

**TOWN OF BELMONT
ZONING BOARD OF APPEALS
MEETING MINUTES
January 6, 2021**

**RECEIVED
TOWN CLERK
BELMONT, MA**

DATE: October 7, 2021
TIME: 3:00 PM

Board Members Present: Nick Iannuzzi, Chair; James Zarkadas, Vice Chair; Andrew Kelley; Teresa MacNutt; Casey Williams; William Fick; Elliot Daniels

Staff: Ara Yogurtian, Assistant Director, Community Development; John Marshall, Assistant Town Administrator

Town Counsel: George Hall; David Lyons

Consultant: Ezra Glenn, MHP Consultant – Massachusetts Housing Partnerships

1. CALL TO ORDER 7:00 PM (MEETING WAS HELD VIA VIDEO CONFERENCE)

Mr. Iannuzzi called the meeting to order and introduced the Zoning Board of Appeal's members. He noted the order of the meeting and explained the video conference process. He also noted that public comment would not be taken tonight, this meeting was for the Board to learn about the Chapter 40B process. The Application would be opened on Monday, January 11, 2021.

Mr. Iannuzzi announced the sad news of the death of Jeffrey Wheeler, Senior Town Planner for the Town of Belmont for 27 years. There were many condolences offered throughout the meeting.

2. INFORMATION SESSION:

- a. Meet with Town counsel, George Hall, to discuss process, eligibility, rules, laws and guidelines pertaining to MGL Chapter 40B, Affordable Housing and 760 CMR 56:00, Comprehensive Permitting for Low- and Moderate-Income Housing.**

Ezra Glenn, Consultant, Public Planning Research and Limitation Consulting Firm, explained the why and the how of the Chapter 40B process. He noted that he offers free consultation through Massachusetts Housing Partnership to Zoning Boards to help towns understand the 40B application process. Next, Mr. Glenn shared a PowerPoint presentation and reviewed the history of Chapter 40B. He described local land use control

in Massachusetts and explained that all cities and towns are in charge of their own land use rules. He noted that around the 1960's people became concerned that there was not affordable housing so this piece of legislation was adopted in the 1960's.

He noted that if there was one thing to remember, a comprehensive permit is different in these three ways:

- It is a comprehensive permit and the Zoning Board can issue approvals for any local by-law. This includes wetlands, shade trees, local policies, dedications of roads, any by-laws, etc. This does not include State Laws, building codes, 21E, ADA, Historic reservation, open meeting law, and those will still apply like normal.
- It is expedited with strict deadlines.
- It is a flexible process.

Mr. Iannuzzi asked for clarification regarding the number of units. He questioned if once the State has given the Developer approval for a 40B project and agreed to a number of units does the Zoning Board have control of the number of units. Mr. Glenn noted that the ZBA has the right to ask for changes that might reduce the number of units. If during the review of the application, the ZBA noticed that the density creates problems with traffic, size of building, size of parking then this can only be solved by only reducing the number of units then that is fine but it cannot be started by assuming there are too many units. You begin with an analysis of the details and the issues of the project and then work through the problems.

Mr. Glenn explained that comprehensive permits can be turned away after the Town has met the 10% affordable Housing requirement, Belmont is at about 6.5% currently. Once a Town has achieved the 10%, they can turn away 40B applications. Mr. Glenn reviewed the Safe Harbor Provisions; he gave examples of the ways that the Town could meet the requirements.

Next, Mr. Glenn reviewed the 40B application submission requirements. He noted that the Developer needs to be an eligible applicant; a public agency, a non-profit or a limited dividend organization. If a for-profit does the project then the State will limit the amount of profit. The process is started with state agencies who determine eligibility prior to coming in with an application. Mr. Glenn suggested that comments by the Board are withheld at this point. The Applicant will need to fill out an application and provide all of the information that is required by the Town. He noted that the Board should ask for as many copies as they need and to require all of the information that is typically needed to review a project.

Next, Mr. Glenn reviewed the performance required deadlines and presented a graphic with the deadline details. A decision must be made on the comprehensive permits in 180 days from the opening of the hearing, including all revisions and conditions. In general, the process was to receive the application, post public notice and then schedule the first public hearing within 30 days and then the Board could operate as it normally does. The issues need to be identified very quickly at first so that they can begin to make decisions and solve issues. Extensions can be issued by the Developer if needed but the Board should be making good progress towards making a decision.

Mr. Yogurtian asked for clarification on the timeframe and dates for this project. He noted that December 15, 2020 was the application date and January 11, 2020 would be the first public hearing, the 30-day limit would be met.

Mr. Glenn noted that the 180 days included the date from the opening of the hearing to the close of the hearing. The Board will have 40 days to render a decision and then there will be a 20-day appeal period following that as well. Some Towns will have the decision voted on within the 180 days.

Mr. Glenn noted that this timeline doesn't matter if the process is being run well and if they need a little more time then the Applicant should give it. He emphasized that the deadlines can be waived as long as progress was being made but the process cannot be dragged out. An Applicant can appeal a denial or conditions or abutters can appeal to court. Mr. Yogurtian confirmed that the process and deadlines will be the same as a special permit or a variance. Mr. Hall noted that it is like any other zoning application, it is signed by the Applicant, approved by the Board and filed with the Clerk.

