

Chapter 40B

Tool for Fair Housing

FELICITY HARDEE
LAW PRACTICE

4/7/2017

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Shameless Marketing Moment

- I have 20 years' experience in affordable housing development and finance
- Focus on community development and assisting nonprofits
- Check out my webpage: www.fhardee.com
- Or send me a tweet @felicity_hardee



Basics of Chapter 40B

c. 40B allows developers to override local zoning if:

1. Less than 10% of town's housing inventory is "affordable" (able to be rented by person making up to 80% of area median income)
2. 25% of units to be built are subject to affordability restrictions
3. Developer must be nonprofit or "limited dividend company"

Why is c. 40B Needed?

- Zoning is local
- Multifamily housing can be prohibited
- Larger, more complex projects require special permits
- Special permits are discretionary
- Abutter pressure
- Appeals process favors the town

40B Levels the Playing Field

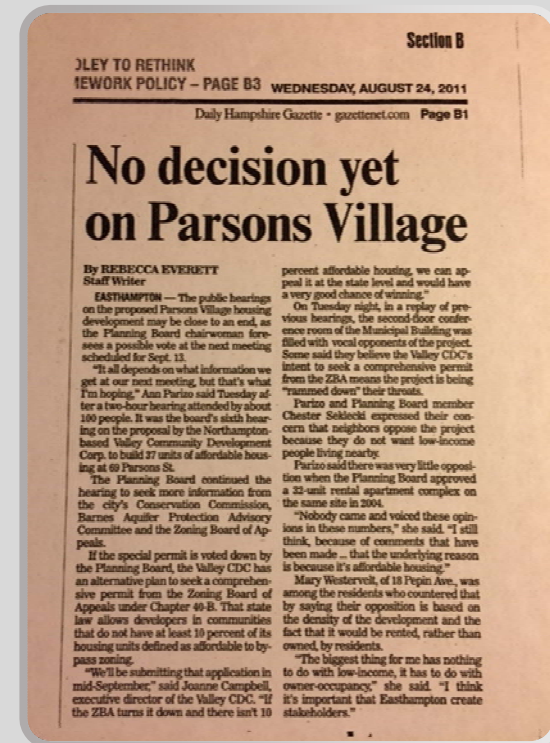
- Fewer local boards involved
- Denials of permits under c. 40B heard by Housing Appeals Committee
 - Review favors developer if less than 10% of existing housing is considered “affordable”
- Applicant can request ZBA to “waive” requirements of zoning bylaw
 - Multifamily housing permitted even if bylaw does not allow it

Parsons Village

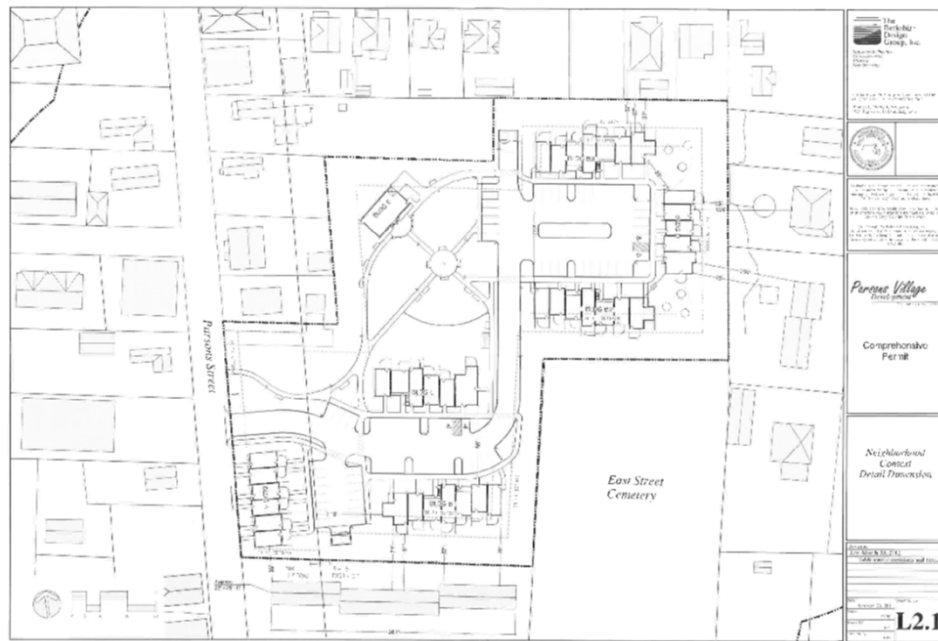
Inclusionary zoning (special
permit hearing process)

V.

