

ABCs of Zoning Relief for Housing Developments in Newton

GLOSSARY

Affordable Housing – Generally, housing affordable to households earning no more than 80% AMI. Under 40B, affordable housing must be supported by some form of subsidy (see definition of Subsidy for 40B, below).

Area Median Income (“AMI”) The Area Median Income as defined by HUD, adjusted for household size. The area used for Newton stretches from southern Massachusetts to southern NH and I-495. Currently the AMI for a family of four in Newton is \$94,100.

Chief Zoning Code Official (“CZCO”) – Employee of the City of Newton responsible for performing zoning review of a proposed development prior to giving a developer the application for a Special Permit and preparing a written report of the zoning variances that are required for the proposed project.

Dept. of Housing and Community Development (“DHCD”) – DHCD is the Commonwealth’s housing and community development agency. According to the state website, DHCD “provide[s] leadership, professional assistance and financial resources to promote safe, decent affordable housing opportunities, economic vitality of communities and sound municipal management.” In a Friendly 40B, DHCD provides technical assistance to the town and to the developer and acts as the subsidizing agency.

Development Review Team (“DRT”) – Consists of City staff from several departments such as Planning, Inspectional Services, Dept. of Public Works, and the Fire Dept. Applicants meet with a DRT prior to filing a Special Permit Application.

Housing Appeals Commission (“HAC”) Five-member state body that adjudicates disputes under 40B. Three members are appointed by the Director of Mass. Dept. of Housing and Community Development. Two members are appointed by the governor.

Inclusionary Units – Defined term used for purposes of Newton’s Inclusionary Zoning Ordinance/Special Permits. Income limits and limits on rental and sales prices apply. See full definition in the City’s Inclusionary Zoning Ordinance.

Inclusionary Zoning Ordinance (“IZO”). Provisions in Newton’s zoning ordinances that require residential developers building 3 or more units to set aside 15% of the units as affordable housing meeting the definition of “inclusionary units.” See current Ord. 30-24(f) (proposed Ord. Sec. 6.10).

Land Use Committee – Comprised of 8 Newton Aldermen, one from each ward. Reviews matters relating to Special Permit and Site Plan Approval petitions, as well

as a variety of other zoning and licensing matters, including matters relating to Community Preservation housing proposals.

Newton Housing Partnership – 15-member board appointed by the Mayor that advises the City on, among other things, housing development projects that require approval by the ZBA (Comprehensive Permit/40B) or the Board of Alderman (Special Permit).

Special Permit Criteria – Newton Ord. Sec. 30-24(d) (proposed Ord. Sec. 8.3.3) states that the Board of Aldermen shall not approve a Special Permit unless it finds “that the use of the site will be in harmony with the conditions, safeguards and limitations of this Section” and that the application meets all of the following criteria (other criteria apply in certain cases, including with respect to mixed use developments):

- (1) The specific site is an appropriate location for such use, structure;
- (2) The use as developed and operated will not adversely affect the neighborhood;
- (3) There will be no nuisance or serious hazard to vehicles or pedestrians;
- (4) Access to the site over streets is appropriate for the types and numbers of vehicles involved;
- (5) In cases involving construction of buildings or structures or additions to existing buildings or structures, if those proposed buildings or structures or additions contain individually or in the aggregate 20,000 or more square feet in gross floor area, the site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy.

Subsidized Housing Inventory (“SHI”) – The list compiled by the Department of Housing and Community Development containing the count of Low or Moderate Income Housing units by City or Town.

Subsidy for purpose of 40B – To qualify under 40B, a development must be eligible for subsidy under a state or federal subsidized housing program, such as MassHousing, MassDevelopment, the Department of Housing and Community Development, or the U.S. Department of Housing and Urban Development. Historically, the required subsidy was a monetary subsidy. The 40B regulations were revised in 1990 to clarify that extensive technical assistance provided by a state or federal agency will qualify as a subsidy in kind. For example, if DHCD provides technical assistance to a developer and a town with respect to a development, that assistance will qualify as a subsidy for purposes of 40B.

Uneconomic Conditions – Defined term applied by HAC in deciding 40B developer appeals. For this purpose, “uneconomic conditions” means (i) a for-profit developer would not be able to realize a reasonable return under the conditions or (ii) a non-profit or government agency would operate at a loss under the conditions. The 40B regulations provide criteria for determining “reasonable return.”

Zoning Board of Appeals (ZBA) – The Newton ZBA is a quasi-judicial board that interprets and enforces Newton’s zoning laws. The ZBA hears and decides, among other things: (1) appeals of zoning decisions, (2) applications for 40B Comprehensive Permits, and (3) petitions for variances. Comprised of five members who serve three-year terms; members are appointed by the Mayor and confirmed by the Board of Alderman. ZBA decisions are made within 100 days of the filing of an appeal.