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**Code
of the
Town of Pepperell**

COUNTY OF MIDDLESEX
COMMONWEALTH OF MASSACHUSETTS

SERIAL NO. .107....

GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, New York 14624
1986/Reprinted 1993

Chapter 215

BOARD OF APPEALS RULES AND REGULATIONS

Part 1
General Provisions

ARTICLE I
Organization

- § 215-1. Officers.
- § 215-2. Chairman; powers and duties.
- § 215-3. Clerk.
- § 215-4. Alternate members.
- § 215-5. Quorum.
- § 215-6. Meetings.

ARTICLE II
Applications to the Board

- § 215-7. Application form.
- § 215-8. Filing period.
- § 215-9. Plan of land; auxiliary information.
- § 215-10. Filing.

ARTICLE III
Hearings

- § 215-11. Timing.

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8-25-93

40B
* Fees were revised 4/26/05
(See attached)

PEPPERELL CODE

- § 215-12. Hearings to be public.
- § 215-13. Representation and absence.
- § 215-14. Brief to the Board.
- § 215-15. Order of business.

ARTICLE IV

Disposition of Matters by the Board

- § 215-16. Voting requirement.
- § 215-17. Withdrawal of applications.
- § 215-18. Reconsideration.
- § 215-19. Reapplication.
- § 215-20. Lack of decision.
- § 215-21. Decisions.
- § 215-22. Effective date of variance and low- or moderate-income housing permits.
- § 215-23. Distribution of copies of decisions.

Part 2

Comprehensive Permit Applications and Hearings

ARTICLE V

Rules and Regulations

- § 215-24. Applicability.
- § 215-25. Reference to state law.
- § 215-26. Filing of application; number of copies; filing fee.
- § 215-27. Minimum application requirements.
- § 215-28. Computation of statutory minimums.

BD. OF APPEALS RULES & REGS.

- § 215-29. Evidence.
- § 215-30. Hearing.
- § 215-31. Continuances.
- § 215-32. Withdrawal.
- § 215-33. Referral to other boards, commissions and agencies.
- § 215-34. Applicability of Open Meeting Law.
- § 215-35. Quantum of vote.
- § 215-36. Stenographic and other records.
- § 215-37. Order of hearing.
- § 215-38. Decision.
- § 215-39. Revisions following approval of comprehensive permit.
- § 215-40. Appeals.
- § 215-41. Preapplication procedures.
- § 215-42. Validity; when effective.

Fee Schedule — revised 4/26/05
See attached

[HISTORY: Adopted by the Board of Appeals of the Town of Pepperell: Part 1, 2-27-1980, amended 12-18-1980; Part 2, 8-25-1988. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Board of Appeals — See Ch. 6, Art. XIX.

Part 1
General Provisions
[Adopted 2-27-1980; amended 12-18-1980]

ARTICLE I
Organization

§ 215-1. Officers.

At the first meeting following the confirmation of the annual appointee, the Board shall elect all officers of the Board, to include a Chairman and Clerk. Alternates do not participate in this act.

§ 215-2. Chairman; powers and duties.

- A. The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules, he shall decide all points of order, unless overruled by a majority of the Board in session at the time. He shall appoint such committees as may be found necessary or desirable.
- B. In addition to powers granted by general laws and local ordinance and subject to these rules and further instructions of the Board, the Chairman shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the work of all subordinates and exercise general supervisory power. He shall at each meeting report on all official transactions that have not otherwise come to the attention of the Board.

§ 215-3. Clerk.

The Clerk shall be a member of the Board, designated by the Board. Subject to the direction of the Board and its Chairman, he shall supervise all of the clerical work of the Board, including all correspondence of the Board, sending all notices

required by law and the rules and orders of the Board, receiving and scrutinizing all applications for compliance with the rules of the Board, keeping dockets and minutes of the Board's proceedings, compiling all required records and maintaining necessary files and indexes.

§ 215-4. Alternate members.

The Chairman of the Board shall designate an alternate member to sit on the Board in case of the absence, inability to act or conflict of interest on the part of any Board member. In the event of a vacancy on the Board, the Chairman may designate an alternate member to act as a member of the Board until someone is appointed to fill the unexpired portion of the vacated term.

