



TOWN of BROOKLINE

Massachusetts

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MELVIN A. KLECKNER
Town Administrator

December 8, 2016

Chrystal Kornegay, Undersecretary
Massachusetts Department of Housing and Community Development
100 Cambridge Street, Suite 300
Boston, MA 02110

Clark Ziegler, Executive Director
Massachusetts Housing Partnership
160 Federal Street, No. 2
Boston, MA 02110

Timothy C. Sullivan, Executive Director
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108

Marty Jones, President and Chief Executive Officer
Massachusetts Development Finance Agency
99 High Street
Boston, MA 02110

Re: **Urgent Request for Temporary Relief from the Impact of Multiple Comprehensive Permit Applications**

Dear Undersecretary Kornegay, Director Ziegler, Director Sullivan, and President Jones:

The Town of Brookline is currently facing an unprecedented **ten** essentially simultaneous Chapter 40B Comprehensive Permit Applications. Several factors, including the fact that the Town has made significant progress toward reaching the Chapter 40B safe harbor, have contributed to this phenomenon. The volume of comprehensive permit applications now pending before the Town's Zoning Board of Appeals ("ZBA") risks constructive approval of these projects, partly because there is simply insufficient time for the ZBA to meet. We believe that these circumstances were neither anticipated nor have precedent in Chapter 40B history. Consequently, we respectfully request that all four subsidizing agencies provide the Town with immediate and temporary relief from this unprecedented situation by placing a six-month hold on the issuance of all Project Eligibility Letters for all Chapter 40B housing

projects in Brookline that are currently under your review or may be submitted to your agency hereafter. The Town is unaware of any regulatory restriction that prevents a subsidizing agency from granting such relief.

At present, there are six Comprehensive Permit applications proposing 497 SHI-eligible units pending before the Town's ZBA, followed by four additional projects proposing a total of 473 SHI-eligible units that are currently under PEL review by MassHousing and MassDevelopment. This will potentially result in a total of ten simultaneous 40B applications pending in the Town of Brookline. This number of pending and proposed Chapter 40B developments has imposed, and continues to impose, a severe and undue hardship on the Town, and more particularly, on Town staff and the volunteer members of the ZBA. The ZBA is often required to meet two to three times per week on 40B projects, in addition to meeting its obligations in Chapter 40A zoning cases. The threat of constructive approvals and 180-day deadlines loom over our Planning Department and the ZBA. While the temporary relief accorded a community under the so-called "large project" threshold in the existing regulatory framework is presumably designed to limit the administrative burden that is associated with reviewing a significant number of units at any given time, it does not work in the context of the current rush of smaller projects that the Brookline ZBA faces, because the criteria for "large projects" fails to acknowledge that a 17-unit project can be as time-consuming as a 99-unit project. The impacts of a development project of any size can be significant.

It is also of great concern to us that seven of the ten projects that are in various stages of the comprehensive permitting process are concentrated in one Brookline neighborhood within approximately a half mile of each other. Even more disconcerting is the fact that five of these ten projects are within a quarter mile of each other. Two of the largest projects are practically across the street from each other. A map identifying the location of the Comprehensive Permit and PEL applications that are presently underway is attached. This number of pending and proposed Chapter 40B development projects has created an extremely difficult situation for the residents of this community, who are rightfully concerned about the permanent impacts these projects will have on their neighborhood. Asking a single neighborhood to shoulder this amount of development imposes an undue hardship on that neighborhood, which is compounded by the fact that the ZBA is unable to consider the collective impact this amount of development will have on a small geographic area under the existing Chapter 40B framework. We cannot believe that the housing advocates who originally sponsored and continue to support, as we do, the laudable goal of creating affordable housing in Massachusetts' communities envisioned a situation in which one municipality would be required to evaluate the impact of a thousand units at once, that one neighborhood would be confronted with evaluating the impact of several projects so close in time; or that the ZBA would be prohibited from considering the collective impact of so many simultaneous projects.

