



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

Barney Heath  
Director

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**MEMORANDUM**

**DATE:** June 21, 2024

**TO:** R. Lisle Baker, Chair, Zoning & Planning Committee  
Members of the Zoning & Planning Committee

**FROM:** Barney Heath, Director, Department of Planning and Development  
Jennifer Caira, Deputy Director, Department of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Alyssa Sandoval, Deputy Chief Planner for Current Planning

**RE:** **#231-24 Requesting discussion regarding community engagement process for large developments**  
ZONING & PLANNING COMMITTEE AND COUNCILOR KELLEY requesting a discussion with the Planning Department, Law Department, Chair of the Land Use Committee, and Chair of the Zoning Board of Appeals regarding the process for community engagement for large developments.

**MEETING:** June 27, 2024

**CC:** City Council  
Zoning Board of Appeals  
Jonathan Yeo, Chief Operating Officer  
Alissa O. Giuliani, City Solicitor  
Jonah Temple, Deputy City Solicitor

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**Overview**

In response to the above docket item, the Zoning and Planning Committee is holding a discussion regarding the engagement with community members during the review process for large developments. The following memo provides some background information on the process and the role of Planning staff as well as a case study of a recent large 40B project.

## **Types of Engagement**

The Planning Department is involved in a wide range of community engagement and outreach activities. The role the department plays in outreach varies depending upon the type of project. For city-initiated projects the department is more directly involved in outreach to help inform the community and shape the project (i.e. Village Center Overlay District (VCOD), Washington Street Pilot, Walk/Ride/Roll Master Plan, Climate Action Plan). For private development projects, the department must play a more technical role in assuring notification of the public, making public and accessible all project related materials, reviewing and analyzing the project and providing information and recommendations to the decision makers.

For proposed development projects going through the special permit or comprehensive permit process, the department's role is to provide professional analysis to decision makers and information to the community. Staff consider all comments received and share those with peer reviewers (independent experts typically hired by the city, and paid for by the applicant, to review large projects). Planning staff can and do recommend project changes, however it is ultimately up to the applicant as to whether to agree to incorporate changes and to the decision maker whether to require changes. Planning staff frequently answer questions regarding the project or process, but staff do not hold community meetings. Staff will always strongly recommend that applicants meet with neighbors early on, but it is appropriately the role of the applicant to hold these meetings for private development projects.

The Planning Department does play an important role in providing updated information to the community so that they remain informed of the project and any changes, including:

- Postcards sent to abutters in advance of public hearing
- NewGov records contain all files, including comments from community, peer reviews, staff memos
- Transmitting information to City Councilors and members of the public throughout the process
- Dedicated project websites for high-interest projects, such as 40Bs

## **Development Review Process**

As a city we can provide direction and expectations for new development through zoning and policy documents and guidelines. However, we cannot control what private property owners may propose within current regulations. It is ultimately the role of the decision makers to determine what is appropriate, weighing all of the feedback from the public and city staff as well as the specific criteria set forth for approval or denial. Large developments, such as new apartment or mixed-use buildings with hundreds of units, can be approved through a special permit (and potentially a rezoning) granted by the City Council or through a comprehensive permit granted by the Zoning Board of Appeals (ZBA) through the 40B process.

Large developments often require additional approvals from other City boards and commissions as well, such as the Newton Historical Commission, local historic district commissions, or Conservation Commission. Large developments also typically will voluntarily present to additional commissions to get feedback, such as the Urban Design Commission, Housing Partnership, or Fair Housing Commission. These commissions provide additional opportunities for public comment and for the project to be shaped and refined.

### 40B Comprehensive Permit

Under the state's Chapter 40B Affordable Housing law, projects providing a minimum number of affordable housing units (20% of units at 50% of area median income or 25% of units at 80% of area median income) may choose to apply for a comprehensive permit through the Zoning Board of Appeals (ZBA) in lieu of a special permit and/or rezoning. As part of the comprehensive permit an applicant may also request waivers from zoning and other city ordinances. The process for a comprehensive permit includes project eligibility review and the public hearing process for the comprehensive permit.

