

# Powder Mill Place Frequently Asked Questions

*In early 2017, a developer reached out to the Towns of Acton and Maynard to discuss the development of a 254-unit apartment complex on land that straddles the town lines. It has been named Powder Mill Place (PMP).*

*Representatives from various town offices from each community attended a public information session where the project was described. Acton and Maynard officials were asked about providing water and sewer. Maynard made it clear they were unable to commit to providing water. Acton's Water District representative indicated it was their board of the district's decision.*

*Subsequently, the developer met separately with representatives from each town to understand local concerns and answer questions. For Maynard's part, there were concerns about traffic, project scale, school impacts, and our sewer system capacity, particularly the collection pipes that carry waste water to the treatment plant.*

*The developer commissioned a traffic study, a sewer analysis, and the developer paid for a financial impact analysis.*

*In July of 2018, the developer made a formal application, called a Local Initiative Program (LIP), to develop the project. The LIP was provided to each community and requires both communities to provide letters of endorsement for the application before the project can proceed. The developer also provided a draft 'Memorandum of Agreement' offering that includes financial gifts to offset the costs of the impact the project may bring. For one example, adding sidewalks along Powder Mill Road.*

*Currently, both communities are considering the LIP details and Maynard has scheduled a public meeting on September 17<sup>th</sup> to gather public input and to answer questions from community members.*

*The LIP, the studies, and other related documents are available on the town's website at:*

*<https://www.townofmaynard-ma.gov/projects/powder-mill-place/>*

*What follows are questions the town has been asked about the project and corresponding answers.*

## **What is a 40B project?**

Massachusetts General Law (MGL) Chapter 40B §55, 20-23 was established in 1969 to facilitate the creation of affordable housing throughout Massachusetts by providing more flexible zoning rules if at least 25% of the units are rented with an income restriction. It allows developers and the local Zoning Board of Appeals (ZBA) to work together to provide more affordable housing than would be developed under the existing local zoning provisions. For instance, a 40B project could be developed in an area with a zoning designation of "Industrial". Without a 40B designation, this could not occur.

Massachusetts cities and towns are encouraged to maintain at least 10% of their housing at an affordable level. If they have 10% or more, they can refuse to waive their zoning regulations under 40B. With a housing inventory less than 10%, a municipality may be subject to a 40B waiver from local zoning regulations.

Maynard currently has about 8.3% of its housing restricted as affordable.

## **How does a 40B project get permitted?**

Chapter 40B provides two paths to obtain permits:

- 1) An ‘unfriendly’ 40B is when a developer works with an outside agency to construct the housing. They take their application directly to the state’s Department of Housing and Community Development (DHCD). A local government’s input in an unfriendly 40B is severely curtailed and a DHCD authorized development operates largely free of the municipality’s zoning regulatory framework.
- 2) A ‘friendly’ 40B process is when a developer works with a community to design a project the community (or “host community”) is willing to endorse. The project details are typically memorialized in a “Development Agreement” or “Memorandum of Agreement”.

If a developer receives a friendly 40B endorsement from the host community, the application proceeds to DHCD for their approval. Whether endorsed by the town or taken directly to DHCD, once DHCD approves of the project, it returns to the local community for review and permitting by its ZBA. The ZBA has 180 days to issue permits.

## **What is the definition of Affordable Housing?**

Affordable housing is defined in Massachusetts as being available to seniors and families who make less than 80% of median household income for the area and are priced at 70% or less of the median rental or sale price. Due to the high cost of housing in the area, many middle-income families qualify for affordable units.

Maynard’s median household income is \$90,134 for a family of four, so those earning less than \$72,107 may qualify for affordable units in Maynard. The rules are more complex than this explanation and adjust based on household size. The figures are adjusted annually by the federal Housing and Urban Development agency (HUD) and the Commonwealth of Massachusetts.

## **How does this project fit with the Maynard Housing Production Plan adopted by the town in 2015?**

The Housing Production Plan (HPP) is designed to provide guidance to address unmet housing needs and guide housing production with an emphasis on Priority Development Areas such as the Powder Mill Corridor [Priority development areas are identified by the town on a periodic basis for the state].

The proposed project is consistent with the HPP, specifically Goal 1: “Work to Preserve & Advance Housing Affordability in Town to Reduce the Number of Local Cost-burdened Households.” This goal contains implementation strategies directly intended to increase affordable housing production.

