



## City of Peabody Zoning Board of Appeals

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5792

### Chapter 40B Comprehensive Permit Rules and Regulations As Required by Chapter 40B, Section 21 of the Massachusetts General Laws and By 760 CMR 56.00

#### I. Purposes:

- A. These rules establish procedures for applications to the Zoning Board of Appeals for comprehensive permits granted under, M.G.L. c. 40B, Sections 20-23 (Chapter 774 of the Acts of 1969) and the regulations promulgated thereunder. These rules and regulations are required by M.G.L. c. 40B, Section 21, as amended by Stat. 1989, c. 593, and by 760 CMR 56.00 all as further amended and as may be amended, restated, and/or replaced. The purpose of that Act and the regulations promulgated thereunder is to facilitate the development of affordable housing in Massachusetts, and the purpose of these rules and regulations is to facilitate the development of affordable housing that meets local needs in the City of Peabody.
- B. These rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with G.L. c. 40B, Sections 20-23, 760 CMR 56.00 and the applicable guidelines prescribed, from time to time, by the Department of Housing and Community Development ("DHCD") all as amended and as may be further amended, restated, and/or replaced. In addition, the Board's general rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

#### II. Definitions.

- (a) *Applicant* means, a Limited Dividend Organization, defined below; a not for profit corporation duly organized and validly existing; or a public agency conforming to the requirements and definitions pursuant to and prescribed in G.L. c. 40B, Sections 20-23 and 760 CMR 56.
- (b) *Application* means an application for a comprehensive permit pursuant to G.L. c. 40B, Section 21 and the regulations promulgated thereunder and prepared and submitted in consistent with and in compliance with these rules and regulations.
- (c) *Board* means the City of Peabody zoning board of appeals established under M.G.L. c. 40A, § 12.
- (d) City of Peabody Housing Production Plan means that Housing Production Plan dated February, 2013 adopted by the City of Peabody as may be amended from time to time.

- (e) *Local board* means 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; fire, police, traffic, or other department; building inspector or similar official or board; City Council.
- (f) *Limited Dividend Organization* means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section III.2.S.).

III. Application Filing, Time Limits, and Notice:

A. Prior to submittal of an Application, the Applicant shall contact the Director of the Department of Community Development and Planning to schedule a Development Review Meeting, involving parties chosen at such Director's sole discretion after receipt by the Applicant of a determination of Project Eligibility (Site Approval) pursuant to G.L. c. 40B and 760 CMR 56.00 and the Comprehensive Permit Guidelines issued DHCD (the "Site Approval Letter").

B. The Application for a comprehensive permit shall consist of:

1. The Application form prescribed by the Board from time to time;
2. A narrative describing the nature and location of the project and the site, including a legal description of the property or properties if affecting multiple parcels of land; complete dimensions and area of such property or properties; the zoning classification(s) that apply to the property or properties; assessor's map and lot number(s); the size and foot print(s) of existing building(s); the size and proposed foot print(s) of the proposed building(s); calculation of existing and proposed lot coverage; location of existing utilities (water, sewer, gas, electricity, as applicable) to the site with applicable recorded easement title references; proposed location of easements for proposed utilities to serve the site and proposed project; a description of measures the Applicant proposes to prevent soil erosion and storm water runoff during construction; estimated cost of all site improvements; projected public water demand, if any; projected parking spaces required for the development, based on proposed use(s) or number of employees, as applicable; the name and address(es) of the property owner(s) and the Applicant, if different from the property owner; and a detailed description of how the proposed development conforms to the City of Peabody's Housing Production Plan;
3. An abutters list, certified by the Board of Assessors;
4. Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walkways 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 materials in section III.3.F. 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;

