



# Manchester-by-the-Sea 40B FAQ

Last Updated December 28, 2020

Frequently asked questions from Manchester-by-the-Sea residents about the 40B project application. This FAQ will be updated and added to as necessary.

**1. Q: How is it that this project is before the Town?**

A: A private developer has secured a purchase and sales agreement from the current private landowner. The developer has submitted paperwork detailing his desire to construct a large apartment building on the parcel through the provisions of state law, Chapter 40B. Thus, the Town needs to respond to the application.

**2. Q: What is the difference between the 40R LCD initiative and the 40B project proposal?**

A: The projects, while unrelated to each other, are both regulated by the State and proposed for land in the Limited Commercial District. How they could interact if approved is something the Town should carefully consider and plan for.

40R (Limited Commercial District) - Manchester is embarking on a planning process to rethink its Limited Commercial District (the area north of Route 128) and to proactively plan for mixed-use, mixed-income development. This would advance two principal goals of the 2019 Master Plan: increase Town revenue through planned development in that area of town and support a diversity of housing options throughout town.

To achieve these goals, the town is exploring a 40R Smart Growth Overlay District, which is a state program that encourages cities and towns to implement zoning that allows compact, mixed-income, by-right development in areas with existing or planned infrastructure and adequate access to services. A 40R district must be primarily residential, must allow a certain amount of housing density, and must include at least 20% affordable units; it can include comprehensive development and design standards to ensure that new development is consistent with the town's vision for the area. As an incentive, the state makes payments directly to towns that have successfully adopted a 40R district, as well as additional payments after new housing is built in the area.

40B - 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.

**3. Q: Can the 40R limit the number of housing units in the 40B housing complex?**

A: No. 40B projects can exceed density limits local zoning imposes. The 40R project is a study that is identifying development opportunities that may be approved by a Town Meeting vote in the future. A study, in and of itself cannot limit the number of housing units in the 40B proposal.

**4. Q: Is there any recourse that the Town has at this point to stop this?**

A: It is very rare that a proposed 40B project is stopped. Even when denied at the local level, a 40B applicant can appeal to the state and typically the 40B Housing Appeals Board awards a permit to proceed.

• The 40B Legislation allows Towns to deny a 40B Application as not consistent with local need, and prohibits Applicants from appeal to the Housing Appeals Committee IF:

- i. 10% of the Town's year-round housing stock is affordable (as defined by DHCD) and on the Subsidized Housing Inventory (SHI)
- ii. During a single calendar year, the Town has increased its number of low- and moderate-income year-round housing units in an amount equal to or greater than 1.0% of the total needed to reach the state goal of 10% of a community's housing stock being affordable (for Manchester it is 11 units).
- iii. 1.5% of its land area (excluding preserved, state and federally owned) is committed to affordable housing development. In Manchester this would require about 68 acres be dedicated to affordable housing, less than 10 acres is currently dedicated to affordable housing.

**5. Q: Are there any legal options based on other towns experiences, to delay this project indefinitely?**

A: The Town is not aware of any legal options to indefinitely delay this project. Once the ZBA renders it decision, the applicant can appeal to the state. Abutters and others with standing can try to appeal a permit through the courts.

**6. Q: How will this project impact the school district?**

A: School impacts will depend on the number and type of units (1, 2 or 3 BR) permitted. The Consultant has provided an Impact Assessment that outlines school impacts based on the existing proposal. The Town is hiring a specialist to evaluate the assessment and help determine it's accuracy.

Under Chapter 40S the State will reimburse education costs to communities that show school impacts exceed income generation (based on % of town budget dedicated to schools)

**7. Q: What will happen to the conservation land and wetlands in the area?**

A: The 40B Applicant will be submitting an environmental impact report as part of its Comprehensive Permit Application to the Zoning Board of Appeals. The Report will identify potential impacts the project is expected to have and will outline steps the project will take to minimize and mitigate such impacts. The Town will hire an environmental specialist to review the report and advise the town. Numerous state environmental standards and safeguards will have to be met.

**8. Q: How can there be appropriate space for leaching fields if there is ledge?**

A: The Project will be required to provide an appropriate wastewater system. If a system cannot be developed on the site that meet state mandated standards, the Project would not be able to move forward.

**9. Q: Can the developer just build the affordable units and not the rest?**

A: 40B Regulations require that an applicant provide 25% of project units as affordable. A Town cannot require a higher percent of affordable units. If all the units are rental units, the Town is entitled to count all the project units- both affordable and market rate- toward its fulfillment of the 10% of its housing stock as affordable.