We maintain that these extraordinary and unusual circumstances, which are addressed neither by statute nor regulation, call for appropriate and immediate relief. We therefore respectfully request that all four State subsidizing agencies place an immediate six-month hold on the issuance of Project Eligibility Letters for 40B projects in the Town of Brookline, including those projects that are currently under review. Because we are unaware of any regulatory restriction that would prohibit this request, we respectfully urge you to join collaboratively with each other in an approach to address the urgency of the situation the Town of Brookline is facing.

By separate request, we are also renewing our August 2016 request to DHCD for a waiver from strict compliance with the provisions of 760 CMR 56.05(3). In that request, we sought an extension of time for the ZBA to issue its decisions on the applications that were pending at the time. Our renewed request to DHCD seeks relief from the requirement in 760 CMR 56.05(3) that attaches a numerical threshold of housing units to the ZBA's ability to stay a comprehensive permit application when three or more applications are concurrently undergoing hearing. DHCD is authorized under 760 CMR 56.08(2) to grant such relief when strict compliance will result in an undue hardship and will be inconsistent with the purposes of M.G.L. c. 40B, s. 20-23. Under the circumstances we are facing, we believe these conditions have been met.

Without the relief we are seeking through the subsidizing agencies and DHCD, we are deeply concerned that the Town, and one neighborhood in particular, will face extraordinary and enduring community impacts that will not only fail to "enhance" but will actually undermine the "quality of life for residents and the communities in which they reside," qualities that are recognized as a goal in the Design Guidelines adopted by all subsidizing agencies.

We further believe that in addition to threatening the integrity of individual residential communities, the potential impacts of this unprecedented number of concurrent development projects will pose a serious threat to the reputation and effectiveness of Chapter 40B. This cannot—and should not—be what the Affordable Housing Act intended.

This Board remains deeply committed to working toward and fully supporting the retention, improvement, and expansion of affordable housing in Brookline. This strong commitment to affordable housing is evidenced by actions of the Board of Selectmen, Town Meeting, and citizens during the past two decades. (For the details of how the Town has supported affordable housing in the past please refer to the enclosed appendix to this letter.) We are hopeful that—together with the Commonwealth and the subsidizing agencies—we can continue to create needed affordable housing while at the same time supporting housing that is consistent with DHCD's stated mission to "strengthen cities, towns and neighborhoods to enhance the quality of life of Massachusetts residents."

We respectfully urge your prompt and favorable action of the Town's request for relief, and ask that you jointly agree to place an immediate six-month hold on the issuance of any Chapter 40B Project Eligibility Letters, in addition to supporting DHCD's favorable action on the Town's request for a waiver from the provisions of 760 CMR 56.05(3). Time is of the essence.

If any of you either jointly or individually would like to meet with the Town, we would be happy to do so. Please contact Alison Steinfeld, Planning Director, if you have any questions or would like to arrange for a meeting. She can be reached at 617-730-2130 or asteinfeld@brooklinema.gov

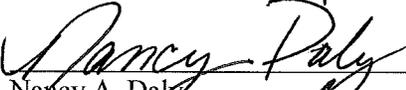
Thank you for your anticipated approval of this request.

Sincerely,

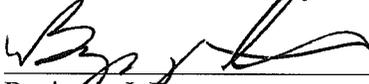
THE TOWN OF BROOKLINE BOARD OF SELECTMEN:



Neil A. Wishinsky, Chairman



Nancy A. Daly



Benjamin J. Franco



Nancy S. Heller



Bernard W. Greene

Attachments

- cc: Representative Frank Smizik
Representative Jeffrey Sanchez
Representative Michael Moran
Representative Edward F. Copping
Senator Cynthia Creem

TOWN OF BROOKLINE

PREVIOUS MUNICIPAL ACTIONS TO MEET AFFORDABLE HOUSING NEEDS

The Department of Housing and Community Development's regulations for Comprehensive Permits under Chapter 40B direct that the Subsidizing Agency "tak[e] into consideration information . . . regarding municipal actions previously taken to meet affordable housing needs such as inclusionary zoning, [and] multi-family districts adopted under M.G.L. Chapter 40A...." Brookline has a robust commitment to multi-family and affordable housing, which is evident in its zoning by-laws and its funding and other support of affordable housing.

