



Town of Walpole
Commonwealth of Massachusetts
Office of Community & Economic Development

JAMES A. JOHNSON
Town Administrator

Patrick Deschenes
*Community & Economic
Development Director*

Memo

To: Select Board
Jim Johnson, Town Administrator

From: Patrick Deschenes, Director of Community & Economic Development

Date: 7/12/2022

Subject: Walpole 40B Status Update

Completed Projects (through Comprehensive Permit process)

- Cedar Edge & Cedar Crossing – 51, 53, and 55 Summer Street
 - Current Proposed Project: The final approved project consists of 268 total housing units; 160 apartment units, 70 townhouse units, and 38 single-family units. Of the 268 total units, 212 units are rental and 56 are ownership. 226 of the units will count be counted towards Walpole's subsidized housing inventory (SHI) at 80% Area Median Income (AMI). Under DHCD rules and regulations, all rental units of a project are eligible to be included in the SHI, but only the affordable units in an ownership development can be included.
 - Project History: The application was filed and received on January 15, 2020 initially for 300 total units. The public hearing process concluded on March 29, 2021 and due to the COVID-19 pandemic was almost entirely conducted remotely. The initial Comprehensive Permit Decision was issued and recorded with the Town Clerk on April 27, 2021. The project applicant appealed this Decision to the Housing Appeals Committee (HAC) on May 12, 2021. Both the Town and the Applicant conducted HAC referred Mediation on July 12, 2021. The full Zoning Board of Appeals met in executive session on July 14, 2021 to discuss and vote on the drafted settlement agreement based on a revised plan, conditions, and waivers for a revised decision. A joint motion was filed by Applicant and the Zoning Board of Appeals (through Town Counsel) to the HAC on July 30, 2021 to issue a Revised Comprehensive Permit. The HAC issued their Decision on Stipulation and Entry of Judgement (The Revised Decision) on August 20, 2021. This Revised Decision was appealed to Superior Court by a town resident on September 17, 2021 and their appeal was revised on October 19, 2021. This subsequent appeal was ultimately dismissed by Superior Court on January 26, 2022.

- Status: On May 4, 2022 the Zoning Board of Appeals approved an Approval Not Required Plan for recording purposes with the Norfolk Registry of Deeds. This was an action which was already approved through the Comprehensive Permit's waivers. On May 26, 2022 the Town received notification that the Applicant was in a Purchase and Sale agreement to sell the rental side of the development to Fairfield Residential. This is an allowed action pursuant to 760 CMR 56.05 (12) (b). At the time of this memo the applicant has yet to file for a building permit to begin construction.
- The Moose Hill Condominiums – 270 Moosehill Road
 - Current Proposed Project: 8 townhouse units within 4 buildings, 2-units will be counted towards Walpole's SHI at 80% AMI. All units are for ownership.
 - Project History: The application was filed and received on May 15, 2020. An extension of time was granted for opening the public hearing due to the ongoing COVID-19 pandemic. The public hearing was opened on December 21, 2020 and continued as requested by the Applicant to January 27, 2021. The Applicant would again request continuation without testimony until eventually proceeding with the public hearing process with testimony on May 19, 2021. The public hearing concluded on July 14, 2022, the decision was voted on July 28, 2021, and recorded with the Town Clerk on July 29, 2021.
 - Status: The conditioned decision was not appealed by any party, and the SHI units were recorded as outlined in 760 CMR 56.03(2)(b). At this time the applicant has yet to file for a building permit. The development has until July 29, 2022 to be issued a building permit before having the SHI units temporarily removed from the inventory.

Ongoing Projects (through comprehensive permit process)

- The Residences at Pinnacle Point – Pinnacle Drive
 - Current Proposed Project: 28 townhouse units within 10 buildings, 7-units would be counted towards Walpole's SHI at 80% AMI. All units are for ownership.
 - Project History: The application was filed and received on May 4, 2022. The public hearing was opened on June 1, 2022. At the June 1, 2022 public hearing the Zoning Board of Appeals invoked Safe Harbor following 760 CMR 56.03 (1)(b) and 760 CMR 56.03 (8). Notification of safe harbor invocation was sent to applicable DHCD officials and the applicant on June 2, 2022. The Applicant appealed the Zoning Board of Appeals action to DHCD on June 13, 2022. DHCD has 30 days from the date they received the Applicant's appeal to respond.
 - Status: On July 7, 2022 DHCD issued their determination of the Applicant's appeal. DHCD has found that because of the suspension of the Town's 2-year safe harbor certification (due to the one year lapse in building permits for Cedar Edge/Cedar

Crossing), and that the Applicant applied after this time lapse, that the Board did not meet its burden of asserting safe harbor standing. If the Zoning Board of Appeals determines that they would want to appeal this decision they may do so through an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05 (9)(c) and 760 CMT 56.06 (7)(e)(11), within 20 days of receipt of the decisions (July 27, 2022).

