200) feet of the locus, and any and all waste sites, underground storage tanks, agricultural land uses, and/or utility rights-of-way that are within 500 feet of the proposed well site(s), including adequate testing and engineering data to support the viability of proposed facilities at the proposed locations and to demonstrate whether and to what extent the proposed facilities may have an adverse impact to off-site drinking water wells and wastewater disposal systems within 200 feet of the locus; and stormwater management and drainage facilities and structures. Adequate supporting information shall be provided to demonstrate that all utilities and related infrastructure shall meet all applicable federal and state laws and regulations (including, but not limited to, Title 5, Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent), as well as related regulations and requirements. Additionally, the utility plan or a separate utility plan shall show the location and type of electric and gas utilities and telecommunication(s) facilities.

**4.7** Habitat – If the locus is identified as Core Habitat on the BioMap (as may be amended), or as Priority Habitat or Rare and Endangered Species Habitat by the Massachusetts Natural Heritage and Endangered Species Program, copies of filing for a Conservation and Management Permit or, at a minimum, copies of correspondence with the Massachusetts Natural Heritage and Endangered Species program regarding the proposed Project;

**4.8** Recreation and Open Space Amenities – a statement of whether the proposed project locus includes or abuts existing protected open space or recreational land, or land identified as potential future open space or recreational land in the Open Space & Recreation Plan, as well as a detailed listing and site plan identifying the recreation and open space amenities and areas to be proposed and set aside within the proposed project's locus, and how any such proposed amenities and areas abut or connect to existing or proposed open space or recreational land.

**4.9** Report on impact of proposed development project to neighboring properties including noise, glare, blocking of natural light, water run-off, proposed screening, proposed hours of construction, proposed method to minimize dust related to proposed construction, etc. This information can be combined as part of the other required drawings.

**4.10** Pro Forma - a complete financial pro forma, detailing the projected costs and revenues of the proposed project. The pro forma shall be updated on a regular basis at the request of the Board of Appeals. The pro forma shall itemize all development costs and all profits and distributions, in accordance with applicable law, regulations and requirements,

including, where applicable, the requirements and guidelines of the Commonwealth's Department of Housing and Community Development, Mass Housing and the entity from which subsidy funding is sought. The Applicant shall fully disclose, in writing, to the Board all related party transactions. If the claimed land acquisition value is five percent (5%) or greater than the land's most recent assessed valuation as determined by the Town of West Newbury, the application shall contain an appraisal of the property, prepared by an appraiser certified as a Massachusetts General Appraiser, with a valuation date no greater than six months prior to the application date. A full compilation and certification of total development costs and total revenues on a federal income tax basis, prepared by a CPA according to generally accepted accounting standards, shall be provided. All information required to review the applicant's financial projections, credentials and market projections shall be provided. The applicant must identify any family members or persons with an identity of interest to the applicant whom the applicant plans to utilize to perform any service to the project, and must identify how the use of those individuals affects the costs or profits of the project.

**4.11 Impact Analysis of the Natural and Built Environment** (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) - prepared by a qualified environmental scientist, professional wetland scientist (PWS), professional hydrologist, professional engineer, certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience) provided to the Board. The Impact Analysis shall assess the impact of the construction phase(s) of the development, and the completed development on the environment within the development and adjacent thereto and shall be used to assist the Board in determining whether any local or regional need for below market rate housing outweighs relevant impacts of the proposed project at the proposed location. Such analysis shall include, but shall not necessarily be limited to, an evaluation of pre-development conditions, construction phase impacts and post-development impacts on:

- a) surface and groundwater quantity and quality;
- b) groundwater recharge;
- c) open space and recreational areas and space;
- d) wildlife habitats and corridors; wetlands and bodies of water, including streams and rivers, both localized and general;
- e) species of special concern in Massachusetts;
- f) historic and cultural resources;
- g) the degree to which the proposed development advances or does not advance the goals and objectives of approved public plans including but not limited to the Comprehensive (Master) Plan, Housing Production Plan, Open Space & Recreation Plan, Municipal Vulnerability Plan, and Capital Improvements Plan, each as most recently amended.



The analysis shall also consider soil conditions on and near the site, percolation, and water testing pursuant to the Department of Environmental Protection's Soil Evaluation procedures under Title 5. Preliminary water table tests should be conducted under all proposed drainage detention facilities, under all buildings, and adjacent to any road cuts greater than three (3) Feet. Such analysis shall include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance shall be identified and a proposed maintenance plan shall be included with the Impact Analysis.