A. Multi-Family Housing in Brookline.

Brookline has nineteen (19) zoning districts that permit multi-family housing (more than a two-family structure) covering approximately 18% of the Town's land area. The impact of the Town's zoning is clear—approximately 20,360 units, or 77% of the Town's housing units, are in multi-family buildings. Approximately half of Brookline households rent their homes. Of these renters, approximately 50% pay less than 30% of household income for gross rent. This rate is comparable to that of the entire Boston – Quincy – Cambridge Metropolitan Statistical Area and the state average.

B. Affordable Housing in Brookline.

Brookline has a longstanding commitment to affordable housing and has often been cited by state officials as an exemplar community for creating and preserving opportunities for affordable and multi-family housing that address the goals of Chapter 40B. As of February, 2016, 2,410 of the Town's 26,201 year-round dwelling units (US Census, 2010), or 9.2%, qualified for the Subsidized Housing Inventory, as well as an additional 73 occupied affordable units serving households with incomes between 80% and 110% of area-median income. The current 40B-eligible units include 923 units owned and operated by the Brookline Housing Authority; 405 rental units owned by private investors; 769 rental units owned or controlled by non-profit organizations; 225 rental units permitted and/or in construction by 40B developers, and 88 owner-occupied homeownership units. Of the Chapter 40B-eligible units, a significant portion contains three or more bedrooms.

The Town has expended substantial municipal resources in support of all of its affordable housing programs and initiatives, facilitating the development and preservation of affordable housing, as more fully discussed below. Since 1992, the Town has spent more than \$20 million of Town appropriations, Housing Trust Funds, and Town controlled resources to support affordable housing. This is in addition to the more than \$10 million (\$9.7 million on operations and \$1.1 million on property modernization) expended annually by the Brookline Housing Authority. In 1987, the Town established an Affordable Housing Trust Fund, under the control of the Housing Advisory Board and the Board of Selectmen.

The Town has regularly directed a portion of the Town's Free Cash to the Trust Fund under circumstances where the unreserved Fund balance is less than \$5 million, in order to ensure that significant resources are available without need for Town Meeting action whenever opportunities to support affordable housing projects arise. In accordance with this policy, the Town deposited \$163,078 into the Trust Fund in FY2015.

In 2005, the Town completed a multi-year comprehensive planning process, which reaffirmed affordable housing as one of the Town's most important long-term goals, consistent with Chapter 40B, and an annual goal of 25 new affordable units per year through conversion or new construction. The Town has adhered to its commitment in both the creation of new affordable housing and the preservation of affordability in "expiring use buildings." Since 2002, the Town has added 257 new affordable units.

C. Brookline's Affordable Housing Policies, Programs and Initiatives.

Under the direction of the Town's Housing Advisory Board, which provides advice and recommendations on the Town's affordable housing policies and initiatives, and the Housing Division of the Town's Department of Planning and Community Development, staffed by two (2) housing professionals who are responsible for implementing housing policy, the Town has employed a multi-faceted approach to increasing and preserving the Town's affordable housing stock. As discussed below, the Town uses virtually all possible opportunities and strategies to accomplish its goals, including regulatory incentives such as inclusionary zoning policies; financial and technical assistance to non- and for-profit property owners and developers to preserve existing affordable units and create additional affordable units through conversion and new construction; tax incentives; the utilization of Chapter 40B in Town-supported affordable housing developments; and technical and financial assistance to those seeking to purchase, rent and rehabilitate affordable homes in Brookline.