- The Residences at Darwin Commons – Darwin Lane
 - Current Proposed Project: 28 townhouse units within 6 buildings, 7-units would be counted towards Walpole's SHI at 80% AMI. All units are for ownership.
 - Project History: The first comprehensive permit application was filed and received on September 17, 2021. The public hearing was opened on October 13, 2021. At the October 13, 2021 public hearing the Zoning Board of Appeals invoked Safe Harbor following 760 CMR 56.03 (1)(b) and 760 CMR 56.03 (8). Notification of safe harbor invocation was sent to applicable DHCD officials and the applicant on October 18, 2021. The Applicant appealed the Zoning Board of Appeals action to DHCD on October 23, 2021. On November 24, 2021, DHCD issued their decision, upholding the Zoning Board's invocation of safe harbor, siding with the town. The Board continued their public hearing with the applicant on December 15, 2021, where the applicant stated they would be willing to reduce the project to twelve (12) units if the Board did not deny due to safe harbor standing. The Board would continue the case an additional time to January 19, 2022 where they would ultimately deny the comprehensive permit. This denial decision, which could not be appealed due to affirmed safe harbor standing, was recorded with the Town Clerk on January 28, 2022.

A second application was filed and received on April 28, 2022. The public hearing was opened on May 25, 2022. At the May 25, 2022 public hearing the Zoning Board of Appeals invoked Safe Harbor following 760 CMR 56.03 (1)(b) and 760 CMR 56.03 (8). Notification of safe harbor invocation was sent to applicable DHCD officials and the applicant on June 2, 2022. The Applicant appealed the Zoning Board of Appeals action to DHCD on June 13, 2022. DHCD has 30 days from the date they received the Applicant's appeal to respond.

- Status: On July 7, 2022 DHCD issued their determination of the Applicant's appeal. DHCD has found that because of the suspension of the Town's 2-year safe harbor certification (due to the one year lapse in building permits for Cedar Edge/Cedar Crossing), and that the Applicant applied after this time lapse, that the Board did not meet its burden of asserting safe harbor standing. If the Zoning Board of Appeals determines that they would want to appeal this decision they may do so through an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05

(9)(c) and 760 CMT 56.06 (7)(e)(11), within 20 days of receipt of the decisions (July 27, 2022).

Projects under Housing Appeals Committee Litigation

- Diamond Hill Estates - Dupee Street
 - Current Proposed Project: 8 single-family homes, 2-units would be counted towards Walpole's SHI at 80% AMI. All units are for ownership.
 - Project History: The original application for 12 townhouse units was received on February 28, 2020. This public hearing was opened on March 20, 2020, and closed on May 5, 2021. After this public hearing process and deliberation the Zoning Board voted to deny the application on June 9, 2021. The decision was recorded on June 10, 2021 and appealed by the Applicant to the HAC on June 23, 2021. On November 23, 2021 representatives from both the Zoning Board of Appeals and the Applicant participated in HAC led mediation regarding the Comprehensive Permit denial. A joint motion was filed on January 19, 2022 to remand the case back before the Zoning Board of Appeals for a public hearing to discuss proposed changes to the site's access and turning radius as a way of resolving the denial decision. The remanded public hearing opened on March 2, 2022 and was closed on April 6, 2022. After new evidence, testimony, and deliberation, the majority of the Zoning Board of Appeals affirmed their original denial decision.
 - Status: A Joint Conference memo was filed by both sides and a conference was held with the HAC presiding officer on June 23, 2022. No court date has been scheduled yet.
- The Residence at Burns Avenue – 48 Burn Avenue – Notice of Project Change
 - Current Proposed Project: At the time of the 2nd Notice of Project Change Denial the project is proposed at 36 townhouse units within 7 buildings, 9-units would be counted towards Walpole's SHI at 80% AMI. All units are for ownership.
 - Project History: The original application was received on February 13, 2019 and received an approval conditional Comprehensive Permit on January 13, 2020 for 32 townhouse units. The Applicant submitted a letter requesting a project change determination on April 26, 2020. Their requested change was to open a second point of access to the site along Brook Lane and add an additional 8-units for a total of 40 townhouse units. The changes were deemed substantial and a new public hearing was opened on November 18, 2020. From the onset of this new hearing process the Zoning Board of Appeals sought peer review assistance to be paid for by the Applicant as allowed under 760 CMR 56.05 (5)(a) and 760 CMR 56.05 (5)(b). Ultimately the Applicant did not agree with the chosen peer review agent and refused to pay for the peer review funding for which they are required. The Zoning Board of

