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BoS mail on 1/13/06
BoS Agenda on 1/23/06
for approach



Planning Department

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MEMORANDUM

To: Board of Selectmen
Planning Board

Date: January 11, 2006

From: Chapter 40 Policy Working Group

Subject: Acton 40B Policy (Draft)

Attached please find for the Boards' review, comment, and endorsement (as appropriate) the final draft of the 40B policy statement. Once adopted, this document would be a joint policy statement by the Board of Selectmen and the Planning Board vis-à-vis Chapter 40B development proposals in Acton. This had been recommended in the 2004 "To Live in Acton" report.

40B Working Group:

Peter Ashton, Board of Selectmen
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TOWN OF ACTON

COMPREHENSIVE PERMIT POLICY

Summary

This Comprehensive Permit Policy has been adopted jointly by the Board of Selectmen and Planning Board to communicate the Town of Acton's preferences for housing developed under Chapter 40B. The main purpose of this policy is to encourage developments that address five local objectives:

- ♦ Provide permanently affordable housing for low-, moderate- and middle-income people;
- ♦ Respect our natural resources;
- ♦ Contribute to the vitality of our villages and business districts;
- ♦ Minimize adverse fiscal and infrastructure impacts; and
- ♦ Reflect a collaborative approach by the developer and Town.

Toward these ends, the Town encourages applications for small-scale comprehensive permit developments that serve low- and moderate-income and, whenever possible, middle-income households. We would like to see developments that make use of existing structures or conform to the established architectural traditions in our community. We also prefer developments located in or adjacent to the Town's existing villages, which are described in our Master Plan, or Kelley's Corner. Small, attractive affordable housing developments in these areas will help us expand our inventory of low- and moderate-income housing in a manner that acknowledges the Town's land use policies, development traditions and fiscal capacity.

Population diversity has historically been important to Acton, and we recognize that housing is essential to retaining diversity. We also want to create opportunities for people with a connection to Acton to stay here or move into our neighborhoods. In addition, we know that Acton's economic base relies on a labor force with varied skills. To keep our existing businesses and attract new ones, we need housing for workers at all wage levels to live in our community. Mixed-income developments of no more than 12 single-family, two-family or townhouse units, with an overall gross floor area ratio of .25, will generally be deemed consistent with our Comprehensive Permit Policy and may receive expedited approval if they are environmentally responsible and incorporate architectural features commonly found in Acton's residential neighborhoods. However, we will consider more than 12 units and a floor area ratio of up to .80 for comprehensive permit developments in or within a half-mile radius of our villages or Kelley's Corner. While we do not encourage comprehensive permits outside of these areas, developments may still be eligible for expedited review if they include no more than 12 housing units or involve the redevelopment of existing, underutilized commercial or industrial space. Where appropriate and feasible, redevelopment in areas zoned for commercial or industrial development should provide affordable housing mixed with other uses. The areas most suited for higher-density housing in Acton are identified in Map 1, Preferred Locations & Density Guide (see Appendix A).

Like most communities, Acton is very concerned about protecting the quality and adequacy of its drinking water supply. We discourage higher-density housing in a DEP Zone II, but a development that minimizes impervious coverage and includes a package treatment plant that meets or exceeds DEP requirements for a nitrogen-sensitive area will be considered. Acton has several areas of Priority Habitat and they are categorically inappropriate for higher-density housing. It is the Town's position that avoiding Priority Habitat areas does not severely limit the opportunities to develop affordable housing in Acton. In general, comprehensive permits for land in areas shown in Map 2, Areas with Poor/Limited Suitability for Higher-Density Housing (Appendix A), will most likely be subject to conditions requiring a development to conform to most if not all of the Town's environmental regulations or be denied as inconsistent with local planning needs.

Policy Statement

1. Housing Priorities

Low-Income Rental Housing. Acton has a severe shortage of rental units for low- and very-low-income families, and a generalized shortage of rental housing in a range of below-market prices, such as apartments for households below 100% of area median income (AMI). The Town encourages development that addresses these needs. If we could choose one of two concurrently filed comprehensive permit applications, Acton would give priority to the proposal that provides more affordability for low-income renters and is more consistent with the planning goals outlined below. Since rental developments are usually larger than our preferred target of 12 units or less, they are not eligible for an expedited review under this policy. However, we encourage applicants with an interest in rental housing to work with the Board of Selectmen, Planning Board and Acton Community Housing Corporation (ACHC) to design a mutually beneficial development.

