



To: Jennifer Caira, Deputy Director of Planning and Jonah Temple, Deputy City Solicitor
From: Councilor R. Lisle Baker, Chair; and Councilor John Oliver, Vice-Chair
Re: Docket #77-24 relating to G. L. c. 40B “safe harbor” status for Newton
Date: January 18, 2024

Memorandum

Colleagues:

The following item will be taken up at our next Zoning and Planning Committee meeting on the 22nd:

*#74-24 Discussion Regarding 40B Process Post 'Safe Harbor' Designation
COUNCILORS OLIVER, BAKER, AND WRIGHT requesting a discussion with the Law and Planning departments regarding the process going forward for 40B projects since meeting the 10% 'Safe Harbor' designation. The discussion should address the different parameters that can or will be used to accept, deny and modify projects and the criteria allowed to be used by ZBA or any other approving authority.*

We also understand that the Zoning Board of Appeals meets next on Wednesday the 24th. It would be helpful in your information response to this item to clarify the substance and procedure of what happens to c. 40B projects once the safe harbor is reached. In addition to the language of the docket item itself, other issues that it would be helpful to clarify include the following:

1. Now that Newton has been reached ‘safe harbor’, what is the mechanism by which a safe harbor status is declared? Is some official action required by a Newton official or public body? For example, does the Newton Zoning Board of Appeals (ZBA) declare safe harbor status in response to a specific comprehensive permit application, or otherwise? If the applicant disagrees, how is the matter determined?
2. What if the ZBA (or other official so empowered) does not declare safe harbor status?
3. If safe harbor status is successfully declared, what is the effect on subsequent comprehensive permit applications and the power of the ZBA in response to them?
4. Is there a window of time between filing a comprehensive permit application and safe harbor declaration that may affect whether an applicant is bound by safe harbor status? If so, how is it determined?
5. Once safe harbor is declared, is there a project size threshold or other aspect which would affect the power of the ZBA to respond to it?
6. Once safe harbor is reached, do regular zoning and other Newton ordinances apply to 40B projects?
7. If so, does that also mean application by and approval by other regulatory bodies, such as the City Council acting as a special permit granting authority, or does the ZBA act in place of these other bodies but act in their stead but with their applicable standards and rules?

This list of questions may be supplemented by others at our meeting, but we hope these are helpful.

Regards,
R. Lisle Baker, Chair
John Oliver, Vice-Chair