

**City of Melrose
Zoning Board of Appeals
Comprehensive Permit Rules**

Section 1	Purpose and Context
Section 2	Definitions
Section 3	Application Requirements
Section 4	Application Fee
Section 5	Outside Consultant Fee
Section 6	Public Hearing and Decision
Section 7	Modification of Previously Approved Comprehensive Permit
Section 8	Appeals

Section 1 Purpose and Context

1.1 The purpose of this document is to establish rules for the procedural and substantive review and adjudication of all Comprehensive Permit applications and revisions filed pursuant to M.G.L. c.40B, s.20-23. The rules are adopted pursuant to M.G.L. c.40B, s.20-23 and 760 CMR 56.05. They must be read in conjunction with and implemented in a manner consistent with M.G.L. c. 40B, s.20-23, 760 CMR 56.00 and the regulations for conducting a public hearing in M.G.L. c.40A. The rules supply guidance to the Board of Appeals and to the Applicant for a Comprehensive Permit.

1.2 These rules, as amended, take effect on passage and supersede any other rules that the Board has adopted in the past related to the review and approval of comprehensive permits.

Section 2 Definitions

2.1 *Board* means the Melrose Zoning Board of Appeals, established by M.G.L. c.40A, s.12 and Chapter 15, s.15-1 of the City of Melrose’s Charter and Administrative Code.

2.2 *Local Board* means any local board or official, other than the Melrose Zoning Board of Appeals, including, but not limited to, the Board of Health, Planning Board, Conservation Commission, Historical Commission, Historic District Commission, City Engineer, Building Inspector, DPW, Fire Department, Police Department, and Board of Aldermen. The Conservation Commission, Planning Board and the Board of Health retain jurisdiction when a project requires permits under the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40, the Subdivision Control Law or Title 5 of the State Environmental Code, 310 CMR 15.00. “Local board” does not include any state agency or any department of the Commonwealth or Federal Government.

2.3 *Project* means any comprehensive permit development proposed pursuant to and in strict conformance with M.G.L. c.40B, s.20-23.

Section 3 Application Requirements

3.1 Prior to filing an application, an Applicant is encouraged to meet with the City Planner to discuss the project, these rules and the application requirements.

3.2 The following application materials are required. The number of copies of each item and plan sizes are as listed on the application form and must be provided to be considered a complete submission. Also, an electronic copy of the application materials must be submitted. Nothing in these rules shall be deemed to limit the right of the Board to require the Applicant to provide additional relevant information and/or documents or to limit the obligation of the Applicant to provide such additional information and/or documents.

3.2.1 The Board's Application Form for Comprehensive Permits.

3.2.2 An Existing Conditions Report of the characteristics and constraints of the proposed site and the surrounding areas including:

- a. A project narrative
- b. Flood Insurance Rate Map (FIRM) showing site boundaries
- c. Wetlands delineation
- d. Survey performed by a qualified 3rd party consultant to identify vernal pools
- e. Survey performed by a qualified 3rd party consultant to identify habitats of plants and wildlife, including accounting for those species utilizing the area during migratory stopover or transitory habitat, noting if any are endangered, threatened, or special concern species that are protected under the Massachusetts Endangered Species Act
- f. Natural Heritage and Endangered Species Program (NHESP) Priority & Estimated Habitat map showing site boundaries
- g. Historic District nomination(s)
- h. Easement documents applicable to the site or to the access or utilities for the site
- i. By-Right Site Plan

3.2.3 Detailed Existing Conditions Plan showing the entire site, prepared, signed and stamped by a professional engineer or land surveyor licensed or registered in the Commonwealth of Massachusetts. Plans should include the following information:

- a. Reduced scale locus map
- b. Surveyed property boundaries
- c. Topography at 2-foot contours
- d. Existing parcel lot lines
- e. Wetland boundaries (if applicable)
- f. Existing utilities (subsurface and above ground)
- g. Natural features including bodies of water, rock outcroppings
- h. Existing easements and/or rights of way on the property and immediately adjacent to the property
- i. Existing buildings and structures, including walls, fences, wells
- j. Existing vegetated areas
- k. Existing site entries and egresses

1. Height and use of all buildings abutting the proposed project, including buildings directly across from the proposed project but separated by a public or private right of way.

3.2.4 One or more aerial photograph(s) of the site showing the immediate surrounding area. Site boundaries and existing site entrance and access points must be clearly marked.