A copy of all of the slides from Mr. Glenn's presentation would be provided to Ara Yogurtian.

Mr. Glenn explained the process of the review. He recommended scheduling a site visit early in the process. He explained that the Board could ask for material samples, for the Applicant to stake the property, a building height balloon float, etc. The ZBA has a lot of power and a lot of responsibility to learn everything they think they need to learn to feel comfortable approving or modifying this project or denying it if they can't. In order to do this the Board should ask for whatever they need, renderings, site visits, information. Do not be afraid to ask for traffic studies, storm water calculations, traffic engineering, site planning work, architect plans, landscape plans and assistance in reviewing these studies. They can be brought to staff or you can hire your own experts to review the reports. Ask the Developers-Applicants to put up funding for the outside reviews. You must review the studies that are submitted by the Applicant, not to come up with your own studies. Ask the Applicant questions and they will submit the answers and peer review groups will review them and let the Board know if it passes. All of the reports are made as part of the record and used in the decision and provided to the Applicants as well.

Mr. Glenn made suggestions on how to use the 180 days wisely. He noted that the ZBA should focus on the real issues, what are the problems and how to solve those problems. He recommended starting with traffic, then moving to stormwater and the moving to design. Don't hesitate to ask for what you need to keep the process moving along. The Board will need to identify real issues and solve the problems through negotiations. It is possible that the Developer may need to add more units to the project in order to cover additional expenses and keep the project economically feasible for any types of upgrades such as running a new water main on the street, etc. The local issues that the Board should focus on are: health, safety, design, environmental issues, open space for screening or recreation and how it fits within the neighborhood, etc.

Mr. Glenn summarized that the goal was to work with the Developers to negotiate and the goal was to identify the issues, beginning with the engineers to solve in a technical way, comply with open meeting laws and consult closely with Town Counsel to make sure these meetings are being run correctly. At some point, the ZBA will close the public hearing, deliberate and work towards conditions and reviewing the Applicant's request for waivers and identifying every place that they are not meeting the By-Laws. Every waiver should be addressed in the decision. The three alternatives are to deny the project if you cannot make it work, it can be approved as submitted if it is a perfect project or lastly and most likely to approve with conditions. The final plan sets should ideally include all of the conditions. If the project was to be made uneconomic the Developer will say it was essentially a denial so the requests should be workable and reasonable to help keep the project afloat. Otherwise, the Applicant will likely appeal to the Housing Appeals Committee if something is required and it "broke the camel's back". The concerns need to be legitimate and to focus on the problems and to figure out what needs to be done to fix them. The balancing factors tend to be the closer you are looking at physical issues the more likely they are to be helped and the more you look at aesthetic issues you are getting into shaky ground. If the problem was well documented by peer review studies then that shows a lot of weight. Mr. Glenn reiterated that it was important to identify the issues early and creatively try to resolve them.

Mr. Hall noted that this was a relatively small project and there would be less flexibility in the reduction of units. It would make the project uneconomic pretty quickly to reduce the number of units. You want the best project as possible that will end up being economical for the Developer.

Mr. Glenn reviewed the list of things that were under control of the Zoning Board and the things that were under control of the Subsidizing Agency. This list is included in the slides that will be provided to Ara.

Mr. Zarkadas noted that the Applicant had already responded to several of the issues that that were previously brought up by the Planning Board. Mr. Glenn noted that it was now up to the Zoning Board to decide if they were okay with the way the issues were addressed. Mr. Hall said that the Zoning Board was now the permit granting authority.

There was a discussion regarding massing and Mr. Hall noted that it could be ameliorated and mitigated and there are various ways to approach it. Think about the impacts and who would it harm, could the rooflines be changed, could screening be added, could positioning be changed to solve the issue. Mr. Glenn noted that when there is a problem, the Board needs to think about how can they make it better.

Abutter concerns and public comments would be taken as they normally would be for a Zoning Board case. Mr. Glenn and Mr. Hall recommended breaking down the issues and covering them, a few at a time per each meeting. Mr. Iannuzzi asked for an independent moderator to help run the meetings. Mr. Hall noted that it would be important to explain the project to the public so that they understand that they will have a chance to make their comments. The public will have plenty of chances to comment on the different issues during multiple public comment periods. Mr. Hall mentioned that the Board could add an extra meeting each week if they get close to the closing date and need to have more meetings. Everybody who votes has to have attended all of the hearings according to Mr. Hall, or they can sign an affidavit stating that they have read the meeting minutes from the meeting that was missed.

Mr. Hall noted that the Board cannot email about this project at all. All responses are to Mr. Yogurtian only. Mr. Glenn said that all of the information should be posted on line so that people can be well informed before they come to the meetings. In terms of the conditions, it is important to address real issue matters and to never request anything that you wouldn't require of any other project.

Mr. Glenn noted that he was available in the future if there are any further questions regarding the 40B process.

3. Adjourn 8:49 PM