

## 40B Cases

Alison Steinfeld <asteinfeld@brooklinema.gov>

Wed 9/29/2021 10:44 AM

To: jgeller@lca-llp.com <jgeller@lca-llp.com>; jschneider@hembar.com <jschneider@hembar.com>; rmeiklejohn@verizon.net <rmeiklejohn@verizon.net>; mark@zurofflaw.com <mark@zurofflaw.com>; larkpalermo@gmail.com <larkpalermo@gmail.com>; paul@gro.ma <paul@gro.ma>

Cc: Polly Selkoe <pselkoe@brooklinema.gov>; Maria Morelli <mmorelli@brooklinema.gov>; Victor Panak <vpanak@brooklinema.gov>

 2 attachments (665 KB)

Brookline waiver letter\_JM signed.pdf; SPREADSHEET ON 40B RELIEF.xlsx;

Hello, ZBA:

The Town is very aware of the tremendous workload imposed by both 40A and 40B cases on the ZBA. We are working hard to find qualified candidates to fill the vacancies.

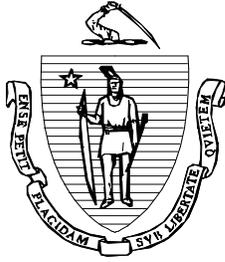
Meanwhile, there are currently five 40B cases pending before the ZBA. While we are not eligible for any relief from the state under the regulations, I have been able to make a case to DHCD that the situation has imposed an untenable burden on our ZBA members. Accordingly, DHCD has provided the ZBA some relief by extending the deadlines for closing the public hearings on three pending cases. Attached please find the letter from DHCD together with a spreadsheet indicating the new hearing deadlines for 32 Marion Street, 108 Centre Street and 87 Longwood Avenue. You will note that, based on the formula, no relief has been accorded to 217 Kent Street given that the applicant has previously agreed to extend the hearing. Furthermore, communications with DHCD subsequent to receipt of the Undersecretary's letter indicated that DHCD would not provide any relief to 45 Bartlett Crescent, which is scheduled to open on September 30<sup>th</sup>. While I will be notifying the applicants, I suggest that at the next hearing on each of the three affected cases, the Chair acknowledge the new deadline for closing the hearing for the record.

Finally, if you are not already aware, I have announced my retirement, which will be taking effect on October 8<sup>th</sup>. It has been a genuine pleasure working with the ZBA for the past eight years—it has consistently been a dedicated, highly professional board, which has worked diligently to protect the quality of life offered by the Town while accommodating appropriate new development.

Thank you all.

Best wishes,

Alison



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn Polito, Lieutenant Governor ♦ Jennifer D. Maddox, Undersecretary

August 27, 2021

Ms. Heather Hamilton, Chair  
Brookline Select Board  
333 Washington Street  
Brookline, MA 02445

Re: Town of Brookline Request for Temporary Relief from the Impact of Multiple Comprehensive Permit Applications

Dear Ms. Hamilton:

The Department of Housing and Community Development (DHCD) is responding to your Town's recent request for temporary relief from the impact of multiple comprehensive permit applications. The request was made via the Brookline Planner and Community Development (BPCD) Office. Specifically, the BPCD requested an extension of the 180-day hearing process for projects in front of the ZBA and/or delaying the opening of a pending Chapter 40B Application.<sup>1</sup>

The BPCD also noted, via emails and conversations with DHCD staff, the burden on Town staff, and the demands that the level of 40B public hearings impose on a volunteer Zoning Board of Appeals (ZBA) whose members dedicate several nights a week to 40B cases in addition to their weekly 40A cases. DHCD does believe that some form of relief is warranted to relieve the administrative burden on the Town, as described below.

**Summary of Pending and Proposed Applications.**

Based on the BPCD emails and additional communication with Town staff, we understand that five applications have been filed in Brookline within a short period of time and are currently active before the ZBA, two additional cases are pending but on hold, and the ZBA is finalizing a decision for an additional case now.

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<sup>1</sup>This pending Chapter 40B Application is known as 45 Bartlett St, a 24-unit ownership development. DHCD has been informed that the ZBA may not have opened the public hearing within the 30-day timeline pursuant to 760 CMR 56.05(3) and M.G.L. c. 40B § 21. Since the 30-day deadline has passed and this may appear as a constructive grant matter before the Housing Appeals Committee (HAC) pursuant to 760 CMR 56.07(5)(d), DHCD will not provide relief in response to the request to delay the opening of the hearing for this project.

**Meaningful Efforts by the Town of Brookline to Process Comprehensive Permit Applications and Increase the Supply of Affordable Housing**

DHCD recognizes that Brookline has engaged the services of Metropolitan Housing Partnership (MHP) Chapter 40B Technical Assistant Consultants for (TBD) 40B applications, which demonstrates that the Town is actively seeking to expedite its processing of comprehensive permit applications.

