



# *Town of Brookline*

## *Massachusetts*

**Department of Planning and  
Community Development**

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**Kara Brewton  
Director**

TO: Select Board  
FROM: Kara Brewton, Director of Planning & Community Development  
DATE: June 20, 2024  
RE: Project Eligibility Letter Comments for 429 Harvard Street

Oak Hill Properties LLC is proposing to [redevelop 429 Harvard Street](#), replacing the Citizens Bank with a 6-story building with commercial space and parking at the ground level, and 40 residential units on the upper floors. Eight of the units would be deed-restricted affordable units for household incomes up to 50% of the area median income.

MassHousing is considering whether the development should be financed through the state's Chapter 40B regulations, and has asked the Town to comment on Oak Hill Properties' [PEL application](#). If MassHousing decides to move this project forward, they would then issue a Project Eligibility Letter, which is required prior to the applicant submitting a full Comprehensive Permit application to the Brookline Zoning Board of Appeals.

MassHousing will especially be looking for comments on:

- (i) whether the conceptual project design is generally appropriate for the site, including the proposed massing of the building typology and to what extent the building transitions to nearby properties appropriately; and
- (ii) whether the site is generally appropriate for the project, taking into account recent municipal actions taken to meet affordable housing needs.

Attached to this memo is a first draft comment letter for your review, which follows a very similar structure to MassHousing's 2012 finding that Saw Mill, a 40B proposal in Easton, was not eligible given a number of factors including the Town's recent approval of an as-of-right<sup>1</sup> multifamily zoning district.

After Oak Hill Properties presents their proposal, there will be a public hearing. The Select Board will then take into account those comments, and discuss any edits to the letter. We will attach any public comments received by email to the Select Board's letter to MassHousing, which are also being posted

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<sup>1</sup> Meaning no discretionary permit, such as a Special Permit, would be required prior to a building permit.

on the [429 Harvard Street webpage](#). In addition to offering comments through the Select Board, the public may also send a comment letter directly to MassHousing via email to [kmiller@masshousing.com](mailto:kmiller@masshousing.com). MassHousing's comment deadline has been extended to July 10<sup>th</sup>, so the Select Board will be able to review a final draft at their July 9<sup>th</sup> Select Board meeting.

### Safe Harbor Status

Unlike recent 40B applications, there is a chance the Town may be in a so-called "safe harbor" status by the time Oak Hill Properties files a full comprehensive permit application (scheduled for late August or early September), which effectively means the Zoning Board of Appeals would not be as constrained in their decision-making authority. In addition to likely being above the 10% SHI threshold this late summer/ early fall, we are finalizing calculations as to whether the Town is currently above the 1.5% General Land Area Minimum threshold of land supporting units on the state's subsidized housing inventory (SHI). The land analysis requires detailed [data analysis and documentation](#) about SHI housing and the surrounding land it sits on, as prescribed by the state. Because we are so close to the 1.5% threshold, we are very carefully double-checking this work before releasing the work. The state will not review our calculations based on land threshold until a full comprehensive permit application is submitted. I will give a more in-depth update to the Select Board regarding our safe harbor status just prior to this agenda item.

In the meantime, we continue to encourage the developer to consider the new Harvard Street zoning as an alternative, which provides an as-of-right process for a four-story building, requires a lower percentage of affordable units, and allows for a higher household income limit for the affordable units if the first-floor commercial space is built out.

Especially given the Town's potential safe harbor status, we are advising all property owners and developers interested in utilizing the 40B Comprehensive Permit process to: speak with the neighborhood early on; explore options that have all, or a very high percentage of, deed-restricted affordable units (beyond the 40B requirements); and also to work in partnership with the Brookline Housing Advisory Board about any potential funding subsidies that could be provided through Community Preservation Act funds or the Affordable Housing Trust Fund to provide that additional affordable housing.

Thank you.