appeals would deny the Notice of Project Change on these grounds and record their decision with the Town Clerk on February 18, 2021. The Applicant would appeal this denial to the HAC on February 23, 2021. The HAC would render their decision on November 8, 2021, effectively stating that the Town was in the right to seek peer review funding and that the Applicant would be responsible for providing funding. Within this same letter the HAC remanded the case back before the Zoning Board of Appeals for reconsideration and review of the Notice of Project Change.

The remanded public hearing was opened on December 6, 2021. Peer review was sought from the engineering firm Tetra Tech, and funding was received from the Applicant on January 5, 2022. Review and subsequent revisions would be submitted during the following public hearings of February 16, 2022 and March 16, 2022. However, the Applicant failed to provide requested revisions and necessary information before the May 4, 2022 continued public hearing. With the extended regulatory deadline of May 18, 2022 approaching, the Zoning Board of Appeals was in a unique position to have to close in order to avoid constructive approval. The Board would close the public hearing on May 4, 2022 and ultimately denied the Notice of Project Change for failure to provide adequate revised information. This denial decision was voted on June 1, 2022 and recorded on June 3, 2022. This denial was appealed by the Applicant to the HAC on June 15, 2022.

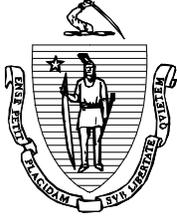
- Status: Both sides are working on scheduling a conference of counsel with the HAC for review of a possible new revision of the Notice of Project Change. The best way to facilitate review of the revised plan has yet to be determined. This information is the latest as of June 29, 2022.

Safe Harbor Status

- The Town was originally issued a Housing Production Plan 2-year safe harbor certification letter from DHCD on September 10, 2021 which was to be effective from April 27, 2021 to April 26, 2023. This was a result of the 268-unit project known as Cedar Edge/Cedar Crossing. The same certification letter also stated that all units must maintain eligibility for the Subsidized Housing Inventory (SHI), “If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification.”
- Under 760 CMR 56.03 (2)(c), If more than one year elapses between the date of issuance of the Comprehensive Permit and issuance of the building permit, the units will become ineligible for the SHI until the date that the building permit is issued.
- According to a June 22, 2022 letter from DHCD, because of this time lapse clause, all units from the Cedar Edge/Cedar Crossing have been removed from the Town’s SHI and our 2-year certification has been suspended as of April 26, 2022. All units will be

restored and certification will be reinstated as soon as DHCD is notified that building permits have been issued for the Cedar Edge/Cedar Crossing development and specifically for construction of at least 90 units (minimum needed for 2-year certification).

- A copy of both the original Safe Harbor certification letter and DHCD's Safe Harbor suspension letter are attached.



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

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

June 22, 2022

Mark Gallivan
Chair, Walpole Select Board
135 School Street
Walpole, MA 02081

Dear Mr. Gallivan:

The Department of Housing and Community Development (DHCD) issued a Housing Production Plan (HPP) Certification letter to the Town of Walpole on September 10, 2021 (see attachment). The Walpole HPP Certification letter stated that the certification period was effective from April 27, 2021, to April 26, 2023. The project for which certification was requested is Cedar Crossing/Cedar Edge (SHI ID#10582). The project consisted of 226 rental units, which constituted enough units for a two-year certification period.

The September 10, 2021, letter also informed Walpole that all units must maintain eligibility for the Subsidized Housing Inventory (SHI), "If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification." DHCD notes that under the Chapter 40B regulations, units created under comprehensive permits need to issue corresponding building permits within 12 months of the final comprehensive permits, as required in 760 CMR 56.03(2)(b.1) and HPP guidelines.¹ In summary, if building permits have not been issued within one year, April 26, 2022, of the final comprehensive permit, units are not eligible for inclusion on the SHI and are also not eligible to be credited towards certification.

