



**TOWN OF SOUTHBOROUGH  
ZONING BOARD OF APPEALS  
COMPREHENSIVE PERMIT REGULATIONS AND GUIDELINES**

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**1.0 Authority, Background and Purpose**

These regulations and guidelines (the “Regulations”) establish procedures for applications to the Town of Southborough (the “Town”) Zoning Board of Appeals (the “Board”) for comprehensive permits granted under the Anti-Snob Zoning Act (Chapter 774 of the Acts of 1969), M.G.L. c. 40B, §§ 20-23 (a “Comprehensive Permit”). They are required by M.G.L. c. 40B, § 21, as amended by Stat. 1989, c. 593, and by 760 CMR 31.02 (“Chapter 40B”). The purpose of that act and these Regulations 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 (“HAC”), 760 CMR 30.01.

These Regulations shall be filed with the Town Clerk, and as of such filing are effective as of March 1, 2007. These Regulations supercede any and all previous such regulations of the Board.

These Regulations may be amended at any time by a vote of four of the five then-sitting members of the Board. Any such amendments shall be filed with the Town Clerk in the same manner in which these Regulations were so filed and will be effective as of such filing date (or other later date as specified as part of such filing).

The Town strives to provide affordable housing for all residents, and recognizes the need for a diversity of housing options for all. At the same time, the need for affordable housing must be considered within the context of such issues as public health and safety, promotion of improved site and building design, neighborhood and open space preservation and support for both larger and smaller affordable housing development projects.

These Regulations alone are not sufficient to describe Comprehensive Permit procedures before the Board. They must be read in conjunction with and implemented in a manner consistent with the complete regulations of the HAC, 760 CMR 30.00 and 31.00 and with the Guidelines for Local Review of Comprehensive Permits, published periodically by the Department of Housing and Community Development (“DHCD”). In addition, the Board’s general Rules and Regulations (the “Rules”) for conduct of hearings under M.G.L. c. 40A apply to Comprehensive Permit Applications. In case of inconsistency or conflict between the Board’s Rules and these Regulations, these Regulations shall govern. These Regulations shall be construed in accordance with the applicable laws and regulations of the Commonwealth of Massachusetts. The invalidity, illegality or unenforceability of any provision of these Regulations, by statute, court or otherwise, shall not affect the validity, legality or enforceability of any other provision of these Regulations, which shall remain in full force and effect.

**2.0 Definitions**

2.1 “Board” means the Southborough Zoning Board of Appeals established under M.G.L. c. 40A, § 12.

2.2 “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 4.1.1.1).

2.3 “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 or district; fire, police, public works, 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.

### **3.0 Initial Process**

#### **3.1. Application**

An “Applicant” may apply to the Board at any time for a Comprehensive Permit, by completing the Comprehensive Permit Application Form (the “Application”), which is available from the Town Building Department. The Application for a Comprehensive Permit shall consist of a completed and duly signed Application, filed with and signed by the Town Clerk, including all necessary supporting documents as required by these Regulations.

An Applicant is encouraged to first meet with the Southborough Housing Opportunity Partnership Committee (“SHOPC”) and the neighbors in the area of the proposed development prior to submission of an Application and to keep SHOPC and the neighbors apprised of all proceedings with Town Departments. The Board will typically expect to receive a letter from SHOPC, summarizing any comments SHOPC may have regarding the proposed Comprehensive Permit development project and any discussions between SHOPC and the neighbors.

If there are wetlands or water bodies on or near the site, the Applicant is advised to contact the Town Conservation Commission as early as possible to identify any potential environmental issues to be addressed.

#### **3.2 Town Department Review**

The Applicant is encouraged to meet with and to discuss their proposed development plans with the following Town entities, as the Board will typically ask such Town entities, as the Board deems may be appropriate, for comments and recommendations related to the proposed Comprehensive Permit development project:

- Board of Selectmen – for review and recommendations concerning the proposal;
- Building Inspector - to determine the relief requested, as well as review zoning and building code issues;
- Town Planner and the Planning Board - to review the plans for completeness, accuracy, and compatibility with good planning, design, and development practices, including, but not limited to, such factors as traffic, public transit, housing, and land use objectives. The Town Planner and the Planning Board may suggest ways that the plans and the Application might be improved, and may make recommendations to the Board relative to the Application;
- SHOPC- for review and recommendations concerning the proposal;
- Southborough Housing Authority - for review and recommendations concerning the proposal;
- Department of Public Works (“DPW”) - to review the adequacy of utilities and roadways in the area and other engineering issues related to the proposal;
- Fire Department and Police Department - to review safety, including emergency access and applicable fire codes;
- Conservation Commission - to review wetland and environmental issues; and

- Others as recommended by the Building Inspector.

3.3 The Applicant is advised to refer to the Town Zoning By-Law (the “By-Law”) as a guideline to the proposed development plan. This includes, but is not limited to, setback, lot size, lot coverage, and parking requirements. By-Law requirements may be overridden by the Board if inconsistent with local needs as defined by MGL Ch. 40B, section 20. The Board may impose conditions as part of the Board’s approval of a Comprehensive Permit, provided that they do not make the project uneconomic as defined by MGL Ch. 40B, Section 20.

