

Plympton Board of Appeals Rules and Regulations

Town of Plympton Board of Appeals Rules and Regulations Revised May 4, 2004

In order to be valid, your application must comply with all rules below.

1. An application fee of \$85.00 payable to the Town of Plympton must accompany this application.
 2. All applications must be submitted in duplicate on this form or equivalent. All fields must be completed.
 3. The location of the property in question must be described by Assessors map and lot number, by street number if any, and by measurement from the nearest known point if no street number is available.
 4. All applications shall be accompanied by a plan of the land affected, drawn to a scale of 1"=40' or 1"=80', showing all monuments, structures, street lines, ways, and proposed structures or uses. The Board reserves the right to require that the plan be prepared by a registered land surveyor or registered professional engineer. The Board also reserves the right to waive plan requirements as appropriate.
 5. The applicant shall provide the names and addresses of direct abutters, owners of land directly opposite on any street or way, and abutters to the abutters within three hundred feet of the property line. The Board reserves the right to require that the abutters list be certified by the Board of Assessors. The Board also reserves the right to notify persons not on the abutters list.
 6. The Board may employ outside consultants if it determines by majority vote that it requires outside technical advice unavailable from Town employees to review an application. Whenever possible it shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of part or all of the consultant fees by the applicant.
- Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable fee for the employment of outside consultants chosen by the Board alone. A review fee may be imposed only if the work is in connection with the applicant's specific project, and all written results and report are made part of the record before the Board.

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The minimum qualifications for consultants shall consist of either an educational degree in a related field or three or more years of practice in a related field. Each review fee shall be deposited in a special account established by the Town Treasurer pursuant to MGL Ch44, Section 53G. Funds from the special account may be expended only for the purposes described above.

Upon the Town Clerk's receipt of your properly completed application and fee the Board will schedule, advertise and hold a Public Hearing on your application. After the Public Hearing the Board will rule on your application.

RULES AND REGULATIONS for COMPREHENSIVE PERMIT APPLICATIONS UNDER CHAPTER 40B, SECTIONS 20-23, and 760 CMR 30.00 and 31.00, as may be amended

STARTING THE PROCEEDINGS: In order to seek a Public Hearing, the applicant shall provide evidence of standing or proof of legal control of the property in the form of a property deed, purchase or lease agreement, or other legally binding documentation. A non-owner applicant shall present notarized authorization of the subject application by the property owner, if not signatory to the application.

COMPLETING THE APPLICATION: It is the responsibility of the applicant to submit complete application forms with supporting documentation and the application-filing fee and technical review escrow deposit. A letter addressed to the chairperson of the Plympton Board of Appeals shall accompany the application, setting forth the facts of the case so that there shall be no ambiguity or uncertainty as to the intent in seeking approval of the requested action. The letter shall outline the reason for the application, background or history of events leading to the request, why the applicant feels (s)he qualifies for relief from stated sections of the zoning bylaw and/or all other Town Rules and Regulations and Bylaws, and any other pertinent information the applicant wishes to provide.

Current Massachusetts General Law places certain time

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limitations on the process by which the Board of Appeals arrives at and files a written decision. *It is important that the application be complete with all specified supporting documentation attached. Failure to provide required information may delay the process or be considered sufficient grounds to deny the application.*

ARRANGING FOR A HEARING and PUBLIC NOTICE: Public Hearings are held in accordance with M.G.L. c. 40A, Section 11, at the Plympton Town House and are public under the Massachusetts Open Meeting Law. The applicant is responsible for advertising costs for the Legal Notice of Public Hearing in a newspaper of general circulation within the Town.

A public hearing shall be commenced within thirty (30) days of filing of the Complete Application Packet and the required application filing fees and technical review escrow with the Town Clerk, *except:*

1. Such thirty-day period shall not commence until such time as a Complete Application Packet with the application filing fee and Technical Review escrow deposit has been received in accordance with the section contained herein entitled, *Acceptance of the Application.*
2. Further, the applicant shall file a time extension agreement with the Board of Appeals for the earliest available Public Hearing date, if there is none available within the required thirty-day period.

