



City of Somerville

ZONING BOARD OF APPEALS

City Hall 3rd Floor, 93 Highland Avenue, Somerville MA 02143

TO: Zoning Board of Appeals
FROM: Planning, Preservation, & Zoning Staff
SUBJECT: 299 Broadway Comprehensive Permit (40B), P&Z 22-092
POSTED: November 22, 2022

RECOMMENDATION: None

Staff memos are used to communicate background information, analysis, responses to public comments, review of statutory requirements and other information from Planning, Preservation, & Zoning Staff to the Review Board members.

This memo summarizes the Comprehensive Permit proposal submitted for 299 Broadway and provides (1) a brief overview of the Comprehensive Permit process and how it differs from most cases that come before the ZBA, (2) background on the Application for 299 Broadway (although not analysis, Staff recommendations, or Staff-proposed conditions of approval), and (3) a draft schedule of Application topics to be reviewed at future ZBA meetings. The application was deemed complete on November 8, 2022, and is scheduled for a public hearing on November 30, 2022. Please note that this is a preliminary Staff Memo that does not include a full analysis or proposed conditions of approval, provided with the understanding that future Memos will provide analysis, Staff recommendations, and conditions of approval for the Application.

LEGAL NOTICE

Applicants, Mark Development LLC and Beacon Communities Services LLC and RISE Together LLC seek a Comprehensive Permit under M.G.L. Chapter 40B. The proposal would create a total of 288 residential units in two (2) new residential buildings, and two (2) new civic spaces. The Applicants are requesting waivers from various sections of the City's ordinances and requirements, including but not limited to waivers related to the following sections of the SZO: building massing and setbacks; screening requirements; and on-street parking in transit areas.

SUMMARY OF PROPOSAL

The Applicants are proposing to construct two 6-story, Plus Passive House and LEED Gold Certifiable General Buildings, and two civic spaces. The proposed development will produce 288 dwelling units of which 132 are affordable units, approximately 13,643 square feet of commercial space and 766 square feet of Arts & Creative Enterprise ("ACE") space, approximately 3,000 square feet of community space, 0 motor vehicle parking spaces, 293 long-term bicycle parking spaces, 46 short-term bicycle parking spaces, and two publicly accessible civic spaces (including one pocket plaza and one pocket park) and publicly accessible pedestrian walkways.

BACKGROUND

299 Broadway is located on a Pedestrian Street and in the 0.5mi Transit Area in the Mid-Rise 4 (MR4), Mid-Rise 6 (MR6), and Neighborhood Residential (NR) zoning districts in the Winter Hill neighborhood represented by Ward 4 Councilor Jesse Clingan.

Most cases the Board sees fall under M.G.L. Chapter 40A and thus must follow the procedural requirements of that chapter and the Somerville Zoning Ordinance. However, this Comprehensive Permit application process falls under M.G.L. Chapter 40B, and thus follows different procedural requirements. The last time the Board considered a Comprehensive Permit under M.G.L Chapter 40B was in 2020 (Clarendon Hill). The Applicants had previously considered the development of the site through the standard subdivision and Site Plan Approval process. However, following several months of site analysis and the goals and priorities for the site and the neighborhood, the Applicants and the City determined that applying for a Comprehensive Permit through the M.G.L. chapter 40B approval process would more appropriately address the unique conditions of the site and facilitate the pursuit of the community's goals for the site, including a significantly higher amount of affordable housing and site and civic space design that responds to neighborhood needs. The Zoning Board of Appeals is the decision-making authority for all Comprehensive Permits following the process established by M.G.L. Chapter 40B, regardless of the zoning district.

MGL Ch. 40B OVERVIEW

DEFINITIONS

Some relevant definitions from 760 CMR 56.02:

Consistent with Local Needs – means either that:

- (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met; or
- (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.

Local Concerns – means the need to protect the health and safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces.

Uneconomic – means any condition imposed by a Board in its approval of a Comprehensive Permit, brought about by a single factor or a combination of factors to the extent that it:

- (a) makes it impossible for a public agency or a nonprofit organization to proceed in building or operating a Project without financial loss; or
- (b) makes it impossible for a Limited Dividend Organization to proceed and still realized a reasonable return in building or operating such Project within the limitations set by the Subsidizing Agency on the size or character of the Project, or on the amount or nature of the Subsidy or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the Applicant.

OVERVIEW

M.G.L. Chapter 40B, Sec. 20-23, allows the Zoning Board of Appeals in a municipality to approve a single “Comprehensive Permit” that replaces the need to apply to other boards for local approval and can grant exceptions from local ordinances and regulations where such ordinances and regulations make the development of low-and moderate-income housing Uneconomic.