The analysis shall be completed by a Registered Professional Engineer and shall include all existing and proposed conditions. Plans shall be drawn at two (2) foot contours and shall contain the information listed above as well as the locations, sizes and details of all inlets, culverts, swales, drains, manholes, pipes and all other infrastructure and/or modifications needed to comply with this section (4.10).

**4.12** Traffic Impact Report (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board) - prepared by a registered professional engineer qualified in the field of traffic engineering, analyzing the proposed project's impact on the congestion, safety and overall convenience of the roadway system, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the Town of West Newbury, MassDOT, a private road, or located in an adjacent municipality. The project's cumulative impacts on both vehicular and pedestrian travel shall be addressed in detail.

**4.13** Statement of Impact on Municipal Facilities and Services – The Application shall provide a detailed analysis of the impact(s) of the proposed project on municipal facilities and services and include an analysis of the costs imposed upon the Town including specific quantitative projections of the impact(s) on schools, traffic, transportation, recreation, open space, roads and road maintenance, solid waste, police and fire and other safety services and utilities (including water, power and natural gas) as well as the anticipated tax and other revenue to be generated by the proposed project, including the basis of such projections.

**4.14** Roster of Development team members and list of prior developments – (i) a list of all members of the development team, including all contractors and subcontractors to the extent known at the time of the Application; (ii) a list of all prior development projects (regardless of whether residential or commercial, etc.) over the last ten (10) years; and (iii) any open litigation to which any member of the Development team is a party.

**4.15** A list of abutters certified by the Chief Assessor, showing names and addresses of

abutting property owners, and abutters to the abutters, whose property is within three hundred (300) feet of the property lines of the property that is the subject of the application. Owners of property directly opposite said property on any public or private street(s) as they appear in the Assessor's records shall be considered a direct abutter;

**4.16** Fourteen (14) paper copies of said Application with Site Plans at 24" x 36" size (1"=40' scale), including all attachments and exhibits, shall be submitted to the Town Clerk upon filing together with 1 flash drive with separate PDF files of each of the required documents (to be distributed to the Board Members, the Inspectional Services Department, and to various Town departments). Up to ten (10) additional copies shall be provided to the Board upon request. Additionally, five (5) sets of 11" x 17" legible copies of all Site Plans (with match-lines, as applicable) shall be provided to the Board;

**4.17** Recent panoramic photograph(s) of the site and immediately adjacent properties;

**4.18** A list of requested exceptions to local requirements and regulations, including local bylaws, rules and regulations. The list, which may be amended by the applicant during the hearing process, must specifically designate the bylaws, rules and regulations and the particular provision(s) thereof, from which relief is sought. Each provision specified for relief shall be copied in the application, and the applicant's proposed alternative to compliance shall be defined for each provision from which relief or exception is sought. The applicant shall offer justification for each requested exemption as to public benefit, why granting the exemption is not inconsistent with the intent of local regulations and local needs, and the effect on the financial feasibility of the project if the requested exemptions are not granted;

**4.19** A table showing the size (sq. ft.) and planned sale price of each unit in the proposed development, including both affordable and market rate units;

**4.20** The applicant's projected date to commence construction and the anticipated schedule for completion of all phases;

**4.21** Where a subdivision of land is involved, a preliminary subdivision plan as defined by M.G.L. c. 41 §81 L;

**4.22** A profile of the developer shall be provided and shall include information regarding experience and qualifications showing an ability to successfully complete the proposed development.

## **5.0 Fees**

**5.1** Fee Schedule: The Application shall be accompanied by a filing fee, based on a flat fee and the number of housing units proposed:

- a) for limited dividend organizations where the total project contains 8 or more units: \$10,000 base fee plus \$250 per market rate unit proposed;
- b) for limited dividend organizations where the total project contains 7 or fewer units: \$5,000 base fee plus \$200 per market rate unit proposed;
- c) for non-profit organizations and public agencies: \$1,000 base fee plus, if the total project contains more than 6 market rate units, \$100 per market rate unit proposed.

## **5.2 Review Fees**

Pursuant to G.L. c.44, s.53G, the Board may employ outside consultants to provide technical assistance in various disciplines, including, but not limited to, civil engineering, pro forma financial analysis, traffic and transportation planning and engineering, wetlands and wildlife science, hydrology, hydrogeology, hydraulic engineering, structural engineering, architectural and landscape design, financial and construction expertise, fiscal impact analysis, and stenographers.