NOTICE TO ABUTTERS: Abutters within a three hundred foot (300') radius of the subject property shall receive reasonable notice of a public hearing under M.G.L. Chapters 40A, 40B, and 41. The applicant shall obtain a certified abutters list from the Plympton Board of Assessors and complete a mailing to those abutters as soon as practicable. If a project is sited within 300' of the Town line, all abutters in the neighboring town shall also be notified, based on a certified abutters list obtained from that town's Board of Assessors. The applicant shall provide a full list of abutters and provide proof of the mailings

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to the Board of Appeals.

ACTION AT THE HEARING: The applicant and/or its designated representative may present the petition and answer questions pertinent to the case. If the applicant designates a representative to act on his or her behalf, the applicant shall provide written authorization to the Board of Appeals *in advance* of any appearance by that representative before the Board.

SWEARING IN: The Public Hearing is part of a legal process. The Board reserves the right at its discretion to place under oath any and all witnesses or speakers at its Public Hearings. Any information provided to the Board shall be true and accurate under the full penalties of perjury.

TECHNICAL REVIEW ESCROW: The escrow for technical review fees is intended to cover the Town's cost of hiring outside consultants, including but not limited to engineers, landscape architects, architects, legal counsel, financial, real estate, and/or other professionals to review the project. The initial escrow deposit amount required for a Comprehensive Permit shall be \$30,000.00, but may be adjusted by vote of the Board of Appeals. Whenever the account falls below 50% of the requirement set by the Board, the applicant shall deposit an additional amount sufficient to return the account to the required level. Any unexpended monies in the escrow account shall be returned to the applicant only after all obligations are satisfied. *Failure to fulfill escrow requirements shall constitute an incomplete application and be considered sufficient grounds for denial of said application.*

CHANGE IN ESCROW REQUIREMENTS: Any reduction or increase in the escrow amount shall be approved by unanimous vote of the Board of Appeals. The applicant may appeal the escrow requirements in writing to the Board of Appeals at the time the application is submitted, stating the reasons for such appeal. Any requested escrow change shall be the first order of business prior to opening of the Public Hearing.

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Any reduction in the escrow requirement approved by unanimous vote of the Board of Appeals shall be refunded to the applicant as soon as practicable.

NONCOMPLIANCE WITH ESCROW REQUIREMENTS: The Public Hearing shall be suspended until such time as the escrow requirement is met.

ACCEPTANCE OF THE COMPLETE APPLICATION PACKET: No application shall be "duly submitted" in accordance with the General Laws of Massachusetts until such time as all information required in Paragraphs 1-12 below (**Complete Application Packet**) has been received and date-stamped by the Town Clerk. **A Complete Application Packet shall include the appropriate application-filing fee and escrow fund deposit.** (The Board of Appeals without prejudice may deny an incomplete application and any application fee submitted therewith shall be forfeited.)

In no event shall receipt of the **Complete Application Packet**, as described in the **Application Requirements** section below, and receipt of the application filing fee and Technical Review escrow deposit be construed as approval by the Board of Appeals of any Comprehensive Permit application nor may it be assumed that all necessary information has been provided, until such time as the Board of Appeals may vote to close the Public Hearing.

NUMBER OF COPIES: The applicant shall provide a minimum of twenty five (25) copies of the **Complete Application Packet** and plans to the Board of Appeals, all of which should be stamped by and one filed with the Office of the Town Clerk. **It is the responsibility of the applicant to provide the appropriate number of copies at the time it is filed with the Town Clerk.** Upon receipt of the Complete Application Packet, the Board of Appeals shall distribute copies to Town Boards and Commissions for review and comment.

PLAN STANDARDS: All plans shall be drawn to conform to standards established by the Town of Plympton Planning

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Board. (*Scale 1" = 40', except Locus Plan*) ALL plans shall be dated and include a North Arrow, name and address of the property owner and designer, and certification of compliance with the Plympton Zoning Bylaws with any exception(s) noted.