# TOWN of BROOKLINE

## *Massachusetts*

### SELECT BOARD

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MICHAEL SANDMAN  
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CHARLES CAREY  
Town Administrator

### INITIAL DRAFT FOR SELECT BOARD DISCUSSION & EDITS FOLLOWING PUBLIC COMMENT ON JUNE 25TH

July 10, 2024

Katherine Miller  
Massachusetts Housing Financing Agency  
One Beacon Street  
Boston, MA 02108  
via email: [kmiller@masshousing.org](mailto:kmiller@masshousing.org)

Re: Project Eligibility Letter Application for 429 Harvard Street, Brookline

Dear Ms. Miller:

Thank you for the opportunity to provide comments on Oak Hill Properties' application for a Project Eligibility Letter under General Law Chapter 40B, related to redevelopment of 429 Harvard Street<sup>1</sup>. The applicant is proposing to demolish a one-story bank building and construct a six-story building consisting of 40 rental units, a first floor commercial space and 15 parking spaces. Eight units would be deed-restricted affordable for households at 50% area median income.

We strongly encourage the developer to pursue a four-story scale design that utilizes the as-of-right Harvard Street zoning standards, which allows for area median income household limits up to 70%, and 15% of the units as affordable. The Town anticipates meeting the unit requirements for "safe harbor" status imminently and is currently evaluating whether we meet the safe harbor by land requirements now.

In accordance with state regulations<sup>2</sup>, the Town respectfully requests Massachusetts Housing Financing Agency (MassHousing) not approve a Project Eligibility Letter for this project as the design is not generally appropriate for the site on which it is located, the project design is inconsistent with local housing needs and concerns, and the site is not generally appropriate for the proposed residential development, taking into consideration previous municipal actions taken to meet affordable housing needs. The information provided herein is structured similarly to MassHousing's 2012 finding that the Saw Mill Village site in Easton<sup>3</sup> was not appropriate for a Project Eligibility Letter, based on a combined analysis of design

<sup>1</sup> Application materials and information is posted on the Town's webpage at <https://www.brooklinema.gov/1311>

<sup>2</sup> Especially 760 CMR 56.04(4)(b) and (c), the related Comprehensive Permit Guidelines dated December 2014, and the January 2011 40B Design Review Handbook

<sup>3</sup> <https://www.mass.gov/doc/masshousing-40bprojecteligibilitypdf/download>

inconsistent with state guidelines and local needs and concerns, as well as recent municipal actions including adoption of an as-of-right multifamily zoning district.

#### Project Design is not Appropriate for the Site on which it is Located

Contrary to the state's December 2014 Guidelines for 40B Comprehensive Projects: IV(A)3(b)1, the site is not appropriate for a project of this design as the property is not large enough to: (i) accommodate modulated massing, steps in height, bulk or scale to create any transition to adjoining sites; (ii) include any landscaping to help buffer the building mass; and (iii) does not take into account take the existing street frontage pattern nor human scale design by reasonably relating the height of buildings to the width of the public way, especially on Coolidge Street.

Existing residential buildings along the Harvard Street corridor are predominantly four story in scale. The site is adjacent to a one-story commercial building and three-story residential buildings to the rear. Newly constructed mixed-use developments on Harvard Street permitted through the 40B process include 420 Harvard Street/39 Coolidge Street (4.5 stories with significant step backs on a site one third larger in size), 455 Harvard Street (4 stories), and 384 Harvard Street (5.5 stories with significant step backs on a property twice the size).

As extensively documented in a micro-scale building analysis and community planning process for Harvard Street<sup>4</sup>, infill of four-story buildings must utilize a combination of design strategies noted in the state's Guidelines and Design Review Handbook to appropriately transition to the adjacent single- and two-family neighborhood. Following this careful planning process, Town Meeting supported as-of-right zoning to encourage the infill of four-story scale buildings along Harvard Street.

For all of these reasons, introducing a new 6-story housing building typology in this neighborhood is not appropriate for a site this small and constrained.

#### Project Design is Inconsistent with Local Needs and Local Concerns

The Town of Brookline's 2024 Housing Production Plan<sup>5</sup> recommends moving towards form-based zoning, specifically pointing to the Harvard Street zoning as a best practice to continue in other areas of Town, as "form-based zoning could help Brookline expand housing units while also addressing concerns residents have expressed about preservation and new development needing to be sensitive to neighborhood context." While the Town has recently changed zoning with some form-based features to permit 6 to 8 story multifamily housing in Fisher Hill and Brookline Village<sup>6</sup>, Town Meeting also agreed with staff's Harvard Street analysis that four-story scale infill was most appropriate for the Harvard Street corridor. If MassHousing were to conclude this particular small site was appropriate for a six-story building in a newly created as-of-right zoning district, community support for continuing form-based code planning work while supporting additional housing development would be detrimentally undermined.