#### 3.4 Other Required Reviews

Other regulations as required by state law that may apply must still be adhered to, such as Massachusetts Environmental Policy Act Regulations, 310 CMR 11.00 *et seq.* (“MEPA”) and the Wetlands Protection Act Regulations, 310 CMR 11.00 *et seq.* An Environmental Notification Form under MEPA is required if a Comprehensive Permit is proposed for more than 100 units.

### 4.0 Filing, Time Limits, and Notice

4.1 The materials listed below shall be submitted to the Board with the Comprehensive Permit Application Form. The Board understands that for many projects, the plans may not be at a definitive stage of development. However, the Board needs to receive information relevant to the impacts of the proposed development on the Town and the surrounding area, and in order to evaluate those impacts, this information is required of the Applicant. Providing this information promptly and in the beginning of the process will result in a quicker process and will help the Board to become better informed about the proposed project.

The Application shall include the following, and, unless specified otherwise below, all required drawings and plans shall be signed and/or stamped by a MA-registered professional engineer, land surveyor, architect, etc., as appropriate:

4.1.1 Documents confirming that the Applicant fulfills the following jurisdictional requirements of 760 CMR 31.01 shall be submitted:

4.1.1.1 The Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization;

4.1.1.2 The project is fundable by a “Subsidizing Agency” under a low and moderate income housing subsidy program (Applicants are advised that the Board may review this documentation to ensure that the applicable Subsidizing Agency has performed the due diligence required under 760 CMR 31.01); and

4.1.1.3 The Applicant controls the site and 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).

4.1.2 A complete financial *pro-forma*, detailing the projected costs and revenues of the proposed project shall be submitted. Specifically:

4.1.2.1 The *pro forma* shall be prepared by a certified public accountant experienced in construction development and signed by the Applicant under penalties of perjury;

4.1.2.2 All financial data submitted by the Applicant is subject to technical review;

4.1.2.3 In preparing the pro-forma, the Applicant shall limit its costs to actual investment in the property. 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;

4.1.2.4 The Applicant shall fully disclose any costs ascribed to related entities (including any financing arrangements). Profits generated by any related entities in the development of any aspect of the project, in excess of usual and customary profits for the same general type of such related entity, shall be considered as

part of the total profit for the Applicant, which is subject to the applicable statutory and/or regulatory limitations; and

- 4.1.2.5 The pro-forma projections for the Applicant's costs, revenues and profits must comply with the requirements of the appropriate Subsidizing Agency and any other applicable laws and regulations. The Board may elect to retain the services of a consultant, pursuant to Section 5.1, to review the details of the *pro-forma*, and to consider other relevant review guidelines, such as those that may be available from the Massachusetts Office of the Inspector General and those that may be available from the Citizens' Housing and Planning Association.
- 4.1.3 Site development plans shall be submitted, as follows:
  - 4.1.3.1 All plans submittals shall conform to the requirements of the Town Subdivision Rules and Regulations, Article III—Plan Submission and Approval, Section 244-10 Definitive Plan, as may be amended, or other requirements as may be specified by these Regulations or by the Board;
  - 4.1.3.2 Plans shall have a title on each sheet, appearing in the lower right-hand corner of the plan, showing the name of the project, if any; the date; scale; the names and addresses of the Applicant; and the names of the designer, engineer and/or surveyor who made the plan. Plan sheets shall be consecutively numbered;
  - 4.1.3.3 Plans shall show the locations and outlines of proposed buildings; existing structures on adjacent properties within 50 feet of the property line; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; proposed locations of utilities; proposed lighting; setbacks required by the Town Zoning By-Law (both in a tabular form and drawn on the plan); setback distances of structures from all property lines; and open areas within the site;
  - 4.1.3.4 Plans shall show Town zoning districts and location of any Town zoning district boundaries, the 100 year floodplain, and any wetland that may lie within the locus of the plan. Dimensional regulations currently in effect shall also be listed, including any conflicts;
  - 4.1.3.5 Plans shall show the location and ownership of abutting property as it appears on the Certified List of Abutters, unless the Applicant shall have more recent knowledge of such abutters, including all abutting land owned by the Applicant, and all other land within three hundred feet (300') of the boundaries of the land shown on the plan including across an existing street. A Certified List of Abutters is required from an abutting Town if the proposed project is within three hundred feet (300') of a Town line. The plans shall show intersecting boundary lines of any abutting properties;
  - 4.1.3.6 Plans shall show major features of the land, such as existing waterways, all wetlands and water bodies (per the Massachusetts Wetland Protection Act), rivers and riparian zones (per 310 CMR10.0), Water Resources Protection Overlay District boundaries, existing wetland resource areas, as defined in the By-Law (including vernal pools, whether certified or not), existing significant environmental features such as ledge outcrops, scenic views and large trees, natural drainage courses, walls, fences, structures, underground structures, utilities, historic markers, milestones, bridges, clearly defined trails, large trees, wooded areas, outcroppings and ditches which exist on or are contiguous and relevant to the site at the time of survey;
  - 4.1.3.7 Plans, signed and stamped by a MA-registered land surveyor, shall show existing and proposed topography for the site at two foot (2') contour intervals, referenced to the NGVD of 1929. The Board may require additional information

