

MANAGING CHAPTER 40B Housing Production Plans: Approval, Certification, Implementation



Brookline Board of Selectmen

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LEGAL FRAMEWORK

- Statute: G.L. c. 40B, ss. 20-23 (Chapter 40B), the “comprehensive permit” law
- State regulations: 760 CMR 56.00 et seq.
- DHCD Chapter 40B Guidelines: policy
- Appeals
 - Housing Appeals Committee (HAC)
 - Superior Court
 - Mass. Appeals Court
 - SJC

STATUTORY FRAMEWORK

- Under Chapter 40B, community presumed to have unmet needs for affordable housing if less than 10% of year-round housing on Subsidized Housing Inventory (SHI).
- 10% is **statutory minimum**. **Brookline today: 9.34%**
- Other statutory minima involve land area calculations, but rarely met.
- Several towns in litigation re “1.5% rule”

REGULATORY SAFE HARBORS

- Housing Production Plan
- “Recent Progress” or “2% Rule”
- Large-Scale Projects
- Related Applications

Safe harbor means...
ZBA's decision deemed
“consistent with local
need.” Even if town is
below statutory
minimum, Housing
Appeals Committee will
uphold the ZBA.

ROLES & RESPONSIBILITIES

STATE & SUBSIDIZING AGENCIES

- Regulate
- Administer/Implement
 - Subsidized Housing Inventory
 - Project Eligibility
 - Final Approval
 - Cost Certification
 - Affordable Housing Restriction
- Housing Appeals Committee

BOARD OF APPEALS

- Adopt local regulations
- Receive comprehensive permit applications
- Conduct fair, impartial hearing process
- Reach decision, file with Town Clerk
- Receive/hear modification, extension requests

CRUCIAL DEADLINES FOR ZBA

- **7/14/30/15/15/30/180/40/20**
- Distribute Application: 7 Days
- Notice of Public Hearing: 14 Days
- Open Public Hearing: 30 Days
- Safe Harbor Notification: 15 Days
- Applicant Appeal Safe Harbor: 15 Days
- DHCD Answer: 30 Days
- Close Hearing: 180 Days
- Decision: 40 Days
- Appeal: 20 Days

ZBA OPTIONS

- ZBA may take one of the following actions on a comprehensive permit:
 - Deny
 - Approve as submitted
 - Approve with conditions
- Appeal to HAC if town does not meet:
 - Statutory minima
 - Regulatory “safe harbors”

HOUSING PRODUCTION PLANS

- Old concept, new name:
 - Special Commission, April 1989
 - “Planned Production,” 2002-2008
 - “Housing Production Plan,” 2008-Present

HPP “101”

- Housing Production Plan
 - Components
 - DHCD approval process
- Implementation: creation of new affordable units
- One- and two-year goals (0.5% and 1%)
- Certification (maximum of 2 years)

WHAT'S THE POINT?

- Purpose of a DHCD-approved Housing Plan:
 - Reach the 10% statutory minimum
 - Gain more control over comprehensive permits while working toward 10%
 - Manage the pace of housing growth
 - Encourages towns to produce housing
 - Helps (or should help) the Board of Appeals

THE POINT IS NOT ...

- To “stop” 40B applications
- To cause needless delays in affordable housing production
- To “do nothing” for 12 or 24 months

BROOKLINE's HPP

- Housing Production Plan: October 2016
- Plan certified: March 23, 2017- March 22, 2018
- Minimum certification goals:
 - 131 units = one-year certification
 - 262 = two-year certification

BROOKLINE BY THE NUMBERS

- Brookline Census 2010: 26,201 year-round units
- Chapter 40B minimum: 2,620
- Existing SHI: 2,438
- 10% Gap: 182
- Certification “gap”
 - 90 before 12/31/2017 OR
 - 131 in 2018
- Potential for 178 in current 40B applications

HOW/WHEN UNITS “COUNT”

- Comprehensive permit units count on the SHI – and for HPP certification – when ZBA decision is filed with the Town Clerk
- If no building permit in 12 months, units removed from SHI. **May** affect HPP certification depending on number of units lost.
- Once removed from SHI, units restored with building permit, but they do not count toward future HPP annual goals. (No “double counting”)

POSSIBILITIES

- Just say “no” under “safe harbor” rules
- Proceed with fair/impartial review
- Work with applicant, other interested parties to arrive at reasonable compromise
- Reach decision

ISSUES

- Is it realistic to permit 90 more units this year?
- Is it realistic to permit 131 next year?
- Balance desire to maintain certification with desire for getting the best possible projects for the Town and neighborhoods
- What is the best possible outcome?
- The worst?