

# **Town of Needham Chapter 40B Guidelines**

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# Town of Needham Chapter 40B Guidelines

## I. INTRODUCTION

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These Guidelines provide information about the Town of Needham's policies, procedures, and requirements for comprehensive permits under G.L. c. 40B, §§ 20-23 ("**Chapter 40B**"). In addition, the Guidelines are intended to advise the Zoning Board of Appeals (**ZBA**) and other Town boards and departments with a role in the development review process. Applicants planning to apply for a Chapter 40B comprehensive permit in Needham should review these Guidelines and meet with the Director of Planning and Community Development as early as possible *before* submitting a Project Eligibility (Site Approval) application to a housing subsidy program.

Note: the Town's guidelines are not a substitute for the statute, the Department of Housing and Community Development's (**DHCD**) Chapter 40B regulations (760 CMR 56.00), or the requirements and policies of affordable housing subsidy programs. It is the applicant's responsibility to comply with these and other applicable state requirements.

### A. CHAPTER 40B

Enacted in 1969, Chapter 40B encourages the construction of low- and moderate-income housing (affordable housing). Under Chapter 40B, a Zoning Board of Appeals (ZBA) may grant a comprehensive permit for a housing development that meets the requirements of the statute and qualifies for funding from a state or federal housing subsidy program. A mixed-income development is considered eligible for a comprehensive permit if at least twenty-five percent of the units in it are affordable.<sup>1</sup>

When less than ten percent of a community's housing is affordable as defined by Chapter 40B, the statute effectively supersedes many local regulations that would make it difficult for developers to build affordable housing. In a community that is subject to Chapter 40B, affordable housing developers may file a single (comprehensive permit) application with the ZBA in lieu of separate applications to other local boards. The ZBA may grant, grant with conditions, or deny the comprehensive permit. If the ZBA denies an application or grants a comprehensive permit with conditions that make the development uneconomic, the applicant may appeal to the State's Housing Appeals Committee (**HAC**), which has authority to overrule the ZBA. HAC decisions may be appealed to Superior Court.

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<sup>1</sup> Rental developments may be eligible for a comprehensive permit if at least 20 percent of the apartments are affordable to very-low-income renters.

**B. HOUSING CONDITIONS IN NEEDHAM**

Needham is a maturely developed suburb of Boston. Its Census 2010 population of 28,886 consists primarily of people in family households, and most of its housing units are owner-occupied. Needham has relatively little rental housing, and the existing rental inventory offers a limited supply of affordable, suitable housing choices for families. According to the most recent American Community Survey (ACS) data (2005-2009), over half of all renters in Needham spend more on housing costs than the benchmark standard of 30 percent of monthly gross income. Furthermore, some 35 percent of the Town's renter households spend more than half of their monthly gross income on housing costs.<sup>2</sup>

**Renters with High Housing Cost Burdens**

Renters paying more than...	Massachusetts	Norfolk County	Needham	Boston Metro Area
30% monthly income	49.7%	47.6%	51.2%	49.5%
50% monthly income	24.8%	23.4%	34.7%	24.7%

Source: American Community Survey, 2005-2009 Estimates.

Census 2010 provides the following information regarding the number of housing units in Needham:

Needham Census Data	2000	2010
Housing Units	10,846	11,122
Housing Occupied Units	10,612	10,341

The increased number of non-housing occupied units may be related to temporary market conditions during the census period. Overall, there has been a slow increase in the number of housing units in recent years.

Almost 80 percent of Needham’s total housing inventory was built prior to 1980, and 27.4 percent prior to 1939. Future housing growth in Needham will most likely be dominated by redevelopment of existing properties because there is relatively little vacant land left on which to build. It is challenging to provide for affordable housing in Needham due to the Town's limited vacant, developable land and high buildable lot values.