- on abutting land, whenever it is deemed necessary, to ensure compatibility of grades and drainage. Reference benchmarks, including descriptions must be identified. The road stationing shall be shown on the grading plans;
- 4.1.3.8 Plans shall include a utilities plan showing the proposed location and types of gas, electric, cable, telephone, sewage, drainage, and water facilities, including hydrants;
- 4.1.3.9 Where a subdivision of land is involved, plans shall include a subdivision plan;
- 4.1.3.10 Plans shall include a landscape plan to include the total square feet of all landscape and recreation areas, and depiction of materials to be used, and the quantity, size, methods, and species of plantings, prepared and stamped by a registered landscape architect in the Commonwealth of Massachusetts. The landscape plan shall also show the location and species of trees to be retained;
- 4.1.3.11 Plans shall contain full information regarding all easements, covenants or restrictions applying to the land, and their purposes;
- 4.1.3.12 Plans shall contain suitable space on every plan sheet to record the action of the Board and the signatures of the Board, including the date of approval and the date of endorsement;
- 4.1.3.13 Plans shall show location and results of soil, percolation, and water table tests using the Department of Environmental Protection Soil Evaluation procedures under Title V;
- 4.1.3.14 Plans shall include a drainage plan, prepared by a Registered Professional Engineer in the Commonwealth of Massachusetts, showing: existing and proposed streets, lots, two foot (2') contour intervals (referenced to the NGVD of 1929), and other pertinent data; the drainage limits and acreage of the area tributary to each storm-water inlet and culvert, location and type of inlets proposed; the location, size, length, invert elevations and slopes of proposed drains and culverts; structural details of inlets, manholes, pipes, headwalls; and all other drainage structures. The grading plan may be used for this purpose, provided that it includes all the information required. The drainage design and construction plan will be assessed against the requirements of the applicable Town By-Laws;
- 4.1.3.15 An Applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in this Section 4.1.3 and in Section 4.1.5 below, which need not have a MA-registered architect's signature. All proposals for the construction or rehabilitation of five or more units must have site development plans signed by a MA-registered architect; and
- 4.1.3.16 The Board may, at its discretion, require that additional information be included in the plans. The Board may engage a Massachusetts-registered Professional Engineer or other professional advisor, experienced in various areas, including such areas as groundwater evaluation, hydrogeology or hazardous and toxic materials, to review the Application for completeness and correctness, with the Applicant required to pay for the cost of the review pursuant to Section 5;
- 4.1.4 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 shall be submitted. This submission may be combined with that required in Section 4.1.3 above;
- 4.1.5 Scaled, architectural drawings shall be submitted. For each building the drawings shall be signed by a MA-registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish;

- 4.1.6 An analysis, assessment, and evaluation of the surrounding areas that details the following information shall be submitted: location and nature of existing buildings, existing streetscape and elevations, traffic patterns (including traffic counts and LOS of streets), character of open space and playgrounds, if any. This analysis should include a neighborhood plan showing abutting lots and listing the owners of those properties;
- 4.1.7 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 shall be submitted;
- 4.1.8 A list of requested exceptions to local requirements and regulations, including local codes, ordinances, By-Laws or regulations shall be submitted. The list of requested exceptions to local requirements and regulations shall include an analysis of each requirement and why its waiver increases the affordability of the project. In addition, if waivers of the By-Law and/or wetlands regulations are requested, the list shall include an analysis of why each exception is required, and why not adhering to each requirement makes the project more affordable. These analyses shall include a discussion of what the impact on the affordability of the project would be if the requirements and regulations were adhered to;
- 4.1.9 A complete copy of any and all materials and applications submitted by the Applicant to any prospective Subsidizing Agency or source, including, but not limited to applications for site approval shall be submitted;
- 4.1.10 A list of each member of the development and marketing team, including all contractors and subcontractors, any financing organizations, the proposed lottery agent and monitoring agency, to the extent known at the time of the Application shall be submitted. The Applicant shall also disclose its relationship, if any, and the nature of any such relationship, to all such entities;
- 4.1.11 A list of all prior development projects completed by the Applicant within the past ten (10) years, along with a brief description of each such project shall be submitted;
- 4.1.12 An "Environmental Analysis" shall be prepared by a qualified Environmental Scientist, with qualifications including training, education, etc., and shall be provided to the Board. The person performing the Environmental Analysis shall (1) have at least a masters degree in ecological science from an accredited college or university, or (2) be another competent professional with at least two years experience in environmental analysis. The Environmental Analysis shall assess the impact of the development on the environment within and adjacent to the development. The analysis shall include, but shall not be limited to, the evaluation of pre-development conditions and post-development impacts on:
- 4.1.12.1 Surface and groundwater quality;
  - 4.1.12.2 Groundwater recharge of upper aquifers and perched groundwater layers;
  - 4.1.12.3 Wildlife habitats and corridors;
  - 4.1.12.4 Wetlands and bodies of water, including streams and rivers, both localized and general;
  - 4.1.12.5 Existing and potential domestic water supplies;
  - 4.1.12.6 Species of special concern in Massachusetts; and
  - 4.1.12.7 Road salt and fertilizer loading.
- The Environmental Analysis shall include proposed mitigation of the post-development impacts identified. Mitigation measures requiring ongoing or periodic maintenance shall be identified and a maintenance plan shall be included with the Environmental Analysis;
- 4.1.13 Compliance with the By-Laws - An analysis shall be submitted which compares the