Chapter 40B Process



Project Proposal



- 38 Unit Family Rental Housing
- Mix of Studio, 1,2 and 3 bedroom units
- Located in mixed use neighborhood
- Community building and "pocket park"
- Density 8.8 units/acre (as contrasted with 16+ units/acre in surrounding neighborhood)

Special Permit “inclusionary zoning”

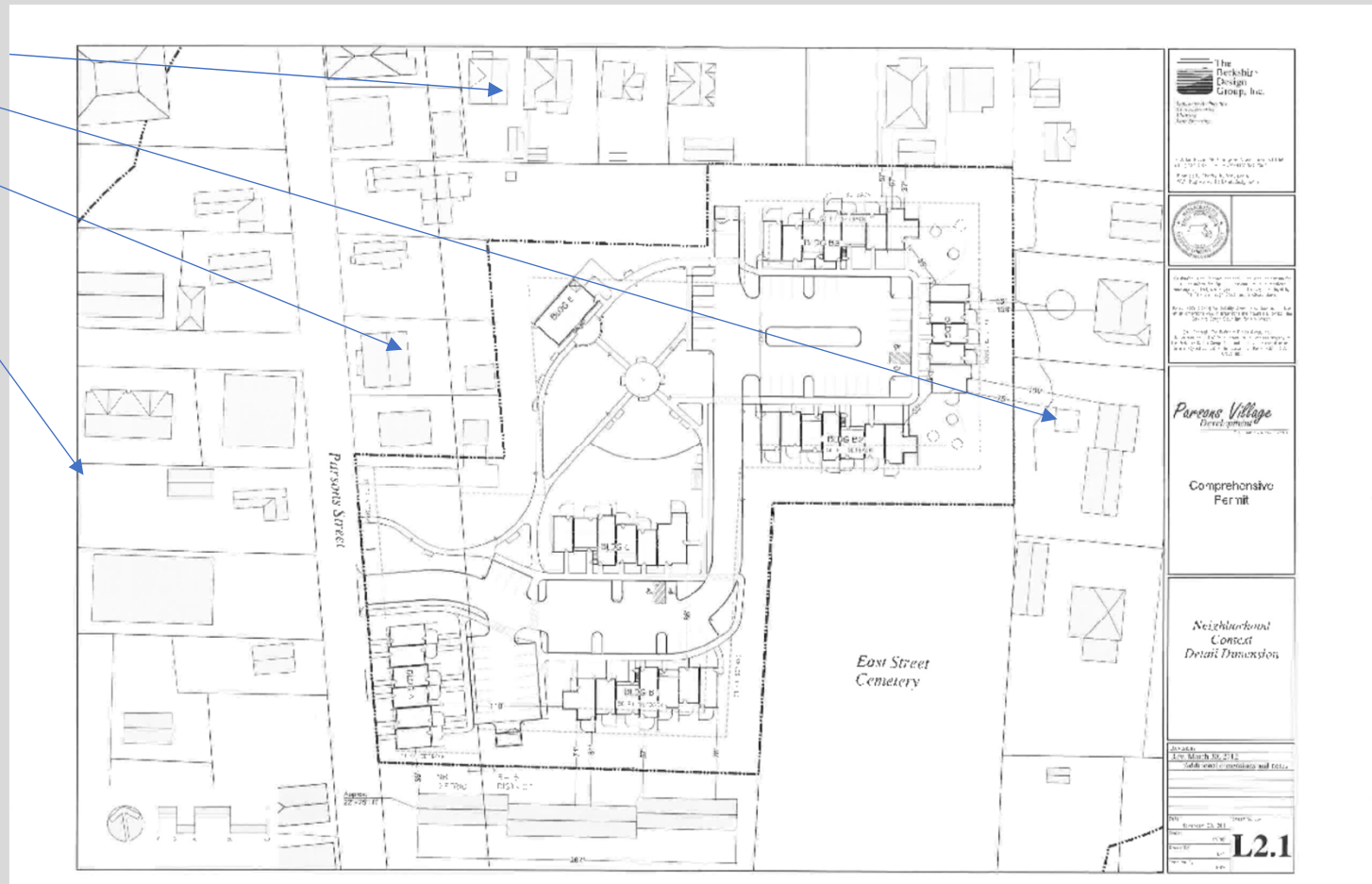
- City had adopted “inclusionary zoning”
- Developer encouraged to apply for special permit
- Extensive planning with community, abutters

Special Permit "inclusionary zoning" - cont'd

- Application filed with Planning Board in early 2011
- Vigorous opposition from abutters
- 5 member Planning Board; one unable to serve
- All four remaining members had to approve
- Nine months of special permit hearings

Project Density?

Note density of
surrounding
area



Proposal Outcome

- Project was denied as “too dense”
- Developer appealed decision to Superior Court
- Low probability of success-- court required to “defer” to Planning Board
- All parties (including opponents) incurred litigation expenses and attorneys’ fees

Comprehensive Permit Process

- Permit application filed on in January 2012
- Developer requested a waiver for permission to construct multifamily
- ZBA retained an outside consultant to advise the board
- Consultant provided tech assistance and helped address opposition concerns

Key Players

Support from:	Financial Assistance from:
Mayor	Town Community Preservation Act
Local Housing Partnership	HAPHousing (now Wayfinders)
Housing Advocates	Dept. Housing and Community Development

Final Result?

After seven months of hearings,
comprehensive permit issued

Parsons Village today

- Housing for working families
- Two units “barrier free” (wheelchair accessible)
- Community space available to all
- Solar electricity generated
- A playground instead of a vacant lot

