

The ABCs of Zoning Relief for Housing Developments in Newton:

A Residents' Guide to How Developers get Permits and How the Community can have its Say

Thursday, May 1, 2014

7:30 p.m. – 9:00 p.m.

Newton City Hall

War Memorial Auditorium

<u>Description</u>	<u>Tab No.</u>
Powerpoint presentation entitled “ <i>The ABCs of Zoning Relief in Newton: A Residents' Guide to How Developers get Permits and How the Community can have its Say</i> ”	1
Glossary of terms	2
Materials relating to 40B	3
Materials relating to Special Permits	4
Contact information/Bios for Panelists and Others	5
List of resources on internet.....	6

Individual members of the Waban Area Council prepared the powerpoint and glossary based on governmental sources. As such, if there are any errors, omissions, inaccuracies or other shortcomings in the powerpoint and glossary they are not those of our esteemed panelists. The other attached materials are publications from the City of Newton website, <http://www.newtonma.gov/>.

A presentation sponsored by the Waban Area Council
<http://www.wabanareacouncil.com/>

Please come visit us

The ABCs of Zoning Relief for Housing Developments in Newton:

A Residents' Guide to How Developers get
Permits and How the Community can have its Say

A Presentation Sponsored by
the Waban Area Council

Panelists:

Candace Havens, *Director of Planning and Development*

James Freas, *Chief Planner, Long Range Planning*

Alderman Marcia T. Johnson, *Chair of Zoning & Planning Committee*

Brooke Lipsitt, *Chairman, Zoning Board of Appeals*

Kathy Winters, *Moderator*

May 1, 2014

Agenda

- ◆ Welcome (Sallee Lipshutz, *President, Waban Area Council (WAC)*)
- ◆ Introduction (Kathy Winters, *Moderator, neighbor and member of WAC*)
- ◆ Panel presentation
 - ◆ Zoning Overview
 - ◆ 40Bs – Regular and “Friendly”
 - ◆ Special Permit Process
 - ◆ Process and Opportunity for Community Input
- ◆ Q&A

Purpose of Presentation



- ◆ Demystify for residents some of the basic zoning relief processes so that citizens can be more informed and more engaged in their community
- ◆ The goal of the program is educational. It is focused on illuminating the zoning relief *processes* and opportunities for community involvement
- ◆ Program is not intended to:
 - ◆ focus on any particular pending development project
 - ◆ be a referendum on any of the public policies underlying zoning relief

Introduction of Panelists

- ◆ **Candace Havens**, *Director of Planning and Development*
- ◆ **James Freas**, *Chief Planner, Long Range Planning*
- ◆ **Alderman Marcia T. Johnson**, *Chair of Zoning & Planning Committee*
- ◆ **Brooke Lipsitt**, *Zoning Board of Appeals (ZBA)*