3.2.5 Photographs of the site and surrounding physical and neighborhood context, including nearby buildings, significant natural features and land uses. Identify the subject and location of all photographs.

3.2.6 An Executive Summary of the project including: proposed uses; building specifications; approach to building massing, style, and exterior materials; site layout; the relationship of the project to adjacent properties, rights of way and existing development patterns; and conformance with smart growth principles such as proximity to transit, environmental and social sustainability, and access to jobs, schools and amenities through accessible corridors. Refer to the Handbook: Approach to Chapter 40B Design Review prepared by the Cecil Group in 2011 in the explanation of the design of the project.

3.2.7 Preliminary Site Development Plans. Any project of five or more units must have a site plan stamped by a professional engineer or architect licensed or registered in the Commonwealth of Massachusetts. Plans should be of the entire site and show:

- a. Proposed parcel lot lines
- b. Limit of work
- c. Topography at 2-foot contours
- d. Natural slopes exceeding 25% over a horizontal distance of 30 feet that will be altered. The slope of land at any point, stated as a percentage, shall be defined as the change in elevation over a horizontal distance multiplied by 100: $\text{slope} = (\text{change in elevation} \pm \text{horizontal distance measured perpendicular to horizon}) \times 100$.
- e. Easements (existing and proposed)
- f. Proposed building and structure footprints with gross floor area and building height
- g. Proposed site circulation with general dimensions and materials for access to public way, entrances/egresses, roadways, driveways, parking areas, walkways, paths, trails. For sloped sites, a profile of the roadway.
- h. Parking spaces delineated, including accessible spaces
- i. Schematic landscaping, recreational areas, screening, fencing and retaining walls
- j. Schematic site lighting and description of method for mitigating light spillage onto adjacent properties
- k. Storm water management including culverts, conveyance systems, and treatment systems
- l. Pre-development and post-development watershed catchment areas
- m. Utilities (water, sewer, gas, electric) including locations, materials and sizes
- n. Wetland and other restricted area boundaries and buffer zones
- o. Regulated Resource Area mitigation
- p. Erosion and sedimentation controls
- q. Snow storage areas

r. Location of solid waste and recycling containers and the nature any screening

3.2.8 Preliminary, scaled architectural drawings prepared by an architect licensed or registered in the Commonwealth, with typical floor plans, elevations, and sections including construction type and finishes. There must also be a table with the size and number of bedrooms of each unit and gross square feet of each building.

3.2.9 Graphics that depict the project's height, massing, setbacks, and overall relationship to neighbors.

3.2.10 Zoning table of required/allowed and provided zoning dimensions and parking requirements.

3.2.11 Subdivision Plan, if the project involves a subdivision.

3.2.12 Stormwater Management Report

3.2.13 Soil Evaluation Report

3.2.14 Infrastructure Report including verification that appropriate infrastructure is available or obtainable with sufficient capacity to support the project.

3.2.15 Traffic Study prepared by a professional engineer licensed or registered in Massachusetts and qualified in the field of traffic engineering, analyzing the proposed project's impact on the congestion, safety and overall convenience of the roadway system, including the roads providing access to and egress from the proposed project and all roads and areas otherwise impacted in any material way or manner by the proposed project, regardless of the level of additional traffic projected and regardless of whether or not the road is under the jurisdiction of the City of Melrose, under state jurisdiction, or located in an adjacent municipality. The report must include impacts on traffic flow and circulation, projected traffic volumes and impacts, estimated average daily traffic and peak hour traffic to be generated by the proposal and level of service for nearby intersections. Impacts on vehicular, bicycle and pedestrian travel must be addressed.

3.2.16 Construction Management Plan describing provisions for the protection of abutting properties during construction, site excavation, demolition, blasting, and site reclamation.

3.2.17 The Project Eligibility approval letter issued by the Subsidizing Agency. Any changes to the project's application materials made after the Subsidizing Agency's review must be listed and explained.

3.2.18 A list of requested waivers from local ordinances or bylaws and rules which may include, but not be limited to, regulations on zoning, subdivision, local historic district, earth removal, utilities, storm water management, and local wetlands. The Applicant must provide an explanation of why the exception is required, how the purpose of the regulation would not be compromised should a waiver be granted and why, if the waiver is not granted, the project would be rendered not economically feasible. No waiver from a local ordinance, by-law, policy or

regulation may be granted unless and until the Applicant requests the waiver in writing and the Board issues a written approval.