Municipalities must accept Comprehensive Permit applications unless it meets at least one of a number of standards (statutory minima) set forth in M.G.L. Chapter 40B, Sec. 20. The two most relevant standards in Somerville are:

1. Low- or moderate-income housing units make up at least 10% of the total housing units that exist in a municipality as of the latest federal decennial census.
2. Low- or moderate-income housing units exist on sites that make up more than 1.5% of the total land area zoned for residential, commercial, or industrial use.

The Commonwealth of Massachusetts Department of Housing and Community Development (DHCD) determines whether a municipality meets these statutory minima. For the first standard, DHCD relies on the Subsidized Housing Inventory to determine whether a municipality meets the 10% unit requirement. For the second standard, DHCD requires municipalities to create and submit much more detailed documentation that is then used to determine whether the municipality meets the 1.5% land area requirement.

ELIGIBILITY

760 CMR 56.04(1) lists three criteria that an applicant must meet in order to be eligible to apply for a Comprehensive Permit:

1. The applicant must be a public agency, non-profit organization, or a limited dividend organization.
2. The project must be fundable, although it would not have to necessarily be funded, by a subsidizing agency.
3. The applicant must have control of the site.

It is the responsibility of the state subsidizing agency (in this case, DHCD) to determine whether an application meets these three eligibility criteria. If a project is found to meet all three criteria, the subsidizing agency can issue a Project Eligibility Letter (PEL)

which allows the Applicant to then submit a Comprehensive Permit application. It is not within the purview of the local Board to determine whether an applicant is eligible to apply for a Comprehensive Permit.

In this case, DHCD has already issued a PEL and determined that the Applicant is eligible to submit a Comprehensive Permit application.

WAIVERS

One of the key features of the Comprehensive Permit process is the Board's ability to grant the project "waivers" from local ordinances and regulations. The applicant is required to provide a list of requested waivers as part of their application. This list should clearly and specifically indicate all requested waivers; the Board should not grant a "blanket" waiver to cover things the applicant has not specifically identified. Once the Comprehensive Permit has been decided, the applicant is able to request revisions to the waivers list if the need arises and the Board will have an opportunity to review all requests.

THE BOARD'S JURISDICTION

The Board's jurisdiction "includes the physical and operational aspects of a project and its impact on public health and safety and environmental design."¹ The Board's jurisdiction does not include whether or not the project is eligible for a Comprehensive Permit, "the location of low- or moderate-income units within a development," or the financial feasibility of the project.²

State requirements (e.g., MEPA) are also outside the Board's jurisdiction and cannot be waived by the Board. Similarly, if state law requires that a specific body decide an issue (e.g., the Tree Warden must approve the removal of public shade trees), the Board is unable to grant an applicant's request to waive that process requirement and have the ZBA decide the issue instead.

PUBLIC HEARING PROCESS

Chapter 40B sets a faster pace for reviewing applications than Chapter 40A. Under 40B, the Board has 30 days (rather than 65) from the day an application is complete to open a public hearing. Once the public hearing is opened, the Board then has 180 days to close the hearing and issue a decision, unless extensions are granted by the applicant in writing.

Unlike smaller 40A cases, it is a fairly common practice for Zoning Boards to conduct site visits for Comprehensive Permit cases. Any site visits by the Board need to be advertised as public meetings (or hearings, if testimony will be taken).

¹ Chapter 40B Handbook for Zoning Boards of Appeal, pg. 24

² Chapter 40B Handbook for Zoning Boards of Appeal, pg. 24

CONDITIONS OF APPROVAL

Like any Chapter 40A project, the Board can impose conditions as part of their approval of the Comprehensive Permit. The conditions that the Board can impose are limited to the types of conditions that Boards “typically impose on special permits and other local approvals, e.g., building construction and design, siting, planning and zoning, public health, public safety, and environmental protection.”³ However, the conditions cannot require that the applicant come back to the Board for further review and approval at a later time.⁴

MODIFICATIONS / REVISIONS

All modifications or revisions of an approved Comprehensive Permit must be reviewed by the Board. The Board determines whether the change is substantial or insubstantial. If the change is substantial, the Board must hold a new public hearing to discuss and decide on it. If the change is insubstantial, it can be approved without a new public hearing.