§ 215-5. Quorum.

Three (3) members must be present for a quorum.

§ 215-6. Meetings.

Meetings may be called by the Chairman or at the request of two (2) members. Notice thereof shall be given to each member at least forty-eight (48) hours before the time set, except that announcement of a meeting at any meeting attended by all members shall be sufficient notice of such meeting. Notices shall be posted publicly as required by law.

**ARTICLE II
Applications to the Board**

§ 215-7. Application form.

Every application for action by the Board shall be made on the official forms, including the certified list of parties in interest. These forms shall be furnished by the Board of

Selectmen's office upon request. Any communication purporting to be an application shall be treated as mere notice of intention to seek relief until such time as it is made on the official application form. All information called for by the form shall be furnished by the applicant in the manner therein prescribed.

§ 215-8. Filing period.

Every application shall be filed and every appeal taken within thirty (30) days from the date of refusal of a permit by, or the date of the order, ruling, decision or determination of, the Building Inspector or other administrative official or board, except for applications entered under MGL C. 40B, §§ 20 through 23 (low- or moderate-income housing), which may be filed at any time.

§ 215-9. Plan of land; auxiliary information.

- A. Each application and petition to the Board shall be accompanied by three (3) copies of the following-described plan: The plan shall have a North point, names of streets, zoning districts, names of owners of properties within three hundred (300) feet of the subject property, property lines and location of buildings on surrounding properties.
- B. In addition, applications entered under § 174-21B or C of the Zoning Chapter shall also include the location of buildings or use of the property where a variance or change, expansion, restoration or resumption of nonconforming uses is requested, and distances from adjacent buildings and property lines shall be verified in the field and shown on the plan. The dimensions of the lot and the percentage of the lot covered by principal and accessory buildings and the required parking spaces shall be shown. Entrances, exits, driveways, etc., shall be shown. All proposed data shall be shown in red.

C. If the application is entered under MGL C. 40B, §§ 20 through 23, as an application to build low- or moderate-income housing, the application shall submit eleven (11) copies of the following:

- (1) An overall parcel development plan containing the information prescribed therefor in the definition therefor in § 174-5 of the Zoning Chapter and the plan of land described above.
- (2) Documents and other information sufficient to determine that the applicant is a public agency, limited dividend or nonprofit organization eligible to proceed under said sections of MGL C. 40B.
- (3) Documents and other information concerning the nature and conditions of the subsidy program(s) under which applicant is proceeding, including but not limited to proposed financing, rent levels and tenant selection.
- (4) Proposed data and findings to support a conclusion by the Board that subsidized housing in the town does not exist in excess of ten percent (10%) of the housing units reported in the latest decennial census or is on sites comprising one and five-tenths percent (1.5%) of the total zoned industrial, commercial and residential land in the town, or that the proposed construction will not result in use of more than three-tenths percent (0.3%) of said area or ten (10) acres, whichever is larger, in one (1) calendar year, and that the low-income residents of the town, whether or not in subsidized housing, do not comprise, when compared to all town residents, a disproportionate number compared to other municipalities in the region.
- (5) Specification of the particular permitting actions of local boards which the applicant proposes that the Board of Appeals undertake.

§ 215-10. Filing.

- A. Excepting applications for low- or moderate-income housing under MGL C. 40B, §§ 20 through 23, all applications and reapplications shall be filed with the Town Clerk, together with the list of parties in interest certified by the Board of Assessors, information required in § 215-9A and B and a nonreturnable filing fee (see the Fee Schedule at the end of this chapter). In addition to the nonreturnable filing fee, the applicant shall also file an amount equal to the number of parties in interest times twice the then-current United States postal rate for first-class mail plus the cost of advertising the public hearing, payable to the Town of Pepperell. The Town Clerk shall forthwith transmit one (1) copy each of the information required in § 215-9A and B to the Building Inspector and the Planning Board and the Board of Appeals. Upon receipt of such application the Board of Appeals may, within twenty-one (21) days thereof, refer the application and plan to such other boards and officials as it deems advisable.
- B. For applications filed under MGL C. 40B, §§ 20 through 23, all the above applies, except that the filing shall be with the Secretary of the Board of Appeals, in care of the Town Clerk, and the Board shall transmit one (1) copy each of the information required in § 215-9C to the Board of Health and Board of Selectmen and any other board it deems applicable.