3.2.19 Completed Sustainable Development Principles Evaluation Self-assessment Form from the MassHousing Comprehensive Permit Application.

3.2.20 Proof of filing a Project Notification Form with the Massachusetts Historical Commission for the locus, if required.

3.2.21 Environmental Impact Analysis (for applications for projects of twenty (20) or more dwelling units or if otherwise required by the Board of Appeals) prepared by a qualified environmental scientist, professional wetland scientist, certified soil scientist, botanist, hydrogeologist and/or other scientific professional with demonstrated qualifications (e.g. education, training, or demonstrated experience). The Environmental Impact Analysis must assess the impact of the development on the environment within the development and adjacent thereto. Such analysis must include, but shall not be limited to, an evaluation of pre-development conditions and post-development impacts on:

- a. surface and groundwater quality;
- b. drainage calculations;
- c. groundwater recharge;
- d. open space;
- e. recreational areas and space;
- f. plant and wildlife habitats and corridors;
- g. vernal pools, wetlands and bodies of water, including streams and rivers, both localized and general;
- h. species of special concern in Massachusetts; and
- i. historic structures or historic areas.

Such analysis must include proposed mitigation of any identified post-development impacts. Mitigation measures requiring continuing or periodic maintenance must be identified and a proposed maintenance plan must be included with the Environmental Impact Analysis.

3.2.22 Detailed financial pro forma of anticipated expenses and revenues of the project, documenting site acquisition costs and setting forth the Applicant's proposed profit limit. The submission and review of the pro forma shall be conducted in conformance with 760 CMR 56.05(6). If the claimed land acquisition value is five percent (5%) or greater than the land's most recent assessed valuation as determined by the City, the application shall contain an appraisal of the property, prepared by an appraiser certified as a Massachusetts General Appraiser, with a valuation date no greater than six months prior to the application date. A pro forma shall be submitted with the initial application and revised, as appropriate, throughout the course of the Project's review. It is the Applicant's responsibility to ensure that the Board has in its possession an accurate and updated pro forma at all times. The pro formas shall be signed and dated by the Applicant or its agent, under the pains and penalties of perjury and contain the following statement, "To the best of the Applicant's knowledge, the pro forma submitted herein is accurate and complete as of the date executed below." A detailed and accurate pro forma is considered an indispensable document to ensure the Board's ability to review the economic viability of the Project.

3.2.23 An abutters list certified by the City's Assessor's Office listing all "abutters" as defined in M.G.L. 40A, s.11.

Section 4 Application Fee

4.1 An administrative fee is required with every comprehensive permit application. The fee is \$3,000 plus \$300 per unit proposed. For Non-Profit Organizations, the fee is \$1,500 plus \$150 per unit proposed. The fees are reflective of the significant and unique staff time and administrative expenses required to process an application that involves approvals that would normally be before multiple boards.

4.2 The Applicant is responsible for paying for publication of the legal notice in the newspaper of general circulation in the City notifying the public of the hearing and the abutter notification.

Section 5 Outside Consultant Review Fee

5.1 Reasonable technical review fees may be required on a case-by-case basis when the Board determines that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project because of the potential impacts or because the City lacks the necessary expertise or staff to perform the work related to the comprehensive permit application. Pursuant to M.G.L. c.44, s.53G, the Board may require that the Applicant pay a fee consisting of reasonable costs incurred by the Board for the employment of outside consultants. The fee must be paid prior to the consultant commencing work on the Project and be replenished as directed by the Board. Failure of an applicant to pay a review fee or replenish a review fee account when requested by the Board to do so may be grounds for denial of the comprehensive permit application.

5.2 The fee must be deposited into an account established by the City Treasurer in the municipal treasury which must be kept separate and apart from other monies. The special account, including accrued interest, if any, may be expended at the direction of the Board without further appropriation; provided, however, that such funds are to be expended by it only in connection with carrying out its responsibilities under the law. Any excess amount in the account attributable to a specific project, including any accrued interest, at the completion of said project must be repaid to the Applicant or to the Applicant's successor in interest and a final report of said account must be made available to the Applicant or to the Applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an Applicant's successor in interest must provide the Board with documentation establishing such succession in interest.