Some of the HPP key implementation strategies to work towards this goal include:

- Strategy 1.1: work towards meeting or exceeding the Commonwealth's 10% goal on subsidize housing inventory.
- Strategy 1.2: produce mixed income housing on vacant and other parcels with a potential for development or redevelopment of housing of varying type and tenure.
- Strategy 1.3 advance projects under the "local initiative program" to create housing affordable to low and moderate income households.

### **How close is Maynard to its 10% affordable unit minimum or a status that lets us better control a project like this?**

As of 2018, Maynard is 74 units from meeting the 10% minimum standard. However, the number is recalculated every ten years (federal census years), so our ratio will change again in 2020. Here is why:

The Subsidized Housing Inventory (SHI) is the data the State uses to confirm whether we are at 10% or not. The number is a fraction with the numerator being the number of eligible units and the denominator the total number of homes in a town.

The numerator changes every time the housing inventory is certified.

**Maynard's SHI currently stands at 369.**

The denominator is set on the decennial census.

**In 2010 the number of houses in Maynard was 4430 homes.**

$$369/4430 = .0833 \text{ (or 8.33\%)}$$

To get to 10%, we would need 74 more units.  $4430 * 10\% = 443$  and  $443 - 369 = 74$

However, since 2010, houses have been built in Maynard and more are being added. We estimate that by the time of the census taking in 2020, Maynard will be reporting 300-400 more housing units (already built or permitted to be built by 2020). There are currently only 22 planned affordable units permitted but not yet built. If the increase is 400 units, Maynard would need 114 affordable units to get to 10%. With 22 planned, that would leave Maynard 92 units short. This does not include PMP or other proposed projects.

### **Don't we also have the acreage to limit 40B development?**

In 2014, a large affordable housing complex was being proposed for what is now called Maynard Crossing (at 129 Parker Street). The developer was suggesting that instead of mixed-use (commercial and residential), only housing would be built. The town wanted a mixed-use project and announced that we had 'safe harbor' based on an acreage calculation. 'Safe harbor' is a phrase the state uses to indicate that a community has reached its minimum expectation of providing affordable housing. One method is if 1.5% of a town's developable land is used for affordable housing. That is considered equivalent to being at or above 10% of all of a community's housing stock.

Maynard has determined that approximately 2.0% of its acreage is being used for affordable housing. However, the calculation has not been verified by DHCD. The Town cannot get the 1.5% verified unilaterally and DHCD will only consider the verification if it is challenged by a developer. In order to provide a legally defensible analysis by a third party verifying the acreage meets or exceeds the DHCD standard, the town would need to commit approximately \$30,000 (an estimate provided to us in early 2018).

### **Can Maynard residents receive priority for affordable units created in Maynard?**

Up to 70% of affordable units can be designated to prioritize current Maynard residents. This would be established within a MOA.

### **Is the proposed project consistent with Maynard's Community Development Principles?**

It is consistent with all ten of the principles.

- **Concentrate development and integrate uses** – density development is efficient; housing is complimented by existing housing and commercial uses in the neighborhood.
- **Protect the village character of the downtown** – this project does not impact the downtown directly.
- **Redevelop and reuse** – An old factory site and several turn of the century homes are being redeveloped.
- **Use natural resources wisely** – The project plans to make new connections to the river.
- **Expand housing opportunities** – The proposed project would add 74 units to Maynard's Subsidized Housing inventory.
- **Provide a variety of transportation choices** – the project has offered contributions to existing transit programs and is along a planned expansion of commuter options to either of two commuter rail stations. The traffic mitigations suggested could include a “complete streets” implementation for Powder Mill Road, allowing people in cars, bicycles, and on foot to more safely traverse the area.
- **Respect cultural and historic resources** – the developer has discussed renovating the historic homes on the site for potential use as a local historic center.
- **Protect land and ecosystems** – the proposed project will clean up a polluted site, enhance the view to the river, and protect open space by building in a concentrated environment.
- **Make effective decisions** – open dialog about this project is the hallmark of making a sound decision about it.
- **Manage infrastructure wisely** – the developer has proposed significant upgrades to our existing waste water system.

### **Who is responsible for public safety and other services if the project is in two communities?**

The two communities will need to discuss inter-municipal agreements. These are already in place for public safety and Maynard and other towns routinely provide shared services in other departments when needed. The general relationships already exist, but the details for this project will need to be considered and a framework developed to address various aspects of a potential agreement.