#### *Project Eligibility*

The first interaction that city staff and community members typically have with a proposed 40B project is during the project eligibility determination process. This process is run entirely by the subsidizing agency (MassHousing or the Executive Office of Housing and Livable Communities) and is a state-imposed pre-qualification process required prior to filing a 40B Comprehensive Permit application with the ZBA. The subsidizing agency must determine that the developer is an eligible organization and that the project is "fundable".

As part of this process the subsidizing agency schedules a site visit, notifies the mayor that an application has been received and provides 30 days for the city to provide comments on the proposal. The City is required to post the notice and project eligibility application on the City website and to seek comments from municipal boards and departments. The policy in Newton is to go beyond just posting the information and seeking comments from boards and commissions but to actually send a notice soliciting comments to all property owners within a 300-foot radius. The date and time of the subsidizing agency's site visit is also typically provided as part of this notice (assuming it has been scheduled). The 30-day comment period is a tight turnaround to solicit public comments, however this ensures neighbors are aware of the potential project at a very early stage and the local knowledge of the site is often helpful and incorporated into the City's official comment letter. All board, commission, and public comments received are also compiled and attached to the City's comment letter.

#### *Comprehensive Permit Hearing Process*

It typically takes several months for the subsidizing agency to make a determination on project eligibility. Once a determination has been issued the developer may apply to the City's Zoning Board of Appeals for a comprehensive permit. Prior to filing for the permit, in Newton the developer would first meet with city staff for a development review team (DRT) meeting and apply for zoning review. Once the Comprehensive Permit application is filed with the ZBA, the ZBA clerk schedules a public hearing (required within 30 days of application filing) and sends notice of the public hearing to

property owners within 300 feet (state law requires only abutting property owners within 300 feet be noticed, however practice has been to send notice to all property owners within a 300-foot radius), posts the notice on the city website and in the Boston Herald, and sends a notification to the City Council.

Early in the process the ZBA normally schedules a site visit with the applicant, which is open to the public. Community members are welcome to speak at the public hearing or send written comments. Once the public hearing is open, the Chair of the ZBA is tasked with managing public comment and ensuring the same rules apply to everyone (adherence to time limits, how many times one person may speak, whether the public may share their screen with additional materials). Typically, the ZBA has allowed for public comment at all meetings throughout the six months to year long process. Written comments are sent to board members and compiled and posted to NewGov as part of the official record. All application materials, including those produced by City staff or peer reviewers are also posted on NewGov and available to the public.

Under the State law, in considering an application, the ZBA must balance the regional need for housing against Newton's health, safety, open space, site and building design concerns. Up until recently Newton had not met the 40B safe harbor threshold (i.e., 10% of year-round housing being eligible for the state's subsidized housing inventory), which limits the discretion of the ZBA in reviewing and conditioning comprehensive permit projects.

### Special Permit

The special permit process for large projects looks similar to the comprehensive permit process, except the project eligibility phase does not apply, and the City Council is the decision maker. The noticing process is the same as comprehensive permits, except the noticing is done by the City Clerk. All application materials are available on NewGov and public comment is typically permitted at each meeting. Planning staff perform a similar technical role, analyzing the project and making recommendations. Peer reviewers are also utilized on large projects. In considering approval the City Council must make findings per the review criteria set forth in the zoning ordinance.

### **Case Study: 528 Boylston Street Comprehensive Permit**

#### Project Eligibility

The most recent comprehensive permit approved by the ZBA was Toll Brothers's application for 244 apartments (which was ultimately reduced and approved at 184 units) at 528 Boylston Street. The City was first notified of the application to MassHousing for project eligibility in September of 2022. Staff sent notice of the application to the City Council, city staff, boards and commissions, and abutters within 300 feet of the project site. Toll Brothers' project eligibility application and the comment request letter from MassHousing, including details for their site visit, were posted on the city website on a page dedicated to the project. Eleven letters were received from neighbors, which were attached to the city comment letter sent to MassHousing in October 2022.

Comments received included concerns about the size of the development, removal of trees, impacts to conservation areas, and traffic and safety issues along Route 9. The city comment letter recognized the great need for housing and particularly affordable housing, but recommended units be set aside

at lower income levels. Staff also raised concerns about the size of the building and its proximity to abutters along Hagen Road and recommended the massing be broken up and the height stepped down near abutters and that the building be pulled back from the closest homes along Hagen Road. Staff also noted that the proposed plan lacked usable open space and did not do much to improve the inhospitable pedestrian conditions along Route 9 and noted that more analysis would need to be done regarding traffic, parking, and circulation.