Overview of Zoning



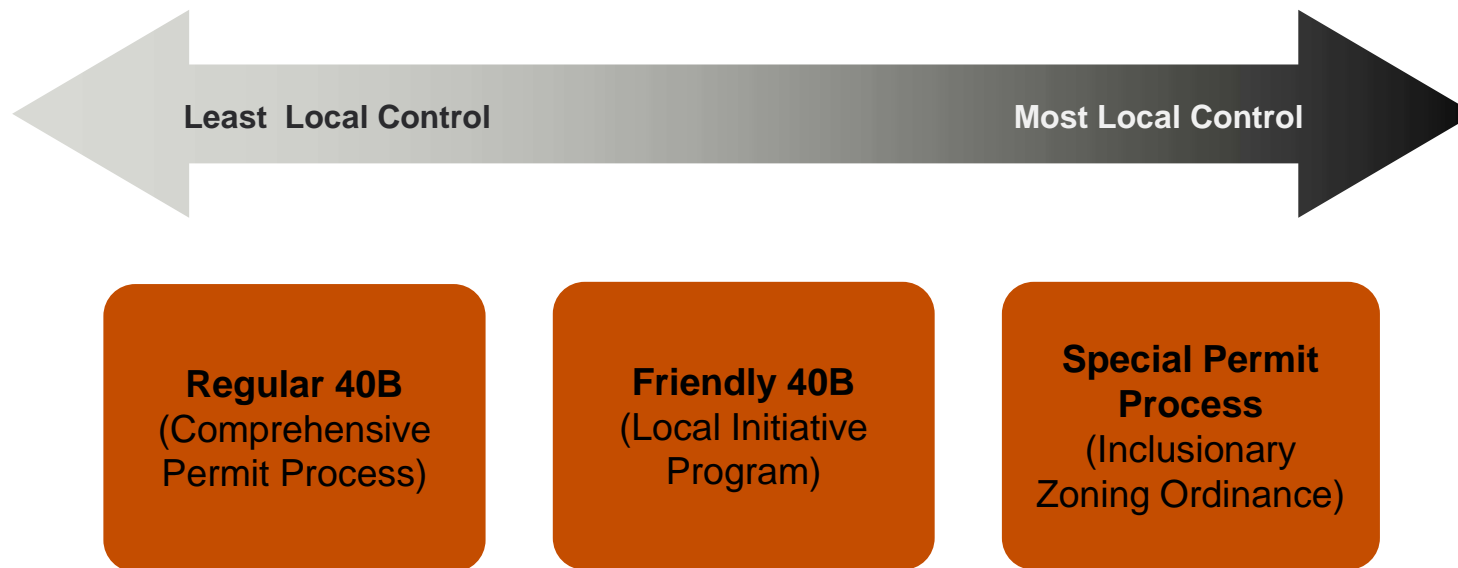
- ◆ Zoning regulation is inherently a local matter
- ◆ It is a series of local/city ordinances restricting the use (e.g., multi-family, single family, business) and dimensions of buildings in Newton (e.g., setbacks, height, floor-to-area ratio (FAR))
- ◆ However, some zoning relief processes are regulated by the State
- ◆ *Note: Newton is in the process of reviewing and updating its zoning ordinance; See the Zoning Reform page on the City website*

Potential Government Authorities Involved in Zoning Relief

- ◆ Local
 - ◆ Board of Aldermen (Land Use Committee)
 - ◆ Newton Housing Partnership
 - ◆ Planning & Development Dept. (and other City departments)
 - ◆ Zoning Board of Appeals
 - ◆ Mayor
- ◆ State
 - ◆ Subsidizing Agencies (i.e., Department of Housing and Community Development (DHCD), MassHousing, and Mass Housing Partnership)
 - ◆ Housing Appeals Committee

The “Big 3” of Zoning Relief

- ◆ Three general ways for a developer to get zoning relief to build multi-unit housing, all of which have an “affordable housing” requirement:



Regular 40B: Overview

- ◆ Ch. 40B is a **state statute** that encourages development of affordable housing by providing relief from local zoning requirements and a streamlined permitting process
- ◆ Requires that project have **20-25%** affordable units
- ◆ **Local Zoning Board of Appeals (ZBA)** decides whether to issue Comprehensive Permit; ZBA discretion is restricted in favor of granting permit where less than **10%** of Newton's year round housing stock is on the State's **subsidized housing inventory**
- ◆ Two different opportunities for public input



Friendly 40B: Overview

- ◆ Similar to regular 40B except requires **early City involvement and support**
- ◆ Three different opportunities for public input



Special Permit: Overview

- ◆ Special Permits are required to construct a building or establish a use that is not allowed by right
- ◆ Part of Newton's zoning ordinances (***Inclusionary Zoning Ordinance***)
- ◆ Projects with 3 or more units must have **15%** affordable units
- ◆ **Land Use Committee** holds public hearing and makes recommendation to **full Board of Aldermen**
- ◆ **16 out of 24 votes of Board of Aldermen** required to approve project



Regular 40B Process

- ◆ In 1969, Massachusetts passed the ***Comprehensive Permit Law***, also known as “40B,” in the interest of increasing affordable housing stock in the state
- ◆ If less than 10% of a town’s year round housing stock is listed on the state’s ***subsidized housing inventory (SHI)***, then a ***local zoning board of appeals (ZBA)*** can override the local zoning laws and grant comprehensive permits to developments that include 20% to 25% units with long-term affordability restrictions
- ◆ 25% of units must be affordable to moderate-income households earning no more than 80% AMI. In the case of ***Rental Units***, an alternative lower-income standard exists: 20% of units must be affordable to households earning no more than 50% AMI
- ◆ A prerequisite to a 40B permit is that the affordable housing receive some form of **state or federal subsidy** (technical assistance from state agency can qualify as a subsidy in kind)