## **How will traffic be impacted by PMP and what traffic changes are going to be put in place?**

In 2017 the developer commissioned a traffic study of the area and Maynard's engineering firm, VHB, provided a peer review of the study. Each indicates that Powder Mill Road is capable of handling the added volume of traffic anticipated. Each study makes recommendations for improvements including the locations of turnouts, adding traffic signals or turning lanes, and providing sidewalks in the area. Should the project move forward and other traffic impacts identified, additional mitigation measures may be required.

## **What will the impact be on the Fire Department?**

The biggest impact on the fire department will be the increased workload in the area of fire prevention. This includes issuing permits, reviewing plans, inspecting installations of both fire alarm work and sprinkler systems, as well consultations with the contractors on placement of extinguishers, Knox Boxes and other safety related items. Once the buildings are complete, we will need to conduct periodic safety inspections. We may also see an increase in emergency call volume related to this project. Our estimates put this number at about 33 more emergency calls annually, or 2-3 more per month. Currently, the Fire Service conducts 1500 emergency responses each year.

## **The financial impact analysis estimates the project will create a .89 positive revenue impact. What does this mean?**

The Financial Impact Analysis (FIA) was conducted in the winter of 2018. It considered the size and type of units to determine a property value and number of cars anticipated for excise taxes. It also considered community services – schools, public safety, and others. The result is a ratio where any number lower than 1 is positive – more revenue than expenses – and a figure greater than 1 would indicate more expenses than revenue. The .89 figure therefore can be interpreted as \$1.00 of revenue for every 89 cents of service costs.

This is a simple snapshot of data though, and a full review of the document reveals the following:

- The financial impact analysis took a conservative estimate of revenues. For example, the consultant suggests our town assessor's estimate was 10% below the potential revenue that may be expected to come from this project.
- It also took a 'worst case' estimate of service costs. For example, based on the school district's budget formula, the budget increase for the schools is about \$10,000 per student. With fifteen children anticipated from PMP, the budget increase is \$150,000. However, the fixed costs of the school's debt, utilities, and staff don't change when enrollment rises or falls. The true 'service cost' for those 15 students is an incremental one.
- Building permit fees (one-time revenues) are estimated to be \$517,815. One-time electrical and plumbing fees have not been estimated. Sewer hookups, if permitted, would be \$889,000.
- The FIA did not consider other revenue-generating impacts of the project, like meals taxes from the residents of the project. That type of analysis would require more time and cost.
- It also did not consider the recurring revenue from waste water fees which would add approximately \$350,000 per year based on the estimated volume.

## **Does Maynard have to provide water and sewer to the project?**

The Chapter 40B regulations state that, if a ZBA denies a comprehensive permit based upon the inadequacy of existing municipal services or infrastructure, it has the burden of proving that the installation of services adequate to meet local needs is not technically or financially feasible.

Financial infeasibility is supportable only where unusual topographical, environmental or other physical circumstances make installation of the needed service prohibitively costly. A developer cannot, in the Chapter 40B context, be required to address town-wide inadequacies, or even remedy existing infrastructure problems that might exist in the very area where a project is proposed. What a ZBA can require is that a developer provide limited off-site services or mitigate specific problems if they are necessitated by the project itself. Where insufficient capacity, e.g. sewer, presently exists to serve a project, Massachusetts courts have acknowledged that *“if [a] connection would at once overload the sewer and risk serious flooding and danger of injury to persons and property, immediate [connection] would not be required... The sewer commissioners,” however, “are not empowered to postpone presently sought connections to give precedence to connections contemplated for the future.”*

## **Could the project proceed without sewer service from Maynard?**

Sewer service could be provided from another municipality or an on-site plant.

## **How much more waste water can our sewer system handle?**

The Maynard Waste Water Treatment Plant (WWTP) has additional capacity based on the current daily average flow rate vs. permitted capacity. A recent capacity evaluation was completed by Veolia North America, the Town's Operations & Maintenance management contractor who operates the facility. The analysis of the past four years of influent data showed that the facility is frequently operating above the influent design values. However, during this same time period, the facility has been in compliance with the NPDES discharge permit limits. The department recommends that a condition assessment of the facility be completed. The specifics of this condition assessment are detailed in the document titled *“Maynard WWTP Capacity Evaluation.”*

- Current 12-Month average flow rate – 0.94 millions of gallons per day (MGD)
- Permitted capacity – 1.45 MGD
- Anticipated additional flow from proposed project – 0.042 MGD
- Anticipated additional flow from 129 Parker Street project – 0.09 MGD
- PMP Projected usage of permitted capacity – 2.89% of permitted capacity
- The WWTP would be operating at 74.4% capacity with the addition of the 129 Parker Street development and the Powder Mill Place development.