The Needham Affordable Housing Plan (June, 2007) outlines four important goals which are furthered by these Guidelines. They include:

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<sup>2</sup> U.S. Bureau of the Census, American Community Survey (ACS) 2005-2009 Five-Year Estimates, B25070, "Gross Rent as a Percentage of Household Income." www.census.gov

- An overarching goal is to build a stronger and deeper community. The way in which housing efforts are carried out can help in bringing the community together in addressing a widely shared concern.
- A related goal is to remain a community having a broad socio-economic diversity shaped less by economic imperatives than by individual choices about the living environment. Achieving that goal entails meeting housing needs across the full range of incomes, promoting the diversity and stability of individuals and families living in Needham.
- A widely expressed goal is to have this community able to shape its own housing future, doing so with sensitivity to larger-than-local considerations but without loss of the Town's ability to guide development outcomes. A key objective in seeking to assure local control is to meet the subsidized housing standard set by Chapter 40B, which currently calls for 10 percent of all housing to benefit through long-term subsidies, as well as to meet annual affordable housing goals for communities above 10%.
- A related goal is to have assurance that new housing is appropriate to its location and context, which is made easier by achieving the above goals, but it requires more than that, including sensitively designed regulation and cooperative development and decision-making processes.<sup>3</sup>

## **II. POLICY STATEMENT**

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The Board of Selectmen has set a goal of having ten percent of Needham's housing units eligible for and counted on the Chapter 40B Subsidized Housing Inventory, consistent with the best interests of the Town. The benefits of this policy include advancing economic diversity for the community and protecting the Town's control of its own zoning.

While all 40B applications will be addressed individually according to applicable laws and regulations, the facts and circumstances of the individual case, input from public participation, and the sound exercise of discretion by the Town and other public agencies, developers and other affected parties are all encouraged to consider the factors set forth below in planning, review, development, and management of 40B properties.

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<sup>3</sup> *Needham Affordable Housing Plan*, 9.

### **III. REVIEW CONSIDERATIONS**

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#### **PERMANENT AFFORDABILITY**

Affordable housing in Needham should be permanently affordable, i.e., the affordability restriction should not lapse with the passage of time. Except in unique circumstances, all parties should expect this principle to apply to all Chapter 40B development in Needham.

#### **PREFERENCE FOR RENTAL DEVELOPMENTS**

The Town prefers rental developments over homeownership developments for two reasons: first, under current state policies, market units in mixed-income rental developments count towards the Town's Subsidized Housing Inventory, and second, the Town believes that rental housing provides greater affordability and flexibility than ownership units even when not specifically regulated as means-tested housing.

#### **PROPERTY MANAGEMENT AND COMPLIANCE WITH AFFORDABILITY RESTRICTION**

Rental housing developers must provide qualified, experienced, property management personnel, on-site in the case of large projects. In addition, they must demonstrate adequate capacity to comply with the project's affordable housing restriction, e.g., the income eligibility of tenants and monthly rent and utility charges consistent with limits imposed by the applicable housing subsidy program.

#### **PERCENTAGE OF AFFORDABILITY**

At least 25 percent and not more than 50 percent of the units in a comprehensive permit should be affordable. However, the Town is open to making 20 percent of the units affordable in a comprehensive permit rental development if the units are affordable to low-income (at or below 50 percent of area median income) tenants.

#### **INCOME TARGETS**

Rental developments should provide a continuum of affordability, such as units at 30 percent, 50 percent, 80 percent, and 110 percent of Area Median Income (AMI).

#### **LOCATION; GENERAL**

In general, the Town prefers that affordable housing be located near public transportation and retail services. In addition, the Town prefers affordable housing for families to be located near elementary schools, and affordable housing for seniors to be located near the Town's Senior Center. No section of Needham is precluded from affordable housing development.