DHCD also recognizes that the Town of Brookline is making meaningful efforts toward achieving the Statutory Minimum threshold of having low and moderate housing in excess of 10% of its housing units pursuant to M.G.L. c. 40B and 760 CMR 56.03(3)(a). Brookline’s most recent percentage, as reflected on the Subsidized Housing Inventory, is approximately 10.4%.<sup>2</sup> DHCD has approved a Housing Production Plan (HPP) which is valid from October 11, 2016 and will expire on October 10, 2021. The HPP outlined a plan to achieve its 10% Statutory Minimum and detailed the Town’s overall housing strategy. DHCD also notes that the Brookline HPP has achieved certification on two occasions. The Brookline HPP was certified from March 23, 2017 to March 22, 2018 and again from October 29, 2018 to October 28, 2020.

**Regulatory Framework.**

DHCD regulations establish fixed time frames within which a municipality must conclude a comprehensive permit hearing. 760 CMR 56.05(3) requires that the hearing be completed within 180 days from the date of opening the hearing, so long as the applicant has made timely submissions of materials in response to reasonable requests of the Board. This time frame serves the important public purpose of assuring that project proponents receive a fair hearing in a reasonable period of time. However, as a result, DHCD’s general policy is that we will not waive the regulatory deadline for the rendering of decisions.

**Relief Granted**

DHCD understands that thoughtful review is required for a municipality to determine whether an individual application is consistent with local needs, and that such review requires significant time and resources. Our regulations did not contemplate the situation of a municipality faced with holding hearings on as many as five comprehensive permit applications at the same time. We recognize that requiring local officials to review and hold hearings on an excessive number of applications at once does not advance the goals of 40B.

Accordingly, DHCD hereby grants the following regulatory waiver in response to your request:

1. Time to Complete Hearings and Render Decision. DHCD is granting a limited waiver of the requirement under 760 CMR 56.05(3) that a hearing be *concluded* within 180 days of the date that the hearing is opened.

This waiver is limited as follows:

- (a) If the applicant previously agreed to an extension of 30 days or more, the regulatory deadline for rendering a decision on an application pending as of the date of this letter is extended until the earlier to occur of (i) 30 days from the current deadline or (ii) a total of 270 days from the date the hearing

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<sup>2</sup> DHCD notes that the 25 rental units at 445 Harvard Street and the 55 rental units at 1299 Beacon Street are subject to removal from the SHI if building permits are not issued for the units as required under 760 CMR 56.03(2)(c) and DHCD’s c. 40B Guidelines, available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>. Additionally, the Town’s SHI percentage is subject to change upon the release of the 2020 U.S. Census housing unit figures.

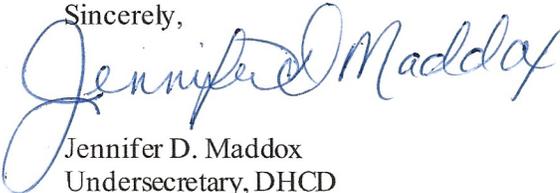
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opened,

- (b) If the applicant did not previously agree to an extension of 30 days or more, the regulatory deadline for rendering a decision on an application pending as of the date of this letter is extended until the earlier to occur of (i) 60 days from the current deadline or (ii) a total of 270 days from the date the hearing opened.

We look forward to continuing to partner with the Town of Brookline to promote the development and preservation of affordable housing that is consistent with local needs. Please contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or [Phillip.DeMartino@mass.gov](mailto:Phillip.DeMartino@mass.gov) if you need assistance or have any questions regarding Chapter 40B.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer D. Maddox". The signature is written in a cursive, flowing style.

Jennifer D. Maddox  
Undersecretary, DHCD

cc: Jessie Geller, Chair, Zoning Board of Appeals, Brookline  
Melvin A. Kleckner, Town Administrator, Brookline  
Allison Steinfeld, Planning Director, Brookline

Project	217 Kent Street	83 Longwood Avenue	32 Marion Street	108 Centre Street
SHI Units	90	64	115	54
>30 day Extension Granted	Yes	no	no	no
Application Date	12/24/2019	3/9/2021	3/17/2021	6/4/2021
Hearing Opening Date	4/28/2021	5/11/2021	4/20/2021	7/12/2021
Pre-Relief Public Hearing	12/24/2021	11/7/2021	10/17/2021	1/8/2022
Pre-Relief Decision Filing	2/2/2022*	12/17/2021*	11/26/2021*	2/17/2022*
a)(i) Decision Filing Date	3/4/2022	n/a	n/a	n/a
a)(ii) Decision Filing Date	1/23/2022	n/a	n/a	n/a
b)(i) Decision Filing Date	n/a	2/15/2022	1/25/2022	4/18/2022
b)(ii) Decision Filing Date	n/a	2/5/2022	1/15/2022	4/8/2022
Post-Relief Hearing Date	12/14/2021	12/27/2021	12/6/2021	2/27/2022
Post-Relief Decision Filing	1/23/2022*	2/5/2022*	1/15/2022*	4/8/2022*

POST-RELIEF DEADLINE                      12/24/2021                      12/27/2021                      12/6/2021                      2/27/2022

(a) If the applicant previously agreed to an extension of 30 days or more, the regulatory (b) If the applicant did not previously agree to an extension of 30 days or more, the \* "Rendering a decision" here means filing the decision with the Town Clerk

Filing deadlines are calculated by adding 40 days to the actual hearing deadline--so the deadlines are not calculated until the hearing actually closes.

**NOTES:**  
For 217 Kent Street, DHCD's "extension" seems to actually reduce the time we have to render a decision.