Mixed-Income Homeownership. There is a substantial gap between affordable housing and market-rate homes in Acton. To provide more housing choices, the Town encourages homeownership developments that offer affordable housing for low-, moderate- and middle-income families. The Town will consider a modest density increase in exchange for some units affordable to middle-income households, which we define as households with income between 81-120% AMI, provided these units are in addition to the state's requirement that at least 25% of the units be reserved for low- and moderate-income households (at or below 80% AMI).

2. Relationship to Community Planning Goals

The Acton Master Plan provides guidance on the Town's land use policies. Whenever possible, comprehensive permit applicants should strive for consistency with these policies because doing so will reduce complications during the review and permitting process. The relevant goals and principles of the Acton Master Plan are reproduced in Appendix B of this Comprehensive Permit Policy Statement. In addition, our Town's housing needs are described and documented in To Live in Acton, a housing plan prepared under Executive Order 418. Both documents are on file in the Acton Planning Department and on the Town's web site: <<http://www.town.acton.ma.us/>> [select "Departments," select "Planning"].

3. Development Preference Criteria

In general, Acton will give preference to comprehensive permits with the following characteristics:

- ♦ **Types of Housing.** In addition to a preference for affordable rental and mixed-income homeownership units, Acton wants a mix of unit sizes to accommodate individuals and families. A development comprised primarily of one- and two-bedroom apartments, with 12-15% three-bedroom apartments, is preferable to one dominated by small units and no three-bedroom units or one in which more than 25% of the units have three bedrooms. The Town wants to provide housing for families at a pace that is fiscally sustainable.
- ♦ **Location.** Acton will give preference to comprehensive permits in the following areas:
 - In the villages centers identified and described in the Acton Master Plan or within one-half mile of these centers (East Acton Village, North Acton Village, South Acton Village, and West Acton Village)
 - In or within a half-mile radius of Kelley's Corner;
 - Areas within a half-mile radius of Acton's Commuter Rail Station;
 - Developments in any location that reuse and improve existing buildings, such as obsolete commercial, industrial or institutional space or buildings located in active commercial or mixed-use areas; or
 - Areas outside of Zones I-II of a public drinking water supply.

Acton does not encourage a comprehensive permit application involving land in any of the following areas:

- Areas zoned for non-residential uses, except for the conversion of existing, underutilized commercial or industrial space in otherwise active commercial and mixed-use areas for mixed-use or multi-family development.
- Priority Habitat Areas as determined by the Natural Heritage and Endangered Species Program (NHESP).

Acton also discourages comprehensive permit applications within Zones I-II of a public drinking water supply.

- ♦ **Mixed-Use Developments.** Acton welcomes affordable housing in developments that offer a mix of residential and commercial space. Dwelling units above the ground floor of a commercial building, or upper-story units combined with a free-standing multi-family building on the same lot, would be consistent with the Master Plan when located in a village or Kelley's Corner.
- ♦ **Density and Scale.** Acton recognizes that density is important to the feasibility of an affordable housing development. However, the Town has valid planning and fiscal reasons

to promote small-scale development. Generally, Acton will give preference to a small affordable housing development over one of a larger scale, regardless of density. An application for 12 or fewer units is strongly preferred, subject to the following guidelines.