**ARTICLE III
Hearings****§ 215-11. Timing.**

- A. A public hearing shall be held on each application no later than sixty-five (65) days from the date of transmittal from the Town Clerk, except for hearings held under MGL C. 40B, §§ 20 through 23 (low- or moderate-income housing), which shall be held within

thirty (30) days from the date of application filing, and provided that hearings on applications entered under § 174-21B of the Pepperell Zoning Chapter shall be held no earlier than thirty-five (35) days from the date of application filing so as to permit Planning Board review as required under § 174-22 of the Pepperell Zoning Chapter, unless the Planning Board earlier responds.

- B. Notice of hearings shall be advertised as required by the provisions of General Laws, Chapter 40A [each of two (2) successive weeks but not less than fourteen (14) days prior to the hearing date, in a newspaper of general local circulation, plus posting in the Town Hall]. In addition, a copy of the advertised notice shall be sent by mail at least seven (7) days prior to the date of the hearing, postage prepaid, to the applicant or petitioner and to the parties in interest.

§ 215-12. Hearings to be public.

All hearings shall be open to the public. No person shall be excluded unless he is considered by the Chairman to be a serious hindrance to the conduct of the hearing.

§ 215-13. Representation and absence.

An applicant may appear in his own behalf or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board may decide on the matter using the information it has otherwise received.

§ 215-14. Brief to the Board.

It is recommended that every application be supported by a brief setting forth in detail all facts relied upon by the parties prior to the public hearing.

§ 215-15. Order of business.

- A. The order of business at a hearing shall proceed as follows:
- (1) Reading of petition and legal notices by the Clerk, together with presentation of exhibits, including the Planning Board review and written briefs received, if any.
 - (2) Applicant's presentation.
 - (3) Opponent's presentation, if any, and questions by those seeking information.
 - (4) Applicant's rebuttal, restricted to matters raised by opponent's presentation.
 - (5) The Board shall set a closing date for receipt of any additional written arguments, and if no such date is established, the hearing record shall close upon termination of the public hearing.
- B. Members of the Board who are hearing the case may direct appropriate questions during the hearing.

ARTICLE IV**Disposition of Matters by the Board****§ 215-16. Voting requirement.**

- A. The concurring vote of all members of the Board shall be necessary to reverse any order or decision of any administrative official under the Zoning Chapter or to effect any variance in the application of any bylaw. A majority vote shall be required for all other actions.
- B. The record shall show the vote of each member upon each question, or, if absent or failing to vote, indicate such fact. It shall, in addition, set forth clearly the reason or reasons for the Board's decision.

§ 215-17. Withdrawal of applications.

An application may be withdrawn without prejudice by the petitioner by notice in writing to the Clerk at any time prior to the publication of the notice of the public hearing by the Board, but thereafter be withdrawn without prejudice only with the approval of the Board.

§ 215-18. Reconsideration.

Once a decision has been voted upon and the meeting at which the decision was made is adjourned, there shall be no reconsideration of a decision of the Board.

§ 215-19. Reapplication.

No appeal application or petition which has been unfavorably acted upon shall be acted favorably upon within two (2) years after the date of final unfavorable action unless the Board finds, by a unanimous vote of the Board, specific and material changes in the conditions upon which the previous unfavorable action was based and describes such changes in the record of its proceedings and unless all but one (1) of the members of the Planning Board consents thereto after notice is given to the parties in interest of the time and place of the proceedings when the question of such consent will be considered.

§ 215-20. Lack of decision.

If no decision is made within seventy-five (75) days of the filing of the application, except for hearings held under MGL C. 40B, §§ 20 through 23 (low- or moderate-income housing), which stipulates that if no decision is made within forty (40) days of the termination of the public hearing, the relief, application or petition sought shall be deemed granted.

§ 215-21. Decisions.

All decisions shall be noticed on the official notice of decision, accompanied by a detailed record of the proceedings, the reasons for the decision and a certification that copies of the decision have been forwarded to the Planning Board and Town Clerk within fourteen (14) days of the decision.