- proposed project with the most applicable zoning district regulations;
- 4.1.14 A “Traffic Impact Report”, prepared by a MA-Registered Professional Engineer qualified in the field of Traffic Engineering, assessing the proposed development’s impact on the congestion, safety and the overall impact the proposed development will have on the roadway system/network providing access to the proposed development shall be submitted. Impacts on both vehicular and pedestrian travel shall be addressed, including, but not limited to, impacts within the site. The Traffic Impact Report shall address issues regarding traffic volume, sight distances, and the adequacy of access by emergency vehicles;
- 4.1.15 A long term monitoring plan shall be submitted which identifies the governmental agency or other entity which will be responsible for project monitoring for the duration of the affordable units. This long term monitoring plan shall include provision, as appropriate and as consistent with applicable laws and regulations, for periodic confirmation that the occupants of the affordable units continue to meet the qualifications for owning and residing in such units (possibly with the assistance of the Southborough Housing Authority or SHOPC), and that activities inconsistent with the intent and requirements of the affordable units do not occur--such as an owner’s sub-letting of an affordable unit (which is not designated as a rental unit). A cost estimate to implement the long term monitoring plan shall be submitted;
- 4.1.16 A list of any of the Applicant’s engineers, consultants, and other professional advisors (“Consultants”) who have been or are expected to be involved in the preparation of plans, reports and other materials presented to the Board as part of the Application or as presented and/or discussed at any public hearing related to the Application (the “Consultant List”) shall be submitted. The Consultant List shall indicate any of the Consultants who have a personal interest in the development project that is the subject of the Application, beyond payment for their professional services rendered on the project under industry standard fee arrangements. The nature and status of any such personal interests, such as an ownership interest or incentive compensation for services rendered or any other interests, a Consultant (or the Consultant’s affiliates or related individuals or related entities) may have in the proposed development project must be described as part of the Consultant List; and
- 4.1.17 Any other information the Board deems necessary and so notifies the Applicant in writing shall be submitted.
- 4.2 The Application shall be accompanied by a filing fee based on the proposed number of housing units as follows, provided that there shall be no filing fee for any project proposed as a Local Initiative pursuant to 760 CMR 45.00:
- (a) for Limited Dividend Organizations - \$3,000 flat fee plus \$100 per unit;
  - (b) for Non-Profit Organizations - \$1,500 flat fee plus \$50 per unit; and
  - (c) for Public Agencies and Local Governments - \$1,500 flat fee plus \$0 per unit.
- Additionally, pursuant to Section 5, the Board may require the Applicant to pay a reasonable Review Fee for the employment of outside consultants chosen by the Board to assist the Board in 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.
- 4.3 The Applicant must file twenty-six (26) copies of all submissions (including all plans, drawings, reports, etc.) at the Applicant’s expense. Should the Board require additional copies of an Applicant’s submission, the Board shall so notify the Applicant and the Applicant must provide such additional copies as well at the Applicant’s expense.
- 4.4 By majority vote of the Board, the Applicant may be required to provide, at the Applicant’s own expense, a professional stenographer to produce verbatim minutes of all public meetings related to the Application. These minutes will be provided to the Town and will become part of the public record for the project.

- 4.5 Within seven (7) days of filing of the Application, the Board shall notify each local official or Local Board of the Application by sending such official a copy of the list required by Section 4.1.11, to the extent that the Board reasonably believes that such local official or Local Board is affected by the list required by Section 4.1.11. Based upon that list, the Board shall also, within the same seven (7) days, invite the participation of each local official or Local Board who has a substantial interest in the Application by providing such official or Local Board with a copy of the entire Application.

## **5.0 Review Fees**

- 5.1 If, after receiving an Application, the Board determines that in order to review that Application requires technical advice unavailable from Town employees, it may employ outside consultants for such purpose. Whenever possible, the Board shall work cooperatively with the Applicant to identify appropriate consultants and to negotiate payment of part or all of consultant fees by the Applicant. Alternatively, the Board may, by majority vote, require that the Applicant pay a reasonable "Review Fee" for the employment of outside consultants chosen by the Board alone. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, attorneys, urban designers or other appropriate professionals who can assist the Board in analyzing a project to assess 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.

- 5.2 A Review Fee may be imposed only if:

- 5.2.1 the work of the consultant consists of review of studies prepared at the request of the Board on behalf of the Applicant, and not of independent studies on behalf of the Board;
- 5.2.2 the work is in connection with the Applicant's specific project; and
- 5.2.3 all written results and reports are made part of the record before the Board.

- 5.3 All Review Fees assessed pursuant to this section shall be reasonable in light of:

- 5.3.1 the complexity of the proposed project as a whole;
- 5.3.2 the complexity of particular technical issues;
- 5.3.3 the number of housing units proposed;
- 5.3.4 the size and character of the site;
- 5.3.5 the projected construction costs; and
- 5.3.6 fees charged by similar consultants in the area.

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

- 5.4 A Review Fee may be imposed only after the Board has complied with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19, and the following additional requirements:

- 5.4.1 For services in an amount less than \$10,000.00, the Board shall issue an invitation for bids conforming to the requirements of M.G.L. c. 30B, § 5 or a request for proposals conforming to the requirements of M.G.L. c. 30B, § 6.
- 5.4.2 For services in an amount of \$10,000.00 or more, the Board shall issue a request for proposals conforming to the requirements of M.G.L. c. 30B, § 6.
- 5.4.3 For all services, whether in amounts less than or greater than \$10,000.00, (i) the Applicant shall be given five days notice and opportunity to attach written comments to the invitation for bids or request for proposals, (ii) at least three bona fide bids or proposals shall be received, and (iii) the Applicant 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.
- 5.4.4 a bona fide bid or proposal shall include: (i) the name of each person performing the work, (ii) educational and professional credentials of each person performing the work, and (iii) the work experience of each person performing the work, (iv) a description of

the work to be performed, (v) the hourly rate charged by each person performing the work, and (vi) all other expenses expected to be incurred.