Regular 40B Process



- ◆ The key decision makers in the 40B process are:
 - ◆ the **subsidizing agency**, which must issue a project eligibility letter (typically, MassHousing, MA Dept. of Housing and Community Development or the Mass. Housing Partnership)
 - ◆ the **ZBA**, which decides whether to grant the permit and can impose conditions
 - ◆ the **Housing Appeals Commission (HAC)**, which handles appeals of ZBA decisions
- ◆ Where a town has less than 10% of its housing stock on the SHI, criteria for 40B decisions generally favor granting the permit

Comprehensive Permit (40B) Review Process



Regular 40B: Community Input #1

- ◆ **Public comment on project eligibility**



- ◆ Once in receipt of the application, the subsidizing agency will provide written notice to the Mayor, initiating a **30-day review period**
- ◆ The subsidizing agency will consider comments of interested parties and local boards received prior to issuing a determination of project eligibility
- ◆ Project eligibility is determination of whether applicant and the project are qualified to obtain a comprehensive permit:
 - ◆ Site is generally suitable for type of housing proposed (with respect to public health and safety concerns)
 - ◆ Project is eligible for public subsidy program
 - ◆ Project appears financially feasible

Regular 40B: Community Input #1

- ◆ Comments from Mayor, local boards and interested parties should address municipal planning and public health and safety concerns.
- ◆ Comments that will be considered:
 - ◆ Relationship between proposed development and local affordable housing plan
 - ◆ Existing infrastructure (roads, water, sewer)
 - ◆ Environmental concerns (traffic, storm water)
 - ◆ Suggestions on how proposed site or building design might be modified to better fit in surrounding neighborhood

Regular 40B: Community Input #1

- ◆ Comments that will NOT be considered for project eligibility determination:
 - ◆ Project is opposed by neighbors
 - ◆ Project would result in increased municipal costs
 - ◆ Anything that goes beyond the scope of local review authority under 40B

Regular 40B: Community Input #2

- ◆ **Public Hearing with the Zoning Board of Appeals**
 - ◆ With a project eligibility letter, a developer can submit an application to the ZBA and begin the review process
 - ◆ The ZBA must open a **public hearing within 30 days** of receipt of an application
 - ◆ The ZBA notifies property abutters by mail in advance of the public hearing
 - ◆ Notice of 40B applications is also typically included in the Planning Department's *Friday Report*

Regular 40B: ZBA Hearing

- ◆ Along with oral testimony at the hearing, the public and local officials are invited to comment in writing while the public hearing is open
- ◆ Once the ZBA closes the public hearing a decision must be issued in **40 days**, unless the time period is extended by written agreement by the ZBA and applicant
- ◆ The ZBA may approve the project as submitted, approve the project with conditions, or deny a comprehensive permit as not consistent with local needs
- ◆ If the application is approved, a comprehensive permit is issued
 - ◆ any person aggrieved may appeal **within 20 days** of the ZBA's filing