§ 215-22. Effective date of variance and low- or moderate-income housing permits.

No variance or permit granted under MGL C. 40B, §§ 20 through 23, or any extension, modification or renewal thereof, shall take effect until a copy of the decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the Middlesex South District and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

§ 215-23. Distribution of copies of decisions.

Copies of the notice of decision shall be mailed, postage prepaid, by the Clerk of the Board of Appeals to:

- A. The owner.
- B. The applicant, if different from the owner.
- C. Parties in interest as listed on the certified list of parties in interest.
- D. All other persons present at the public hearing who requested that notice be sent to them and stated the address to which such notice was to be sent.

Part 2
Comprehensive Permit Applications and Hearings
[Adopted 8-25-1988]

ARTICLE V
Rules and Regulations

§ 215-24. Applicability.

The following rules and regulations are promulgated to establish minimum application requirements and to govern the conduct of proceedings and decisions under MGL C. 40B, §§ 20 through 23, regarding comprehensive permit applications to the Zoning Board of Appeals of the Town of Pepperell.

§ 215-25. Reference to state law.

The State Housing Appeals Committee has promulgated relevant rules and regulations in 760 CMR 30.00 and 31.00 et seq., which are referred to herein.

§ 215-26. Filing of application; number of copies; filing fee.

An application is deemed received when the applicant has filed with the Board of Appeals at the office of the Town Clerk, Town Hall, Pepperell, Massachusetts, an application purporting to meet the requirements of § 215-27 below with fifteen (15) copies together with a list of parties in interest, as that term is defined in MGL C. 40A, § 11, and the required filing fee and review deposit and cover sheet as follows:

- A. Filing fee. The filing fee is two hundred fifty dollars (\$250.) to cover mailing, office and advertising costs.
- B. Review deposit. The applicant shall pay to the Board of Appeals an amount equal to two hundred dollars (\$200.) per dwelling as proposed, these funds to be used as the Board determines to provide engineering and other

technical advice to the Board during the hearing and decision process. The balance, if any, is to be returned or disposed in the decision of conditions for inspection or implementation purposes.

§ 215-27. Minimum application requirements.

- A. The application contents set forth herein are minimum requirements. Additional information may be determined necessary by the Board of Appeals to enable required findings, and such additional information will be determined after the opening of the required hearing. Upon application of the applicant, leave will be granted to produce the same in a time certain, provided that in every case, all testimony, documents and evidence shall be produced at a hearing and shall be subject to examination and cross-examination.
- B. The following information must be contained in the original application as it stands when advertised for hearing, or the application may be dismissed by the Board without prejudice, and the applicant may reapply; and the reapplication shall be advertised as required by law, as if an original application under § 215-26 above.
 - (1) Minimum application contents (all of the following must be included):
 - (a) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four (4) or fewer units may submit a sketch of these matters in conjunction with Subsection B(1)(c), which need not have an architect's signature. All structures of five (5) or more units must have site

development plans signed by a registered architect.

- (b) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in Subsection B(1)(a) above.
- (c) Preliminary architectural, scaled drawings for building plans, including typical floor plans, typical elevations and sections and identifying construction type and exterior finish, signed by a registered architect.
- (d) A tabulation of proposed buildings by type, size (number of bedrooms and floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas and by open areas.
- (e) Where a subdivision of land is involved, a preliminary subdivision plan as defined in MGL C. 41, § 81L.
- (f) A preliminary utilities plan showing the proposed location and types of sewage, water and drainage facilities, including hydrants.
- (g) Documents which show to the legal status of the applicant and the acceptability of the site to the state or federal subsidy agency to which the project is proposed for subsidy financing. All plans submitted in Subsection B(1)(a) through (f) above must be prepared consistent with the requirements of the said subsidy agency.
- (h) A list of requested exceptions to town codes, bylaws or regulations, including the Zoning

Bylaw.¹ The list must specifically designate the bylaws, code, rule or regulation, and particular provision(s) thereof, from which relief is sought, and the Board shall not accept evidence or allow relief from any provision not specified. The Board may allow said list to be amended as the hearing progresses to accommodate plan revisions and to correct oversights. The Board need not allow amendments to said list if it finds that the applicant failed to submit an adequate list prior to circulation of a copy of the original application to other local boards as required in Subsection B(2) hereof. Each town bylaw, rule or regulation specified for relief shall be copied in the application, and the applicant's proposed alternative to compliance shall be defined as to each item from which relief or exception is sought.

