

Town of Brookline, Massachusetts

To Zoning Board of Appeals  
From Daniel Bennett, Building Commissioner  
Date 9/5/2018  
Re 1299 Beacon 40B proposal - Staff Report to ZBA

### **Background**

There continues to be a long standing means of egress and potential trespass issue between the two properties at 1299 Beacon Street and 1297 Beacon Street that remains unresolved. A second means egress door for 1297 Beacon Street is located in a rear wall that is approximately 12" off the property line of the subject premises (1299 Beacon Street). Anyone exiting this rear egress will trespass onto 1299 Beacon Street.

In 2010, the Brookline Building Commissioner at the time issued a building permit to the owner of 1299 Beacon Street to install a fence on the property line shared with 1297 Beacon Street. Subsequently, the owner of 1299 Beacon erected a chain link fence effectively blocking the second means of egress from 1297 Beacon Street.

In July 2018, I issued building code violation notices to both property owners expecting this to be resolved by an appropriate court of jurisdiction via the appeals process or by the Board of Building Regulations and Standards (BBRS) for an interpretation or a response to a request for a building code waiver. The Fire Department is aware of this issue and defers to the Building Department. (As a short term measure, the owner of 1299 Beacon Street has agreed to temporarily remove the fence as requested.)

### **Appeal of Building Department's Violation Notice and BBRS Decision**

Subsequently, the owner of 1299 Beacon filed an appeal to the BBRS of the Building Department's notice of the fence violation. On August 21, the BBRS heard the appeal and decided in favor of the owner of 1299 Beacon Street.

The Building Department and the Fire Department were not properly notified of the hearing and therefore the Town was not represented at the hearing.

Keep in mind that the matter before the BBRS was strictly the fence at 1299 Beacon not a proposed building. To confirm, the BBRS was not aware of the proposed building, and the Building Commissioner is not certain how that might have affected the BBRS decision.

The BBRS has 30 days to issue a written decision. I wish to review decision before contacting the BBRS about my concerns.

### **40B Proposal and Second Means of Egress Issue**

The plans for a mixed use building at 1299 Beacon currently before the ZBA features a zero setback from the property line at the rear of 1297 Beacon to the foundation of the proposal.

As of this date, the owner at 1297 Beacon has not remedied the second means of egress issue and remains in violation.

If the applicant were to submit the current plans for a building permit, or if the violation at 1297 Beacon remains unresolved by that time, I would deny the building permit application because the project would not comply with the State Building Code and therefore is not safe.

Upon denial of the building permit, the applicant's recourse would be to appeal to the BBRS.

The plans for 1299 Beacon could be revised to provide a passageway [egress 50 feet away from building] to a public way in compliance with the State Building Code.

### **Preliminary Building Code Analysis**

In my July 10, 2018, memo to the ZBA, I requested a preliminary building code analysis as is done for all 40B projects. Staff confirmed that the project team will submit one as plans are revised over the course of the public hearing.

### **Construction Means and Methods, Protection of Abutting Foundations**

I recommend that the applicant assess the following during the public hearing process:

- 1 – Review the deeds of the abutting properties to discern if there are any deed restrictions regarding use of party walls.
- 2 – Because of the shallow setbacks and below grade parking, the applicant should assess construction means and methods [purview of the State Building Code] that might affect project planning and design.
- 3 – The applicant should also assess protection of adjacent properties [purview of the State Building Code] that might affect project planning and design.