ALL plot plans and site plans for property line determinations shall be prepared by a Massachusetts-certified Professional Land Surveyor and referenced to USGS Datum and/or MassGrid.

Wherever required, plans shall be stamped and signed by a Registered Professional Engineer and/or Registered Landscape Architect, licensed by the Commonwealth of Massachusetts. *A Massachusetts Registered Architect shall prepare ALL architectural plans.*

COMPREHENSIVE PERMIT APPLICATION REQUIREMENTS: The applicant shall provide to the Board of Appeals a completed application and submit therewith the following information and documentation, which shall constitute the **Complete Application Packet**.

1. **PROJECT ELIGIBILITY LETTER:** No project eligibility letter shall be accepted by the Town of Plympton unless it is issued in compliance with all published State procedures. The applicant may be required at any time during the public hearing process to produce such evidence as may be required by the Board of Appeals to substantiate that all published State procedures have been satisfied and complied with.

2. **DOCUMENTATION OF SITE CONTROL** showing that the applicant fulfills the **jurisdictional requirements** of 760 CMR 31.01, and amendments thereto.

- a. The applicant shall be a public agency, a non-profit organization, or a limited dividend organization,
- b. The project shall be fundable by a subsidizing agency under a low and moderate income housing subsidy program, and
- c. The applicant shall control the site. Such Site Control shall include but not be limited to the following:

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- i. Proof of current ownership of any and all parcels that may constitute the proposed project site shall be provided by the applicant, including certified copies of recorded deeds and/or certificates of title for all parcels pertaining to the proposed development, establishing clear and proper title, or
- ii. Valid copies of such Offer(s) to Purchase and/or Purchase & Sale Agreement(s) and/or lease agreement(s) relating to any and all parcels that may constitute the proposed project site. The applicant shall be required to provide certified copies of recorded deeds and/or certificates of title for all parcels pertaining to such Purchase & Sale Agreement (s) relating to the proposed development, establishing clear and proper title, AND
- iii. In all instances, if the proposed development shall include more than one parcel of land, than the applicant shall be required to produce evidence satisfactory to the Board of Appeals as to the manner in which the proposed parcels shall be merged. The Board of Appeals may not close the Public Hearing without receipt of such evidence. In no instance shall any building permit be issued until the applicant has produced evidence satisfactory to the Board of Appeals that such merger has been recorded with the Plymouth County Registry of Deeds and/or Land Court, as appropriate.
- iv. Further, the applicant shall be required to provide a Plan of Land drawn from an on-the-ground boundary survey showing metes and bounds, prepared, stamped and signed by a Registered Land Surveyor acceptable to the Board of Appeals.
- v. The applicant shall provide one or more independent, certified Real Estate Appraisal (s) by such appraisers as may be acceptable to the Board of Appeals for all parcel(s) relating to the proposed development. Such appraisal(s) of land shall be based upon the

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highest and best land use under current zoning by right.

3. EXISTING SITE CONDITIONS PLAN AND REPORT to provide a summary of conditions in the surrounding areas including but not limited to existing topography (including identification of soils classifications in accordance with NRCS standards) and geographic features, such as wetlands, ledge, boulders; flood zones, zoning district lines, zoning overlay districts, easements, rights-of-way, encumbrances, limitations or any other natural or imposed restriction or constraint that may affect the proposed construction or site development; the location and nature of existing buildings; existing street elevations; traffic patterns; and character of open areas, if any, in the neighborhood.

4. PRELIMINARY SUBDIVISION PLAN where a subdivision of land is involved.

5. 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 space areas within the site; as well as buildings on all abutting property to the proposed development including abutters separated by a public way.

6. PRELIMINARY SCALED ARCHITECTURAL DRAWINGS for each building: Drawings shall be signed and stamped by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish.

All architectural drawings shall be coordinated with the Site Development Plans of the proposed project. If there is any discrepancy or inconsistency between the Site Development Plans and the Architectural Drawings submitted as respects number of units, size of units, number of rooms or other quantitative irregularities that the Board of Appeals may consider significant, the application shall be considered incomplete and may

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not be accepted by the Board of Appeals until any such discrepancy is resolved.