Regular 40B: Appeal to HAC

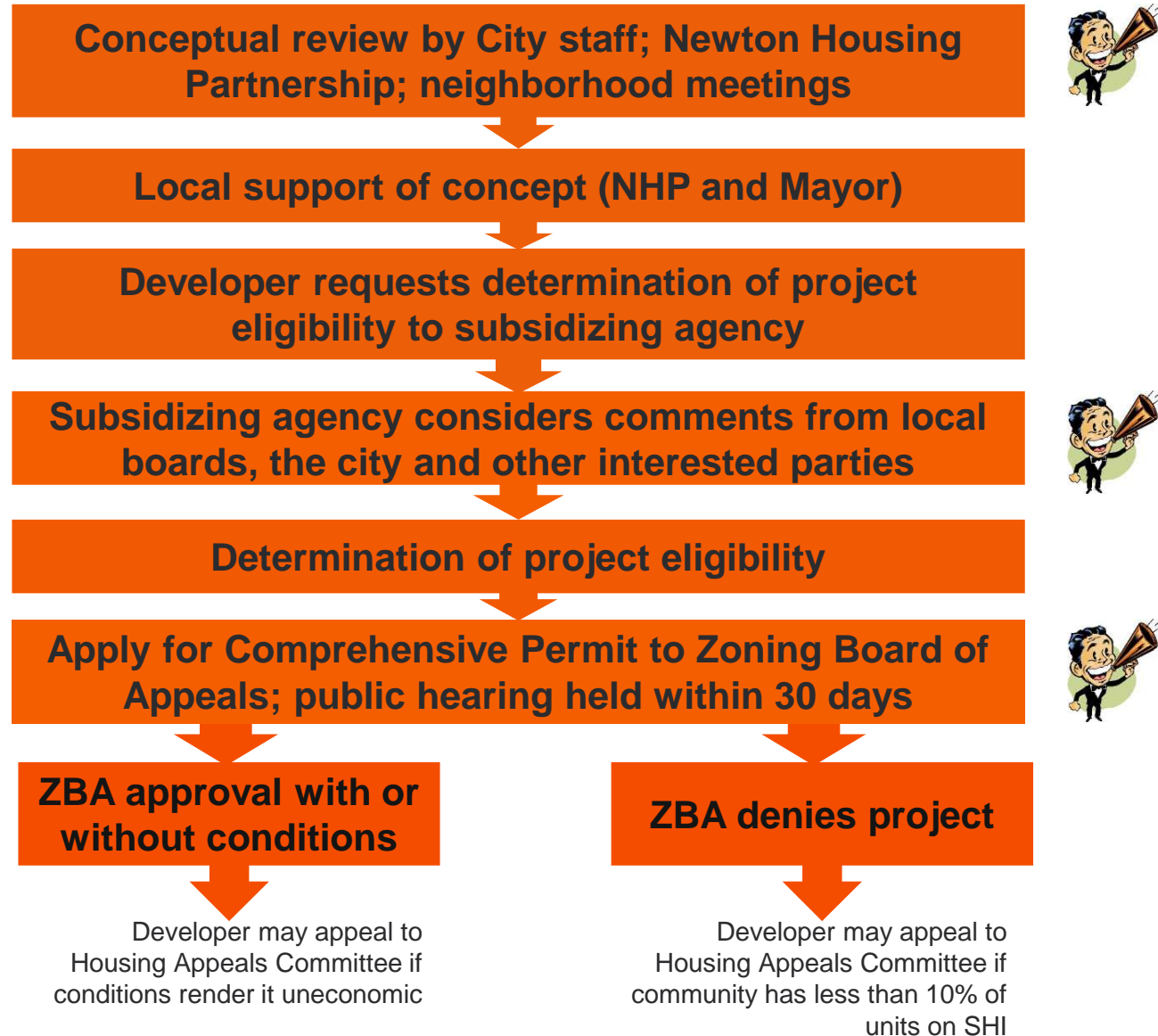
- ◆ If the ZBA rejects the project or imposes conditions that the developer believes makes the project “**uneconomic**” the developer may appeal the decision to the state **Housing Appeals Committee (HAC)** within **20 days** of the ZBA’s filing
 - ◆ The HAC may overrule the local decision unless it is determined that the project presents **serious health or safety concerns** that cannot be mitigated
 - ◆ The HAC may also reduce or eliminate conditions imposed on a project where the developer can demonstrate that such conditions make the project “**uneconomic**”
- ◆ This appeal option is only available for developers in communities with less than 10% of its housing units on the SHI

Friendly 40B

- ◆ Introduced in 1990 as part of the **Local Initiative Program (LIP)**, and is meant to allow towns engaged in a 40B process to have more input and control
- ◆ Developer meets with City officials and the **public** early in the process to win support for the project
- ◆ Will proceed as Friendly 40B only if the Mayor sends a letter of support for the application to the **Mass. Dept. of Housing and Community Development (DHCD)**



The Local Initiative Program (Friendly 40B)



