



TOWN OF BROOKLINE
Massachusetts

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December 9, 2016

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

Re: Urgent Request for Temporary Relief from Strict Compliance
With 760 CMR 56.05(3)

Dear Undersecretary Kornegay:

This follows my August 29, 2016 correspondence to the Department of Housing and Community Development (the "Department") seeking temporary relief from strict compliance with the Chapter 40B implementing regulations. At the time of my letter, the Town's Zoning Board of Appeals ("ZBA") had opened hearings in four Chapter 40B projects and was expecting to open three additional hearings in the near future. Based on this projection, I sought relief from the Department in an effort to provide the ZBA with more time to review, deliberate and issue its decisions on these applications.

Since the date of my letter, two additional comprehensive permit applications have been submitted to the Town, and the ZBA is currently conducting six concurrent hearings. Although the ZBA's review and deliberation of these projects requires essentially an equal amount of time, staff, and resources, together they do not reach the numerical threshold of housing units for a so-called "large project," which in the Town of Brookline is calculated at 524. Four additional comprehensive permit applications are currently in the project eligibility review stage and are expected to be submitted to the Town in the near future. In addition, the Town has been made aware of at least one additional Chapter 40B project that has not yet applied for a project eligibility letter.

In response to these applications, the ZBA is currently scheduling tandem hearing dates and the Town is presently in grave danger of losing volunteer members of the ZBA, who simply cannot be expected to maintain pace along with their employment and family responsibilities. The position the Town and its ZBA are in is unsustainable.

Pursuant to the authority granted to the Department under 760 CMR 56.08(2) to waive any provision of 760 CMR 56.05 “when in the judgment of the Department ... strict compliance with such provision will result in an undue hardship and will be inconsistent with the purposes of M.G.L. c. 40B, ss. 20 through 23”, I respectfully request the following specific relief on behalf of the Town and ZBA:

Relief from the “Three-Consecutive Hearing” Rule – 760 CMR 56.05(3)

760 CMR 56.05(3) authorizes the ZBA to “stay the commencement of a hearing if three (3) or more Comprehensive Permit applications are concurrently undergoing hearings by the Board, and the total number of housing units in those pending Projects exceeds the numerical threshold for a large project within that municipality, as set forth in 760 CMR 56.03(6).” (Emphasis added). Based on the undue hardship imposed on the Town by potentially ten concurrent Comprehensive Permit hearings, I request the Department to exercise its authority under 760 CMR 56.08(2) to temporarily waive so much of the “three consecutive hearing” rule in 760 CMR 56.05(3) as requires a numerical housing unit threshold to be met, and authorize the ZBA to stay the commencement of hearings on all Comprehensive Permit applications submitted to the Town after the date of this letter, for so long as three or more Comprehensive Permit applications are concurrently undergoing hearings by the ZBA.

Relief under the “180-Day Hearing” Rule – 760 CMR 56.05(3)

760 CMR 56.05(3) requires the ZBA to “open a hearing within 30 days of its receipt of a complete application ... [and] a hearing shall not extend beyond 180 days from the date of opening the hearing ... except with the written consent of the Applicant.” I respectfully request the Department to exercise its authority under 760 CMR 56.08(2) to temporarily waive the “180-day hearing rule” in 760 CMR 56.05(3) and authorize the ZBA to extend the closing of all hearings opened as of the date of this letter for an additional ninety (90) days.

In support of the foregoing request for relief, the Town states that the ZBA is currently conducting an unprecedented six Comprehensive Permit application hearings. The closing dates for some of these hearings fall within 30 - 45 days of each other. To date, the applicants have been extremely reluctant—and in fact, some have refused—to consent to even modest extensions. Four more Comprehensive Permit applications are expected to be submitted shortly. The Town’s volunteer ZBA is experiencing a tremendous strain on its time, staffing, and resources and 4 – 5 additional Chapter 40B projects loom on the horizon. In accordance with 760 CMR 56.08(2) the requested relief is within the Department’s authority to grant, and it does not conflict with the mandatory provisions of Chapter 40B.¹ This request is intended only to provide the ZBA with temporary, short-term “breathing room” to complete its review and deliberation of the Chapter 40B projects for which hearings have been opened, to provide the ZBA and Town staff with some flexibility in scheduling public hearings, and to permit a more orderly review of coming anticipated and unanticipated projects.

¹ G.L. c. 40B, s. 21 requires the ZBA to “hold” a public hearing within thirty days of receiving an application; however, this is not considered “mandatory” because the c. 40B implementing regulations currently authorize the ZBA to extend the opening of a hearing under the circumstances described in 760 CMR 56.05(3).

Should this relief not be granted, strict compliance with the requirements of 760 CMR 56.05(3) will continue to result in an undue hardship on the Town and be inconsistent with the purposes of G.L. c. 40B, s. 20 – 23.

Thank you in advance for your immediate consideration of this urgent request. Should you wish to meet or discuss this matter further, please contact me at (617) 730-2190.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joslin Murphy', with a long horizontal flourish extending to the right.

Joslin Murphy

Cc: Mr. Jay Ash, Secretary of Housing and Economic Development
Attorney Roberta Rubin, Chief Counsel, DHCD
Board of Selectmen
Zoning Board of Appeals