In February 2023, MassHousing issued a letter stating that project eligibility was granted, subject to final approval. MassHousing also reiterated many of the city and abutter comments and recommendations in their letter.

### Comprehensive Permit

Toll Brothers submitted their comprehensive permit application in April 2023 and the ZBA opened a public hearing in May 2023. At the first hearing the ZBA authorized staff to hire peer reviewers to provide an independent review of stormwater, open space, site design, architectural design, traffic, parking, and circulation. The ZBA held eight additional meetings, seven of which were public hearings, and granted approval one year later, on May 8, 2024. The chair permitted comment at each of the eight hearings and did not cut off public comment until everyone interested in doing so had a chance to speak. The ZBA also conducted a site visit, which was attended by the applicant team, city councilors, and neighbors.

Over the course of the hearings the ZBA heard hours of testimony and received almost 800 pages of written testimony, containing over 200 written comments as well as photos, videos, presentations, and analysis from outside experts. All written correspondence was compiled by the ZBA clerk and posted to NewGov (see all materials [here](#)). Additionally, Planning staff exchanged dozens of emails and phone calls with community members, had several in person discussions at the public counter, multiple zoom meetings with neighbors, as well as phone calls and zoom meetings with city councilors. Given the sheer volume of correspondence, staff are unable to directly respond to every email, however city staff, peer reviewers, and ZBA members reviewed all materials submitted. The ZBA and peer reviewers spent significant time discussing many of the issues raised by neighbors, such as stormwater runoff, groundwater, building size and massing, and safety of all users along Route 9.

In response to ZBA, staff, peer reviewer, and community comments, Toll Brothers made significant changes to the project:

- The project was reduced from 244 apartments to 184 apartments, the building size was reduced by approximately 130,000 square feet, the height was reduced at the rear of the building closest to Hagen Road and the buffer between the building and the neighbors was significantly increased.
- The project is required to provide 46 units affordable to households earning up to 80% of the area median income (AMI) and Toll Brothers agreed to further restrict nine of those units to households earning up to 50% AMI.
- The open space on the site was increased, the building was pulled back from Route 9 and a new sidewalk along with a landscape buffer will be installed along the Route 9 frontage.

- Toll Brothers will extend the current Route 9 island on the Parker Street ramp to eliminate the dangerous maneuver of vehicles turning from Route 9 onto Sheldon Road and they will stripe a new acceleration/deceleration lane from the Parker Street ramp to all for more gradual entry on to and exiting from Route 9. Two speed feedback signs will also be installed on Dudley Road.
- Toll Brothers will also be required to extend a future Safe Routes to School multi-use path along Route 9 from Olde Field Road to the apartment building, and the site design includes a north-south footpath through the site with landscape screening to provide a pedestrian connection from Route 9 to Hagen Road.
- In addition to the physical improvements, the project will provide \$582,183 to the City for sewer and stormwater improvements to decrease inflow and infiltration plus an additional \$500,000 in mitigation funding to be used by the City for off-site transportation, open space, or recreation improvements.
- The project will also meet or exceed all state and city stormwater requirements.

The ZBA may grant waivers from city ordinances, however the 40B process does not permit the ZBA to waive any state requirements. This project will still require approval from MassDOT for the work along Route 9 and approval from the Newton Conservation Commission, the latter which will include additional opportunities for public comment.

This project benefited from extensive community involvement and the end result is a design that is more responsive to the surrounding context and will provide numerous improvements and protections for neighbors. While neighbors may still be unsatisfied with the outcome, the ZBA is charged with carefully weighing neighbor's concerns against the regional need for housing, as required by 40B. The Planning Department is sensitive to the level of change and proposed construction that larger development projects bring to neighborhoods and strive to provide a high level of service that relays information while acknowledging residents' viewpoints, potential impacts of a project, and unique experience and knowledge of the neighborhood. For large projects staff try to balance providing information to neighbors and soliciting input while ensuring the process plays out in a public setting. Staff can also only make recommendations, so it is important for both the applicant and decision makers to hear directly from community members. It has often been helpful when the ward councilors have been involved and can help disseminate information to neighbors, collect feedback and information to share with staff/board members, and help facilitate community meetings with the applicant.