1. Inclusionary Zoning.

The Town has significantly increased the number of affordable housing units in mixed-income developments through the Town's inclusionary zoning provisions set forth in Section 4.08 of the Town's zoning by-law. Adopted in 1987 and revised several times since then, these provisions require developers of residential projects with 6 or more units to offer at least 15% of the units to households with incomes under 100% of area median income. At least two-thirds of these units must meet Chapter 40B requirements, that is, serve households with incomes under 80% of area median income. In lieu of providing on-site units, developers of projects with 15 or fewer units may choose to make a cash payment to the Town's Housing Trust in accordance with a specific schedule. This cash payment is based upon a percent of the sales price of each unit minus \$125,000 (the imputed price of an affordable unit). The percent charged ranges from 3%

for a 6-unit project to 9.75% for a 15-unit project, encouraging developers at the higher end to provide on-site units.

Between 1996 and the present, these inclusionary zoning provisions have directly produced 104 affordable rental and condominium units (the majority of which serve households with incomes under 80% AMI) in 22 properties. In addition, the zoning by-law has resulted in \$6.4 million in contributions to the Town's Housing Trust Fund. This source, along with \$4.1 million in Town appropriations and \$1.4 million in investment income, has resulted in total revenues of over \$12 million to the Housing Trust since its inception in 1987. Housing Trust allocations have already leveraged much greater amounts of State, federal and private funding for Brookline projects.

Examples of projects developed under the Town's inclusionary zoning program include:

Goddard House, a 115-unit development, providing 17 below-market, assisted-living units to low- and moderate-income seniors;

Longwood Towers, the addition of 26 units to an existing rental complex, resulting in 2 new on-site affordable units and 4 affordable units in an existing building off-site;

Kendall Crescent, a 35-unit development combining preservation of a former public school and new construction, and providing 5 affordable condominium units, including one fully accessible unit;

Cypress Lofts, a newly constructed 45-unit condominium in which the Applicant retained 5 units for low-income renters.

Park Place Condominium, a newly constructed 9-unit condominium with 2 affordable units;

The Hammondswood, a newly constructed 59-unit condominium, providing 9 affordable units; and

The Parkway, a newly constructed 16-unit condominium, with 2 affordable units.

2. New Affordable Housing Development.

Brookline has provided financial support and assistance to developers of new affordable housing, including projects on private properties, as well as Town and other publicly-owned properties. These Town-funded

developments went through an extensive planning process, resulting in designs compatible with the surrounding neighborhoods as more particularly described below.

The Olmsted Hill project, completed in 2012, is located on a 4.8 acre former Town-owned reservoir site in the single-family neighborhood of Fisher Hill. After several years of community planning and developer selection, the Town partnered with New Atlantic Development Corporation, which dismantled and filled two underground reservoirs, created a subdivision, sold 10 market-rate, single-family lots, and developed an affordable condominium complex. This project contains 24 affordable two and three bedroom units in three buildings, including 12 units that will serve families with incomes up to 80% of AMI and 12 units that will serve families with incomes up to 100% of AMI. The 2 ½ -story and 3-story multi-family buildings are designed to harmonize with the surrounding single family neighborhood by resembling a large estate home and carriage house. Permanent subsidy provided by the Town for the affordable units includes \$1,273,982 in HOME funds, as well as \$820,605 from Brookline's Housing Trust, \$2,326,600 in revenue from the sale of the lots and a discount to the developer by the Town on the value of the land. All 24 units were sold with long-term deed restrictions.

