

Town of Brookline's current 40B status related to the proposed Waldo-Durgin zoning

4/22/19

From now until at least October 29, 2019, the Town is in a so-called “temporary safe harbor” due to the number of Comprehensive Permit (“40B”) units that were permitted in 2018. This status effectively means the Zoning Board of Appeals (ZBA) may deny any newly submitted Comprehensive Permit application and that denial will be upheld by the State’s Housing Appeals Committee (HAC) if the decision is appealed.

HAC will also uphold a ZBA denial of any newly submitted Comprehensive Permit application once 10% of our housing inventory is listed on the State’s Subsidized Housing Inventory (“the 10% threshold”). Units on the SHI include units that are limited to households with incomes of 80% Area Median Income (AMI) or lower as well units at higher income thresholds, including market rate units, *if* they are part of a mixed-income rental property that meets certain state requirements (e.g., where at least 25% of the units are restricted to 80% AMI or where at least 20% of the units are restricted to 50% AMI).

Units fall off the SHI if a Building Permit is not issued within one year of a Comprehensive Permit and when a Certificate of Occupancy is not issued within eighteen months of a Building Permit being issued.

As of March 29, 2019, the Town needs 33 more units to be added to the SHI to reach the 10% threshold. The Town’s status relative to 40B is currently very fluid; since so many variables are at play, it is very difficult to predict what will and will not happen—and when. We could potentially reach that threshold—and potentially not fall below the threshold—if two things happen prior to October 29, 2019:

- (i) We ***add*** at least 33 units to the SHI, most likely to happen fastest through:
 - a. 2Life (formerly JCHE) filing an application for a building permit for their 62-unit development at 370-384 Harvard Street; **OR**
 - b. The ZBA issuing a Comprehensive Permit for 1299 Beacon Street (74 units proposed); **OR**
 - c. Chestnut Hill Realty securing a Building Permit for Residences of South Brookline for 177 units ***AND***

- (ii) We are able to ***preserve*** units currently listed on the SHI, most importantly, if Chestnut Hill Realty receives a building permit for their Puddingstone development at Hancock Village (230 units) so that that it does not fall off the SHI inventory on October 29, 2019.

With so many variables for each Comprehensive Permit, it is difficult to predict when the Town will reach the 10% threshold permanently (with Certificates of Occupancy). For example, 40 Centre Street is under litigation, 1180 Boylston is seeking a modification to its Permit and is pending before the ZBA, and Residences of South Brookline has just secured ZBA authorization to make insubstantial changes to its Comprehensive Permit. But, all three projects have fallen off of the SHI since they did not secure Building Permits within one year of their Comprehensive Permits. The Coolidge 40B application is on hold pending action by Annual Town Meeting on May 21st on a proposed zone change, and Hampton Court is on hold until August 2019 at the request of the applicant. Meanwhile, 1299 Beacon and 445 Harvard Street are pending before the Zoning Board of Appeals.

Additionally, we fully expect the Town will be in and out of temporary safe harbor status and/or the 10% threshold for the next several years given the time it takes for developers to pull together financing, construction documents, and construction phasing.

Some residents have wondered whether we would reach our 10% threshold faster if Town Meeting decided to vote against the Waldo-Durgin Overlay District, and therefore, prefer that the ZBA grant a Comprehensive Permit for the same site. If Chestnut Hill Realty does not move forward with a building permit for Puddingstone by October 29th, but did move forward with securing a Comprehensive Permit for The Coolidge under 40B, the Town would likely not be in a safe harbor or meet the 10% threshold until at least early 2020, at which point we would again be in a safe harbor for one or two years. What happens after that point would be in control of Chestnut Hill Realty, based on how fast they file for and receive a building permit at this site or their other two approved Comprehensive Permits at Hancock Village or for that matter, proceed with Comprehensive Permit application for Hampton Court.

Taking a longer view, if we conservatively start with assuming that only the Comprehensive Permits that at least have a foundation in the ground as of today will eventually receive a Certificate of Occupancy, then we would be at 2,235 SHI units, or 385 units shy of the 10% threshold. Those 385 units could be added through any combination of the following developments, listed in order of the Planning Department’s estimate of which developments have the highest likelihood to move forward the fastest towards a Certificate of Occupancy:

2Life	62			
445 Harvard	25			
Residences of South Brookline*	177			
Puddingstone*	230			
1180 Boylston	45			
1299 Beacon	74			
Hampton Court*	123			
Waldo-Durgin Mixed Use*	11	OR	The Coolidge*	299
40 Centre Street**	40			
500 Harvard Street***	30			
Total	<hr/>			
	817-1105			

*Chestnut Hill Realty projects (Hampton Court & The Coolidge) have not yet received a Comprehensive Permit.

**Assumes the developer prevails in Court and proceeds to apply for a Building Permit

*** This project is eligible to apply for a Comprehensive Permit; we anticipate the proponent will not do so until the Town is no longer in a temporary safe harbor.

As demonstrated above, we do not currently have a path to reaching and staying above the 10% threshold without one or more of Chestnut Hill Realty’s Comprehensive Permits moving forward to Certificate of Occupancy. Of the potential SHI units under Chestnut Hill Realty’s control, the number of units at the Waldo-Durgin site that contribute to the SHI is likely inconsequential unless Chestnut Hill Realty decided to not move forward with either Comprehensive Permit at Hancock Village.