A review fee will be imposed consistent with the following principles:

- a) The work is in connection with the applicant's project
- b) All written results and reports are made part of the Board's record
- c) All fees assessed shall be reasonable in light of the:
  - 1) Complexity of the proposed project
  - 2) Complexity of the particular issues
  - 3) Number of dwelling units proposed
  - 4) Size and character of the site
  - 5) Projected construction costs
  - 6) Fees charged by similar consultants for similar work.

If the Board requests the applicant to pay the fees of a particular review consultant, the applicant shall provide the Board with the fees prior to the commencement of work by the consultant. In accordance with 760 CMR 56.05(5)(c) if the applicant does not provide the Board with the requested fees within seven (7) calendar days of such written request, the Board may deny the Comprehensive Permit.

## **5.3 Procedures**

**5.3.1.** Within 7 calendar days of receipt of a complete application, the Board shall notify local boards that the application has been received, which notice shall include the requested waivers. The Board may request that local boards and departments provide guidance to assist the Board in evaluating the application. All reports and correspondence

shall become part of the public record.

**5.3.2.** All hearings shall be posted and held in accordance with Open Meeting Law, and shall be video recorded, with such recording made available for viewing on local cable and on the internet.

**5.3.3.** The Board shall open a public hearing on a complete application within thirty (30) days of its receipt thereof provided that said complete application includes the filing fees and all the information required by these regulations. Unless one or more of the items of information required by these Regulations is waived by the Board, an application will not normally be deemed complete if it does not contain all of the filing requirements established herein. The Board may in its discretion allow one or more of the items of information required by these Regulations to be submitted during the Board's public hearing on an application.

**5.3.4.** The Board shall request the appearance at the hearing of such representatives of local boards or members of the general public as it considers necessary or helpful in reviewing the application. The applicant or its agent(s) shall appear at each of the public hearing sessions held on the completed application and be available for questioning by the Board, the Board's agents and representatives, representatives from any local boards and the general public, subject to the principles of due process and the procedural rules of the Board. The following is a general guideline to the order of proceeding: (a) applicant's presentation (which may be reasonably limited to a set amount of time by the Board) (b) local officials (c) comments by those in attendance (which may also be reasonably limited to a set amount of time by the Board).

**5.3.5.** In making its final decision, the Board shall take into consideration the recommendations of local boards and the public and acknowledge within the Board's written decision, all written comments received from local boards, officials or members of the general public.

**5.3.6.** Unless otherwise excused by the Board or its agents, the applicant shall cause to be present at each of the public hearing sessions held on the completed application any professional, expert or other witness who has participated in the drafting of the proposed Project plans or relevant elements of the Project or whose testimony would otherwise be relevant to the Board's deliberations and the public's understanding of the proposed Project. The Board will not accept the testimony of a lay witness (whether said witness is the applicant or the applicant's agent) with regard to technical matters (including legal, engineering, financial, scientific or construction) unless the lay witness demonstrates to the Board that he/she possesses sufficient skills and knowledge to so testify and then, and only then, the Board may permit such testimony but only in regard to the demonstrated area(s) of expertise of the witness.

**5.3.7.** Pursuant to G.L. c.44, s.53G or otherwise, the Board may in its discretion collect appropriate fees from the applicant for the retaining of a notary public or other qualified stenographer and may in its discretion cause a stenographic record of the proceedings to be made. The applicant shall be entitled to a copy of any such stenographic record and said record, as applicable, shall be referred to either directly or by reference in the Board's decision.

**5.3.8.** Where the application materials required by these Regulations, by statute, by 760 CMR 56.00 et seq. and as required by the Board during the course of the public hearing in this matter have been received or their submission waived in writing by the Board, the Board shall close the public hearing within 180 days unless said time period is extended by written agreement of the Board and the applicant. In all other respects, the public hearing is deemed terminated, in the Board's sole judgment, when all public testimony has been received and all information requested by the Board and required by these Regulations, by statute and by 760 CMR 56.00 et seq. has been received to the satisfaction of the Board.

## **6.0 Zoning Board of Appeals Review Criteria**

**6.1** Site Selection. The Town encourages comprehensive permits that promote appropriately designed developments that consider rural community characteristics of the Town of West Newbury including:

- a) Density,
- b) Scaling, massing and overall building design,
- c) Impact on the neighborhood and town, including financial impact,
- d) Suitability of the site for the proposed development,
- e) Public health and public safety considerations, and
- f) Affordability considerations.

