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A Primer on 40B

By Gregory T. Federspiel

The Town anticipates that a developer will be putting forth a proposal for a large apartment complex on Upper School Street across from Utopian Farm Stand and Atwater Avenue. The proposal is for a “40B” project. General Law Chapter 40B, Sections 22-23 of the Massachusetts state statutes, known as the Comprehensive Permit Law, or simply 40B, was enacted back in 1969 by the state to facilitate the construction of low- or moderate-income housing. The law establishes a consolidated local review and approval process (one comprehensive permit) that is handled by the Zoning Board of Appeals to cover all aspects of the local approval process. Other boards and committees can provide input to the ZBA but the ZBA is the permit granting authority for a 40B permit.

Developers willing to include a minimum of 25% of the proposed new housing units as affordable per state guidelines can seek a 40B comprehensive permit. The development can create greater density and other variations from local zoning regulations through the 40B process. For communities that have not met the minimum threshold of having 10% of their housing stock designated as affordable, the developer can appeal any local decision to the state Housing Appeals Committee, where modifications to local conditions often occur. Manchester currently has under 5% of its housing stock formally designated as affordable.

For housing to be affordable, the cost of the housing must not exceed 30% of the income of a household making 80% of the Area Median Income (AMI). We are part of the metro Boston area which, in 2019, had an 80% AMI of \$80,300 for a family of three. This translates to spending no more than \$2000 a month on housing, including utilities. Assuming such a household has the funds for a 20% down payment, they can purchase a house in the \$400,000 range; the median assessed value of a house in Manchester is nearly double this.

The ZBA’s formal public hearings are the official start of the local review of a 40B project. Prior to appearing before the ZBA, a developer must receive project eligibility approval from the state. Before issuing such approval, the state agencies involved will seek comment from the municipality. In anticipation of these comments, developers will often seek preliminary agreement for the project from the Board of Selectmen in order to put forth to the state what is known as a “Friendly 40B” – that is, a project that has local support because of the contribution it can make to the community’s need for more diverse housing options and the contributions the developer agrees to make to local needs (infrastructure, public safety, land protection, etc.)

Before determining whether to support the project, the Selectmen will hold public sessions dedicated to the review of the proposed development. We expect this to begin by the end of the summer and conclude by the end of October. The developer, with or without Selectmen support, will proceed to



secure the project eligibility from the state. By mid-winter, 2021 the project is likely to begin the comprehensive permit review process before the ZBA which could last through the summer. The ZBA process is independent of any preliminary agreements that the developer and Selectmen may have reached. Additional approvals from the state are needed before the project can break ground, putting us into 2022.

A “Friendly” 40B process affords an opportunity to negotiate mitigation measures from the developer. Otherwise, the town and the developer often end up fighting before the state’s Housing Appeals Committee where we may end up on the short end of a decision.

The 40B process has many steps to it and can get quite involved. It has been many years since a project was proposed in Manchester. No doubt this one will generate a high degree of interest. The Town will create a dedicated part of our web site for information as the process unfolds in the coming months.