- 5.5 Any invitation for bids or request for proposals shall indicate that award of the contract is contingent upon payment of a Review Fee. If the Applicant fails to pay the Review Fee within ten days of receiving written notification of selection of a bidder or offeror, such failure to pay shall constitute grounds for the Board to deny the Comprehensive Permit.
- 5.6 Each Review Fee shall be deposited in a special account established by the Town treasurer pursuant to M.G.L. c. 44, § 53G. Funds from the special account may be expended only for the purposes described in Section 5.2, above, and in compliance with the Uniform Procurement Act, M.G.L. c. 30B, §§ 1-19. The Review Fees shall be managed according to the procedures specified in Section 4.6 (Handling of Project Review Fees) of the Board's separate publication—Regulations Governing Fees and Fee Schedules.
- 5.7 Prior to paying the Review Fee, the Applicant may appeal the selection of the consultant according to the procedures specified in Section 4.7 (Appeal) of the Board's separate publication—Regulations Governing Fees and Fee Schedules.

## **6.0 Review Standards and Process**

The following describes the Board's review standards and process:

- 6.1 The purpose of the review standards is:
  - 6.1.1 To encourage a more efficient and uniform review process by clearly specifying local requirements in advance of Applications for Comprehensive Permits;
  - 6.1.2 To ensure that Applications demonstrate the maximum benefit in providing housing for families of low and moderate income;
  - 6.1.3 To equitably distribute Comprehensive Permit housing units throughout the Town and throughout a Comprehensive Permit development, so as to avoid concentrations of subsidized Comprehensive Permit housing units in any one area;
  - 6.1.4 To ensure the long-term viability of Comprehensive Permit developments through well designed projects that function properly and that are provided with adequate utility infrastructure;
  - 6.1.5 In a similar manner to that for other development projects presented to the Board or other Town Boards for review, to assure that the appropriate and relevant issues are considered by the Board, including, but not limited to:
    - 6.1.5.1 minimizing impacts to abutting properties, neighborhoods, and municipal services and infrastructure;
    - 6.1.5.2 ensuring that a site design provides affordable housing yet conserves environmental features, woodlands, wetlands and areas of scenic beauty and which preserves sites and structures of historical importance; and
    - 6.1.5.3 providing affordable housing without threatening the ability of the Town to provide bona fide infrastructure and public services to existing and future development on other sites or to municipal uses;
- 6.2 Review standards, as for other applications before the Board and including but not limited to the following, will be applied by the Board, as the Board deems appropriate for a particular Application:
  - 6.2.1 Impact on sensitive areas: Comprehensive Permit developments shall avoid impacts to the extent possible on environmentally sensitive areas such as floodplains, wetlands, groundwater recharge areas, aquifers, areas contributing to municipal water supplies or recreational water bodies, or to significant woodlands, hillsides or other sensitive natural features;
  - 6.2.2 Impact on the site: Comprehensive Permit developments shall be designed to accommodate the natural features of the site. The placement of roads, housing units,

driveways, drainage structures and other elements requiring site disturbance shall be sited to fit with the land. The design shall not alter a site in such a manner as to physically transform it dramatically, permanently altering and destroying natural features, drainage patterns, wildlife habitats, historic landscapes and biodiversity of the area. It is the intent that if the development is designed to fit with the landscape, minimizing site disturbance and alteration, it will reduce the cost of construction and development, making it a more economic and affordable development for all citizens, and will result in fewer problems in the future in dealing with the impacts of massive alteration to the landscape;

- 6.2.3 Impact on infrastructure: Comprehensive Permit developments shall avoid areas which have public infrastructure or services incapable of serving the increased density of such developments without imposing significant increased public expense that would otherwise be unnecessary for uses built at densities permitted by right. Applicants may downsize their projects or improve the infrastructure to meet these criteria;
  - 6.2.4 Impact on municipal water supply: The amount of municipal water supply is finite and its use for any new development, including Comprehensive Permit developments, is reviewed and managed by the DPW. Therefore, any Comprehensive Permit development project that includes connection to the municipal water system for water service shall be reviewed by the DPW, and a recommendation from the DPW regarding its assessment of any considerations related to the impact of the proposed project on the municipal water supply shall be provided to the Board;
  - 6.2.5 Site suitability: While it is not necessarily an absolute requirement, the Board recommends that Comprehensive Permit developments strive to avoid sites which are zoned Industrial; and
  - 6.2.6 Exceptions to local regulations and requirements: It is not the intent of the Board to grant exceptions to local regulations to the extent that such exceptions do not contribute materially to rendering the project uneconomic as described in Chapter 40B. The Applicant must demonstrate that any such local regulation negatively affects the profitability of the project or the affordability of the units within the project.
- 6.3 Project Size-The maximum number of dwelling units (affordable and market rate) in any Comprehensive Permit development is recommended (but not necessarily required) to not exceed the greater of (i) the maximum number of units which could be accommodated under full compliance with the By-Law for multi-family developments for the elderly, and (ii) the relevant DHCD guidelines for development density.
  - 6.4 Building Height-The maximum building height is recommended to not exceed three habitable stories and be consistent with the heights of other building in its neighborhood.
  - 6.5 Access-To assure reasonable standards of public safety, there shall be adequate means of access to a Comprehensive Permit development, which the Board will assess based on an evaluation by and the recommendations of the DPW, the Fire Chief and the Police Chief. Typically this means at least two means of access to the property if eleven (11) or more dwelling units are proposed, or otherwise as recommended by the DPW, the Fire Chief and the Police Chief. The principal means of egress shall have pavement width and grades adequate in the opinion of the DPW, the Fire Chief and the Board for the safe passage of public safety vehicles. If roads within the proposed project site are to become public ways, they shall also be adequate in width, structure, and horizontal and vertical alignments, in the opinion of the DPW and the Board to accommodate Town snow plow vehicles within the paved areas.
  - 6.6 Affordability-Pursuant to DHCD regulations and Town guidelines:
    - 6.6.1 Comprehensive Permit developments shall include at least 25% affordable units, as defined by Chapter 40B.
    - 6.6.2 Deed riders on a Comprehensive Permit development shall specify that the units shall remain subject to the affordability guidelines in perpetuity.