APPEALS

Appeals of Comprehensive Permit decisions are heard by the Massachusetts Housing Appeals Committee (HAC). The HAC will evaluate whether a Board's decision was Consistent with Local Needs. If the decision is found to be Consistent with Local Needs, it will be upheld. Otherwise, the HAC can overturn or amend the Board's decision to allow the project to proceed. If the project is denied, the HAC can approve it with whatever conditions the HAC believes are necessary. If the project is approved with conditions, the HAC can remove any conditions that make the project Uneconomic.

ADDITIONAL RESOURCES

In March 2017, the Massachusetts Housing Partnership published a guide to the 40B process for Zoning Boards. The link is here:

<https://www.mass.gov/doc/chapter-40b-handbook-for-zoning-boards-of-appeal-march-2017/download>

DRAFT SCHEDULE FOR REVIEW

Because of the scale of the project and multiple subjects for discussion, Staff anticipate review of this Application will take place during multiple meetings, to evaluate subjects as they relate to the project. At this first meeting, the Applicant will be providing a broad overview of the project, including background information. PPZ Staff are proposing a draft schedule for Application review, broken out by subject, based on when relevant Staff reviews of the Application will be complete and when comments and analysis will be provided.

³ Chapter 40B Handbook for Zoning Boards of Appeals, pg. 1

⁴ Chapter 40B Handbook for Zoning Boards of Appeals, pg. 27

This schedule is likely to change, and updated schedules will be provided by PPZ Staff and the Applicant at each ZBA hearing as review of the Application progresses.

DRAFT SCHEDULE:

November 30, 2022:	Project Overview (confirmed)
December 14, 2022:	Building Design, Sustainability, & Housing (confirmed)
January 4, 2023:	Retail Strategy (tentative) Mobility, Traffic, & Parking (initial review, tentative) Site Design (initial review, tentative)
January 18, 2023:	Mobility, Traffic, & Parking (continued review, tentative) Site Design (continued review, tentative) Civic Space Design (initial review, tentative)
February 2023:	Continued review of Application

NEIGHBORHOOD MEETINGS

Although not required through the Comprehensive Permit application process, the Applicants followed the process for Neighborhood Meetings typical of the Site Plan Approval process for new buildings and civic spaces under the Somerville Zoning Ordinance. Rather than having just two neighborhood meetings, the Applicants held three meetings to more fully address the project with the neighborhood. The first meeting was held in July to provide an overview of the entire project. The second and third meeting were held in October, on different evenings so the civic spaces and the buildings could be reviewed and addressed separately.

The first neighborhood meeting was hosted by Ward 4 Councilor Jesse Clingan and Councilor At Large Jake Wilson and the Applicants on July 21, 2022, via the Zoom meeting platform. The Applicants reviewed both the buildings and civic spaces at this meeting, and topics of discussion and questions from the public included building design and sustainability considerations, mobility and parking, civic/open space design, the types of businesses that may be pursued in the proposed retail spaces (including neighborhood-focused goods and services), and the Comprehensive Permit/40B process.

The second neighborhood meeting was hosted by Ward 4 Councilor Jesse Clingan and Councilor At Large Jake Wilson and the Applicants on October 17, 2022, via the Zoom meeting platform, following UDC review of the Application. The Applicants reviewed the civic spaces at this meeting, and topics of discussion and questions from the public

focused primarily on the proposed pocket park (“Sewall Park”) and its design and programming, including consideration of how children of all abilities will use the park.

The third neighborhood meeting was hosted by Ward 4 Councilor Jesse Clingan and Councilor At Large Jake Wilson and the Applicants on October 19, 2022, via the Zoom meeting platform, following UDC review of the Application. The Applicants reviewed the buildings at this meeting, and topics of discussion and questions from the public included building design and massing, sustainability considerations, parking and mobility, the retail space and potential for a grocery store, and potential programming for the community room.

DESIGN REVIEW

Although not required through the Comprehensive Permit application process, the Applicants followed the process for Design Review with the Somerville Urban Design Commission typical of the Site Plan Approval process for new buildings and civic spaces under the Somerville Zoning Ordinance. The Applicants attended August and September UDC meetings for Design Review. The Design Review process will be reviewed in greater detail in a future Staff Memo.

ANALYSIS

No further analysis is being provided at this time, as Staff review of the Application has not yet been completed. Analysis (both general and for each Application topic) will be provided following the completion of Staff review of the Application.

CONSIDERATIONS & FINDINGS

Considerations or findings are not being discussed at this time, as Staff review of the Application has not yet been completed. Considerations and findings will be addressed following the completion of Staff review of the application.

PERMIT CONDITIONS

Permit conditions are not being provided at this time, as Staff review of the Application has not yet been completed. Permit conditions will be provided following the completion of Staff review of the Application.