- **Intensity of Use.** Requests to waive the density requirements of the Acton Zoning Bylaw must be accompanied by evidence of financial necessity. As a rule, a gross floor area ratio of up to .80 in or within a half-mile of our villages and a maximum of .25 in other locations would be considered responsive to this Comprehensive Policy Statement. To the maximum extent feasible, developments should comply with the Town's building and impervious coverage regulations and setback requirements
- **Height.** Acton prefers affordable housing developments that are architecturally similar to surrounding residential areas. Building heights should be consistent with local zoning, although the Town will consider exceptions for buildings comparable to Town Hall or Exchange Hall in massing, bulk, articulation, and roof details. In general, buildings should be harmonious with Acton's existing architectural styles.
- **Scale.** Developments of not more than 12 units are automatically eligible for an expedited review as described in Section 6, provided they are not located in one of the areas shown in Map 2, Areas with Poor/Limited Suitability for Higher-Density Housing. Any development exceeding 50 units will be reviewed as a Large-Scale Project under Section 7.
- ♦ **Building and Landscape Design Considerations.** The Town recognizes that many factors determine appropriate design. What is aesthetically pleasing to some is objectionable to others, and since design decisions ought to be sensitive to the site and its context, the Town wants to avoid imposing overly prescriptive rules on developers and their design teams. However, local residents appreciate certain architectural styles and wherever possible, developers should try to incorporate them in their proposals. A Visual Preference Survey conducted for our housing plan revealed fairly strong consensus about the desirability of several buildings, pictures of which are attached to this policy statement as Appendix C.
- **Traditional Design.** A development that accommodates density by making use of locally preferred design elements is more likely to receive support from the Town than one comprised of large, monotonous buildings that lack articulation. Buildings should be oriented toward the street or around a courtyard, or they should respond to a prominent site feature, such as a corner location. Off-street parking, open or covered, should be located toward the side and rear of buildings, so that views from the road are defined by buildings and landscaping, not pavement and garage doors. Attention to walkability, both within a development and between the site and surrounding areas, will strengthen the desirability of a comprehensive permit proposal.
- **Cultural Resources.** A proposal to redevelop and reuse a historically significant or distinctive structure should incorporate appropriate historic preservation methods. Developers are encouraged to review the Acton Cultural Resources Inventory, on file in the Building Department, to determine whether the structure is subject to the Chapter N of the Bylaws of the Town of Acton, "Procedures for the Demolition of Historically or Architecturally Significant Buildings."

- **Open Space and Natural Resources.** The use of open space and landscaping to provide visual relief and connectivity within a development is very important. Protecting mature trees and preserving as much existing vegetation as possible would be responsive to the values of our Town. Since comprehensive permit developments are often located on marginal land, site planning should demonstrate sensitivity to nearby wetlands regardless of whether any work on the site requires review or approval under the Wetlands Protection Act. Acton takes wetlands and water resource protection very seriously. Landscaping should minimize high water use turf and emphasize non-invasive, drought-resistant plantings, which may include a variety of trees, flowers, shrubs, succulents and ornamental grasses. If an outdoor watering system is proposed, it should be drip irrigation or low-energy spray irrigation, or a comparable water-conserving irrigation system.
- ♦ **Site Plan Standards.** Wherever possible, applicants should comply with the site plan standards listed in Section 10.4 of the Zoning Bylaw.
- ♦ **Public Benefits.** Acton recognizes affordable housing as one of the public benefits that development can bring to a community. Many developers of affordable and market-rate housing provide other public benefits depending on the size of the project and its impact on municipal and school services, the surrounding neighborhood, and needs for community facilities or services in the vicinity of the project. In general, a development of 12 units or less would not be expected to contribute more to the Town than affordable housing and suitable on-site development improvement while larger developments would be expected to help Acton meet the service demands associated with new growth.

4. Affordability Preferences

Acton has devoted considerable effort to identifying housing needs in our own community and the surrounding region. A comprehensive permit development that addresses the following needs is more likely to receive the Town's support:

- ♦ **Desired Percentage(s) of Affordability:** 25-30% for rental or homeownership units. In homeownership developments, a higher percentage of units eligible for inclusion in the Chapter 40B Subsidized Housing Inventory may be considered a reasonable trade-off, when necessary, for a modest increase in density above the guidelines outlined in this Policy Statement. The additional affordable units should be priced for households below 80% AMI, in which case they would qualify for the Subsidized Housing Inventory, but they may be priced for households with slightly higher incomes if there is an affordable housing restriction in place to protect affordability upon resale.
- ♦ **Income Targets:** rental developments should provide a continuum of affordability, such as units priced for households at 30%, 50%, 80%, and 110% AMI. Range of affordability may be considered a reasonable trade-off, when necessary, for a modest increase in density or support from the Town in the developer's efforts to obtain additional subsidies for the development. Acton has housing needs at several market levels. We are not interested in having a disproportionately large share of units affordable only to households with incomes at the upper end of the moderate-income range. A mix of unit pricing will be more

advantageous to the developer than pricing all of the units in a development for households at 70-80% AMI.

