

Chapter 40B: Frequently Asked Questions

What is Chapter 40B?

Chapter 40B, also known as the Comprehensive Permit Law, is the state's Affordable Housing Law. Enacted in 1969 to help address affordable housing shortages, Chapter 40B aims to encourage the production of affordable housing in all communities throughout the state.

How does a development qualify for a Comprehensive Permit under Chapter 40B?

To qualify for Chapter 40B, a development proposal must first be approved under a state or federal housing program such as MassHousing, MassDevelopment, the Executive Office of Housing and Livable Communities (formerly the Department of Housing and Community Development), or the U.S. Department of Housing and Urban Development. Affordability restrictions for homeownership developments and rental units apply. If units are for sale, at least 25% must be sold to households with incomes less than 80% of the area median income (AMI). In a rental development, at least 25% of the units must be restricted to households earning less than 80% AMI or at least 20% of the units must be restricted to households earning less than 50% AMI. Applicants must also agree to restrict their profit to a maximum of 20% in for-sale developments and 10% per year for rental developments. The property must be deed-restricted ensuring that the property will remain affordable with each sale and resale for at least 30 years.

What are the affordability restrictions and what is the area median income?

Affordable homes, apartments, and condominiums are reserved for those who make less than 80% of the AMI for the area. Each year, the Department of Housing and Urban Development (HUD) calculates the AMI for every geographic region in the country using data from the US Census. The AMI is the midpoint of a region's income distribution, meaning half the households earn more and half earn less. A household's income is calculated by its gross income, which is the total income received before taxes and other payroll deductions. In Harwich, as part of Barnstable County, for a family of four, the AMI limit is \$106,800 (2025). For more information regarding income limits, please click here: <C:\Users\bnickerson\OneDrive - Town of Harwich\Documents\Housing Advocate\FY25 HUD Income Limits.pdf>

Who is the permit granting authority for Comprehensive Permits?

Chapter 40B establishes a consolidated local review and approval process into one comprehensive permit that is handled by the Zoning Board of Appeals (ZBA). The ZBA has

the authority to grant approvals that would otherwise trigger separate applications under local bylaws or ordinances. These projects are subject to more flexible rules and a more streamlined permitting process. Chapter 40B overrides local zoning. The ZBA does not have the authority to waive state requirements. Developers are required to obtain various permits required by state statutes and state regulations remain fully in effect under the comprehensive permit. Developments are also subject to the State Wetlands Protection Act, which is administered by the Conservation Commission.

What control does the Town have over Chapter 40B developments?

The ZBA has very limited ability to deny a comprehensive permit outright unless at least 10% of a community's housing inventory is considered affordable and on the Subsidized Housing Inventory (SHI), or 1.5% of the land area is committed to affordable housing development. Of Harwich's 6,581 housing units, approximately 4.98% of the Town's total housing stock—are included on the SHI. Once a community reaches the 10% threshold, it can claim "safe harbor" and deny a developer a comprehensive permit. Until that time the ZBA must balance the regional need for affordable housing against local health, safety, open space, and site and building design concerns. The Massachusetts Housing Appeals Committee (HAC) has established high standards for a ZBA to meet to deny a project. The denial must be based on valid, compelling, and documented demonstration of verifiable local concerns about the health and safety of residents of the proposed housing, the surrounding neighborhood, or the community as a whole; and serious building and site design deficiencies that cannot be rectified with conditions of approval; and establishment that the local requirements imposed by the ZBA are essential for protecting these public health, safety, design or environmental or open space concerns. The standards are very difficult to meet. The Zoning Board of Appeals may place conditions and requirements on the project. The ZBA can impose requirements that are clearly under its purview and that do not exceed what is generally imposed on other types of residential development. The requirements cannot address a pre-existing condition affecting the municipality generally or be disproportionate to the impact of the project on the community. Generally, ZBAs can try to negotiate on the density or scale of proposed building, architectural design changes, housing types and unit sizes, open space and outdoor recreation amenities, landscaping, and off-site mitigation such as connecting nearby sidewalks to improve pedestrian safety. The most productive approach is to focus on qualitative ways to improve a project. These include physical and operational aspects of a project and its impact on public health and safety and environmental design.

How does the local review process work?

- Step 1: Prior to applying for a comprehensive permit with the ZBA, the developer must first apply for a determination of project eligibility with a subsidizing agency. Within 10 days of filing an application, the applicant must provide written notice to the Town which may submit comments to the subsidizing agency within 30 days. The subsidizing agency will review the proposed project, consider any comments received and may issue a site eligibility letter at which point the applicant can apply for a Comprehensive Permit from the ZBA.
- Step 2: Following issuance of a site eligibility letter, a formal application is submitted to the ZBA.
- Step 3: The ZBA notifies local boards and Town departments of the application and requests their comments and recommendations. The case must be opened within 30 days of the application and abutters within 300 feet of the project site will be notified by mail of the initial hearing.
- Step 4: The ZBA will hold a series of public hearings and, when necessary, may engage the services of one or more consultants to review various aspects of the project at the applicant's expense. Hearings are geared towards understanding site characteristics, neighborhood issues, public safety issues, and the applicant's general concept for the development, and original plans are often modified through this process. After the review is complete and the hearing is closed, the ZBA has 40 days to issue a decision unless the Board and applicant agree to an extension.
- Step 5: A decision is issued which may result in approval, conditional approval, or denial. If approved the applicant must still obtain the permits required by state statutes. If the ZBA denies the application or imposes conditions that the applicant believes makes the project economically infeasible, the applicant may appeal the decision to the State Housing Appeals Committee (HAC) within 20 days of the filing. The HAC will render a decision within 30 days of the hearing and may overrule the local decision. For those proposals that go to the State

Housing Appeals Committee, the record has generally been in favor of allowing reasonable projects to move forward.

Who can appeal and how does the process work?

If the ZBA approves the comprehensive permit, any person aggrieved may appeal within the 20-day time period as provided in M.G.L. c. 40A, §17. For more information about Chapter 40B including guidance on comprehensive permits, sale prices and rents, and the Housing Appeals Committee, please click here: <https://www.mass.gov/info-details/housing-appeals-committee-hac>