



TOWN OF ARLINGTON
DEPARTMENT OF PLANNING and
COMMUNITY DEVELOPMENT

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MEMORANDUM

To: Christian Klein, Chair, Zoning Board of Appeals
Doug Heim, Town Counsel
Claire Ricker, Director, Department of Planning and Community Development

From: Kelly Lynema, Assistant Director

Date: 10/13/2022

RE: GLAM Projections

In light of the 9/21/2022 filing of a Comprehensive Permit Application by 1025 Mass Ave, LLC, the Zoning Board of Appeals (ZBA) has asked for an informal assessment of Arlington's progress toward achieving a 1.5% General Land Area Minimum (GLAM). Last year, DPCD worked with Arlington's GIS Administrator to review DHCD guidance on calculating the GLAM and identified current and projected percentages. This memo, largely based on that analysis, provides an overview of the background of 40B and GLAM calculations in Arlington, provides an estimate of the Town's current GLAM given recent additions to the Town's Subsidized Housing Inventory (SHI), and a recommendation for how the ZBA may wish to respond to this current Comprehensive Permit Application.

Background

In 1969, the state legislature adopted the Comprehensive Permit Statute under MGL Chapter 40B Sections 20-23 to "address the shortage of low- and moderate-income housing in Massachusetts and to reduce regulatory barriers that impeded the development of such housing." Subsequently, the Department of Housing and Community Development (DHCD) issued 760 CMR 56.00, which "set forth comprehensive standards and procedures" governing Comprehensive Permits, addressed the Subsidized Housing Inventory (SHI), and advanced the statutory purposes of MGL Chapter 40B Sections 20-23 "by clarifying the procedures of the expedited review process, and by otherwise addressing recurring questions of interpretation."

Section 56.03(3) of 760 CMR defines the methods by which a community can demonstrate progress toward local affordable housing goals. If one or more of the criteria described below are met, a municipality's Board of Appeals may invoke safe harbor, which thereby allows its board to deny a comprehensive permit or grant a permit with conditions. Reaching safe harbor precludes the Housing Appeals Committee (HAC) from overturning or modifying a board decision. The board may invoke safe harbor if:

1. The municipality can demonstrate that it has achieved one or more of the statutory minima:
 - a. 10% of all housing units are deed-restricted for occupancy by households earning an income at or below 80% of Area Median Income (AMI).

- b. 1.5% of the municipality's land area zoned for residential, commercial, or industrial use is dedicated for use as housing for households earning a low to moderate income.
2. The municipality has an approved Housing Production Plan certified by DHCD demonstrating its compliance with the goals of that plan by increasing the supply of SHI eligible housing units by at least 0.5% of its total units in a calendar year¹.
3. The municipality can demonstrate recent progress toward the statutory minima by having created affordable housing comprising at least 2% of its total housing units in the prior 12 months.

SHI eligible housing units may be counted toward these criteria if they have been inventoried by DHCD, or if they are established according to 760C CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date when the ZBA receives a Comprehensive Permit Application. However, if more than one year passes between the date when the ZBA issues a Comprehensive Permit or zoning approval for a 40B project and the date when a building permit is issued, the units fall off the SHI and they do not contribute toward the minima until a building permit is issued. Additionally, if more than 18 months pass between the date of the building permit issuance and the issuance of a certificate of occupancy, the units do not contribute to the SHI until the date the certificate of occupancy is issued.

At present Arlington's SHI represents 6.54% of total housing units, well below the 10% statutory minimum. The 2015 Master Plan suggested that the Town was potentially closer to achieving the 1.5% GLAM than the 10% statutory minimum and recommended that the Town work to determine its status under the Chapter 40B 1.5% land rule. The first recommendation in the Housing and Residential Development section of the Master Plan is for Arlington to plan for housing with a Housing Production Plan.

In September 2016, Arlington Land Realty (ALR) submitted a comprehensive permit application to build a 219-unit project on a parcel of land off Dorothy Road. In October the ZBA invoked safe harbor—stating that it believed the Town had been protected on the grounds that the Town had reached the 1.5% GLAM. After ALR notified DHCD of its objection to the ZBA's position, DHCD issued a determination that the Town had not reached the 1.5% GLAM. The ZBA appealed, stating that based on internal calculations the Town had achieved a GLAM of 1.53%.

In subsequent hearings on the matter, GIS experts from the Town and ALR described how they arrived at their respective GLAM calculations. In 2019, after hearing testimony on the individual calculations, the HAC concluded that the ZBA had not established the Town had achieved the 1.5% statutory minimum and denied its claim that the Town was entitled to safe harbor. The table below outlines these calculations, including the figures factoring into the HAC's decision.

¹ Meeting this requirement provides safe harbor only temporarily. If the municipality can demonstrate production of SHI eligible housing units at a rate of 0.5%, it can decline comprehensive permits for 40B developments for up to one year; if a rate of 1% can be demonstrated, it can decline them for up to two years. This was accomplished in 2021 after the ZBA issued a Comprehensive Permit for 1165R Massachusetts Avenue, which allowed the Town to certify the 2016 HPP from September 17, 2021 through September 16, 2022.