- (i) The applicant's projected date to commence construction and the schedule for completion of all phases.
- (2) The applicant shall submit fifteen (15) copies of these items to the Board, together with the application cover sheet attached hereto,² and a list of parties in interest, as that term is defined in MGL C. 40A, said list to be certified by the Assessors of the Town of Pepperell.
- (3) The applicant is referred to § 215-29F below with respect to technical and engineering information to support the specific relief requested and to enable the statutory determinations required in MGL C. 40B, §§ 20 through 23.

¹ Editor's Note: See Ch. 174, Zoning.

² Editor's Note: A copy of the application cover sheet is available at the town offices.

§ 215-28. Computation of statutory minimums.

A. Housing unit minimum. For purposes of calculating whether the town's low- and moderate-income housing units exceed ten percent (10%) of its total housing units, or annual limits, pursuant to MGL C. 40B, § 20:

(1) The number of low- and moderate-income housing units shall be the number of units, as defined in 760 CMR 30.02(i), most recently inventoried by the commonwealth's Executive Office of Communities and Development (EOCD) as occupied or available for occupancy or under permit in the town prior to the applicant's initial submission to the Board, provided that evidence that net additional units have been occupied or have become available for occupancy between the date of the most recent inventory and the date of initial application shall be considered. The EOCD inventory shall be presumed to be the number of units up to the time of the most recent inventory prior to initial application. The Board shall consider evidence to rebut this presumption, but shall allow a different inventory only where the EOCD inventory is clearly incorrect.

(2) The total number of housing units shall be that total number of units enumerated for the town in the latest available United States Census, provided that evidence that net additional units have been occupied or have become available for occupancy or are under permit or that total units have decreased between the latest census and the date of initial application shall be considered.

B. General land area minimum.

(1) For the purposes of calculating whether low- and moderate-income housing exists in the town on sites comprising more than one and one half percent (1½%) of the total land area zoned for residential, commercial or industrial use, pursuant to MGL C. 40B, § 20:

- (a) Total land area shall include all districts in which any residential, commercial or industrial use is permitted, regardless of how such district is designated by name in the town's Zoning Bylaw.³
 - (b) Total land area shall include all unzoned land in which any residential, commercial or industrial use is permitted.
 - (c) Total land area shall exclude land owned by the United States, the commonwealth, the town or any political subdivision of the commonwealth, the Metropolitan District Commission or other district or any state public authority.
 - (d) Total land area shall exclude any land area where all residential, commercial and industrial development has been prohibited by restrictive order of the Department of Natural Resources pursuant to MGL C. 131, § 40A or 105. No other swamps, marshes or other wetlands shall be excluded.
 - (e) Total land area shall exclude any water bodies.
 - (f) Total land area shall exclude any floodplain, conservation or open space zone if said zone completely prohibits residential, commercial and industrial use, or any similar zone where residential, commercial or industrial uses are completely prohibited.
- (2) Only sites of low- and moderate-income housing units inventoried by the Department or established as above provided and occupied or available for occupancy as of the date of the applicant's initial submission to the Board shall be included toward the one-and-one-half-percent minimum.

³ Editor's Note: See Ch. 174, Zoning.

- (3) Where a housing development for a project is receiving a state of federal subsidy but less than one hundred percent (100%) of its units are provided at below-market rental or cost, the land area occupied by low- or moderate-income housing shall be the land area of the housing site multiplied by the ratio of low- and moderate-income units to the total units.