5.3 The Board may hire engineers, planners, architects, landscape architects, geologists, hydrogeologists, hydrologists, sanitarians, wetland scientists, urban designers, traffic consultants, lawyers, financial analyst and/or other appropriate professionals who can assist the Board in reviewing and analyzing a proposal to ensure compliance with all relevant laws, ordinances and regulations. Such assistance may include compiling a stenographic record of the public hearings,

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. The outside consultants' minimum qualifications must 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.

5.4 The Applicant may appeal the selection of the outside consultant to the Board of Aldermen. The grounds for such an appeal are limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The required time limits for action upon an application by the Board can be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Aldermen within one month following the filing of the appeal, the selection made by the Board stands.

Section 6 Public Hearing and Decision

6.1 The Board shall endeavor to distribute the application to Local Boards and municipal departments no later than seven days from the date on which they receive the comprehensive permit application. The Board shall request their comments prior to the public hearing and request their appearance at the hearing as deemed necessary or helpful in making its decision upon the application.

6.2 The Board must provide notice of the public hearing 14 days before the date of the hearing by publication in a newspaper of general circulation in the City, posting in a conspicuous place in City Hall, and mailing to parties of interest as required by M.G.L. c.40A s.11.

6.3 The Board must open the public hearing no later than 30 days from the date on which they receive a complete Comprehensive Permit Application, including the total amount of fees required, unless the Applicant has agreed in writing to an extension of the public hearing date.

6.4 The Board shall schedule a site visit at a time and date convenient to the Board, the applicant and the landowner. The site visit shall be open to the public although the landowner's consent may be required prior to the public entering the site. No such landowner permission shall be required for the Board members, City employees reviewing the proposed project or agents of the Board of Appeals employed to review the proposed project.

6.5 In the event that during the public hearing the Applicant proposes any change in its application or project plans that the Board determines is a material or substantial change to the project, the Applicant must provide a letter from the designated Subsidizing Agency acknowledging receipt of the change and providing an update to a change in the agency's determination of project eligibility. In the event of a material or substantial change, the Board may request and the Applicant shall provide any and all information specified in the Application Requirements above that is deemed by the Board to be necessary to evaluate such changes. The Board shall specify the number of copies of the materials that the Applicant shall supply.

6.6 The Board must close the public hearing within 180 days from the opening of the public hearing unless there is a mutual agreement in writing between the Applicant and the Board to extend the time.

6.7 The Board, in making its decision on said application, may take into consideration the application materials, the Handbook: Approach to Chapter 40B Design Review prepared by the Cecil Group in 2011, the site visit, materials presented during the public hearing, testimony including that of the consultants, recommendations of the Local Boards and prior decisions of the Courts, the Housing Appeals Committee and the advice of counsel. The Board must render a decision based on a majority vote of the Board and file its written decision with the City Clerk no later than 40 days from the close of the public hearing.

6.8 The Board may approve as proposed, approve with conditions, or deny the comprehensive permit. Conditions may be attached to the approval to eliminate or mitigate adverse impacts of the proposed project which may relate to the protection of public health, public safety, environmental protection, open space, site and building design, height, size or shape, and/or building materials. Denials may be warranted if the project is not consistent with local needs and there is no practical way to address concerns related to the protection of health, safety, open space, and site and building design through reasonable conditions.

Section 7 Modification of Previously Approved Comprehensive Permit

7.1 If the Project has not received approvals from all relevant state and federal agencies and Local Boards prior to the Board's decision, and the other approvals modify the Project or are based upon a project other than that described in the comprehensive permit, the Applicant must submit the proposed modifications to the Board. The Board has 20 days to determine whether the requested change is insubstantial or substantial.

7.2 If the modification is deemed by vote of the Board to be insubstantial, the change is deemed approved.

7.3 If the modification is substantial, the Applicant must file an application for the modification following the same timelines and process as the original permit to receive approval.

Section 8 Appeals

8.1 An appeal of the decision may be filed within 20 days of the date that the decision is filed with the City Clerk.

8.2 An aggrieved Applicant may file an appeal with the Housing Appeals Committee as provided in M.G.L. c.40B, s.22.

8.3 Other parties seeking to challenge approval of a comprehensive permit shall file their appeal in the Superior Court or Land Court pursuant to M.G.L. c.40A, s.17.

Adopted by the Zoning Board of Appeals, July 10, 2019