



TOWN OF WEST NEWBURY

381 Main Street, West Newbury, MA 01985

ZONING BOARD OF APPEALS APPROVED MEETING MINUTES 5-19-20

Meeting was called to order at 4:12 PM. Meeting was by remote participation. Meeting was recorded.

ZBA Members attending: Paul Kelly (Chair), Patrick Higgins (Member), William Bachrach (Member), Judith Gregg (Member) and Dennis Lucey (Associate Member).

Absent members: Rick Davies

1. At start of meeting, Angus Jennings confirmed that no development permit was pending to date.
2. A "Chapter 40B" presentation was made by Phil DeMartino from Department of Housing and Community Development (DHCD), Commonwealth of MA.
3. A copy of the presentation slides is included in these minutes.
4. Key points are listed below. Please refer to the attached presentation materials for details:
 - State statute enacted to allow developers to override local zoning in municipalities with 10% or less of affordable housing.
 - Developer must be part of a "subsidized" development built or operated by a public agency, non-profit, or limited dividend organization.
 - At least 25% of the units must be income restricted to meet affordability levels for the local area.
 - 40B projects with "for sale" components are subject to 20% profit limitations.
 - Once the Subsidizing Agency provides notice to Municipality where the project is located, a 30 day review and comment period by Municipality is initiated. (For the project in question, The Cottages at Rolling Hills, review and comment period is currently extended to June 16, 2020 based on current COVID conditions.

- A site visit for the ZBA is recommended. (Per Angus Jennings, another site walk for ZBA members will be arranged soon. It was suggested that having a full set of site plans before the site walk would be helpful in evaluating the project. A video of the Board of Selectmen's 5-15-20 site walk will be posted on line soon.)
- A Project Eligibility Letter (PEL) is needed before the project can proceed. It can be issued by Mass Housing, Mass Housing Partnership, Mass Development, or Dept of Housing and Community Development. Once Developer has a PEL they can file for a Comprehensive Permit with the ZBA. Developer also needs evidence of site control.
- Mass Housing Partnership provides technical assistance to local ZBAs. It allows for ZBA to engage qualified third party consultants at the choosing of the ZBA. The expense is born by the developer. (Phil DeMartino recommends it would be best for the Town to engage a consultant as soon as possible to avoid delays.)
- The 40B process has numerous filing and notification deadlines. It is imperative to know and meet all filing deadlines to avoid a "constructive approval", where project approval by state is automatic if a deadline for response or action is missed.
- The ZBA has three decision alternatives for the project submitted by the developer:
 - a. Denial (strongly urged NOT to do this as applicants almost always appeal and courts do not look favorably on denials)
 - b. Approval as submitted (almost never occurs)
 - c. Approval with conditions (most likely outcome)
- Appeals by the applicant are made with the Housing Appeals Committee (HAC)
- West Newbury has achieved to date a 2.5% Subsidized Housing Inventory (SHI), being 2.5% of total existing housing units per recent records.
- West Newbury has a "certified housing plan" (Housing Production Plan or HPP) for the creation of subsidized units. The Planning Board has established these goals with approval of Board of Selectmen. This plan is approved from 6-18-18 until 6-17-23.
- To achieve safe harbor conditions (not included in 40B statutes), there are 3 options: a.) Recent Progress on SHI eligible housing units; b.) classification of a Large Scale Project; or c.) Related Applications. (As respects a Large Scale Project, Phil DeMartino noted that the cap for total new housing units in one project application, in small towns with less than 2500 existing units, is 6% of total existing units.)
- To achieve statutory safe harbor, allowing the town to deny the project, a town must have 10% of all town housing designated as subsidized housing; or general land area takes up a minimum of 1.5% of total land area in town zoned for residential, commercial or industrial use.

- Within 15 days of opening a hearing, the Board must provide written notice to developer/applicant and DHCD advising that safe harbor has been achieved by the town. Supporting documentation must be provided.
 - Town or applicant can file an interlocutory appeal within 20 days of DHCD ruling regarding safe harbor applicability.
5. It was noted that the Developer will need to submit to the town a list of requested zoning exemptions.
 6. Also noted was the Developer will need to submit a project impact analysis (e.g traffic, municipal facilities and services, etc.) prepared by an engineer or other professional.
 7. The Developer will also need to submit to the town for review its pro forma financial information for the project.
 8. The Developer and the Town need to prepare a list of all project abutters for proper notice to all abutters of project details.
 9. Angus Jennings, Sam Joselin, Mike McCarron, and Attorney Jon Witten will participate in review and revision of the towns 40B rules and regulations. A ZBA meeting is scheduled for Tuesday June 2nd to review the DRAFT of these changes and to make further revisions.
 10. Following the Board's review of the changed rules and regulations, a public hearing will be scheduled for June 11th at which time additional revisions can be made. From that hearing, agreed upon rules and regulations will be voted upon at the Town Meeting scheduled for June 27th.

Meeting adjourned 8:00PM.

Respectfully submitted:

Judith D. Gregg

Judy Gregg

ZBA Board Member