C. Annual land area minimum. For purposes of calculating whether the application before the Board would result in the commencement in any one (1) calendar year of construction of low- and moderate-income housing on sites comprising more than three-tenths of one percent ($\frac{3}{10}$ of 1%) of the town's land area or ten (10) acres pursuant to MGL C. 40B, § 20:

- (1) Total land area of the town and the land area occupied by low- or moderate-income housing shall be calculated in the manner provided above.
- (2) If three-tenths of one percent ($\frac{3}{10}$ of 1%) of total land area is less than ten (10) acres, the minimum for sites occupied by low- and moderate-income housing shall be ten (10) acres.
- (3) The relevant calendar shall be the calendar year period of January 1 through December 31, inclusive, which includes the applicant's projected date for initiation of construction.
- (4) Any low- or moderate-income housing for which construction is expected to commence within the calendar year, other than that proposed by the applicant, must have received a firm funding commitment by the subsidy financing agency prior to the date of the applicant's initial submission to the Board in order to be included toward the three-tenths-percent or ten (10) acres, and, as appropriate, the Board will request a status report from the subsidy financing agency with respect to other projects.

- (5) Development and construction work in connection with low- or moderate-income housing shall be proceeding in good faith to completion insofar as is reasonably practicable in order for such housing to be included towards the three-tenths-percent or ten (10) acres minimum.

§ 215-29. Evidence.

A. Health and safety. The Board may, without limitation, receive and require evidence of the following matters:

- (1) Structural soundness of the proposed buildings.
- (2) Adequacy of sewage arrangements.
- (3) Adequacy of water drainage arrangements.
- (4) Adequacy of fire protection.
- (5) Adequacy of the applicant's proposed arrangements for dealing with the traffic circulation within the site, and feasibility of arrangements which could be made by the town for dealing with traffic generated by the project on adjacent streets.
- (6) Proximity of the proposed site to airports, industrial activities or other activities which may affect the health and safety of the occupants of the proposed housing.
- (7) Location of wetlands subject to regulation under MGL C. 131, § 40, and 310 CMR 10.00 et seq. The best evidence in this regard is presumed to be a determination of the applicability by the Town Conservation Commission or a superseding order or adjudicatory determination by the Massachusetts Department of Environmental Quality Engineering (DEQE). The applicant is encouraged to request such a determination for submission at the hearing.

B. Site and building design. The Board may receive and require evidence of the following matters:

- (1) Height, bulk and placement of the proposed housing.
- (2) Physical characteristics of the proposed housing.
- (3) Height, bulk and placement of surrounding structures and improvements.
- (4) Physical characteristics of the surrounding land.
- (5) Adequacy of parking spaces and arrangement.
- (6) Adequacy of open areas, including outdoor recreational areas, proposed within the building site.
- (7) The applicable building and site plan requirements of the subsidy financing agency, which requirements must be reflected in § 215-27 above entitled "Minimum application requirements" and which shall be a condition on every application approved.

C. Open space. The Board may receive evidence of the following matters:

- (1) Availability of existing open spaces, as defined in 760 CMR 30.02(m), in the town.
- (2) Current and projected utilization of existing open spaces and consequent need, if any, for additional open spaces by the town's population, including occupants of the proposed housing.
- (3) Relationship of the proposed site to a town open space or outdoor recreation plan officially adopted by the Planning Board and to any official actions to preserve open spaces taken with respect to the proposed site by the Town Meeting prior to the date of the applicant's initial submission. The inclusion of the proposed site in said open space or outdoor recreation plan shall create a presumption that the site is needed to preserve open spaces unless the applicant produces evidence to the contrary.
- (4) Relationship of the proposed site and land adjacent to the proposed site to any regional open space plan

prepared by the Northern Middlesex Area Commission.

- (5) Current use of the proposed site and of land adjacent to the proposed site.
- (6) Inventory of sites suitable for use as open spaces and available for acquisition or other legal restriction as open spaces in the town, provided that the Board shall admit no evidence of any open space plan adopted only by the Town Conservation Commission or other town body but not officially adopted by the Planning Board.

D. Uneconomic conditions. The Board shall require evidence of the following matters:

- (1) The reason that particular town bylaws, requirements or regulations from which relief is sought make subsidized low- and moderate-income housing under the subsidy program proposed by the applicant uneconomical.
- (2) The individual and combined financial effect of the town bylaws, rules and regulations specified for relief on the housing proposal of the applicant; provided, however, that where the applicant has paid or has agreed to pay more than the fair market value for the land in question, as such value may be reasonably determined with respect to the highest and best use under applicable regulations and without regard to the relief sought in the instant application, the financial effect shall be related to the said fair market value.
- (3) The limitations imposed or likely to be imposed on the applicant by the financing agency, with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant incomes, and unit costs and buy income levels.