In addition to these issues, there are other issues the ZBA will inevitably examine or need to address during the course of its hearing process on any 40B application. The Board reserves the right to request or require information to permit the thorough evaluation of any issue raised during the course of its hearing process that it deems relevant to its responsibilities.

## **6.2 Limited environmental impact.**

Development shall minimize to the greatest extent practicable:

- a) Depletion and contamination of ground waters;

- b) Alteration or relocation of waterways and drainage patterns;
- c) Any use of groundwater for irrigation of landscaping;
- d) Alteration of existing, natural grades, and overall volume of cut and fill;
- e) Area over which existing vegetation will be disturbed, especially if within 200 feet of a river, pond or stream or wetland resource, or having a slope of more than 15%;
- f) Removal of mature trees (18" DBH or greater);
- g) Soil loss or instability during and after construction;
- h) Alteration or disturbance of land within any flood plain or wetlands area;
- i) Adverse impacts to municipal facilities;
- j) Blockage of trails or potential trails;
- k) Disturbance of important wildlife habitats or corridors, outstanding botanical features or scenic or historic environment;
- l) Visual prominence of man-made elements which are not necessary for safety or orientation including visibility of building sites from existing streets and existing protected open space;
- m) Traffic congestion and reliance on private transportation;
- n) Number of driveways exiting onto existing streets; and
- o) The degree to which the proposed development does not advance the goals and objectives of approved public plans including but not limited to the Comprehensive (Master) Plan, Housing Production Plan, Open Space & Recreation Plan, Municipal Vulnerability Plan, and Capital Improvements Plan, each as most recently amended.

Development shall maximize to the greatest extent practicable:

- p) Preservation of uncontaminated ground and surface waters;
- q) Visual prominence of natural features of the landscape;
- r) Legal and physical protection of views from public ways and existing protected open space;
- s) Connections via publicly accessed trails to and between protected open space and other trails;
- t) Buffers for and connections among existing protected open spaces;
- u) Wildlife corridors;
- v) Access to public transportation;
- w) Creation of, and access to, pedestrian walkways and bicycle paths;
- x) Stormwater Mitigation;
- y) Compensatory Flood Storage; and
- z) The degree to which the proposed development advances the goals and objectives of approved public plans including but not limited to the Comprehensive (Master) Plan, Housing Production Plan, Open Space & Recreation Plan, Municipal Vulnerability

Plan, and Capital Improvements Plan, each as most recently amended.

**6.3** Developments shall demonstrate use of environmentally sustainable planning and engineering approaches for natural resources management to improve water quality, control flooding, maintain ecological diversity, promote adaptation to climate changes and ensure that West Newbury's residential areas, commercial centers and infrastructure are developed in harmony with natural resource conservation.

**6.4** Site and building planning should be compatible with the existing neighborhood character and existing development pattern.

**6.5** Compatible architectural features include scale, materials, roof style and pitch, porches or balconies, and exterior detailing. Rooflines and setbacks may mitigate height differences with neighboring structures.

**6.6** Site planning should maintain existing significant trees to the extent reasonably feasible and replace trees to be removed with trees of a sufficient diameter to provide shade and infill within a reasonable period after planting. All landscaped areas shall be continuously maintained and provided adequate water. The Board may require that the Applicant submit a landscape maintenance plan providing for periodic reviews by Town Departments or Boards.

**6.7** All paved areas shall provide for proper stormwater control with a focus on low impact design techniques. If pervious pavers are proposed, the landscape maintenance plan must provide for control of sediment at areas of pervious pavement.

**6.8** All exposed storage areas shall be screened from abutting properties. Trash dumpsters shall be fully screened on three sides with solid walls to block visual access from street level and with a solid front gate.

**6.9** Traffic impacts. Developments shall minimize increase of automobile traffic and enhance access to public transit and enhance both bicycle and pedestrian access to public ways.

## **7.0 Decision**

The Board shall render a decision, based on a majority vote of the Board, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant.