In 1999, the Town began working with the Archdiocese of Boston Planning Office for Urban Affairs (POUA) to develop St. Aidan's Church as a "friendly 40B" development. POUA submitted an application to the Board of Appeals that conformed to development principles and guidelines established by community process. The 59-unit development was completed in 2009, and includes 36 affordable units (20 low-income rental and 16 homeownership units); preservation of the church building through adaptive reuse; and conservation of open space and specimen trees. The 3-to 5-story buildings are organized around common green space designed for passive and active recreation. The Town's contribution of \$6.1 million in Housing Trust, HOME and CDBG monies leveraged \$5 million in gap funding from the state and \$4.5 million from private investors under the federal Low Income Housing Tax Credit program. This project was identified by Housing and Community Development Undersecretary Aaron Gornstein during his introductory remarks at the September 28, 2012 conference on Chapter 40B, co-sponsored by DHCD and CHAPA, among others.

Most recently, the Town supported the Brookline Housing Authority in its first venture as a developer of privately owned affordable housing. The Town provided \$4.3 million towards the development of a 32-unit Low Income Housing Tax Credit project, constructed on an existing under-utilized parking lot serving the BHA's Trustman Apartments. The project was completed in December of 2015 and is now fully occupied.

3. Renovation of Existing Affordable Housing Units

The Town supports the preservation of existing affordable housing by providing funding for capital improvements. The Town regularly funds improvements at Brookline Housing Authority developments, to which it has contributed over \$2.3 million. It also has assisted various residences serving individuals with special needs, including a total of \$363,000 to Humanity House, a home for 10 developmentally disabled individuals, and \$614,000 to a Pine Street Inn project in Brookline, a lodging house at 1043-1045 Beacon Street which serves 28 low-income individuals. Federal AARA dollars were allocated by the Town for energy-saving improvements to several properties controlled by nonprofits, including properties under the umbrella of Specialized Housing, Inc., which serves disabled adults at several locations in Brookline. The Town and the BHA have proven their commitment to modernizing and improving the Town's existing affordable housing stock.

4. Redevelopment of Existing Market Rate Housing.

Brookline has provided extensive financial and technical assistance to property owners and for-profit and non-profit entities proposing to redevelop existing market rate housing into affordable housing units.

Currently the Town is working with the Pine Street Inn to rehabilitate two lodging houses at 51-53 and 55-57 Beals Street. These long term lodging houses were managed by Pine Street under a lease with the owners since 2004. Pine Street Inn was able to purchase the property in 2014 with over \$1.9 million in Housing Trust, HOME and CDBG funds from the Town. The buildings are being redeveloped into thirty-one "enhanced" single room occupancy (SRO) units including small bathrooms and mini-kitchenettes.

In 2001, the Town financed the purchase of a dilapidated lodging house at 1754 Beacon Street by the non-profit Brookline Improvement Coalition, Inc. (BIC), the Town's Community Housing Development Organization, and assisted BIC in the selection of a non-profit developer to rehabilitate, own and manage the lodging house. Pine Street Inn, the successful applicant, used the Town's investment of over \$907,000 in HOME monies to leverage an additional \$1.6 million commitment from three state sources for the rehabilitation of this historic building. The 14 rooms and efficiencies, permanently affordable for income-eligible persons, were occupied in the fall of 2003. The project has been both nationally recognized for innovative use of HOME funds and by the Massachusetts Historic Commission as an exemplary preservation project.

During the summer of 2002, the Housing Division staff learned of another deteriorated lodging house on the market at 1876 Beacon Street. After several affordable lodging house operators viewed the property, the Town agreed to support Caritas Communities, Inc., in acquiring the building. At the same time, the developer of Longyear Estates was seeking property to satisfy its off-site affordable housing obligation under the inclusionary provisions of the Town's zoning by-law. By partnering Caritas with Longyear and supporting Caritas in advocating for additional funding from state agencies, the Town was able to assure that Caritas received the \$1.1 million in gap funding required to complete the acquisition, rehabilitation and long-term affordability of another 15 S.R.O. units for lower-income individuals.

