

## Zoning Board of Appeals - Overview of Chapter 40B

### Basic Summary:

Chapter 40B of the General Laws allows applicants to bypass local bylaw restrictions in order to develop residential projects with an affordable housing component. Local approvals for such projects, known as Comprehensive Permits, are issued by the Zoning Board of Appeals, and are subject to review by the state's Housing Appeals Committee.

### Legal Authority:

- Comprehensive Permit Act (M.G.L. c. 40B, Sections 20 - 23)
- DHCD Regulations (760 CMR 56.00)
- ZBA Rules and Regulations

### Project Requirements:

- 25% of units restricted and subsidized as affordable, based on 80% area mean income
- Applicant must be a limited dividend organization, non-profit, or public agency
- Profits capped at 20% for sold units and 10% per year for rentals

### Statutory Minima:

- Subsidized Housing Inventory (SHI) of 10% or more
- 1.5% of town's land area has low or moderate income housing
- Project site is .3% of the town's land area or 10 acres (whichever is larger)

\* If met, ZBA may deny the application and HAC may not overturn

### Safe Harbors:

- Housing Production Plan in place and meeting goals.
- "Recent Progress" towards development of SHI units (2% increase in 12 months)
- "Large project" (in Groton, more than 200 units)
- Recent application on same land within 12 months with less than 10% affordable units

\* If met, ZBA may deny the application and HAC may not overturn

### Pre-ZBA Process:

- Project Eligibility Determination
- Local Comment Period (30 days)
- Local Initiative Program (LIP) Applications

### Application Requirements:

- Preliminary site development plans
- Proposed landscaping improvements
- Site plan stamped by a registered professional architect or engineer (if 5 units or more)
- Existing conditions report
- Preliminary architectural drawings
- Tabulation of proposed buildings by type, size, and footprint, impervious coverage, and open space
- Preliminary subdivision plan, if applicable
- Preliminary utilities plan
- Project Eligibility Letter
- **A list of requested waivers** from local or bylaws and regulations (zoning, wetlands, septic, etc.)
- Additional local requirements (within reason and within scope of authority)

### Timeline:

- 7 days after receipt of application: distribute to other boards and departments
- 14 days before public hearing: publish notice and notify abutters
- 30 days after receipt of application: open public hearing
- 15 days after opening hearing: notice of safe harbor grounds
- 180 days after opening hearing: close hearing
- 40 days after close of hearing: issue and file written decision
- 20 days after decision filed: deadline to appeal (HAC or court)

\* 180 deadline may be extended with agreement from the applicant

### Hearing:

- Quorum
- Public access and participation
- Site Visits

### Resources:

- MHP Technical Assistance Program (free consultant!)
- Town Staff
- Other Boards
- Town Counsel
- Peer Reviewers (paid through 53G process)

### Decisions:

- Deliberation and vote
- Areas of jurisdiction
- Conditions
- Written Decision

### Appeals

- HAC (applicants)
- Superior Court or Land Court (abutters)
- “Consistent with local needs”
- “Uneconomic” conditions

### Post-Comprehensive Permit:

- Regulatory agreement with subsidizing agency
- Lapse (3 years)
- Modifications (10% threshold)

### Tips:

- Technical Assistance
- Peer Reviewers
- Denial vs. approval with conditions
- Mind the time