

To: Southborough Zoning Board of Appeals

lot 2

120 Turnpike Road 40B Apartment Bldg. Questions and Comments

Public Hearing 12/5/23 PAUL CARTER, RESIDENT, 6 HILLSIDE AVE

1. The existing Comprehensive Permit Application refers to the address of the proposed 40B Apartment project as 120 Turnpike Road. 120 Turnpike Road is located on Map 37 Lot 4 which is the lot referred in the approved Special Permit for the two office buildings identified as Bldg. 120 and Bldg. 118. I believe that the Special Permit Lot 4 as it currently exists is not a suitable lot for the 40B project because the existing Special Permit for the office uses does not include residential housing and other provisions.
2. In order to get a better understanding of this issue, I researched the following documents:
 - a. 760 CMR: Department of Housing and Community Development
CMR 56.00 Comprehensive Permit: Low or Moderate Income Housing
 - b. Masscases/Supreme Judicial Court/457 Mass. 748 Zoning Board of Appeals Amesbury vs Housing Appeals Committee & another
 - c. "Taking the Initiative on Housing Production in Your Community: Methods Utilizing 40B and Other Zoning Tools" prepared by Edward H. Marchant, EHM/Real Estate Advisor dated January 21, 2021
3. I also spoke briefly with the following people at the Mass Housing Authority regarding 40B Projects (Kathy Miller is no longer with the Mass Housing Finance Agency):
 - a. Katherine Lacy, Senior Planner. Mass Housing Partnership
 - b. Emma McGurren, CA Program Coordinator, Mass Housing Partnership
 - c. I posed the following hypothetical question: Does a 40B Comprehensive Permit Housing Project need to be tied to a fully defined specific legal lot. They both replied yes.
4. My understanding is that only one of two things is allowed to achieve that for this 40B Residential Apartment Project:
 - a. Map 37 Lot 4, which currently includes the two (2) existing office buildings: 118 Turnpike Road and 120 Turnpike Road needs it's Special Permit amended to allow a third 40B Residential Apartment Building on the same lot. This Modified Special Permit Lot 4 would need to be specifically referred to in the 40B Application.

cc: Southborough Planning Board

- b. The 40B Comprehensive Permit Application Submittal needs to include a fully defined **Preliminary Subdivision Plan** showing:
 - i. a separate residential lot for the 40B Apartment Project
 - ii. a remaining Map 37/Lot 4 which includes the two existing office building
 - iii. and a Subdivision Road providing legal frontage to the 40B Housing project.
- 5. I recommend that if there is any doubt or question regarding this issue, the two possible ways the lot for the 40B Apartment Project needs to exist or be created, then the Planning Board and Zoning Board of Appeals need to request and receive a detailed **Written Legal Opinion from Town Counsel** regarding this issue before any more action is taken on this proposed Apartment Project.

To : Southborough Zoning Board of Appeals

120 Turnpike Road 40B Apartment Bldg. Questions and Comments

11/27/23 PAUL CARTER, RESIDENT 6th Side Ave

1. The existing Comprehensive Permit Application refers to the address of the proposed project as 120 Turnpike Road. 120 Turnpike Road is located on Map 37 Lot 4 which is the lot referred in the approved Special Permit for the two office buildings identified as Bldg. 120 and Bldg. 118. I believe that the Special Permit Lot 4 **is not a suitable lot** for the 40B project because the existing office uses do not include residential housing.
2. The current 40B Apartment Project needs to identify a **previously created legal lot** that the 40B Apartment project is associated with, not an existing lot that is already in use with two office buildings, either by:
 - a. Submitting and receiving approval from the Zoning Board of Appeals for a revised and updated Special Permit (in accordance with Local Regulations) including the Apartment Project **prior** to submission of a 40B Apartment Project under a 40B Comprehensive Permit not subject to Local Regulation.
 - b. Submitting and receiving approval of a Definitive Subdivision Plan from the Planning Board creating a new lot separate from the existing Lot 4, in accordance with Local Regulations, not a Comprehensive Permit, (not subject to Local Regulations).
3. I understand that the Planning Board under the Massachusetts State Subdivision Control Law is the **only entity** that is legally empowered to **create a legal lot** not the Zoning Board of Appeals (unless under appeal of a Definitive Subdivision approved or denied by the Planning Board).
4. Therefore, I understand that a separate legal lot needs to be created (under Local Regulations) before a 40B Comprehensive Permit can be approved by the Zoning Board of Appeals under Section 40B (exempt from Local Regulations) **not at the same time** as part of the Comprehensive Permit.
5. I recommend that if there is any doubt or question regarding this issue and the required sequence of these two permit processes, then the Planning Board and Zoning Board of Appeals need to request and receive a detailed **Legal Opinion from Town Counsel** before any more action is taken on this Apartment Project.

cc: Southborough Planning Board

To: Southborough Zoning Board of Appeals
120 Turnpike Road Apartment Bldg 40B

Questions & Comments

12/6/23

1. The ZBA should request & obtain a Peer Engineering Review of the 40B Comprehensive Permit Application in preparation for the ZBA Public Hearing on 12/11/23 (just as was done for the previous Park Central ~~40B~~ 40B project)

2. The 120 Turnpike Road 40B Apartment Comprehensive Permit project should include a sidewalk along the apartment project access driveway to connect the proposed project to the office buildings, Route 9 sidewalk and the nearby shopping center on White Bayley Road.

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