7. 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.

Any and all rooms that may be used as a bedroom, including but not limited to studies, offices, dens or any other room not intended for use as a kitchen or living room (limited to one each), or bathroom(s), shall be counted as a bedroom for the purpose of this Tabulation. Any room that is larger than would normally be anticipated in a dwelling unit of the size proposed or that could reasonably be subdivided into a separate usable living space shall also be counted as a bedroom for the purposes of such Tabulation.

8. PRELIMINARY UTILITIES PLAN showing the proposed location and types of all public utilities, including but not limited to sewage, drainage, electrical, cable, telephone, gas, and water facilities, including hydrants. All connections to utilities at the street or property line with proper separation of all such utilities shall be shown.

9. PROPERTY LOCATION MAP showing all abutting property to which notice is required and including a list of names and addresses thereof. Notification to abutters shall be in accordance with the paragraph entitled *Notice to Abutters*, contained herein.

10. List of REQUESTED EXEMPTIONS to local requirements and regulations, including local codes, ordinances, by-laws or regulations. As specified in 760 CMR 31.05(3), it is the responsibility of the applicant to demonstrate the manner in which any exemption requested which would otherwise negatively impact the financial feasibility of the proposed project.

11. PROJECT FINANCIAL PRO FORMA: The pro forma shall be prepared by a certified public accountant experienced in

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construction development and signed by the applicant
under penalties of perjury. All financial data submitted
by the applicant is subject to technical review.

12. **DEVELOPER'S PROFILE** including experience and
qualifications to successfully complete proposed project
shall be required of all applicants financed through the
New England Fund, or other Non-Government Entity.

SUPPLEMENTAL INFORMATION: The Board of Appeals during the
course of its public hearing, including any continuance
thereof, shall require such information, documentation or
plans as it may deem necessary to proceed with thoughtful
consideration and deliberation upon such application for
the protection of the Town of Plympton and the health,
safety, and welfare of its residents.

All requested supplemental information shall be
provided to the Board of Appeals by the applicant *at least
fifteen (15) days in advance of the scheduled hearing date
or the meeting may be automatically continued to the next
available date on the Board's schedule.* Any information
requiring technical review shall be submitted to the Board
of Appeals by the applicant, a minimum of three weeks prior
to the next hearing to allow adequate time for examination
by the Board's consultant.

FALSE OR MISLEADING INFORMATION: The Board of Appeals shall
deny any application that is knowingly submitted with false
or misleading information. Any person(s) who knowingly
submits such information may be prosecuted to the full
extent of the law and shall be prohibited from submitting
any such future application to the Board of Appeals.

CONSULTANT SELECTION: All Professional Engineers, Land
Surveyors, Landscape Architects and other similar
professionals shall hold a valid license issued by the
Commonwealth of Massachusetts. Technical Review Consultants
engaged on behalf of the Town of Plympton shall be paid
from Technical Review Escrow funds. Such consultants shall
be chosen in accordance with applicable provisions of

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M.G.L. c. 30B §§1-19 and c. 44 §53G.

APPEAL OF CONSULTANT SELECTION: The applicant may appeal the selection of the consultant to the Board of Selectmen.

- 1.The grounds for any such appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications.
- 2.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.
- 3.The required time limits for action upon the application by the Board shall be extended by the duration of the appeal. In the event the Board of Selectmen makes no decision within one month following the filing of the appeal, the selection made by the Board shall stand.

DECISION: The decision of the Board of Appeals shall be rendered within forty (40) days of the close of the Public Hearing unless time is extended by mutual agreement between the applicant and the Board of Appeals. The Board of Appeals shall file the written decision with the Town Clerk. A copy of the Board's Decision shall be sent to the applicant and property owner, if not the applicant, by certified mail or hand delivery. A copy shall also be sent to DHCD as required by its Regulations. Postcard notification of the Board's decision shall be sent to other parties of interest by regular mail. For the purposes of this section, *other parties in interest* shall mean abutters within 300 feet of the subject property, whether or not separated by a public or private way, and those in attendance at the public hearing requesting such notification.