- ♦ **Term of Affordability:** Affordable housing built in Acton must be affordable in perpetuity. Although some subsidy programs call for 30-50 years of affordability, Acton requires affordable housing to remain affordable for the maximum period allowed by law.

5. Affirmative Marketing and Local Preference

To the maximum extent permitted by law, first preference for the purchase of seventy percent (70%) of the affordable units in a comprehensive permit development shall be given to households that meet one or more of the following "Acton Connection" preference criteria:

- ♦ At least one member of the household is currently a legal resident of the Town of Acton. For purposes of an affordable housing lottery, a person shall be deemed a resident if that person has been registered as an Acton resident with the Acton Town Clerk pursuant to G.L. c. 51, §4 and would be considered a resident under the U.S. Census Bureau's residency guidelines.
- ♦ At least one member of the household is a parent, son or daughter of an Acton resident.
- ♦ At least one member of the household is an employee of the Town of Acton, the Acton Public Schools, the Acton-Boxborough Regional School District, or the Acton Water District, and has been an employee for a period of at least six months at the time of the affordable housing lottery application deadline.
- ♦ At least one member of the household is currently privately or publicly employed within the Town of Acton and has been so employed for a period of at least six months at the time of the affordable housing lottery application deadline.

6. Incentives for Small-Scale Projects

A comprehensive permit development with 12 units or less, not located in one of the areas shown on Map 2, Areas with Poor/Limited Suitability for Higher-Density Housing, and with a gross floor area that meets the guidelines of this Policy Statement, is eligible for a modified review process and reductions in or exemptions from certain local requirements. This process is outlined below.¹

- ♦ Prior to submitting an application for Site Approval, the developer will meet informally with the ACHC and Town Planner to review the proposal against the preferences and standards outlined in this Policy Statement.

¹The same process may be available to a development that exceeds 12 units, depending on its location and the public benefits it offers in addition to affordable housing. For a development in this size category, the public benefits criteria that determine eligibility for a streamlined review include walkability, connectivity, and reuse of older buildings.

- ◆ The developer will present the proposal at an informational meeting sponsored by the ACHC for residents, town boards and professional staff.
- ◆ The ACHC and Town Planner will evaluate the proposal according to the Development Preference Criteria outlined in Section 3. In the Town Planner's discretion, other department heads may be asked to participate in the proposal evaluation. If the reviewers agree that the proposed development satisfies the Town's preference criteria, they will recommend that the Board of Selectmen send a letter of support to the subsidy program with responsibility for issuing a Project Eligibility/Site Approval letter. A developer whose project does not adequately address the preference criteria will be encouraged to modify the proposal and resubmit it to the Town for review.
- ◆ After receiving a Project Eligibility/Site Approval letter from the state, the developer will be permitted to submit a simplified small-project comprehensive permit application to the Board of Appeals.
- ◆ During the public hearing process, project review assistance required by the Board of Appeals, if any, will be performed in-house. The developer will not be required to pay for peer review services unless there is no other option available to the Town. If the Board of Appeals needs a specialized review that requires outside support, the Town will seek Chapter 40B Technical Assistance from the Massachusetts Housing Partnership Fund.
- ◆ If necessary, the Board of Selectmen will designate one of its members to serve as liaison to abutters and as the Town's negotiator.
- ◆ When necessary to meet the Building and Landscape Design Considerations of this policy statement, the 75-foot no-build setback to the edge of driveways, roadways and structures under the Town's local wetlands bylaw may be reduced to 50 feet.
- ◆ The Board of Appeals will make every reasonable effort to conclude the public hearing within three sessions and file its decision with the Town Clerk not later than 30 days after the close of the public hearing.

7. Large-Scale Project Review

This section describes the Town's procedures for reviewing and evaluating a comprehensive permit development of 50 or more units.

- ◆ **Project Review Procedures.** Below is the process that developers must follow prior to submitting a Project Eligibility/Site Approval application for any development that is subject to Large-Scale Project Review:
 - The developer will meet informally with the ACHC and Town Planner to review the proposal against the preferences and standards outlined in this Policy Statement.
 - The developer will present the proposal at an informational meeting sponsored by the ACHC for residents, town boards and professional staff. In addition, the developer should plan on meeting with officials such as the Planning Board, Conservation

Commission, Historical Commission or Board of Health regarding any proposed or potential waivers from laws and regulations within their jurisdiction.