**7.1** The Board may dispose of the application in the following manner:

**7.1.1** approve a comprehensive permit on the terms and conditions set forth in the

application; or

**7.1.2** deny a comprehensive permit as not consistent with local needs pursuant to G.L. c.40B, s.20-23 or due to the failure of the applicant to conform to these Regulations or those found at 760 CMR 56.00 et seq.; or

**7.1.3** approve a comprehensive permit with conditions consistent with these Regulations provided that the approval does not render the construction or operation of such housing uneconomic, as uneconomic is defined by the Board with the assistance of the Board's advisors and consultants and subject to the definition of "uneconomic" as found in M.G.L. c.40B, s.20.

**7.2** In rendering a decision to approve a comprehensive permit or approve a comprehensive permit with conditions, the Board shall:

**7.2.1** never require nor permit the use, via easement, license or any other means, of private or public property, not under the control or authority of the applicant, unless the applicant demonstrates the legal right to use, via easement, license or otherwise, said private or public property;

**7.2.2** always require, as a condition of comprehensive permit approval, that prior to the commencement of any construction activities or any site clearing, the comprehensive permit, with a true and attested copy of these Regulations affixed, be recorded at the Essex County Registry of Deeds.

**7.2.3** always require, as a condition precedent to recording the comprehensive permit, the execution of a regulatory agreement limiting the profit of the proposed project to that set by the subsidizing agency, unless the Board chooses to establish stricter profit limitations, subject to applicable law;

**7.2.4** always require, as a condition precedent to recording the comprehensive permit, the execution of a deed rider ensuring that the below market rate units remain affordable in perpetuity, or the longest period allowed by law;

**7.2.5** where relevant, always require a performance guarantee;

**7.2.6** always require, as a condition precedent to recording the comprehensive permit, the execution of a monitoring services agreement ensuring that the applicant has engaged the services of a competent professional or agency to monitor, in perpetuity, the transactions of the below market rate units in a for sale Project and the renting of the below market rate units in a rental Project;

**7.2.7** always require the following condition: "Prior to the commencement of any construction activities or any site clearing, the Applicant shall submit to the Board a



final comprehensive permit site plan and the final engineered plans and calculations associated with the construction of the roadways and related infrastructure, stormwater management utilities, the approved wastewater disposal plans, and the approved water supply plans for technical review by the Board to ensure that it is consistent with and in conformity with this Decision, which upon such finding shall be approved and endorsed by the Board (the 'Approved Plans')." The Board shall render a decision under this Condition within 45 days of the Applicant's complete submittal of these plans and calculations;

**7.2.8** always require the following condition to be included in "for sale" comprehensive permit Projects: "No more than three certificates of occupancy shall be issued by the Building Commissioner for units designated for sale at fair market prices until at least one affordable housing unit has received a certificate of occupancy and made available for sale. Affordable housing units shall be constructed and made available for sale coincident with the development of market rate units. Prior to the issuance of the certificate of occupancy for the last-to-be-sold market rate dwelling unit in any phase of the Project, the Applicant shall complete construction, obtain certificates of occupancy for, and make available for sale all of the affordable dwelling units in that phase."

## **8.0 Appeals**

**8.1** If the Board approves the comprehensive permit, any person aggrieved may appeal within the time period and to the Superior Court or Land Court as provided in G.L. c. 40A, § 17 and G.L. c.40B, s.21.

**8.2** If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to render the Project uneconomic, the applicant may appeal to the Housing Appeals Committee as provided in G.L. c. 40B, § 22.

**8.3** Where an appeal is taken pursuant to both Section 8.1 and Section 8.2, appeals brought pursuant to Section 8.1 shall be stayed pending final disposition of the appeal brought pursuant to Section 8.2.

**8.4** Where the Housing Appeals Committee, pursuant to an appeal brought under Section 8.2 above, disturbs a decision of the Board and orders the Board to issue a revised decision, said revised decision or failure of the Board to issue same shall constitute a decision which may be appealed by any person aggrieved pursuant to Section 8.1, above.

## **9.0 Amendments to Approved Plans**

**9.1** If after the issuance of a comprehensive permit an applicant seeks to make changes to an approved project, it shall promptly notify the Board in writing, describing such change. Within 20 days of receipt of written notification, the Board shall determine and notify the applicant whether it deems the change substantial or insubstantial.

**9.2** If the Board determines the change is insubstantial, the comprehensive permit shall be deemed to incorporate the change.

**9.3** If the Board 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. Only the changes in the proposal or aspects of the proposal affected thereby shall be at issue in the hearing, however nothing shall prevent the Board from ensuring that all prior conditions have been adhered to and fulfilled by the current applicant or its predecessor(s) in interest or title.