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<sup>4</sup> <https://www.brooklinema.gov/3582/Harvard-Street>

<sup>5</sup> <https://www.brooklinema.gov/DocumentCenter/View/48341>, currently under review by EOHEd

<sup>6</sup> Fisher Hill Special Overlay District, Emerald Island Overlay District, and MBTA-CA Multifamily Overlay Districts

The applicant has not yet demonstrated why the Harvard Street zoning is not financially feasible to add housing on this property, especially when taking into account the as-of-right permitting process compared to what can be a 3 to 4 year permitting process for contentious 40B projects. The Town's recent inclusionary zoning changes provides for more flexible affordable housing restrictions than the Comprehensive Permit regulations: Brookline now allows for the 15% affordable rental units to be available to households up to 70% area median income when there is ground-floor retail space. The local requirements and regulations in our zoning are applied equally to both subsidized and unsubsidized housing, and parking minimums can be reduce to zero by special permit.

In order to protect the health of Brookline residents, the Harvard Street zoning provides for specific site design standards to mitigate stormwater pollution and heat island effects in this corridor with landscaping, tree canopy, open space, and sustainable site standards<sup>7</sup>. As documented in our 2017 Climate Vulnerability Assessment and Action Plan<sup>8</sup>, this site is located in a census tract with the highest category of vulnerable population to extreme heat. The proposed development would remove all of the significant existing trees on site, including the shade now present along Coolidge Street and over the rear parking lot; the proposal does not include any tree canopy replacement, open space, nor sustainable site design features.

#### Recent Municipal Actions to Meet Affordable Housing Needs

The Town has met the purpose of the Comprehensive Permit Act by creating zoning districts that provide the opportunity for affordable housing, including affordable housing that is available to families with children. This work includes the creation of multifamily overlay districts under G.L. c.40A that allow for multifamily development by right, zoning bonuses for multifamily development, and adopting more flexible regulations with regards to inclusionary zoning, accessory dwelling units, and parking requirements for projects that add housing units.

1. In Fall 2023, Town Meeting approved an overlay district for most multifamily districts to permit multifamily construction as-of-right (without a discretionary permit). The Town is in compliance with the MBTA Communities Act, the Attorney General has approved the language, and the state has approved the financial feasibility analysis for our inclusionary zoning requirements. This district is estimated to permit by right up to 800 additional housing units. Additional zoning bonuses are included for all-affordable units in Brookline Village, and the Brookline Housing Authority is currently working on conceptual plans that would add an additional 100 units to their High/Walnut Street site; they are planning on being ready to request state financing to move this project forward in the spring.
2. Beyond meeting the requirements of the MBTA Communities Act, Fall 2023 Town Meeting also made zoning changes near Brookline Village to incentivize multifamily housing within the Emerald Island Overlay District, unlocking approximately 80-115 new dwelling units. As a result of this action, the owner of the property is refining engineering plans and will soon be submitting conceptual design plans to the Town.

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<sup>7</sup> See Sections 11-5.04 through 11-5.06 and 11-5.09 at <https://www.brooklinema.gov/DocumentCenter/View/50485>

<sup>8</sup> See Figure 18, <https://www.brooklinema.gov/DocumentCenter/View/13876>

3. Fall 2023 Town Meeting rezoned the Harvard Street corridor, including 429 Harvard Street, to permit multifamily construction with ground floor retail as-of-right (without a discretionary permit).
4. In February 2024, the Town voted on an updated Housing Production Plan, which the state is currently reviewing for approval.
5. Spring 2024 Town Meeting relaxed inclusionary zoning requirements by allowing a higher (70% rather than 50%) area median income limit for rental projects that build out ground-floor commercial space.
6. Spring 2024 Town Meeting voted to make the regulations related to accessory dwelling units (ADUs) more flexible, allowing larger units, removing a minimum time period for a structure to have been built before adding an ADU, and relaxing external design standards.
7. Spring 2024 Town Meeting approved \$6.4 million, or 81% of our first year of Community Preservation Act project funds, towards building new affordable housing units, rehabilitating existing affordable housing units, and to continue an emergency rental assistance program associated with affordable units.
8. In the last five years, our Affordable Housing Trust Fund spent \$9.7 million on community housing developments. An additional \$3.75 million is allocated to support additional housing units at the Brookline Housing Authority's High/Walnut Street site.
9. In the last five years, the Town has permitted 464 housing units through 40B regulations *within a quarter mile of this site*<sup>9</sup>.
10. 24% of the 1,042 net new units that were issued a building permit between 2015-2023 were for deed-restricted affordable units. According to the Metropolitan Area Planning Council's review of 14 communities in the region, only two other communities have permitted a higher percentage of affordable units during this timeframe.
11. The Town's Housing Advisory Board is currently working with a consultant to suggest potential parameters for an Affordable Housing Overlay District to further incentivize affordable housing through zoning bonuses.