- (4) Changes in rents, costs and unit sizes and number of the development as proposed which would be necessary to accommodate the otherwise effective town requirements and regulations from which relief is sought, based upon acquisition of the site at fair market value as set forth in Subsection D(2) above and development of dwelling units to sell or rent in accordance with the proposed subsidy program(s).
- E. Tenant/owner selection. The Board may inquire as to the tenant selection criteria of the subsidy agency, and the Board will hear recommendations on tenant and owner selection for subsidized units, and a permit may be conditioned on a certain tenant or owner selection plan, but such a plan, or lack thereof, shall not be cause for disapproval.
- F. Applicant's evidentiary obligation. The applicant is expected to provide engineering, financial and technical plans, calculations and other data to support favorable findings on all of the foregoing issues, such information to be commensurate with the scale and complexity of the project and the relief sought in § 215-27B(1)(h). The Board shall refer to engineering and technical submission usually submitted and accepted for comparable projects in the town as a measure of engineering and technical sufficiency.
- G. Relevance of evidence. If a party seeks to introduce evidence which he alleges is related to the need to protect health and safety, to the need to promote better site and building design, to the need to preserve open spaces or to whether the local requirements and regulations will make the proposed housing uneconomic, but which is not specifically enumerated above, as admissible, the Board shall require a showing before such evidence is introduced that such evidence is relevant to at least one (1) of those four (4) issues.

§ 215-30. Hearing.

Chapter 40B, §21, of the Massachusetts General Laws requires that the application be heard within thirty (30) days of receipt following notice to parties in interest and publication as required by MGL C. 40A, § 11. The hearing shall be closed when all who are entitled to be heard have been heard, and the Board and the applicant have not agreed to continue the hearing to a time certain to submit additional relevant testimony and evidence, including, but not limited to revisions to plans already submitted.

§ 215-31. Continuances.

- A. The Board shall grant no continuance on the time to open the hearing as required within thirty (30) days of receipt of the application, unless the applicant has first withdrawn the application in writing to the Board.
- B. Following the opening of the hearing, the Board may continue the hearing to a date(s) certain, announced at the hearing with the assent of or on motion of the applicant. Such continuance by agreement or on applicant's motion shall be reduced to a signed writing.

§ 215-32. Withdrawal.

The applicant may, in writing, withdraw the application at any time without prejudice to reapplication at any time, such reapplication being subject to §§ 215-26 and 215-27 above.

§ 215-33. Referral to other boards, commissions and agencies.

Upon receipt, the Board shall circulate the application to other town boards, commissions and agencies, including, at least, the Board of Health, Planning Board, Building Inspector, Selectmen, Subdivision Board of Appeals, Conservation Commission, Fire Chief, Highway Department, Housing

Authority and Police Chief. Others may be referred the application as the Board deems appropriate. The referral shall state the due date for comments which shall not be later than the opening of the hearing, and said Boards shall be requested to attend the hearing.

§ 215-34. Applicability of Open Meeting Law.

Chapter 39, § 23A through C, of the Massachusetts General Laws applies to all proceedings hereunder. All communications shall be made to the Board at public open meeting. No communication shall be considered or made relevant to the decision unless it has been heard at the hearing.

§ 215-35. Quantum of vote.

A majority vote of the Board is sufficient to decide. No decision shall be voted upon by a member who has not heard the matter.

§ 215-36. Stenographic and other records.

The Board shall keep a record in accordance with MGL C. 39, §§ 23A through C, and MGL C. 66. Tape recording may be used, and the Board may determine to make a stenographic record. Any person may make a stenographic record or audio tape, so long as such record making does not interfere with orderly proceedings. Film video recording shall be allowed by leave of the Board in particular instances.

§ 215-37. Order of hearing.

A. The hearing shall proceed as follows:

- (1) Introductory matters by Board.
- (2) Reading of notices and listing of application documents.