5. 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 III,B.2. above;
6. 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;
7. A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and building/lot 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;
8. Lighting plan showing the location height, intensity, and bulb type of all external lighting fixtures, the direction of illumination, and methods to reduce glare onto adjoining properties;
9. Conceptual landscaping plan showing the location and approximate number and size of plant types, and the locations and elevation and/or height of fences, walls, steps, paths and other walkways and or sidewalks;
10. If a subdivision of land is involved, a preliminary subdivision plan;
11. A utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information shall be provided to demonstrate that the drainage system will meet all Storm Water Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent;
12. A Phase 1 or greater environmental site assessment under M.G.L. c.21E (Note, the Applicant shall provide a Phase II 21E site assessment upon request by the Board);
13. Analysis of environmental impacts, including as a minimum: a narrative analysis of existing and expected post-development environmental conditions, including but not limited to measures proposed to prevent pollution of surface and ground water, erosion of soil, excessive runoff of precipitation, excessive raising or lowering of the water table, or flooding of other properties; measures to protect air quality, minimize noise levels, prevent harmful or noxious emissions, and damage or threat to wetlands, flood plain, wildlife habitat, and historical or archaeological resources, and the visual environment. Potential smoke, odors, vibration and electromagnetic radiation should be identified and addressed. The environmental impacts analysis should also describe proposed methods of waste disposal;

14. Analysis of traffic impacts: estimated average daily traffic and peak hour traffic to be generated by the proposed project with analysis comparing the existing condition. The Board may request that the Applicant prepare an appropriate "Traffic Impact and Access Study" to assist the Board in determining the potential impacts of the proposed project on the existing access to and from the project site, the affected and surrounding area roads and ways and, if any, transportation infrastructure impacted thereby. Such Traffic Impact and Access Study shall be in conformity with the applicable standards prescribed by the Traffic Engineering and Transportation profession;
15. Analysis of community impacts: a narrative assessment of existing and projected demands for community services, utilities, and facilities, including but not limited to public water or sewer service;
16. Documents showing that the applicant fulfills the jurisdictional requirements of 760 CMR 56.00, that is,
  - a. The applicant shall be a public agency, a non-profit organization, or a Limited Dividend Organization,
  - b. 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 56.00, and
  - c. The applicant shall demonstrate control of the site and the means of access thereto. This documentation must adequately demonstrate that the Applicant possesses the necessary control over the site and the site access to develop the project as proposed in the Application;
17. A complete list of requested exceptions to local requirements and regulations, including but not limited to zoning ordinances, subdivision regulations, local conservation ordinances, and any other local ordinances, bylaws, regulations or codes;
18. The Site Approval Letter from a qualified and approved "Subsidizing Agency" within the meaning of G.L. c. 40B and 760 CMR 56.00;
19. A complete *pro-forma* in compliance with the requirements of G.L. c. 40B, 760 CMR 56.00, applicable rules and guidelines prescribed by DHCD, and in conformity with the requirements of the applicable Subsidizing Agency, detailing the projected costs and revenues of the proposed project. In preparing its *pro-forma*, the Applicant shall limit its costs to actual investment in the property or properties. Acquisition costs shown in the pro-forma shall be limited to the lesser of the existing as-is fair market value of the property (i.e. the value under existing by-laws and regulations without the benefit of waivers or variances) or the amount of last arm's length sale (with all reasonable and demonstrable carrying costs), whichever is less. Additionally, the Applicant shall fully disclose any costs ascribed to related entities. Profits generated by any related entities in the development of any aspect of the project shall not be allowable as project costs.

