

<b>Topic:</b>	Affordable Housing
<b>Resource Type:</b>	Regulations
<b>State:</b>	Massachusetts
<b>Jurisdiction Type:</b>	State
<b>Municipality:</b>	N/A
<b>Year (adopted, written, etc.):</b>	2004
<b>Community Type – applicable to:</b>	Urban; Suburban; Rural
<b>Title:</b>	Massachusetts Affordable Housing Appeals Law
<b>Document Last Updated in Database:</b>	February 24, 2016

### ***Abstract***

The legislature of the Commonwealth, in Chapter 23B of the Massachusetts Code, has created the Massachusetts Department of Housing and Community Development. Within the Department of Housing and Community Development, the legislature created a Housing Appeals Committee. Mass. Gen. Law Ch. § 5A (2004).

Under the Commonwealth’s Low and Moderate Income Housing Law, certainties entities who wish to build affordable house may follow a streamlined application process. If the application is denied or conditionally granted, the entity may appeal the decision of the local board to the Housing Appeals Committee which is housed under the Massachusetts Department of Housing and Community Development. The Housing Appeals Committee will hold a hearing to consider the denial of the permit. At the hearing, the Housing Appeals Committee is limited to the issue of whether the denial of the application, was reasonable and consistent with local needs. If the Housing Appeals Committee finds that the decision was unreasonable, it shall vacate the decision of the local board and order the issuance of the permit. MASS. GEN. Laws ch. 40B, § 21 - 23 (2004).

### ***Resource***

MASS. GEN. Laws ch. 40B, § 23 (2004)

§23. Limitation on Issues Before Housing Appeals Committee; Findings; Powers; Enforcement of Orders.

The hearing by the housing appeals committee in the department of housing and community development shall be limited to the issue of whether, in the case of the denial of an application, the decision of the board of appeals was reasonable and consistent with local needs and, in the case of an approval of an application with conditions and requirements imposed, whether such conditions and requirements make the construction or operation of such housing uneconomic and whether they are consistent with local needs. If the committee finds, in the case of a denial, that the decision of the

board of appeals was unreasonable and not consistent with local needs, it shall vacate such decision and shall direct the board to issue a comprehensive permit or approval to the applicant. If the committee finds, in the case of an approval with conditions and requirements imposed, that the decision of the board makes the building or operation of such housing uneconomic and is not consistent with local needs, it shall order such board to modify or remove any such condition or requirement so as to make the proposal no longer uneconomic and to issue any necessary permit or approval; provided, however, that the committee shall not issue any order that would permit the building or operation of such housing in accordance with standards less safe than the applicable building and site plan requirements of the federal Housing Administration or the Massachusetts Housing Finance Agency, whichever agency is financially assisting such housing. Decisions or conditions and requirements imposed by a board of appeals that are consistent with local needs shall not be vacated, modified or removed by the committee notwithstanding that such decisions or conditions and requirements have the effect of making the applicant's proposal uneconomic.

The housing appeals committee or the petitioner shall have the power to enforce the orders of the committee at law or in equity in the superior court. The board of appeals shall carry out the order of the hearing appeals committee within thirty days of its entry and, upon failure to do so, the order of said committee shall, for all purposes, be deemed to be the action of said board, unless the petitioner consents to a different decision or order by such board.

MASS. GEN. LAWS ch. 40B, § 22 (2004)

§ 22. Review by Housing Appeals Committee of Denial or Conditional Grant of Application;  
Judicial Review.

Whenever an application filed under the provisions of section twenty-one is denied, or is granted with such conditions and requirements as to make the building or operation of such housing uneconomic, the applicant shall have the right to appeal to the housing appeals committee in the department of housing and community development for a review of the same. Such appeal shall be taken within twenty days after the date of the notice of the decision by the board of appeals by filing with said committee a statement of the prior proceedings and the reasons upon which the appeal is based. The committee shall forthwith notify the board of appeals of the filing of such petition for review and the latter shall, within ten days of the receipt of such notice, transmit a copy of its decision and the reasons therefor to the committee. Such appeal shall be heard by the committee within twenty days after receipt of the applicant's statement. A stenographic record of the proceedings shall be kept and the committee shall render a written decision, based upon a majority vote, stating its findings of fact, its conclusions and the reasons therefor within thirty days after the termination of the hearing, unless such time shall have been extended by mutual agreement between the committee and the applicant. Such decision may be reviewed in the superior court in accordance with the provisions of chapter thirty A.

MASS. GEN. Laws ch. 40B, § 21 (2004)

§ 21. Proceedings Before Board of Zoning Appeals on Applications to Build Housing;  
Hearings; Appeals.

Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The board of appeals shall adopt rules, not inconsistent with the purposes of this chapter, for the conduct of its business pursuant to this chapter and shall file a copy of said rules with the city or town clerk. The provisions of section eleven of chapter forty A shall apply to all such hearings. The board of appeals shall render a decision, based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section seventeen of chapter forty A.

MASS. GEN. Laws ch. 40B, § 20 (2004)

§ 20. Definitions.

The following words, wherever used in this section and in sections twenty-one to twenty-three, inclusive, shall, unless a different meaning clearly appears from the context, have the following meanings:--

"Low or moderate income housing", any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by

any public agency or any nonprofit or limited dividend organization.

"Uneconomic", any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development 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 units sizes proposed by the public, nonprofit or limited dividend organizations.

"Consistent with local needs", requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing. Requirements or regulations shall be consistent with local needs when imposed by a board of zoning appeals after comprehensive hearing in a city or town where (1) low or moderate income housing exists which is in excess of ten per cent of the housing units reported in the latest federal decennial census of the city or town or on sites comprising one and one half per cent or more of the total land area zoned for residential, commercial or industrial use or (2) the application before the board would result in the commencement of construction of such housing on sites comprising more than three tenths of one per cent of such land area or ten acres, whichever is larger, in any one calendar year; provided, however, that land area owned by the United States, the commonwealth or any political subdivision thereof, or any public authority shall be excluded from the total land area referred to above when making such determination of consistency with local needs.

"Local Board", any town or city board of survey, board of health, board of subdivision control appeals, planning board, building inspector or the officer or board having supervision of the construction of buildings or the power of enforcing municipal building laws, or city council or board of selectmen.

Mass Gen. Law ch. 23B, § 5A. Housing Appeals Committee Created; Membership; Authority.

There shall be within the department a housing appeals committee, consisting of three members to be appointed by the director, of whom one shall be an officer or employee of the department, and two members to be appointed by the Governor for terms of one year each, of whom one shall be a member of a board of selectmen and one a member of a city council

or similar governing body of a city. The members shall serve for terms of one year each, and the director shall designate the chairman. A member of the committee shall receive no compensation for his services, but shall be reimbursed by the commonwealth for all reasonable expenses actually and necessarily incurred in the performance of his official duties. Said committee shall hear all petitions for review filed under section twenty-two of chapter forty B, and shall conduct said hearings in accordance with rules and regulations established by the director.

The department shall provide such space and clerical and other assistance as the committee may require.

<http://www.mass.gov/legis/laws/mgl/40b-23.htm>

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