APPEALS: Any decision of the Board of Appeals may be appealed to Superior Court or the Housing Appeals Committee (as appropriate) within twenty (20) days after filing of

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the written decision with the Town Clerk.

RECORDING OF DECISION: After receiving certification from the Town Clerk that no appeal has been taken within the twenty (20) day appeal period (if appealed than dismissed or denied), a designated agent of the Board of Appeals shall file a copy of the Board's decision at the applicant's expense with either the Registrar of the Plymouth County Registry of Deeds to be recorded and indexed in the grantor index under the name of the owner of record in the case of unregistered land, or with the Recorder of the Land Court to be registered and noted on the owner's certificate of title in the case of registered land. A copy of the recording fee receipt shall be attached to the official file of the Board of Appeals. *The Board of Appeals at its discretion may require the applicant to provide sufficient monies in advance to pay the filing fee as well as reasonable expenses incurred by the Board of Appeals to file its Decision.*

GROUND DISTURBANCE, COMMENCEMENT OF CONSTRUCTION, AND ISSUANCE OF BUILDING PERMIT(S): In no event shall any site work preparation or other on-site construction work commence until such time as the Board of Appeals has reviewed and approved final construction plans in writing to the applicant (except for any site work required by the Board as part of the application process). The applicant at its expense shall provide the appropriate number of copies thereof to the Plympton Building Inspector and other interested local authorities.

Further, no building permit shall be issued until the applicant is in compliance with the Conditions of the Comprehensive Permit Decision *and* these Rules and Regulations, as may be amended from time to time by the Plympton Board of Appeals.

EFFECTIVE DATE OF THE COMPREHENSIVE PERMIT: *The Comprehensive Permit and/or any extension, modification or renewal thereof, shall be valid only after such time as the Decision is recorded. No building permit can be issued*

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without such evidence.

EXPIRATION: The applicant shall commence construction within two (2) years from the date of approval of the Comprehensive Permit by the Board of Appeals, or it shall lapse. Construction shall proceed expeditiously on a timeline mutually agreed upon by the Board of Appeals and the applicant. Any delay or deviation from such agreement by the applicant is subject to review and modification of the Comprehensive Permit by the Board of Appeals.

TERMS AND CONDITIONS OF THE COMPREHENSIVE PERMIT: Any Comprehensive Permit issued with or without Conditions specific to the proposed project, sited in whole or in part within the Town of Plympton, shall be valid only for the applicant to which it has been issued. No Comprehensive Permit approved by the Plympton Board of Appeals may be assigned or transferred to any other party or entity without its expressed written approval. *An approved Comprehensive Permit, and any extension, modification or renewal thereof, shall take effect only at such time as the Board's Decision has been recorded at the Plymouth County Registry of Deeds and/or the Land Court, as applicable.*

PROJECT CHANGES: Any change in the plans or in the scope of the project for which a Comprehensive Permit has been issued shall be submitted to the Board of Appeals for a determination as to whether such change constitutes a significant modification that may require a new public hearing.

PERFORMANCE GUARANTIES: The Board of Appeals may require the developer at its expense to procure and maintain such performance guarantees, as it deems necessary to protect the interests of the Town of Plympton. Any such requirement may be included as a Condition of the Board's Decision.

MONITORING OF AFFORDABILITY: **If approved by that entity,** the Plympton Housing Authority or another appointed agency

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shall be the designated agency responsible for monitoring of affordability requirements, unless other arrangements are requested by the applicant and approved by the Board of Appeals.

SEVERABILITY: If any provision of these Rules and Regulations is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of these Rules and Regulations, it being hereby expressly declared that these Rules and Regulations and each provision thereof would have been adopted irrespective of the fact that any one or more other provisions be declared invalid or unconstitutional. Further, if any provision of these Rules and Regulations is for any reason held to be in excess of the authority of the Board of Appeals, such provision shall not affect any other part of these Rules and Regulations.