

# Thorndike Place: 40B Refresher and Update

# Timeline of Actions to Date:

## Project Eligibility Phase

- 5.19.2015 Arlington Land Realty, LLC Files Request for “Site Approval” with MassHousing
  - Site visit with MassHousing on 6.23.2015
  - Select Board holds special hearings on the application on 8.12.2015
  - Select Board retains Experts for early “peer review.”
  - Select Board appoints special counsel, Jon Witten, Esq. and urges Town Meeting to appropriate additional funds for rendering a thorough decision
  - Select Board urges MassHousing to deny site approval (by letters dated 8.18.2015 & supplement dated 10.2.2015)
  - 12.5.2015 MassHousing Grants Site Approval

# Timeline of Actions to Date: “Safe Harbor” Status and Appeal

- 8.31.2016: Arlington Land Realty files 40B Application with Zoning Board of Appeals
- Initial Comments Received, including Select Board Opposition
- 10.6.2016: Arlington ZBA asserts “safe harbor” status; i.e. that 1.5% of the min. land area is dedicated to deed restricted affordable housing
  - The applicants appeal to DHCD and prevail
  - On 12.6.2016, the ZBA initiates an interlocutory appeal relative to DHCD’s decision to the Housing Appeals Committee
  - The ZBA, *inter alia* successfully files suit on 6.5.2017 to enforce HAC subpoenas for records to DMH and DDS

# Timeline of Actions to Date: “Safe Harbor” Status and Appeal

- Town asserts 1.56% vs. Applicant’s 1.39 % assessment;
- Extensive briefing schedule throughout 2017-2018;
- HAC Hearings on 10.25.2018 and 11.22.2018;
- January 2019 Final Briefings by the parties;
- 10.15.2019 HAC finds for Applicants on Safe Harbor Status

# Timeline of Actions to Date: Substantive 40B Hearings

- Substantive ZBA Hearings Resume on 40B Application on December 10, 2019
  - Comments received, Select Board renews opposition
  - ZBA retains peer review experts, initial information exchanges
  - Applicants submit modestly revised proposal – 3.2020
  - Further Comments received, peer reviewers continue exchange
  - Applicants submit moderately revised proposal with new team of consultants
  - Substantive hearings on specific topics ongoing

# Revised Proposal

## Original Proposal

- 219 Units
- 12 units in two-family townhouses for ownership;
- 207 rental units in four (4)-story apartment building,
- 25% (52 units) of rental units affordable

## Current Proposal

- 176 Units
- Two-family townhouses eliminated;
- Reduced size four (4)-story building relocated;
- 25% (44 units) affordable;
- Parking moved underground

# Work to be Done

- Complete Hearing Process
  - Substantive hearings on specific topics ongoing – hearing tomorrow on Architectural Design for example;
  - Consider and incorporate further comments;
  - Complete peer review on *allowable* subjects.
- Render Decision – within 40 days of close of hearing
  - Decision must be carefully crafted;
    - approve the project as submitted;
    - approve the project with conditions or change;
    - deny as “not consistent with local needs”\*\*\*
  - Denials are Disadvantageous (understanding the mandate)
  - Orders “with conditions” should be sustainable

# Work to be Done... if necessary

- Prepare for Any Appeals – within 20 days of the decision
  - Appeals by the Applicant to the HAC
  - Appeals by Abutters
- Prepare for Subsequent Litigation
  - ZBA Appeal of HAC Decision to Court;
  - Abutter Appeal of HAC Decision to Court;
  - Applicant Appeals to Court



# Work to be Done ...if necessary.

- Conservation Commission Application of the WPA
- MEPA review?
- Building Permitting

# Context for the Public

- Laws, regulations, and facts apply as of the date of *filing the 40B application*.
- Average time from application to decision – 10 months \*
  - We are now in four years out from the filing of the application, and nearly five years from the site approval notice
- 80 % of projects “approved” by Zoning Boards
  - Decision must be carefully crafted – “uneconomic” renderings likely to be appealed;
  - Denials are Disadvantageous (understanding the mandate);
  - Orders “with conditions” should be sustainable;
- 10 % proceed to further litigation\*
- The HAC rarely rules in favor of Zoning Boards on substantive grounds

# Select Board Further Actions

## Done

**Opposed Project Eligibility**

**\*Peer Review**

**\*Support from Legislative  
Delegation**

**Retained Special Counsel**

**Requested & Received Supplemental  
Funds**

**\*Including second round of  
supplemental funds**

**Opposed Original Project in Hearing**

**Opposed Revised Project**

**Explored Negotiations with Land  
Owner**

## Options Going Forward

**Further Comment on Revised Project**

**Continued Support for Funds**

**Support of Assertion of ZBA Rights  
through any appeals and litigation**