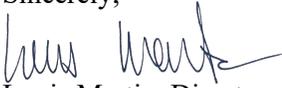
DHCD also sent an email to the Town on May 24, 2022, requesting building permit issuance information (see attachment 2) DHCD has not received a response from the Town. As DHCD has no record of building permit issuance, the units have been removed from the SHI and Walpole's certification is suspended as of April 26, 2022.² Please note that the units will be restored to the SHI and Walpole's certification will be reinstated as soon as we are notified that building permits have been issued for the Cedar Crossing/Cedar Edge development for the required number of units (90 for a two-year certification period).

If you have further questions, please contact Phillip DeMartino, Senior Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov.

¹ Section II.B of the M.G.L. c. 40B Guidelines, available at <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

² **Term of Certification.** So long as the units produced are SHI Eligible Housing units (see 760 CMR 56.03), a certification shall be in effect for a period of one year from its effective date if the community has increased its SHI Eligible Housing units 0.5% of the total year round housing units or two years from its effective date if it has increased its number of SHI Eligible Housing units 1.0% of total year round housing units. If the units by which the municipality achieved its certification become ineligible for the SHI, then the certification shall lapse as of the date that the units became ineligible for the SHI. If such units become eligible for the SHI during the remaining term of the certification period, then the certification shall be re-instated for such remaining term." Section II.B.9 of the M.G.L. c. 40B Guidelines.

Sincerely,



Louis Martin, Director
Division of Community Services

cc: Senator Paul R. Feeney
Representative Edward R. Philips
Representative Paul McMurtry
Representative John H. Rogers
Representative Shawn Dooley
Jim Johnson, Town Administrator, Town of Walpole
Patrick Deschenes, Director of Community and Economic Development, Town of Walpole
Margaux LeClair, Counsel & Fair Housing Specialist, DHCD

Attachments



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

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

September 10, 2021

Mark Gallivan, Chair
Walpole Select Board
Walpole Town Hall
135 School Start
Walpole, MA 02081

RE: Housing Production Plan - Certification Approval

Dear Mr. Gallivan:

The Department of Housing and Community Development (DHCD) has reviewed the Town of Walpole's August 26, 2021 request for certification of compliance with its Housing Production Plan (HPP). In order for a municipality to be certified the following needs to occur:

- Housing units affordable to low and moderate income households and eligible for inclusion on the Subsidized Housing Inventory (SHI) have been produced during one calendar year, the same year for which certification is requested during the initial year of SHI eligibility.
- Units must total at least 0.5% (45) units for Walpole of year-round housing units for one-year of certification. A total of 1% of year-round housing units (90) units for Walpole are needed for a two-year certification,
- The units were produced and are eligible in accordance with the approved HPP and DHCD's c. 40B Guidelines.¹

DHCD makes the following findings:

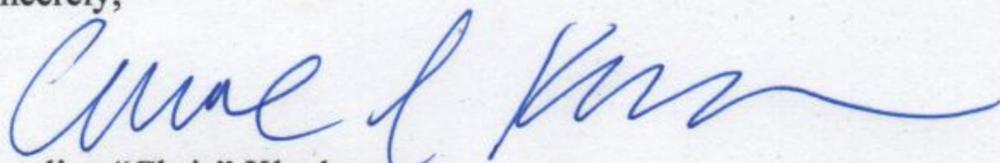
1. Walpole has a valid HPP. The effective date for the HPP is April 23, 2019 the date that DHCD received a complete plan submission. The HPP has a five-year term and will expire on April 22, 2024.
2. The project for which certification was requested for is known as Cedar Crossing/ Cedar Edge (SHI ID# 10582) which consists of 226 SHI units.
3. DHCD finds that the units are eligible for SHI inclusion and have been added to the SHI. The number of SHI units (226) is enough for a two-year certification period (90).
4. The certification period will run from April 27, 2021 to April 26, 2023.

Please note that all units must retain eligibility for the SHI for the entire certification period. If units are no longer eligible for inclusion on the SHI, they will be removed and will no longer be eligible for certification. This action may affect the term of your certification. I have included an updated list of SHI eligible units. The Town of Walpole's SHI currently stands at 9.74%. I applaud your efforts to plan for the housing needs of Walpole.

¹ <https://www.mass.gov/files/documents/2017/10/10/guidecomprehensivepermit.pdf>.

Please contact Phillip DeMartino, Technical Assistance Coordinator, at (617) 573-1357 or Phillip.DeMartino@mass.gov if you need assistance as you implement your HPP.

Sincerely,



Caroline "Chris" Kluchman
Deputy Director, Division of Community Services

cc Senator Paul R. Feeney
Representative Edward R. Philips
Patrick Deschenes, Director, Community & Economic Development, Walpole
James Johnson, Town Administrator, Walpole