The Town has strongly supported, helped locally fund, and changed zoning for 6 to 13 story residential buildings on larger sites that can accommodate landscaping, street trees, step backs and step downs of massing. The Select Board concludes that the development proposal on this site: (i) would not significantly further affordable housing goals in Brookline; (ii) has the high likelihood of deterring future local Town Meeting zoning actions to support housing development; and (iii) would compound the urban heat island effects in a census tract whose population is most vulnerable to rising temperatures.

Thank you for your consideration.

Sincerely,

Bernard Greene  
Chair

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<sup>9</sup> 40 and 108 Centre St., 134 Babcock St., 209 Harvard St., 32 Marion St., 1299 Beacon St., and 384, 445, 500 Harvard St.

cc: Charles Carey, Town Administrator  
Kara Brewton, Director of Planning & Community Development  
Ashkan Sanieoff, Oak Hill Properties, LLC  
Jennifer Dopazo Gilbert, Robert Allen Law Firm

encl: Specific Comments to be Considered During Feasibility Phase  
Comment Letters to Select Board: Jerry Tuckman, [insert others received here]

## Specific Comments to be Considered During Feasibility Phase

The Town of Brookline's departments, boards and commissions will conduct a more intensive evaluation during any local permitting process. In the meantime, the Select Board submits the following comments to MassHousing and Oak Hill Properties, which may be helpful during this preliminary phase of feasibility:

1. We continue to encourage the developer to meet with the neighborhood, both individually with immediate abutters as well as residents from the area to solicit concerns and identify mitigation measures.
2. We strongly encourage the developer to pursue a four-story scale design that utilizes the as-of-right Harvard Street zoning standards, which allows for area median income household limits up to 70%, and 15% of the units as affordable. The Town anticipates meeting the unit requirements for "safe harbor" status imminently and is currently evaluating whether we meet the land requirements now.
3. Setbacks should be increased along the ground floor to allow landscaping along the street edges, to accommodate street trees along Coolidge Street, to provide usable open space for the residents, and to reduce the urban heat island effect from this development.
4. As noted in our 2017 Climate Vulnerability Assessment and Action Plan, this area is a hot spot in a census tract with multiple vulnerable populations to heat, and the Town's 2021 Brookline Urban Forestry Climate Resiliency Master Plan has a tree canopy goal of 51%. We strongly encourage replacing the significant tree canopy on the site.
5. Any parking charges should be included in the maximum rental unit price for affordable units.
6. The Town will schedule a meeting with the developer and Transportation, Building, Health and Fire staff for July or August (prior to any application submittal to the Town) to ensure all safety and building codes and standards are incorporated early in the design review process.

As the applicant moves forward with any permitting process, please include in the submittal:

- a virtual 3D model of the proposed project showing abutting and nearby buildings
- a site plan showing abutting buildings with setbacks of the proposed building to its property line and abutting buildings
- site sections through the building including abutting buildings
- revisions to the architectural and floor plans, addressing: the quality of the living spaces in the residential units (no windows in "studio" 2<sup>nd</sup> bedrooms), the lack of articulation in the massing, the lack of prominence to the residential entrance on Coolidge Street, net new shadow impacts to abutters, and the visually prominent south-facing blank wall
- confirmation that the building is being designed to meet fossil fuel-free building code standards that the Town has adopted in partnership with the Department of Energy Resources and other pilot communities
- a traffic and parking report, including the impact to the availability of existing on-street parking in the immediate area
- a trash and recycling plan following initial consultation with Health Department staff
- a storm water and drainage report
- a waiver list in tabular form

Comment Letters to be Considered During Feasibility Phase

[letters to be attached are uploaded at

<https://www.brooklinema.gov/Admin/DocumentCenter/Folder/Index/5563>]