



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

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Chrystal Komegay, Undersecretary

December 19, 2016

Board of Selectmen  
Town of Brookline  
333 Washington Street  
Brookline, MA 02445

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

Ladies and Gentlemen:

I am responding to your thoughtful and detailed letter of December 8, 2016, in which you expressed an urgent request for temporary relief from the impact of multiple comprehensive permit applications in the Town of Brookline. DHCD recognizes that an extraordinary number of applications have been filed in Brookline within a short period of time, and that the Town is on notice of several additional likely applications that are in the Project Eligibility phase. Under these circumstances, while we are unable to accommodate all of your requests, DHCD does believe that relief is warranted to relieve the administrative burden on the Town, as described below.

1. **Summary of Pending and Proposed Applications.** Based on your letters and additional communication with Town Counsel, we understand that currently there are six (6) comprehensive permit applications pending before the Brookline Zoning Board of Appeals. Of these, one is the subject of a tentative settlement agreement that defers any further action by the ZBA (if needed) until after a Town Meeting this spring. Three more applications were filed in May or June, 2016, and the regulatory deadlines for issuance of decisions are fast approaching. Two additional applications were filed in December, 2016, and the regulatory deadline for issuance of decisions for both of these will occur in June, 2017. In addition, the Town has received notice of four additional requests by developers for Project Eligibility Letters (PELs), that if granted could result in additional hearings being opened while the Town is still considering the currently pending applications. This is an unprecedented number of pending applications in a single municipality at one time, and, as you have described, represents a heavy burden for the volunteer members of the ZBA, particularly given the Town's commitment to an extensive public process involving multiple hearings for each project.

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 10% of its housing units. Brookline's most recent percentage, as reflected on the Subsidized Housing Inventory, is approximately 8.6%. DHCD recently approved a Housing Production Plan for Brookline in which the Town has outlined a plan to achieve its 10% Statutory Minimum within 3 years.

In your letters you have requested three forms of relief:

- a. Extension of the regulatory deadline for issuance of decisions on currently pending applications. Your most recent letter modified the request that you originally submitted in August, and we understand you are now seeking a 90 day extension of the regulatory time frame within which you are required to issue a decision on each pending application, measured from the commencement of the hearing.
- b. Deferral of Commencement of New Hearings. You are asking permission to stay commencement of new hearings based on the number of pending applications. This also requires a regulatory waiver, as DHCD's regulations permit deferral only if the hearings already pending before the ZBA involved projects comprising, in the aggregate, more than 2% of the Town's total housing units.
- c. Moratorium on Issuance of New Project Eligibility Letters. You have asked for a 6 month moratorium on issuance of new PELs by subsidizing agencies, including DHCD and the quasi-public agencies that also issue PELs.

## 2. Regulatory Framework.

DHCD regulations establish fixed time frames within which a municipality must open and conclude a comprehensive permit hearing. 760 CMR 56.05(3) requires that the hearing be opened within 30 days of a Board's receipt of a complete application, and completed within 180 days thereafter, so long as the applicant has made timely submissions of materials in response to reasonable requests of the Board. 760 CMR 56.05(3) also requires that hearings be opened in the order in which complete applications are filed, to assure that each project is considered on its own merits. These time frames serve the important public purpose of assuring that project proponents receive a fair hearing in a reasonable period of time. As a result, DHCD's general policy is that we will not waive the regulatory deadlines for the opening of hearings or rendering of decisions.

At the same time, we recognize the importance of offering municipalities a reasonable opportunity to review and comment on projects. For example, under 760 CMR 56.04, upon receipt of an application for Project Eligibility, a subsidizing agency must provide written notice to the Chief Executive Officer of the municipality, initiating a 30-day review period during which the Subsidizing Agency shall conduct a site visit, which local boards can attend, and shall accept written comments from local boards and other interested parties. No determination of Project Eligibility shall be issued for a project before the end of the 30 day review period, and under 760 CMR 56.05(2)(g)), no comprehensive permit application can be submitted to Town without a PEL.

DHCD regulations do contemplate that municipalities may experience excessive burden as a result of needing to hold too many hearings at once. Accordingly, 760 CMR 56.05(3) allows a municipality to stay the commencement of a hearing if three or more applications are concurrently undergoing hearings before the Board and the total number of housing units in those projects exceeds the numerical threshold for a "large project" (which varies by the size of the municipality). 760 CMR 56.03 also allows a Board to deny a comprehensive permit for a "large project." Under 760 CMR 56.03(6), the "large project" threshold for a municipality with more than 7,500 units is 2% of total units or 300 units, whichever is larger. We understand that, for Brookline, the large project threshold is in excess of 500 housing units.

### 3. Relief Granted

We note that Brookline has taken active steps towards achieving its Statutory Minimum threshold, including the development of a new Housing Production Plan this past fall that contemplates achievement of the 10% threshold within three years. We also note that Brookline has been actively holding hearings on six projects since late May, 2016, and has engaged actively with the developers and the public with respect to these projects.

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, whether it is for a large or small project. While our regulations take into account the fact that review of three or more projects containing, in the aggregate, a very large number of units may be burdensome for a municipality, the regulations did not contemplate the extraordinary situation of a municipality faced with holding hearings on as many as ten 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 in reasonable manner.

Accordingly, DHCD hereby grants the following regulatory waivers:

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, with respect to the currently pending hearings only. Because some of the applicants involved have already voluntarily agreed to extensions pushing the time for the Town's review beyond the 180 day regulatory time limit, and also recognizing that the Town's review of several of the pending applications is very near to completion, 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 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.
2. Time to Commence New Hearings. DHCD is granting a limited waiver of the requirement under 760 CMR 56.05(3) that a hearing be *opened* within 30 days of the date that the comprehensive permit is filed. We recognize that the Town needs time to work through the existing backlog of pending applications, and that it would be excessively burdensome for the volunteer members of the ZBA if there were a rapid recurrence of the situation where the Town is involved in active hearings on six applications at once. Because this is based on extraordinary circumstances, and a departure from DHCD's general policy, we believe it is important that this waiver be time limited. Accordingly, the waiver is limited as follows:

- (a) The Town may temporarily delay the opening of any new hearings until April 1, 2017, to enable the Town to complete hearings on many of the currently pending applications.
- (b) In addition, until December 31, 2017, the Town may defer opening a new hearing if opening the hearing would cause the total number of applications pending before the Board to exceed four, regardless of the number of units proposed in those applications.

DHCD is not prepared, at this time, to impose a moratorium on the issuance of new Project Eligibility Letters. However, we do understand the Town's concerns regarding the clustering of many projects close together, and we are committed to working with the other Subsidizing Agencies to monitor and, where appropriate, seek greater coordination regarding the issuance of PELs for projects within Brookline.

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.

Sincerely,



Chrystal Kornegay  
Undersecretary