

COMMONWEALTH OF MASSACHUSETTS  
HOUSING APPEALS COMMITTEE

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In the Matter of )

BRAINTREE ZONING BOARD OF )  
APPEALS, )

and )

383 WASHINGTON STREET, LLC. )  
\_\_\_\_\_ )

No. 2017-05

**ORDER ON MOTION FOR RECONSIDERATION OF  
DECISION ON INTERLOCUTORY APPEAL  
REGARDING APPLICABILITY OF SAFE HARBOR**

The Housing Appeals Committee issued its Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor in this matter on June 27, 2019. That decision determined, based on the credible evidence submitted by the Board, that the Board has failed to meet its burden of proof that Braintree has met the statutory general land area minimum of 1.5 percent. G.L. c. 40B, § 20. The Committee therefore dismissed the appeal and remanded the matter to the Board for further proceedings.

On July 10, 2019, the Board filed a motion for reconsideration and to re-open the public hearing, specifically to allow the Board to provide new information in response to conclusions reached by the Committee in its Decision. The Board alleges the Committee indicated in the Decision that the Board would have been entitled to a credit of additional land area towards the numerator in support of its asserted 1.5 percent general land area minimum safe harbor, but for the fact that the Board had not provided a calculation of those certain limited areas. Instead, the Board argued that a more expansive area should have been included, and therefore the Committee was unable to extrapolate the calculation of those limited areas. If allowed to submit this new information, the Board argues it will be able to demonstrate that the Town has satisfied the 1.5 percent general land area minimum threshold, pursuant to 760 CMR 56.03(3)(b).

383 Washington Street, LLC (Washington) filed an opposition on July 17, 2019. Washington argues the Board has not identified any “newly discovered evidence” that was unknown to the Board and could not have been discovered at the time of the hearing. The additional calculations the Board now proposes to add to the record were previously known and available to the Board. Additionally, Washington argues the Board’s motion for reconsideration repeats legal arguments raised at the hearing and in post-hearing briefing, and that it challenges the Committee’s legal interpretation and analysis found in the Decision, as opposed to proffering new evidence or changed circumstances justifying reconsideration.

The comprehensive permit regulations in 760 CMR 56.06(7)(e)2 grant broad authority to the presiding officer over the conduct of a hearing. Included in the scope of that authority is the power to issue rulings on matters that do not finally determine the proceedings.<sup>1</sup> Of course, the presiding officer may, in their discretion, choose to bring a matter before the full Committee for discussion, as I have done in this case.<sup>2</sup>

The arguments raised by the Board in its motion are without merit. As Washington argues, the parties had a full opportunity to introduce their relevant evidence; they are not entitled to redo the evidentiary hearing when the result is not to their liking. The Board’s failure to meet its burden of proof does not warrant reconsideration. Additionally, arguments challenging the legal rulings of the Committee do not support reconsideration. The Board had a full opportunity to raise its arguments during the hearing.

Accordingly, the motion for reconsideration is hereby denied.

#### HOUSING APPEALS COMMITTEE

October 11, 2019



Shelagh A. Ellman-Pearl, Chair

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<sup>1</sup> 760 CMR 56.06(7)(e)2 states, “[t]he presiding officer shall have all those powers conferred upon the Committee for the conduct of a hearing, except that he or she shall not be empowered to make any decisions that would finally determine the proceedings [with certain enumerated exceptions].”

<sup>2</sup>This motion for reconsideration was brought before the Committee at its regular meeting on August 22, 2019. The Committee discussed the merits of the motion and concurred with the presiding officer’s intention to issue a ruling denying the motion on her own authority under 760 CMR 56.06(7)(e)2.

Certificate of Service


I, Veronica G. Barros, Clerk to the Housing Appeals Committee, certify that this day I caused to be mailed, first class, postage prepaid, a copy of the within Order on Motion for Reconsideration of Decision on Interlocutory Appeal Regarding Applicability of Safe Harbor in the matter of Braintree Zoning Board of Appeals and 383 Washington Street, LLC, No. 2017-05, to:

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Dated: 10/11/2019

  
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Veronica G. Barros, Clerk  
Housing Appeals Committee