Friendly 40B and Community Input



- ◆ In a Friendly 40B, the **Newton Housing Partnership** and **City** staff review and comment on the project and the **Mayor** signs a letter of support that is submitted to the **Department of Housing and Community Development**
- ◆ A Friendly 40B therefore provides additional opportunity for public comment
- ◆ In the past applicants have been encouraged to hold two or more community meetings to engage the community as early as possible to present their ideas and obtain feedback. **Newton is now adopting a policy to standardize the manner by which this community engagement will occur during the early stages of a Friendly 40B project.**

General Timeline for “Friendly” 40B

Local Initiative Program			
Preliminary reviews; neighborhood meetings	Project Eligibility; Determination; comment period	ZBA Public Hearing	ZBA Decision
2-4 months (or longer)	2-3 months	Up to 6 months	40 days from close of public hearing ¹

¹ An appeal to the Housing Appeals Committee must be filed within 20 days from the date of the ZBA decision

Public, Government, and Developer Roles for 40B Projects

<p>Newton Housing Partnership</p> <p>Advisory review, Project eligibility support</p>	<p>City Departments</p> <p>Advisory and Technical Reviews, Encourage outreach</p>	<p>Board of Aldermen</p> <p>Attend neighborhood meetings, ZBA hearing</p>	<p>General Public</p> <p>Attend neighborhood meetings, ZBA hearing</p>
<p>Monitoring Agent</p> <p>Monitors compliance</p>	<p>Mayor</p> <p>Project eligibility support</p>	<p>Subsidizing Agency</p> <p>Determines Site eligibility; establish/enforce profit limitation</p>	<p>Conservation Commission</p> <p>Advisory review</p>
<p>Developer</p> <p>Entitled to public hearing and decision; no legal obligation to modify proposal</p>	<p>Other local boards</p> <p>Recommendations to ZBA</p>	<p>Zoning Board of Appeals</p> <p>Grants all local approvals; impose conditions</p>	<p>Housing Appeals Committee</p> <p>Can overrule local decision</p>

Special Permit Process

- ◆ The City's Zoning Regulations often require Special Permits for new buildings and uses that are not allowed by right
- ◆ A Special Permit issued under Newton's **Inclusionary Zoning Ordinance (IZO)** requires a housing development with 3 or more units to provide no less than **15% "Inclusionary Units"**
- ◆ **Inclusionary Units** are subject to long-term income and affordability restrictions
- ◆ Inclusionary Units will, in most cases, qualify for inclusion in Newton's SHI for purposes of meeting Ch. 40B 10% threshold
- ◆ Special Permit applicant **may only use public development funds:**
 - 1) to construct more units than the 15% required, 2) in order to offer units more affordable than otherwise required, or 3) for units that exceed accessibility requirements.

Special Permit Process


- ◆ **Pre-Application Steps** – Developer meets with Development Review Team
- ◆ Chief Zoning Code Official prepares report of zoning reliefs required (Zoning Memo)
- ◆ Applicant submits Zoning Memo with Special Permit Application
- ◆ **Land Use Committee** holds **public hearing**, discusses and makes recommendation for action, with or without conditions
- ◆ **Board of Aldermen** takes final action; **16 (out of 24) required**
- ◆ While the zoning ordinances contain enumerated **criteria** that the **Board of Aldermen** must apply in making their decision, the Board has a greater degree of discretion than in the 40B process (see Special Permit criteria in Glossary)

Special Permit Process



Special Permits: Community Input

- ◆ *Note:* While the public hearing is the only required occasion for community input, the City strongly encourages developers to hold public meetings prior to filing the Special Permit application.
- ◆ In advance of the Land Use Committee public hearing, abutter notifications are sent, notice is printed in a newspaper advertisement, and notice is included in the City's *Friday Packet* and Planning Department's *Friday Report* (both posted each Friday on City website).
- ◆ Documents related to high-interest Special Permit applications and Land Use Committee working session documents are posted on Planning Department's Special Permit webpage
- ◆ Members of public have opportunity to comment at public hearing of Land Use Committee and can also submit written comments to the Committee prior to their recommendations



Individual members of the Waban Area Council prepared the powerpoint based on governmental sources. As such, if there are any errors, omissions, inaccuracies or other shortcomings in the powerpoint they are not those of our esteemed panelists.

A presentation sponsored by the Waban Area Council
<http://www.wabanareacouncil.com/>

Please come visit us

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.