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20. The Application shall be accompanied by a filing fee based upon the number of housing units proposed: Email: [grace.augulewicz@peabody-ma.gov](mailto:grace.augulewicz@peabody-ma.gov)
    - a. Limited Dividend Organization - \$200 flat fee plus \$100 per unit;
    - b. Non-Profit Organizations - \$200 flat fee plus \$50 per unit;
    - c. Public Agencies - \$0 flat fee plus \$0 per unit;
    - d. In addition, the Applicant shall be responsible for paying all legal advertisement costs; and
    - e. Additionally, the Applicant shall pay \$5,000.00 to pay for the services of administrative personnel (stenographer, clerks, hearings officer, legal counsel, and any other personnel deemed necessary for assistance in any project of 25 units or less, and \$7,500.00 for any project in excess of 25 units but not exceeding 75 units and \$10,000.00 for any project in excess of 75 units. This cost is a reasonable estimate of the administrative costs and legal costs for personnel and counsel retained to assist the Board with the efficient process and handling of the Application required of the c. 40B process. The Board, in its sole and unfettered discretion may waive any or all of this fee. Alternatively, the Applicant may opt to pay for the Board's legal counsel in the manner prescribed by G.L. c. 44, §53G or Section IV hereof.
  21. All abutters and parties of interest shall be notified of the public hearing, pursuant to the requirements of M.G.L. c. 40A Section 11.
  22. 58 copies of the Application (14 Full Size; 38 Half Size; 6 Electronic), including all supporting documentation as required below and the application fee shall be submitted to the Peabody City Clerk. Once received and time stamped by the City Clerk, the Application will be received by the Zoning Board of Appeals (ZBA). Upon completion of the submission, the ZBA Clerk shall distribute these copies to the following Departments and Boards: Zoning Board of Appeals (9), City Council (11), Department of Community Development and Planning (1), Planning Board (1), Public Services Department (1), Board of Health (1), Conservation Commission (1), Building Commissioner (1), Police Department (1), Fire Department (1), Peabody School Committee (1), Peabody Municipal Light Plant (PMLP) (1) Peabody Housing Authority (1), the Mayor's Office (1), and the City Solicitor's Office (2). In addition, the Applicant shall provide to the board one (1) unbound copy of the Application for copying purposes with a full set of 11" x 17" copies (with match lines) of all plans, and a full set of full sized plans. The unbound Application submission shall be provided in paper and electronic version utilizing a commonly used electronic format (Portable Document Format "PDF" is preferable).

IV. Review Fees:

- A. When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit Application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the City lacks the necessary expertise to perform the work related to the comprehensive permit Application. Whenever possible, the Board shall work cooperatively with the Applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum at any time after the opening of the Board's hearing in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits by the Applicant.
- B. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers and administrative personnel (see Section III hereof), urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, bylaws, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.
- C. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, § 53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the Applicant. Accrued interest may also be spent for this purpose. Failure of an Applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.
- D. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the Applicant or the Applicant's successor in interest. A final report of said account shall be made available to the Applicant or Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
- E. Any Applicant may take an administrative appeal from the selection of the outside consultant to the City Council. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the Applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application

by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the City Council within thirty (30) days following the filing of the appeal, the selection made by the Board shall stand.

V. Public Hearing and Decision:

- A. The Board shall hold a public hearing on the completed application as set forth in Section III above, within thirty (30) days of its receipt, or such other time frame that may be mutually agreed upon by the Board and the Applicant. The Board 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. The hearing shall be held at the date, time and place established by the Chair of the Board.
- B. 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. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received as determined by the Board in its discretion.
- C. The Board may dispose of the application in the following manner:
  1. Approve a comprehensive permit on the terms and conditions set forth in the Application,
  2. Deny a comprehensive permit in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or
  3. Approve a comprehensive permit with conditions consistent with the requirements of M.G.L. c. 40B including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto. The economic viability of a project may be determined with reference to the average profit earned by other developers of residential housing, as adjusted for the type of housing and the geographical area.
- D. It shall be the Applicant's burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, ordinance or regulation will adversely affect local concerns.

VI. Changes in the Application:

- A. In the event that, during the public hearing, the Applicant proposes any

changes in its Application or project plans that, in the Board's discretion, constitutes a material or substantial change to the project, the Applicant shall provide a new Site Eligibility Letter from the designated Subsidizing Agency.

- B. In the event of such material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section III hereof that is deemed by the Board to be necessary to evaluate such changes.
- C. In the event of such material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in Section III, above.
- D. If the Applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions.

VII. Appeals:

- A. 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, Section 17.
- B. If the Board denies the comprehensive permit or approves the permit with unacceptable conditions or requirements, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, Section 22.