2019 HOUSING APPEALS COMMITTEE DECISION			
	Town (ZBA)	Arlington Land Realty	Housing Appeals Committee
Numerator			
SHI eligible land area	30.14	30.14	30.14
Denominator			
Total Municipal Area		3509.86	3509.87
Water Body Area (acres)		-224.95	-224.95
Right of Way Area (acres)		-726.28	-726.28
Total Zoned Included Land	2556.59	2558.63	2558.63
Exclusions ²	-588.88 ³	-361.77	-361.77
Total Eligible Land Area	1967.71	2196.86	2196.86
GLAM			
<i>GLAM</i>	1.53%	1.37%	1.37%

An Estimate of Arlington’s Current GLAM

Since the HAC’s 2019 decision, several small-scale developments that include units of deed-restricted affordable housing, the mid-sized Downing Square/Broadway Initiative, and the Comprehensive Permit Application for 1165R Massachusetts Avenue have been approved and are under construction (see Appendix A). DPCD has been asked for an assessment of the degree to which those developments would contribute to the GLAM.

In the time since Arlington’s GLAM was last calculated, DHCD issued new guidance for calculating the GLAM⁴. This guidance varies from and supersedes the approach applied in the 2019 HAC decision in that each of the guideline’s instructions builds on the preceding instruction, thereby reducing the likelihood of a land area being double counted (e.g., double counting the path for the Minuteman Bikeway as both right of way and open space). As such, the denominator (Total Land Area) is larger than was identified in the 2019 HAC analysis. The guidance also provides specific definitions for what areas of a development parcel may be counted as “directly associated” with that development and what does not contribute toward the GLAM. Land area available for parking, circulation, and open space is directly associated, while areas such as wooded hills and wetlands do not contribute toward the GLAM. As a result, some figures in the calculation provided below differ slightly from those provided to the HAC in 2019⁵.

Using the DHCD GLAM guidelines, in 2021 staff worked with Arlington’s GIS administrator to determine the Town’s current and projected GLAM as shown in the following table.

² The following uses are excluded from the calculation: land owned by the state or federal government; land where residential, commercial, and industrial development has been prohibited by order of the Department of Environmental Protection; water bodies; and flood plain, conservation, or open space zone where residential, commercial, or industrial uses are completely prohibited.

³ HAC determined that the ZBA had excluded acreage associated with Arlington’s water bodies twice in its calculation.

⁴ Guidelines for Calculating General Land Area Minimum: <https://www.mass.gov/service-details/guidelines-for-calculating-general-land-area-minimum>

⁵ The 2019 HAC decision describes how ALR’s expert witness disputed the Town’s numerator of 30.14, suggesting that a Board had claimed as SHI eligible a property of .189 acres that was not listed on the SHI.

2022 GLAM ESTIMATE		
	1: 2019 Adjusted GLAM (per DHCD Guidelines)	2: 2022 Estimated GLAM based on current SHI
Numerator		
Group homes ⁶ (acres)	1.11	1.11
SHI eligible land area (acres)	28.84	30.69
<i>Total</i>	29.95	31.8
Denominator		
Total Area (acres) ^{7, 8}	2206.5	2206.5
GLAM		
<i>GLAM</i>	1.36%	1.44%

Staff Recommendations

Based on these figures, staff recommend that the ZBA does not attempt to invoke safe harbor in response to new Comprehensive Permit Applications, or at a minimum, postpone any decision to invoke safe harbor until after such time when any developments that include affordable housing have been issued building permits and receive a certificate of occupancy.

Given that the Fair Housing Action Plan and 2022 Housing Production Plan (HPP) clearly state goals of increasing the Town’s supply of affordable housing, including housing for families and seniors, the ZBA may wish to consider endorsing a voluntary goal of meeting the 10% statutory minimum instead of focusing exclusively on achieving the 1.5% GLAM. The 2022 HPP has been approved by DHCD; with an approved HPP, the Town can apply to have the HPP certified by DHCD if Arlington adds affordable housing at an annual rate of 0.5% or 1% of its year-round housing stock (99 or 199 units). This was recently accomplished last year after the ZBA’s approval of the Comprehensive Permit Application for 1165R Massachusetts Avenue, which resulted in the certification of the 2016 HPP and granted the ZBA one year of temporary safe harbor, which ended in September of this year. If the current HPP is able to be certified in the future, the ZBA would then have the option to decline to issue comprehensive permits for Chapter 40B developments without fear of being overturned by the HAC for a period of one or two years, respectively. This would be in coordination with the Town’s efforts to increase the supply of affordable housing outside of 40B applications, such as through implementation of the Fair Housing Action Plan, the 2022 HPP, and the work of the Affordable Housing Trust Fund Board of Trustees.

⁶ Estimated using DHCD’s 2016 data. The Town receives data on the number of group homes as part of DHCD’s annual SHI information, however their location, and therefore land area, is confidential. DHCD shares group home land area only when municipalities elect to calculate their GLAM in response to a Comprehensive Permit Application.

⁷ Non-zoning restrictions such as conservation restrictions, easements, or deed restrictions do not qualify as eligible rationale for exclusion.

⁸ Private Right-of-ways were not identified in the GIS parcel data (see step 2.8) for this preliminary and estimated calculation and should be included in the final calculation. In the GIS parcel data, all ROWs are combined and the official road list in Engineering should be used to separate public from private and paper ROW in GIS. The Town’s GIS administrator used the SAMIS Pavement Management data and created buffers for each Private, Paper, and Unknown road class and used the stated width to create the buffer.

Appendix A | Affordable Housing Developments Added to the SHI Since 2019

The developments identified below were included in calculations of the Town's estimated GLAM. The unit at 483 Summer Street was added to the Town's SHI in 2020 but was not included in the 2019 HAC decision.

Properties added to the SHI since the last calculation of the GLAM

483 Summer St	Private Developer	Completed, one of nine units affordable
19R Park Ave	Housing Corp. of Arlington	Under construction, 100% affordable
117 Broadway	Housing Corp. of Arlington	Under construction, 100% affordable
1165R Mass Ave	Private Developer	Under construction, 40B project, 25% affordable