



Town of Brookline

Massachusetts

STATEMENT ON LITIGATION REGARDING 845 BOYLSTON STREET

FROM THE CHAIR OF THE BROOKLINE ZONING BOARD OF APPEALS

June 1, 2022

The Zoning Board of Appeals panel that is hearing the c.40B application to develop 845 Boylston Street chose NOT to appeal the Department of Community Development's (DHCD) safe harbor determination against the Town. The Town had argued to DHCD that the applicant's 40A pre-application activities last summer constituted a "related application" and therefore violated DHCD's regulations requiring a 12-month "cooling off" period between the filing of 40A and 40B applications for the same parcel of land. DHCD disagreed.

In exchange for the Town not appealing DHCD's adverse safe harbor determination, the applicant agreed to drop the appeal it had filed with the Housing Appeals Committee (HAC). In its appeal the applicant had alleged that the ZBA "constructively approved" the project because the applicant wasn't allowed to make its initial presentation within 30 days of filing. In other words, the applicant agreed to drop its previously filed appeal if the Town did not appeal.

With advice from Town Counsel, the ZBA made its decision based on the likelihood that the HAC, which is DHCD's administrative appeals body, would decide that DHCD correctly interpreted its own regulations. If this were the case, the Town could then appeal the issue to a court of law. It is important, however, to note that in the vast majority of cases, judicial review of an agency's interpretation of its regulations results in the court upholding the agency's decision.

After reviewing all arguments on both sides of the issues, the ZBA decided it is in the best interests of the Town to proceed with the local hearing. The Town's staff is presently reviewing documents related to the project that have been recently provided by the applicant.

I make this statement on my own behalf without the benefit of input from other board members. They will have a chance to comment on the contents of this statement during the next meeting on this application, which is scheduled for June 15, 2022, at 7:00 p.m.

Lark Jurev Palermo, Chair
845 Boylston Street c.40B Application