VIII. Adoption:

The foregoing rules and regulations are hereby adopted this 24<sup>th</sup>, day of April, 2017 by the Zoning Board of Appeals. All former rules of this Board applicable to G.L. c. 40B are hereby repealed.

(Please see original in the Department of Community Development and Planning for City Clerk's stamp.)



# City of Peabody

## Zoning Board of Appeals

City Hall • 24 Lowell Street • Peabody, Massachusetts 01960 • Tel. 978-538-5792

### Distribution List Chapter 40B Comprehensive Permit Filing Project Address:

Project Address: \_\_\_\_\_

**Required plan formats: Full size – 24" x 36" Half size – 11" x 17" or Electronic**

City Office	Plan Format	Received By	Date
Zoning Board of Appeals	8 Full Size 1 Electronic		
City Council	11 Half Size		
Department of Community Development & Planning	1 Full 1 Electronic		
Planning Board	12 Half Size 1 Electronic		
Public Services Department	1 Full Size 1 Electronic		
Board of Health	1 Half Size		
Conservation Commission	2 Full Size 8 Half Size		
Building Commissioner	1 Electronic		
Police Department	1 Half Size		
Fire Department	1 Full Size		
Peabody School Committee	1 Half Size 1 Electronic		
Peabody Municipal Light Plant (PMLP)	1 Full Size		
Peabody Housing Authority	1 Half Size		
Mayor's Office	1 Half Size		
City Solicitor's Office	2 Half Size		

**THE COMPLETED DISTRIBUTION SHEET MUST BE RETURNED TO THE OFFICE OF COMMUNITY DEVELOPMENT AND PLANNING**

# City of Peabody

## Zoning Board of Appeals

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### COMPREHENSIVE PERMIT APPLICATION CHECKLIST

58 copies of the Application (14 Full Size; 38 Half Size; 6 Electronic), including all supporting documentation as required below and the application fee shall be submitted to the Peabody City Clerk. Once received and time stamped by the City Clerk, the Application will be received by the Zoning Board of Appeals (ZBA) located in the Department of Community Development and Planning. Upon completion of the submission, the ZBA Clerk shall distribute these copies to the following Departments and Boards: Zoning Board of Appeals (9), City Council (11), Department of Community Development and Planning (1), Planning Board (1), Public Services Department (1), Board of Health (1), Conservation Commission (1), Building Commissioner (1), Police Department (1), Fire Department (1), Peabody School Committee (1), Peabody Municipal Light Plant (PMLP) (1) Peabody Housing Authority (1), the Mayor's Office (1), and the City Solicitor's Office (2). In addition, the Applicant shall provide to the board one (1) unbound copy of the Application for copying purposes with a full set of 11" x 17" copies (with match lines) of all plans, and a full set of full sized plans. The unbound Application submission shall be provided in paper and electronic version utilizing a commonly used electronic format (Portable Document Format "PDF" is preferable).

The application for a comprehensive permit shall consist of:

- The application form
- A narrative describing the nature and location of the project and the site
- An abutters list, certified by the Board of Assessors
- Preliminary site development plans
- Existing site conditions
- Preliminary, scaled, architectural drawings
- A tabulation of proposed
- Lighting plan showing the location height
- Conceptual landscaping plan
- If a subdivision of land is involved, a preliminary subdivision plan;
- A preliminary utilities plan
- A first-level environmental assessment under M.G.L. c.21E, if available;
- Analysis of environmental impacts
- Analysis of traffic impacts: estimated average daily traffic and peak hour traffic to be generated by the development

- ❑ Analysis of community impacts
- ❑ The Site Approval Letter from the subsidizing agency;
- ❑ A development proforma for the proposed project;
- ❑ The application shall be accompanied by a filing fee based upon the number of housing units proposed:
  1. Limited Dividend Organization - \$200 flat fee plus \$100 per unit
  2. Non-Profit Organizations - \$200 flat fee plus \$50 per unit
  3. Public Agencies - \$0 per unit
  4. In addition, the applicant shall be responsible for paying all legal advertisement costs