## **What are the conditions of the collection pipes for the sewer system in Maynard?**

In August of 2017 the Maynard Department of Public Works completed an impact analysis and sewer flow modeling for the Powder Mill Place development. The analysis included the CCTV inspection of the Maynard sewer system which currently services the property located on Powder

Mill Road and the downstream impacts of future flows from the Powder Mill Place development. The assessment recommended that the lining and replacement of over 2000 linier feet of sewer main be completed to allow the system to support the additional 42,000 gallons per day flow from the proposed Powder Mill Place development. Details of this recommendation, including estimated costs, can be found in the document titled “*Review of Powder Mill Place Development 2,4,12,18 Powder Mill Road, Acton Massachusetts 112,114,116,118 Powder Mill Road, Maynard, Massachusetts - Sewer Impact Analysis and Condition Assessment Recommendations.*”

### **What would it cost to entirely replace the waste water treatment system?**

The replacement cost of the current wastewater treatment system including collection system, pump stations and WWTP would be approximately \$125,000,000-\$150,000,000.

### **What is the purpose of a sewer hook-up fee?**

Some is used to offset existing debt for the system that exists and is now being used by that customer. The balance should be set aside for future capital investment in the system.

### **Will sewer rates change as a result of this project?**

Sewer rates are set to manage the enterprise in a responsible and sustainable way. Issuing debt, salaries of employees, equipment and material costs, all impact the rates charged. Most of these enterprise costs are fixed or have predictable increases (debt, salaries, etc.). Those won't be changed by the added volume of users. The incremental cost of use (actual collected volume of waste water and the cost to treat it) will create revenues greater than corresponding expenses.

Another way to see this is in ratios. There are currently 4,183 sewer customers in Maynard. Adding 254 more customers is an increase of 6%. We can expect revenues to increase by about the same 6%. The sewer enterprise funds' fixed costs, however, will not increase, and the incremental costs of the department budget will be less than the increased revenue.

### **What would be the anticipated annual revenue for this project if connected to the Maynard sewer system?**

Potential annual revenue would be in the range of \$300,000-\$375,000 depending on the percentage of in-town and out-of-town units.

### **Can a large scale project occur in this location without Maynard's cooperation?**

Less than a third of the project is located in Maynard's jurisdiction. Assuming infrastructure was provided, a large project could occur exclusively on the Acton portion of the property without Maynard approvals.

**If the developer chooses the “unfriendly” route for development with DHCD approval can Maynard legally challenge the decision?**

Yes and no. No, municipalities cannot generally challenge a decision by the subsidizing agency to issue preliminary approval. (Though, upon receipt by the subsidizing agency of an application for project eligibility, the municipality is given notice and a 30-day comment period ensues during which written comments may be submitted by local boards and other interested parties.) But a determination of project eligibility does not constitute project approval. An application would thereafter be made to the ZBA for the issuance of a comprehensive permit. Yes, the ZBA may choose to deny that application as long as its decision is consistent with local needs. An appeal may follow, to an administrative agency tasked with nothing other than reviewing Chapter 40B decisions: the Housing Appeals Committee (HAC). On appeal, it would be the ZBA’s burden to establish that approval of the project will endanger the natural environment that the design of the site or housing project is seriously deficient or that critically needed open space will be eliminated by the development. Where a municipality has not satisfied its quota, there exists a presumptive need for affordable housing that is difficult to overcome. The HAC has determined that the regional housing needs typically outweigh local planning concerns. The ZBA must, therefore, be prepared to justify its denial with project deficiencies that satisfy the above test. Assistance from the Town’s legal counsel will be required, and other consultants may likewise be needed to support the ZBA’s rationale for denial.

**Is the site environmentally contaminated currently?**

The site is known to be contaminated and the owner is working on cleanup. Any development of the site would require environmental rehabilitation of the location.