#### **LOCATION; SPECIFIC AREAS**

The Town encourages affordable housing development in the New England Business Center, Highland Commercial – 128, Mixed Use – 128, and the adjacent Industrial District, located in the area North of Kendrick Street bounded by Kendrick Street, the Charles River, Central Avenue, and the Route 128 right of way. Additionally, the areas around Avery Square – specifically the Hillside Avenue Business District, Avery Square Business District and the adjacent Industrial District – the Center Business District and Chestnut Street Business District are appropriate areas, all as shown on the attached Priority Map. (See Priority Areas Map)

## DESIGN

The Town recognizes that many factors determine appropriate design. The following points are general guidance for developers to consider in designing their projects. The Town understands that each project is different and that some of the following points may not apply in particular cases.

- **Make every reasonable effort to comply with local regulations.** Minimize the number and extent of waivers required for height, setback, or other requirements. Under Chapter 40B, waivers of local rules and regulations are not “automatic.” Rather, the Town’s responsibility is to consider waiving requirements that would make a project uneconomic to build. It is the applicant’s burden to demonstrate the need for each requested waiver.
- **Orient buildings toward the street wherever possible.** A portion of the project should continue the neighborhood street front. Orientation for other considerations such as solar access should also consider general site orientation to the street. Developers should choose design solutions that serve the interests of the site, sustainability, and preservation of the character of the neighborhood.
- **Pay attention to design elements found in the neighborhood, and make use of them where possible to help developments fit with the neighborhood.** The design should be as consistent as possible with the existing building frontage in scale and character. Use existing topography where possible to minimize the impacts of the massing of the new construction on adjacent properties.
- **Locate off-street parking to the side and rear of buildings.** This will help to ensure that buildings and landscaping, not parking, define views from the road.

## DENSITY

In the single residence districts, the Town wants to limit affordable housing development to a density of eight to ten units per acre. Higher densities (up to twenty-four units per acre) in apartment-zoned parcels and sixteen units per acre in other zones will be considered. Densities exceeding twenty-four units per acre will be considered on an individual case basis in the Kendrick/Fremont area (see Specific Locations).

### Density of Permitted Chapter 40B Developments in Needham (Sample)

Project name	Address	Number of units	Total area (acre)	Units/acre
<b>Rental Prjobject</b>				
Charles River Landing	300 Second Avenue	350	7.94	44.1
Nehoiden Glen	1035, 45 & 55 Central Avenue	61	4.6	13.3
<b>Condominium Project</b>				
Suites of Needham	797 Highland	8	0.61	13.1
Craftsman Village	21 High Street	6	0.61	9.8
High Cliff Estates	199 St. Mary Street	12	1.46	8.2
Browne - Whitney Place	207-213 Garden St.	6	0.62	9.7
Junction Place	32 Junction Street	5	0.26	19.2

Source: Needham Planning Department

### HISTORIC PRESERVATION

Preserve historically significant buildings and features. Buildings listed in the State Register of Historic Places or the Massachusetts Cultural Resources Inventory System (**MACRIS**) are presumed to be significant, but other buildings not listed may be significant as well. Developers should consult with the Needham Historical Commission if their site includes an existing older building *before* submitting a Project Eligibility application to MassHousing or another Subsidizing Agency.



### MIXED USE/VILLAGE DEVELOPMENT

Developers are encouraged to:

- Provide housing that is oriented to encourage and take advantage of public transportation.

- Reuse and redevelop existing buildings, e.g., older commercial, industrial, or institutional facilities, and
- Provide housing in mixed-use buildings, provided the location is zoned for compatible business uses.

#### **ENVIRONMENTAL CONSIDERATIONS**

- Use **environmentally responsible design**, whether Leadership in Energy and Environmental Design (**LEED**) certification or other generally accepted standards, taking steps to minimize adverse impacts on natural resources, conserve water and energy, use native plants, and use green building construction materials.
- **Incorporate landscaping treatments** that will help to blend the project with surrounding area, including retaining mature trees and existing vegetation where possible.
- **Take active steps to protect nearby wetlands and other open space**, including resource areas covered by the local wetlands bylaw even if not required by the Massachusetts Wetlands Protection Act.
- **Minimize impervious surfaces.**

#### **NEIGHBORHOOD SUPPORT**

Developers are encouraged to work with residents of affected neighborhoods. It is a favorable consideration for developers to address reasonable neighborhood concerns.

