

ARTICLE LXV - Comprehensive Permits for Pre-Existing and Unpermitted Dwelling Units and for New Dwelling Units in Existing Structures.

1.0: Intent and Purpose.

1.1 The intent of this Ordinance is to provide an opportunity to bring into compliance many of the currently unpermitted accessory apartments and apartment units in the Town of Barnstable, as well as to encourage the use of existing dwellings to create additional affordable housing.

1.2 This Ordinance recognizes that although unpermitted and unlawfully occupied, these dwelling units are filling a market demand for housing at rental costs typically below that of units which are and have been, lawfully constructed and occupied.

1.3 It is in the public interest and in concert with its obligations under state law, for the Town of Barnstable to offer a means by which so-called unpermitted and illegal dwelling units can achieve lawful status, but only in the manner described below.

1.4 It is the position of the Town of Barnstable that the most appropriate mechanism for allowing for the conversion of unlawful dwelling units to lawful units is found in GL c.40B, ss. 20-23, the so-called "Comprehensive Permit" program. This provision of state law encourages the development of low and moderate-income rental and owner occupied housing and provides a means for the Board of Appeals to remove local barriers to the creation of affordable housing units. These barriers include any local regulation such as zoning and general ordinances that may be an impediment to affordable housing development.

1.5 The Local Comprehensive Plan states that the town should commit appropriate resources to support affordable housing initiatives. Under this ordinance, the town commits the following resources to support this affordable housing initiative:

- a. Waiver of fees for the inspection and monitoring of the properties identified under this ordinance;
- b. Designation of town staff to assist the property owner in navigating through the process established under this ordinance;
- c. To the extent allowable by law, the negative effect entailed by the deed restriction involved will be reflected in the property tax assessment, and
- d. To assist property owners in locating available municipal, state and federal funds for rehabilitating and upgrading the properties identified under this ordinance.

1.6 The Local Comprehensive Plan supports, in conjunction with a variety of other strategies, the conversion of existing structures for use as affordable housing.

1.7 Through the creation of a local Chapter 40B program, which uses state and federal subsidies, the town can create a mechanism to utilize existing structures for the creation of affordable housing units that is consistent with the town's identified housing needs.

2.0: Creation of Local Chapter 40B Program:

As part of the town's efforts to create the type of affordable housing that best meets the needs of the town and its residents, the town manager and staff designated by the town manager, shall establish a screening process and criteria for the preexisting and unpermitted units described herein, as well as for new units in existing structures, as part of a local Chapter 40B program which program will provide the state or federal subsidy necessary to establish standing under Chapter 40B for units being created and/or permitted in existing dwellings and structures.

3.0: Amnesty Program

Recognizing that the success of this Ordinance depends, in part, on the admission by real property owners that their property may be in violation of the zoning ordinances of the town, the town hereby establishes the following Amnesty Program:

3.1: The threshold criteria for units being considered as units potentially eligible for the Amnesty Program are:

- a) Real property containing a dwelling unit or dwelling units for which there does not exist a validly issued variance, special permit or building permit, does not qualify as a lawful, non-conforming use or structure, for any or all the units, and that was in existence on a lot of record within the Town as of January 1, 2000; or
- b) Real property containing a dwelling unit or dwelling units which was in existence as of January 1, 2000 and which has been cited by the Building Department as being in violation of the zoning ordinance and
- (c) The property owner has the burden of demonstrating to the Building Commissioner that the criteria in either paragraphs (a) and/or (b) have been satisfied.
- d) If any dwelling unit or units identified herein are occupied during the period of time when amnesty is in effect, said unit must be inspected by the entity designated by the town manager and found to be in conformance with the State Building Code and State Sanitary Code.

3.2: Procedure for Qualifying for Amnesty for Units that Meet Threshold Criteria:

- a) The unit or units must either be a single unit accessory to an owner occupied single family dwelling or one or more units in a multifamily dwelling where there exists a legal multifamily use but one or more units are currently unpermitted;
- b) The unit(s) must receive a site approval letter under the town's local chapter 40B program;
- c) The property owner must agree that if s/he receives a comprehensive permit, the unit or units for which amnesty is sought will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agree that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from

HUD's rent level.

d) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit or units for which amnesty is sought, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an interest in the property and which restricts the use of one or more units as rental units to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

e) Upon receiving the site approval letter under 3.2(b) above, the property owner shall within three (3) months file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

3.3: Obtaining Amnesty and Duration.

a) No zoning enforcement shall be undertaken against any property owner who demonstrates that s/he meets the threshold criteria under section 3.1 and further demonstrates that s/he is proceeding in good faith to comply with the procedures under Section 3.2 to obtain a comprehensive permit.

b) Any protection from zoning enforcement under this ordinance shall terminate when: 1) A written determination is issued under the local Chapter 40B program that the criteria under Section 3.2 and the local Chapter 40B program cannot be satisfied; or 2) it is determined that the property owner is not proceeding diligently with his/her Chapter 40B application; or 3) the property owner's Chapter 40B application is denied. A person is deemed "not to be proceeding diligently" if s/he does not receive a comprehensive permit within twelve months from the date of issuance of the site approval letter under the local Chapter 40B program.

c) This amnesty program shall be reviewed by the town council no later than October 1, 2003.

4.0: New Accessory Units in Single Family Owner Occupied Dwellings.

For a proposed new unit to be eligible for consideration under the local chapter 40B program, it must be a single unit accessory to an owner occupied single-family dwelling and comply with the following:

a) The unit(s) must receive a site approval letter under the town's local chapter 40B program;

b) The property owner must agree that if s/he receives a comprehensive permit, the accessory dwelling unit will be rented to a person or family whose income is 80% or less of the Area Median Income (AMI) of Barnstable-Yarmouth Metropolitan Statistical Area (MSA) and shall further agrees that rent (including utilities) shall not exceed the rents established by the Department of Housing and Urban Development (HUD) for a household whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area. In the event that utilities are separately metered, the utility allowance established by the Barnstable Housing Authority shall be deducted from HUD's rent level.

c) The property owner must agree, that if s/he receives a comprehensive permit, that s/he will execute a deed restriction for the unit, prepared by the Town of Barnstable, which runs with the property so as to be binding on and enforceable against any person claiming an

interest in the property and which restricts the use of the one unit as a rental unit to a person or family whose income is 80% or less of the median income of Barnstable-Yarmouth Metropolitan Statistical Area (MSA).

d) Upon receiving the site approval under 4(a) above, the property owner shall file an application for a comprehensive permit under the local Chapter 40B program with the Barnstable Zoning Board of Appeals.

5.0: Quarterly Reporting.

The Town Manager shall report to the Town Council no less than quarterly as to the use of this ordinance, paying particular regard to the level of participation.

Approved by a vote of the Town Council on November 16, 2000, by a roll call vote of 9 Yes 1 Abstain.