**10. Q: Is there a runoff containment plan?**

A: The 40B Applicant will be submitting Stormwater Management Plan as part of its Comprehensive Permit Application to the Zoning Board of Appeals. The Town will hire a stormwater specialist to review the report and advise the town.

**11. Q: Is there a difference in the terms affordable and low-income housing?**

A: The two are often used to refer to housing that is restricted to households of low and moderate income. People who qualify for affordable housing have higher incomes than those who qualify for low-income housing. See income chart below:

	1 Person	2 Person	3 Person	4 Person	5 Person
30% AMI	\$24,900	\$28,450	\$32,000	\$35,550	\$38,400
60% AMI	\$49,800	\$56,880	\$64,020	\$71,100	\$76,800
80% AMI	\$62,450	\$71,400	\$80,300	\$89,200	\$96,350

- 12. Q: Can the Town prevent people renting apartments to enroll in the school but owning a home in another Town?**  
A: No, but they must maintain their primary residence in town if they wish to send students to our schools. This also cannot be done in the town's existing rentals.
- 13. Q: What will happen to the existing compost area?**  
A: The 40B will have no impact on the Town's compost area. The Town expects that the compost area will be repurposed when the compost operations move to the planned site on upper Pine Street.
- 14. Q: Can a town achieve "Safe Harbor" during an ongoing appeal through an alternate proposal?**  
A: Progress toward meeting the Town's affordable housing goals (safe harbor) must have occurred within the 12 months prior to the 40B Application to the ZBA.
- 15. Q: How many affordable units are required in Town to achieve the 10% minimum?**  
A: At this time, 113 additional housing units are required for the Town to reach 10%. The Town currently has 115 housing units that meet the 40B requirements (page 12 of the Housing Production Plan), located mostly in Newport Park, The Plains, and Loading Place Road.
- 16. Q: Is a Town vote required at any steps in this process?**  
A: 40B Comprehensive Permit does not require a Town Meeting vote.
- 17. Q: What is the 40B Land Percentage vs. Housing Units?**  
A: About 68 Acres required vs 10 Acres now dedicated to Affordable Housing.
- 18. Q: What is the traffic impact with the additional 40R expansion potential?**  
A: Potential impacts of the 40R District cannot be projected until uses and density are determined.
- 19. Q: Has MBTS considered the recent government discussion to eliminate 40B requirements?**  
A: Any discussions about potential changes to 40B regulations in the future have no bearing on the current application.
- 20. Q: What is the impact to Singing Beach? Can it handle an additional 200 cars?**  
A: Access to Singing Beach is controlled by the capacity of the parking lot and beach capacity as determined by the Department of Parks and Recreation. These are not expected to change with or without additional housing units in town.
- 21. Q: Would this 40B require additional staffing in the Fire Department and Police Department?**  
A: The 40B Applicant submitted a Community Impact Assessment that concludes there is no need for additional staffing in the Fire or Police Departments. The Town is hiring a specialist to review the assessment and advise the Town on its accuracy and potential mitigation options.
- 22. Q: Will these apartments be allowed to be rented as Airbnb or vacation rentals?**  
A: It is likely that a lease agreement will prohibit subletting. If the Town moves forward with negotiations with the Applicant, the Town could request a prohibition of subletting for short term rentals.
- 23. Q: What housing needs does this project satisfy, other than 40 units of Affordable Housing?**  
A: In addition to the 40 income restricted rental units, the project helps diversify housing options in Town by providing housing that is smaller in size than a single family home, is fully or more accessible due to single floor living, requires no yard/exterior maintenance, has tenant amenities such as a fitness center, playground, meeting rooms, flexible work space and on site management. An apartment community (with services and facilities in addition to housing units) is intentionally designed to function as a neighborhood with public gathering spaces and tenant amenities offering opportunities for shared experiences.

The project also provides an alternative to home ownership. The affordability gap for a single-family homes is \$229,500, based on the difference between what a median income household can afford of \$585,500 (for an average household of three and 80% financing) and the median house price of \$815,000. Moreover, this analysis assumes 80% financing and the ability to afford the upfront cash requirements for the down payment and closing costs of almost \$170,000, something most first-time homebuyers without equity in a previous home are typically challenged to provide and effectively adds to the affordability gap.

The housing needs of seniors, young professionals, small families, households in transition, and singles and couples across life's stages are some that may be satisfied by this project.

**24. Q: Is there adequate on-site parking?**

A: The Town will hire a consultant to advise on adequacy of on-site parking, along with circulation, and other transportation related issues.