#### **LOCAL PREFERENCE**

To the maximum extent allowed by law, the Town wants local preference observed in tenant and buyer selection, including affordable housing lotteries. Local preference means:

- At least one member of the household currently lives in Needham;
- At least one member of the household works for the Town of Needham, or for a business or non-profit organization located in Needham; or
- The household includes at least one student attending the Needham Public Schools through the METCO Program.

State policies or other requirements may limit or preclude local preference for a specific development. However, the Town expects developers to advocate and make reasonable efforts to secure applicability of local preference for their projects.

#### **OTHER PUBLIC BENEFITS**

Provide other public benefits in addition to affordable housing, e.g., 1) pass-through easements to adjacent public properties and open space; 2) streetscape improvements; or 3) pedestrian linkages.

## PROCEDURES

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### A. PRE-APPLICATION PHASE

When planning to apply for a comprehensive permit, an applicant should meet with Town staff and some of the Town boards at the earliest possible point in the planning process. These discussions should occur **before filing a Project Eligibility application** with MassHousing or another subsidizing agency. Many problems that occur during the permitting process can be reduced or avoided altogether if applicants take the time to consult with local officials and accommodate reasonable requests while a project is still at the conceptual stage. Furthermore, early consultation can help make local review of Project Eligibility applications much smoother.

#### KEY STEPS

- **Meet with the Director of Planning and Community Development** to discuss plans for the site. Ask about the site's history, the neighborhood, other recent developments and developments in the pipeline nearby, and issues that might cause concern for Town boards.
- **Meet with the Town's Development Review Team (DRT)**, and be open to input and guidance from Town staff. They have technical information that the applicant will need in order to plan the site and prepare for the meetings with Town boards. In addition to the Director of Planning and Community Development, the DRT includes the Assistant Town Manager/Operations, Building Commissioner, Director of Conservation, Director of Economic Development, Director of Public Works, Town Engineer, Highway Superintendent, Water and Sewer Superintendent, Chief of Police, Fire Chief, and Director of Public Health. A meeting with the DRT is an efficient way to obtain feedback about many aspects of the project without having to attend individual appointments with department heads.
- **Have a preliminary meeting with the Design Review Board (DRB)**. The degree to which proposed buildings fit with surrounding development will weigh heavily in how a comprehensive permit application is received in Needham. The DRB can help applicants explore possibilities for building design, landscaping treatments, exterior lighting, and so forth, depending on the site and the types of housing you intend to construct.
- **Have a preliminary meeting with the Conservation Commission** if the project will require approval under the state Wetlands Protection Act, G.L. c. 131, s. 40 and/or any waivers under the Needham Wetlands Bylaw. Chapter 40B developments that affect wetland resource areas usually require an Order of Conditions under G.L. c. 131, s. 40, but the local wetlands bylaw, like other local regulations, falls under the purview of the ZBA. It is in your interests to comply with the local wetlands bylaw because doing so may reduce the number of waivers you need in order to construct your project. You should not assume the ZBA will grant local wetlands bylaw waivers simply because you ask for them.

- **Meet with the Needham Historical Commission** if your project involves substantial alterations to or demolition of a historically significant building. (See Section III, Historic Preservation)
- Meetings with the DRB, the Conservation Commission, and other Town boards and committees are subject to the Open Meeting Law.
- The Town cannot require applicants to discuss the project with neighbors, but it is to the developers' advantage to do so as soon as possible - certainly before applying for a Project Eligibility letter (see below).

Pre-application consultations will not lead to any binding decisions. The purpose of the meetings is to give the applicant a chance to present the proposal for the property and to obtain information from the Town, and to give the Town a chance to learn about the proposed plans. If the ZBA is represented at any of these meetings, the ZBA member who participates will speak only as an individual, not in an official capacity as a ZBA member.