- (3) Rulings on pending motions, if any.
 - (4) Applicant's presentation.
 - (5) Supportive oral testimony.
 - (6) Receipt and reading of written communications.
 - (7) Opposition oral testimony.
 - (8) Reply by applicant to oral and written opposition by the applicant.
 - (9) Further, but not redundant, oral opposition.
 - (10) Motion to continue, if any.
 - (11) Close of session and, if not continued, close of hearing.
- B. The Chair may cause to be removed any disorderly person and shall rule on the admissibility of any offered testimony. All testimony shall be directed to the Board.

§ 215-38. Decision.

The Board shall decide the application within forty (40) days after the close of the hearing upon the standards set forth in MGL C. 40B, § 21, and the following rules shall apply:

- A. If the Board finds that the application is inconsistent with local needs or has failed to meet the minimum requirements of content as required by these regulations, it shall disapprove the application. The Board may disapprove an application where it finds that its implementation will exceed the statutory minima set forth in MGL C. 40B and defined in § 215-28 above.
- B. The Board may approve an application without conditions or may approve a application with the imposition of condition(s) which do not render the project uneconomic or inconsistent with local needs.
- C. The Board, in its decision, may direct such permit to be subject to any or all of the following conditions:

- (1) The grant of a subsidy by a state or federal financing agency, including submission of the grant or subsidy award and the contract between the subsidy agency and the applicant, and within a time certain.
- (2) Compliance with any requirement imposed by the financing agency.
- (3) A finding by the financing agency that the applicant is a public agency or a nonprofit or limited dividend organization or that the applicant has suitable interest in the proposed site, and the submission of documentation as to such finding within a time certain.
- (4) The securing of the approval of any state or federal agency with respect to the proposed housing which the applicant must obtain before building.
- (5) Directions or orders to local agencies or officials designed to effectuate the issuance of a comprehensive permit and the construction of the approved housing.
- (6) Limitations in time, after which a permit is expired and void, for failure to obtain the low- and moderate-income housing subsidy represented at the hearing as having site approval, and for failure to make a substantial start within a certain time after contracting for said subsidy.
- (7) All conditions of town bylaws, rules and regulations not specified or not approved for relief, if specified, and all applicable rules and regulations not subject to relief by the Board under MGL, C. 40B, §§ 20 through 23.
- (8) Any other condition which does not render this project uneconomic or inconsistent with local needs as these terms are defined in MGL C. 40B, § 20. The Board shall not issue any permit which would allow the building or operation of such housing in accordance with standards less safe than the

applicable building and site plan requirements of the financing agency.

- D. The decision shall incorporate all plans, specifications, designs and other representations and materials necessary to assure construction and operation consistent with the project as heard and approved, and the Board shall sign each document for identification and may require recording at the Registry of Deeds or in the registered land section of every document so incorporated.

§ 215-39. Revisions following approval of comprehensive permit.

Whether following a Board decision or following further review and decision by the Housing Appeals Committee, all revisions to approved plans as incorporated in the decision shall, forthwith and prior to implementation, be forwarded to the Board for a determination within fourteen (14) days as to whether the revision is substantial. A substantial revision shall be approved only after a hearing upon notice as required for an original application. Revisions deemed not substantial may be approved or denied at open meeting.

§ 215-40. Appeals.

Applicants have a right of appeal to the Housing Appeals Committee under MGL C. 40B, § 22, and others may appeal directly to Court under MGL C. 40A, § 17. The appeals must be taken within twenty (20) days of the Board's decision in each case.

§ 215-41. Preapplication procedures.

All applicants are encouraged to seek out and work with relevant town boards, commissions and officers prior to filing of an application and during any hearing continuance, including

§ 215-41 BD. OF APPEALS RULES & REGS. § 215-42

but not limited to the Housing Authority and the Selectmen's Affordable Housing or Housing Partnership Committee.

§ 215-42. Validity; when effective.

These rules and regulations were voted by the Zoning Board of Appeals of the Town of Pepperell at a public meeting duly posted and held in Town Hall, Pepperell, Massachusetts, on August 25, 1988, with all of the three (3) members present. The undersigned⁴ certify that each was present and voted affirmatively to adopt the rules and regulations and to file the same forthwith with the Town Clerk. These rules and regulations are to be effective upon receipt by the Town Clerk.

⁴ Editor's Note: The original legislation contained the signatures of the voting Board of Appeals members immediately following this section.