- 6.6.3 Deed riders on a Comprehensive Permit development shall include provisions giving the Town the right of first refusal for purchase of the units.
  - 6.6.4 The deed riders on a Comprehensive Permit development shall include a provision stating that should the Town be unable or unwilling to exercise its right of first refusal, the difference between the price which an income qualified buyer would have paid and the market price actually paid, shall be deposited with the Town into an account managed by the Southborough Affordable Housing Trust to be used for affordable housing programs.
  - 6.6.5 Affordable units shall be the same as the market rate units in terms of floor area, interior and exterior finishing and bedroom mix, and residents of affordable units shall have the same access as residents of other units to any project amenities (such as recreational facilities, parking, etc.).
  - 6.6.6 Affordable units shall be owner-occupied, excepting units designated in the Comprehensive Permit as rental units.
  - 6.7 Southborough Preference-The development plan shall provide that all legally permissible efforts shall be made to provide 70% of the affordable units as local preference, with such local preference requirements determined by SHOPC, pursuant to DHCD regulations, and as modified by SHOPC from time to time or for specific proposed projects.
  - 6.8 Parking-Adequate parking for the development shall be provided, which the Board will assess based on the recommendation of the Town Planner. A baseline standard for such parking capacity is (i) two parking spaces per housing unit, and (ii) additional parking spaces shall be provided for a community center, if one is proposed, at the ratio of one parking space for each two legal occupants of the community center.
  - 6.9 Site Amenities-The design of the site shall respect the natural and historic characteristics of the site and shall preserve and enhance the natural landscape wherever possible. The Applicant is encouraged to retain a minimum of 50% of the site as permanent open space. A maximum of 50% of the permanent open space may be developed as park or recreation land. The Applicant is encouraged to protect undisturbed open space with a conservation restriction, and to the maximum extent possible, the site plan shall connect on-site trail systems to abutting trail systems.
  - 6.10 Stormwater Management-The plan shall be prepared to conform with the requirements of the Department of Environmental Protection Stormwater Management Guidelines and Policy, and the Town's Stormwater By-Law, whether or not the proposed work is subject to the Wetlands Protection Act, and the plan shall conform to the standards for a 100-year storm.
  - 6.11 Technical Review Team – In order to expedite the review process, the Board may, at its sole discretion, appoint and direct a “Technical Review Team” to assist with the review of the Application and to advise the Board regarding technical details of the Application. The Technical Review Team may include such individuals as one or more Board members, the Town Planner, the Building Inspector, the Town Engineer, representatives of other Town boards or committees (such as SHOPC), one or more neighborhood representatives, and selected advisors to the Board.
- 7.0 Public Hearing and Decision**
- 7.1 The Board shall hold a public hearing for a Comprehensive Permit Application within thirty (30) days of the date of the official filing of the Application with the Town Clerk. This public hearing (and any continuations of the public hearing) will be conducted according to the Rules and Regulations of the Board.
  - 7.2 The Board may request the appearance at the hearing of such representatives of local officials and Local Boards 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 and Local Boards.
  - 7.3 In assessing the Application, the Board shall consider the review standards in Section 6 above, and additional factors including, but not limited to, the following:

- 7.3.1 the health and safety of the residents of the proposed housing and the current residents of the Town, including:
  - 7.3.1.1 the structural soundness of the proposed buildings;
  - 7.3.1.2 adequacy of sewage disposal;
  - 7.3.1.3 adequacy of handling stormwater runoff;
  - 7.3.1.4 adequacy of fire protection;
  - 7.3.1.5 adequacy of water pressure;
  - 7.3.1.6 adequacy of handling traffic generated by the project and the impact of such traffic on adjacent areas;
  - 7.3.1.7 the manner in which the development recognizes and addresses the need for, and availability of, alternative modes of transportation for all Town residents; and
  - 7.3.1.8 the proximity of the site to industrial activities that might affect the health of the proposed residents.
- 7.3.2 the height, bulk, and placement of the proposed buildings, accessory structures, and improvements, including:
  - 7.3.2.1 the physical characteristics of the proposed housing;
  - 7.3.2.2 the physical characteristics of the surrounding land;
  - 7.3.2.3 adequacy of access to the site and adequacy of parking arrangements; and
  - 7.3.2.4 adequacy of open areas and green space.
- 7.3.3 the economic need to require additional units, including:
  - 7.3.3.1 the general feasibility of the project;
  - 7.3.3.2 limitations imposed by the Subsidizing Agency with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant limits; and
  - 7.3.3.3 changes in rents and unit sizes of the development which would be necessary to accommodate the requirements and regulations sought to be imposed.
- 7.3.4 The manner in which the project responds to the Town's current supply of affordable housing and current need.
- 7.4 The Board shall render a decision, based on a majority vote, 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; provided that the public hearing shall not be closed until the Applicant has submitted a proposed "Memo of Decision" including proposed findings and conditions.
- 7.5 The Board may dispose of the Application as follows:
  - 7.5.1 approve a Comprehensive Permit on the terms and conditions set forth in the Application; or
  - 7.5.2 deny a Comprehensive Permit as not consistent with local needs; or
  - 7.5.3 approve a Comprehensive Permit with conditions (which conditions may be related to characteristics including, but not limited to, height, site plan, size, shape, building materials, nature of affordability, or any other aspect of the housing or of the project's impact) that do not render the construction or operation of such housing uneconomic.
- 7.6 The Board's decision related to a Comprehensive Permit shall become final (the "Effective Date") on the date that the written decision of the Board is filed in the office of the Town Clerk if no appeal is filed; otherwise, it shall become final on the date the last appeal is decided or otherwise disposed of. A Comprehensive Permit approved by the Board shall be valid for a period of three (3) years from the Effective Date. Beyond three (3) years after the Effective Date, any undeveloped areas must conform to the then-current Town Zoning By-Laws. The period for completion in this Section 7.6 may be extended by the Board at the written request of the Applicant before the expiration of the three (3) year period, accompanied by satisfactory proof

that such extension is necessary and in the public interest.

## **8.0 Changes in Application**

- 8.1 In the event that, during the public hearing process, the Applicant proposes any changes in its Application or project plans that, in the Board's discretion and consistent with Chapter 40B and applicable DHCD regulations, constitutes a material or substantial change to the project, the Applicant shall provide a new site-eligibility letter from the designated Subsidizing Agency.
- 8.2 In the event of material or substantial changes, the Board may request, and the Applicant shall provide, any and all information specified in Section 4 above that is deemed by the Board to be necessary to evaluate such changes.
- 8.3 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 4.5, above.
- 8.4 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.

## **9.0 Appeals**

- 9.1 If the Board approves the Comprehensive Permit, any person aggrieved may appeal the decision within the twenty (20) day time period and to the court as provided in MGL Ch. 40A, Section 17.
- 9.2 If the Board denies the Comprehensive Permit or approves the Comprehensive Permit with conditions or requirements unacceptable to the Applicant, the Applicant may appeal to the HAC within the twenty (20) day time period as provided in MGL Ch. 40B, Section 22.

## **10.0 Construction**

- 10.1 The construction process will be subject to inspection, as follows:
  - 10.1.1 The Town Zoning Board of Appeals, Planning Board, the Building Inspector, and the DPW shall be notified of the construction start date at least two (2) weeks prior to the commencement of construction;
  - 10.1.2 The construction inspection activities will be administered through the Building Inspector and/or the Planning Board. The Board may also retain the services of a consulting engineer, pursuant to Section 5, to inspect the construction work and to assist the Building Inspector and/or the Planning Board with their inspection activities;
  - 10.1.3 Required inspections shall be those outlined in the Town Subdivision Regulations, those inspections typically required by the Building Inspector as part of the construction of similar projects in the Town, any other inspection requirements shown on the project plans or any other inspections as may be required by the Board as a condition of approval of the Application or as related to issues that may arise during the construction process relative to compliance with the approved plans;
  - 10.1.4 The Applicant must keep the Building Inspector, the Planning Board and anyone else designated by the Board informed when materials and other items of work are ready for inspection (for example, activities such as the installation of bounds, loam and seeding, and general cleanup). The Applicant is responsible to ensure that every aspect of construction of the project is inspected by the appropriate individual(s) prior to backfilling or covering said inspection item. Any items not inspected shall not be accepted. The Applicant shall be required to uncover all covered work for required inspection; and
  - 10.1.5 Approval of work completed, to the satisfaction of the Board and its designated inspectors, including approval of materials used, for each of the inspected items must be granted prior to the continuance of subsequent work activities.
- 10.2 As may be required by the Board, prior to the issuance of building permits within the development, a "Maintenance Association Agreement" shall be submitted to the Board, and

reviewed and approved of by the Town Counsel, and the Board. Upon approval, the Maintenance Association Agreement shall be recorded at the Registry of Deeds (or Land Court as applicable) prior to any construction beginning. The Maintenance Association Agreement shall establish an association of all the property owners within the project that will have the authority to guarantee that all aspects of the project shall be maintained, repaired, reconstructed, etc. as needed in perpetuity assuming no "outside" or Town assistance. Maintaining includes, snow plowing, street patching, repairing, street lighting, street sweeping, catch basin cleaning, landscaping, pipe cleaning, painting common public areas inside and outside, building maintenance, mowing, water system maintenance, sewer/septic maintenance and solid waste removal, etc.. The Applicant shall make whatever initial monetary deposit as required into a special account to ensure the required funding for the Maintenance Association Agreement. The funds shall be deposited and the Maintenance Association Agreement shall be in full effect prior to the first occupancy permit being issued.

