

Chapter 40B Information (Very Abbreviated)

What is 40B and what does it mean?

Chapter 40B of the General Laws was passed in 1969 as a way to encourage construction of affordable housing. These projects have been built in other towns and cities since then, and in recent years towns like Pepperell have become “targets”.

How does it work? After receiving State approval for “Project Eligibility”, a developer applies for a Comprehensive Permit to the local Zoning Board of Appeals (ZBA), not the Planning Board. Local zoning for lot size, housing density, setbacks and so forth do not apply.

The ZBA, after Public Hearings and review that might take many months, can then approve, or approve with conditions, or deny a Comprehensive Permit. The thresholds for the state to uphold a local denial or conditional approval are very high. For example, the health and safety of occupants or residents must be imperiled, or the proposed housing must be seriously deficient. As a result most appeals are decided in the developer’s favor.

40B is Contentious

Quoting from the state’s web site: “Affordable housing advocates have called Chapter 40B the state’s most effective tool for creating more affordable units. Local officials have called it a blunt instrument killing cities and towns with uncontrolled development.”

Pepperell is not alone – other area towns are dealing with 40B developments and issues. Groton for example has several in the works. One of these is the new Groton Residential Gardens that is being built on 119 across from NEBS. Townsend tried to deny one and was over-ruled by the State. We have just learned of another development at the conceptual stage for Park Street.

What Can We Do?

It will come down to finding enough obstacles to convince the state that this project should be denied or significantly reduced. Because this is a 40B project, the impact of this development on the character of our town, taxes, schools, and all sorts of other local factors will not carry any weight and will be ignored. Arguing about them will get you nowhere. Arguing about 40B will also get nowhere – it is the law. (However, campaigning to repeal that law is highly encouraged.)

Although the 40B process by-passes most local zoning, the developer must still obtain various permits required by state statutes. State regulations, such as Wetlands Protection Act, Title 5, and all building codes, remain fully in effect under the comprehensive permit.

The arguments against this development that have a chance of some success are those that bring some other state law into opposition with this one, or arguments that can show negative impact on health and safety. Topics we are focusing on are endangered species, Title V and septic, wetlands and groundwater, traffic and public safety (fire and police). Arguing just about the inconvenience of more cars on our roads won't work. We need to convince the state that roads such as Heald Street can't be improved, and a large increase in traffic will lead to fatalities.

We've got a lot of people already working on this, but the Public Hearing opening on May 23 will just be the start of many months of a long hard effort. We can use all the help we can get. We need people to attend town board meetings, continue to attend meetings as the Public Hearing continues, help keep neighbors up to date, and make sure we do everything we can to prevent this project from destroying what we value in Pepperell.