- The ACHC will prepare a written summary of all comments received at the informational meeting, transmit them to the Board of Selectmen and the developer, and review the developer's response.
- The ACHC and Town Planner will evaluate the proposal (as may be revised following the all-boards meeting). In the Town Planner's discretion, other department heads may be asked to participate in the proposal evaluation. This joint review process will be guided by the Development Preference Criteria in Section 3. In addition, one or more members of the Board of Selectmen will review the proposal for consistency with the Public Benefits Criteria in Section 3, considering the degree to which the proposal meets the Compensatory Conditions and Mitigation standards outlined below.
- If the reviewers agree that the proposed development satisfactorily addresses the Development Preference Criteria and Compensatory Conditions, the development may be eligible for a favorable recommendation to the subsidy program. A development that does not meet these standards will most likely receive an unfavorable recommendation from the Town, along with a request to defer action on the Project Eligibility/Site Approval application until such time as identified deficiencies are resolved.
- The Board of Selectmen will maintain a record of the ACHC/Development Review Team's analysis of the project, other written comments, and the results of the all-boards meeting. These documents will be part of the official public records file for the development and may be transmitted to the subsidy agency that is responsible for acting on the developer's Project Eligibility/Site Approval application.
- ♦ **Compensatory Conditions.** A large-scale project is more likely to obtain support from the Town when the development meets the following criteria:
 - Located in one of the Preferred Development Areas identified on Map 1;
 - Does not exceed a gross floor area ratio of .25; or .80 in the villages/Kelley's Corner;
 - Provides a mix of residential use types and unit sizes;
 - Substantially addresses the Building and Landscape Design Considerations in Section 3;
 - Located on residentially zoned land, except for a mixed-use development that includes commercial space or involves reuse of an existing nonresidential structure;
 - Provides pedestrian amenities and where appropriate, transportation management to reduce traffic impacts on surrounding areas; and
 - Provides a significant public benefit to the Town in addition to affordable housing, such as transportation management, traffic mitigation, provision of additional affordable units in off-site locations, or a contribution to the Town for capital improvements or other affordable housing.

When these compensatory conditions are met, the Board of Selectmen and Planning Board may recommend to the Board of Appeals that the project be reviewed in whole or in part under the procedures for a small project in Section 6.

- ♦ **Comprehensive Permit Application & Review.** The large-scale project developer is required to file a complete comprehensive permit application with the Board of Appeals. Not later than the end of the second session of the public hearing, the Board of Appeals will determine its technical assistance and peer review needs and notify the developer of the estimated amount of funds required to conduct these reviews (if any). The Town will maintain a list of qualified reviewers and their review fees. Applicants should be prepared to pay for the following consulting services and peer reviews:

- An appraisal of the site for its highest and best use under current zoning
- Development pro forma
- Market study
- Community impacts analysis
- Traffic

The Board of Appeals may request additional reviews, and it may also identify needs for other reviews after the second session of the hearing depending on issues identified by abutters or other Town boards reviewing the project.

- ♦ **Town Negotiator.** The Board of Selectmen will designate a negotiator or a negotiating team to represent the Town in working with the developer to resolve issues and identify appropriate mitigation.
- ♦ **Mitigation.** Large-scale developments have a responsibility to mitigate their attendant environmental, fiscal and traffic impacts. Mitigation should reflect the size of the project and its impact on municipal and school services, nearby roadways and intersections, the surrounding neighborhood, and needs for community facilities or services in the vicinity of the site. For example, a small neighborhood park accessible to persons with disabilities or a playground may be appropriate mitigation for a development of 50-60 units while a larger development may create needs for a community center or accelerate the need to complete a project identified in Acton's Capital Improvements Plan (CIP). Since large developments also tend to generate significant traffic, the Town expects large-scale project developers to include transportation management, traffic mitigation and facilities for pedestrians as part of an application for a comprehensive permit. In general, Acton will give preference to a large development that provides a public recreation facility or community facility, or a cash contribution to help the Town finance such facilities in the future, and sustainable transportation.