- 10.3 Prior to the issuance of building permits within the development, the Applicant shall, at the discretion of the Board, post a surety company bond or make a cash deposit to the Town in an amount equal to the remaining cost of construction including public improvements, streets, and infrastructure, but not including the cost to construct housing units. In order to establish the amount of the performance guarantee, the Applicant shall submit a professional estimate of the cost to the Town to complete all work approved by the plan remaining at the time the estimate is submitted. The estimate shall be based on the current edition of a regularly updated professional estimators guide, using the costs for publicly bid contracts in greater Boston. The estimate shall reflect probable increases in costs over a three year period and contingency funds consisting of a minimum of 15% of the total amount determined above. The Board may refer such estimate to its engineer for review and recommendation, at the Applicant's expense pursuant to Section 5. The Board shall have the authority to reduce the performance guarantee amount being held from time to time. The Board shall have the authority to increase the performance guarantee amount being held from time to time in order to reflect additional work that should have been included in the original amount, additional work required to correct or address problems which arose after the original amount was established, or to reflect increases in construction costs over time. It is the responsibility of the Applicant to submit requests for reduction with a list of remaining work, in writing. In the event that the Applicant does not complete the project in the time period established or if there are serious public safety hazards which the Applicant does not address, the Town may obtain the performance guarantee funds and complete the remaining work.
- 10.4 During construction, if any modifications or changes to the plan are requested or required due to unforeseen site conditions or for any other reason, the Applicant shall follow the following procedure:
- 10.4.1 Minor changes – If, in the opinion of the inspecting engineer and the Town Planner, the change is minor and does not involve the material redesign of any of the plan details, the Applicant shall submit a letter describing the change to the engineer, Town Planner and the Board; provided that the Board may, at its discretion, determine if a proposed change is a minor change. The change may be made in the field.
- 10.4.2 Major changes and design changes – If, in the opinion of the inspecting engineer and the Town Planner, the change is major and/or involves a material change in design of any of the plan details, the Applicant shall submit a letter describing the change and a plan showing the proposed change to the Planning Board and to the Zoning Board of Appeals; provided that the Board may, at its discretion, determine if a proposed change is a major change. The Applicant shall be responsible for the cost of review of the proposed change by a consultant selected by the Board pursuant to Section 5, should the Board deem such consulting services to be necessary. If the Board determines that a public hearing should be held regarding the proposed change, it shall hold such a hearing. Such hearing shall be advertised and notice sent to abutters in the same manner as required by the original Comprehensive Permit Application. If the Board determines that a public hearing is not

necessary, it may approve the change at a posted public meeting. In determining whether or not to hold a hearing, the Board shall consider whether the proposed change is within the scope of the original plan and public hearing discussions and if the proposed change will potentially materially impact abutters to the development.

10.5 The Building Inspector or the Board may issue a stop work order in the event that there are serious violations of the Comprehensive Permit approval conditions, noncompliance with the approved plan, or serious environmental damage due to erosion, sedimentation, or other site conditions. The stop work order shall remain in effect until violations or damages are corrected.

**11.0 Completion**

11.1 Upon completion of the project, the Applicant shall submit 4 copies of an as-built plan of the roads and infrastructure to the Board. All as-built plan submittals shall conform to the requirements of the Town Subdivision Rules and Regulations, Article III—Plan Submission and Approval, Section 244-11.E.(4)., as may be amended, or other requirements as may be specified by the Board or by the Building Inspector. If the roads are to become public ways, the Applicant shall satisfy the requirements of the Town’s Road Acceptance Policy with respect to such roads. All drainage easements shall be recorded in the Registry of Deeds, with copies of such recorded easements submitted to the Board and to the Department of Public Works.

11.2 If the Board determines that the construction or installation has been completed in accordance with the plan and to its reasonable satisfaction, it shall release the interest of the Town in the bond or the deposit of money to the person who furnished the same.

**12.0 Violations**

12.1 Written notice of any violations of these Regulation shall be provided by the Building Inspector to the Applicant or the owner of the premises, as applicable, specifying the nature of the violations and a schedule of compliance, including cleanup of any spilled materials. This compliance schedule must be reasonable in relation to the public health hazard involved and the difficulty of compliance. In no event shall more than thirty (30) days be allowed for either compliance or agreement on a plan for longer-term compliance. In the enforcement of this regulation, the Building Inspector shall notify, as applicable, the Board of Health, the Zoning Board of Appeals, the Planning Board and the Conservation Commission of any violations.

**13.0 Waiver of Compliance**

13.1 Full compliance with any part(s) of these Regulations may be waived by the Board, provided that such waivers are deemed by the Board to serve the public interest and are not conflicting with Chapter 40B. Requested waivers (original and twenty six (26) copies) shall be submitted by the Applicant in writing at the time of the application for such waivers.

Attested

Board of Appeals

Full Members:

- Sam R. Stivers, Chairman
- Edward D. Estella
- Matthew C. Hurley
- Regina McAuliffe
- Peter C. Norden

Alternate Members:

- Leo. F. Bartolini, Jr.
- Nancy A. Vargas