## **B. ELIGIBILITY TO APPLY FOR A COMPREHENSIVE PERMIT**

The following prerequisites must be met by anyone applying for a Chapter 40B comprehensive permit:

- The applicant must have site control, such as a deed, purchase and sale agreement, or option to purchase;
- The applicant must be a public agency, non-profit organization, or limited dividend organization; and
- A housing subsidy program must have determined that the proposed project is fundable.

This third requirement means that developers have to obtain a pre-application eligibility letter from an agency that subsidizes low- or moderate-income housing. Doing so requires filing an application to a housing subsidy program. In most cases, MassHousing will be the housing subsidy agency that issues a **Project Eligibility** determination, but DHCD, the Massachusetts Housing Partnership (**MHP**), and MassDevelopment also subsidize low- or moderate-income housing and issue project eligibility letters. Furthermore, developers wishing to build under a Local Initiative Program (**LIP**) comprehensive permit must obtain a project eligibility determination from DHCD - with approval of the Needham Board of Selectmen.

Once an applicant submits a Project Eligibility application to MassHousing, the Board of Selectmen will be notified. MassHousing will request local comments within 30 days. In Needham, the Board of Selectmen seeks comments from Town departments and other Town boards, and compiles all comments received into a single submission to MassHousing.

Depending on the project (mainly the project's size, location, and density), the Board of Selectmen may convene a meeting with representatives of other Town departments and committees in order to facilitate a conversation about the proposed development. Applicants will be afforded an opportunity to be heard, and may be invited to make a presentation and respond to questions.

### **C. APPLICATION, REVIEW, AND DECISION PROCEDURES**

This section of the Guidelines summarizes the key features of Needham's comprehensive permit process. In accordance with Chapter 40B, however, the ZBA has adopted **Comprehensive Permit Rules**. An applicant should review the ZBA's Rules (Appendix A). If there is a conflict between these Guidelines and the ZBA's Rules, the latter will control. An application will not be deemed received until all the information required by the ZBA Rules is provided and the required fee is paid.

#### **WHAT DOES "7/14/30/15/15/30/180/40/20" MEAN?**

- Within **7 days** of the receipt of the comprehensive permit application, the ZBA must distribute copies of the application to all Town departments, boards, and committees with a role in the review process. In Needham, this means the Planning Board, Design Review Board, Conservation Commission, Board of Health, Public Works Department, and Board of Selectmen. (This is why pre-application meetings may be helpful both to the applicant and the participating Town officials.)
- Within **14 days** of receipt of the comprehensive permit application, the public hearing must be advertised, with proper legal notice and proper notice to abutters. (Applicants will be responsible for the cost of publishing the legal notice and mailing the notice to abutters.)
- Within **30 days** of receipt of a complete comprehensive application, the ZBA must open the public hearing unless the applicant grants permission in writing to hold the hearing at a later date.
- Within **15 days** of opening the public hearing, the ZBA must determine whether it wants to deny an application on one or more of the grounds identified in DHCD's Chapter 40B regulations at 760 CMR 56.03(1), following procedures under 760 CMR 56.03(8). The ZBA must provide written notice to the applicant and to DHCD.
- Within **15 days** of receiving the ZBA's notice, the applicant must file a written response with DHCD if she/he wants to challenge the ZBA's assertion that it can deny the application. The applicant must provide a copy of that response to the ZBA.
- Within **30 days** of receiving the applicant's appeal, DHCD must issue a decision. DHCD's failure to issue a timely decision will result in a determination in favor of the ZBA.

- Unless the applicant provides written consent, the ZBA cannot extend the public hearing beyond **180 days** of the initial hearing date. The 180 day limit assumes that the applicant will make timely submissions of materials reasonably requested by the ZBA.
- The ZBA must render a decision - a denial, approval, or approval with conditions - within **40 days** of the closing of the public hearing, unless the applicant agrees in writing to an extension.
- If the ZBA denies the permit or approves the permit with unacceptable conditions or requirements, the applicant has the right to appeal to the Housing Appeals Committee within **20 days** after the written decision has been filed with the Town Clerk. Similarly, any person aggrieved by the ZBA's issuance of a comprehensive permit may appeal in court within **20 days** of the date that the decision is filed with the Town Clerk.