At the end of 2003, the Town was notified of the sale of a 6-family building at 154-156 Boylston Street. BIC purchased and completed the rehabilitation and occupancy of this building in 2005 with \$593,000 in Town-controlled CDBG funds, leveraging about \$500,000 in gap funding from the Massachusetts Housing Partnership.

5. Preservation of Affordability in Expiring Use and Other Projects.

Brookline also has actively sought to preserve affordability in its existing housing stock. One strategy has been to extend affordability at the Town's "expiring use" properties.

For example, in 2001, the Town assisted the Hebrew Rehabilitation Center for the Aged (Hebrew Rehab) in connection with its acquisition and rehabilitation of the senior housing at 100 and 112 Centre Street and 1550 Beacon Street, three such "expiring use" properties. The Town's commitment of \$1 million in Housing Trust funds and an agreement to terminate the projects' 121A tax agreements gave this non-profit the competitive edge needed to purchase the properties. At that time, only about 280 of 516 units were still affordable, with a potential loss of another 160 affordable units when restrictions expired in 10 to 15 years. As a result of the Town's commitment, Hebrew Rehab acquired and modernized the properties, and is operating them under the name of Center Communities of Brookline, with at least 60% (338) units preserved as affordable for an additional 40 years.

In 2004, the Town modified its 121A tax agreement with the owner of the subsidized project at 1371 Beacon Street, resulting in the extension of the affordability of the project's 30 units until 2028. The Town also negotiated with the Board of the 116-unit Brookline Cooperative, preserving 32 units as affordable condominium units, when the Co-op converted upon the expiration of the original HUD mortgage guarantee.

In 2015, Winn Development sought to pre-pay its federally-subsidized mortgage in order to take advantage of HUD's Rental Assistance Demonstration Program, which provides better protection for existing low-income tenants. The Town negotiated with Winn to increase the number of units that will remain affordable for the next thirty years. The Town also hopes to work with the owner to preserve the 116-unit senior building on the property as permanently affordable with additional state and Town-controlled resources.

6. Other Affordable Housing Activities and Funding.

The Town actively supports affordable homeownership in several ways. It operated a first-time homebuyer down payment assistance program from 1992 until 2010. With assistance increasing over the years from a maximum of \$25,000 to a maximum of \$175,000 per buyer, the program provided over \$5 million in HOME and CDBG funds, with some of this total reflecting the recycling of loan payoffs upon resale. Since all new units are sold subject to permanent deed restrictions, the Town regularly exercises its right of first refusal by identifying eligible buyers and holding a lottery upon all unit resales.

In short, unlike many communities in the Commonwealth, Brookline's efforts to create, promote and preserve multi-family and affordable housing have been long-standing, committed, comprehensive and effective. Brookline has committed significant Town resources to these efforts and has made measurable progress in creating and preserving affordable housing. Affordable housing that has been created in the Town is subject to permanent affordability restrictions. Through its own efforts and close cooperation with private developers, Brookline has demonstrated that affordable housing does not need to be incompatible with sound planning objectives, environmental concerns or its surrounding community.

40B Projects Brookline

Legend

-  0.25 Mile Radius
-  0.6 Mile Radius
-  Currently Under ZBA Review
-  PEL Submitted to MassHousing

| Projects Under ZBA Review | | Under State Subsidizing Agency Review | |
|--|------------|---------------------------------------|------------|
| Projects within 1/4 mile | | | |
| Address | # of Units | Address | # of Units |
| 420 Harvard | 25 | 455 Harvard | 17 |
| 384 Harvard | 62 | 134 Babcock | 62 |
| 40 Centre | 40 | Waldo-Durgin | 320 |
| Total Units before ZBA: | 127 | | |
| Total Units before subsidizing agencies | 399 | | |
| Projects within ~ 1/2 mile | | | |
| 111 Cypress Street | 99 | 1299 Beacon Street | 74 |
| Total Units before ZBA: | 226 | | |
| Total Units Before Subsidizing Agencies | 473 | | |

