Asst. Town Clerk M. Holmes
3:03 p.m.
Nov. 13, 2015

TOWN OF NANTUCKET ZONING BOARD OF APPEALS
COMPREHENSIVE PERMIT RULES AND REGULATIONS

Section

1.00 Purpose and Context
2.00 Definitions
3.00 Filing, Time Limits, and Notice
4.00 Review of Applications and Review Fee
5.00 Public Hearing and Decision
6.00 Changes in Application
7.00 Appeals

1.00: **Purpose and Context**

These Rules establish procedures for an application to the zoning board of appeals for comprehensive permits granted under M.G.L. c. 40B, §§ 20-23 and the regulations promulgated thereunder. They are required by M.G.L. c. 40B, §21 and by 760 CMR 56.00, to facilitate the development of affordable housing in Massachusetts.

These Rules alone are not sufficient to describe comprehensive permit procedures before the zoning board of appeals. They must be read in conjunction with and implemented in a manner consistent with G.L. c. 40B, §§20-23. In addition, the Board's general Rules for conduct of hearings under M.G.L. c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general Rules for conduct and these Rules, these Rules shall govern.

2.00: **Definitions**

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

(b) *Local board* means any local board or official, including, but not limited to any board of 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; board of selectmen.

(c) *Limited Dividend Organization* means any applicant which proposes to sponsor housing under M.G.L. c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program (see Section 3.01(i)).

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

3.01: The application for a comprehensive permit shall consist of:

(a) preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives,

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

(b) a report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in section 3.01(a), above;

(c) preliminary, scaled, architectural drawings. For each building the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;

(d) a tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas;

(e) where a subdivision of land is involved, a definitive subdivision plan, conforming to all of the requirements of the Planning Board's Rules and Regulations for the Subdivision of Land;

(f) a utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information, including pre-construction and post-construction drainage calculations and soil test results (which result shall have been witnessed by an appropriate and qualified Town Official or a qualified Town consultant) shall be provided to demonstrate that the proposed drainage system shall meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent and shall result in no net increase in the rate or volume of stormwater runoff;

(g) a Project Eligibility Letter that satisfies all of the requirements of 760 CMR 56.

(h) a list of requested exceptions to local requirements and regulations, including local codes, ordinances, by-laws or regulations.

(i) a complete copy of any and all materials and applications submitted by the applicant to any prospect subsidizing agency or source, including, but not limited to applications for site approval.

(j) a list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The Applicant shall also be required to disclose its relationship to all such entities.

(k) a list of all prior development project completed by the Applicant, along with a brief description of each such project.

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

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

(b) for Non-Profit Organizations - $1000 flat fee plus $25.00 per unit

(c) for Public Agencies and Local - $0

3.03: Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by § 3.01(h), above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, it shall also invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application. In order to allow review by local officials, the Applicant shall provide the Board with twenty-five copies of the completed application, so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. The Applicant shall provide an electronic copy of the plans, so that the plans can be distributed electronically. Additionally an 11"x17" copy of all plans (with matchlines) shall be made available to the Board for copying purposes.

4.00: **Review Fees**

4.01: When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an Applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

4.02: In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but not be limited to, analyzing an application,

monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

4.03: Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose, consistent with the terms and provisions of G.L. c. 44, §53G. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

4.04: At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

4.05: Any applicant may take an administrative appeal from the selection of the outside consultant to the Board of Selectmen. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection made by the Board shall stand.

5.00: **Public Hearing and Decision**

5.01: The Board shall open the public hearing on the application within thirty days of its receipt of an application, but opening the hearing shall not waive its right to contest the completeness of the application not shall a constructive grant result if the Board does not open the hearing within 30 days if the application is not complete. To be deemed complete, the application must include all of the information detailed above. 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.

5.02: The Board shall render a decision, based on a majority vote of the Board, within forty days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

5.03: The Board may dispose of the application in the following manner:

(a) approve a comprehensive permit on the terms and conditions set forth in the application,

(b) deny a comprehensive permit in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs, or

(c) approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the Applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto.

5.04: It shall be the applicant's burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local by-law, ordinance or regulation will adversely affect local concerns.

6.00 **Changes in Application**

6.01: In the event that, during the public hearing, the Applicant proposes any change in the Application or project plans that, in the Board's discretion, constitutes a material or substantial change, the Applicant shall forthwith notify its designated subsidizing agency.

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

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

6.04: If the Applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the Application shall be deemed to be revised, subject to the foregoing provisions.

7.00: **Appeals**

7.01: If the Board approves the comprehensive permit, any person aggrieved may appeal within the required time period as provided in M.G.L. c. 40A, § 17.

7.02: If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to be unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in M.G.L. c. 40B, § 22 or M.G.L. c.40A, §17, as appropriate.

Nantucket Zoning Board of Appeals

On November 12, 2015, at a regularly scheduled and posted meeting and as duly advertised and noticed, the Nantucket Zoning Board of Appeals held a public hearing and considered the **"Town of Nantucket Zoning Board of Appeals Comprehensive Permit Rules and Regulations"** and then voted 5 to 0 to **CLOSE** the public hearing and voted 5 to 0 to **APPROVE** and **ADOPT** the said regulations, in accordance with G.L. c.40B and Nantucket Code Chapter 2 and directed that the regulations as approved and adopted shall be published in accordance with Code Chapter 2, §2-6, of the Nantucket ADMINISTRATIVE PROCEDURES By-law which provides as follows:

§ 2-6 Filing of copies of regulations; publication required; effective date of regulations.

In addition to any requirements imposed by law, after taking action for the adoption, amendment or repeal of any regulation but before the effective date thereof, the board, commission, agency or instrumentality so acting shall file a copy thereof with the Town Clerk and shall publish such regulation as so adopted, amended or repealed in a newspaper having general circulation within the Town of Nantucket. Regulations, other than emergency regulations, shall become effective only when published in accordance with this section or, in the case of any regulation as to which a later effective date is required by law or is specified in such regulation, then upon such later date or upon such publication, whichever last occurs.

The effective date of these regulations shall be **November 19, 2015**, the date of publication in the *Inquirer & Mirror*, a copy of which notice is attached herewith.

Edward Toole

Lisa Botticelli

Michael J. O'Mara

Susan McCarthy

Kerim Koseatac

COMMONWEALTH OF MASSACHUSETTS

County of Nantucket, ss

On the 12th day of November 2015, before me, the undersigned notary public, personally appeared Edward Toole, one of the above-named members of the Zoning Board of Appeals of Nantucket, Massachusetts, personally known to me to be the person whose name is signed on the preceding document, and acknowledged that he signed the foregoing instrument voluntarily for the purposes therein expressed.

Official Signature and Seal of Notary Public
My commission expires:

DORIS C. STRANG
Notary Public
Massachusetts
Commission Expires Oct 9, 2020

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