### **MANAGING THE PROCESS**

- The ZBA requires enough information to understand the physical characteristics of the site, the health, safety, and welfare impacts of the project, and the impact on the neighborhood. The ZBA's minimum application requirements are designed to provide this information at the outset. A **complete comprehensive permit application** will help to minimize delays in the permitting process.
- The ZBA strongly encourages that applicants meet with the neighbors in advance of the first public hearing to explain the proposed project and receive input that will make the project more acceptable to the neighbors.
- In addition to considering the contents of an application, the ZBA may conduct a **site visit** in order to understand the site and neighborhood conditions, the proposed site plan and building design, and the location of abutters who will be most affected by the proposed development.
- Depending on the issues involved with the site or the proposed development plan, the ZBA may hire qualified **peer review consultants** to assist with the review process. The applicant will be responsible for paying the reasonable cost of these services. Needham has adopted the provisions of G.L. c. 44, s. 53G, so the applicant will be asked to deposit funds in an escrow account that the ZBA can use to pay the peer review consultants.
- The ZBA may ask the applicant to participate in **work sessions** in order to examine specific issues in a setting less formal than that of a public hearing. Work sessions are advisory; they do not constitute an extension of the public hearing. The sessions would be announced at the public hearing and posted as public meetings under the Open Meeting Law so that interested people can attend and observe. No substantive decisions can be made at work sessions, however. At the next public hearing, one of the attendees will provide the full ZBA with a report about matters discussed at the work sessions. The ZBA has the discretion to

hire a third party mediator to facilitate these meetings, to be paid for by the Applicant or through the use of a consultant with experience in Chapter 40B at no cost, through the Massachusetts Housing Partnership program.

- In its discretion, the ZBA may defer to the Town Manager to assemble a **mitigation team** or committee to negotiate with you for mitigation to address the impacts of your project on traffic, infrastructure, public facilities, or public services. At the conclusion of its work, the mitigation team will make recommendations to the ZBA for conditions to be incorporated in the comprehensive permit decision.
- If the applicant and the ZBA cannot reach agreement about project changes the ZBA has requested, the applicant will be asked to prove that the requested changes will make the project uneconomic. This means the applicant will need to submit a **development pro forma** for the ZBA's review, and the ZBA may decide to hire a peer review consultant to examine the pro forma and its assumptions.

#### **THE ZBA'S DECISION**

- The ZBA will close the public hearing when all relevant information has been received and all parties have had opportunity to present their issues. After closing the hearing, the ZBA will deliberate and reach a decision.
- The ZBA has three members and two associate members. One or more of the associate members may participate in the public hearing. The affirmative vote of two persons of a three person panel is required to render a decision. The panel to render a decision will normally be the three members of the ZBA. If any regular member has not attended all sessions of the public hearing or is otherwise unavailable, the Chairman will designate an associate member to serve on the panel to render a decision.
- The ZBA will review the waivers the applicant has requested in the application. The ZBA will normally grant waivers that will allow an affordable housing development to go forward, assuming the project's impacts can be mitigated in a manner that protects the Town and surrounding neighborhood. However, applicants should not assume that all of the requested waivers will be granted. The applicant has the burden to demonstrate that the waivers are essential for constructing the project.

TOWN OF NEEDHAM  
Chapter 40B Guidelines  
Priority Areas:  
Affordable and Mixed-Income  
Housing Development



- ROADWAYS
- Interstate
  - U.S. Highway
  - State Route
  - Non-numbered Road
  - Local Roads
  - Open Water
  - Railroad ROW
  - MBTA Station
  - Commuter Rail
  - Needham Boundary

0 0.25 0.5  
Miles

