

COMMONWEALTH OF MASSACHUSETTS
HOUSING APPEALS COMMITTEE

In the Matter of

ZONING BOARD OF APPEALS OF THE
CITY OF MEDFORD,

APPELLANT

and

COMBINED PROPERTIES, INC.,

APPELLEE

No. 2020-08

**ORDER ON BOARD'S ASSENTED-TO MOTION
FOR STIPULATION AND ORDER OF REMAND**

On September 29, 2020, the Medford Zoning Board of Appeals (Board) appealed a determination by the Department of Housing and Community Development (DHCD)¹ that the Board had not established a safe harbor under 760 CMR 56.03(1) with regard to an application for a comprehensive permit filed by Mystic Property Associates Limited Partnership for a residential development located at 278-282 Mystic Avenue in Medford, Massachusetts.

When this matter was filed, the applicability of the 1.5% Safe Harbor was being challenged in two other appeals with this Committee: *Matter of Medford and MVP Mystic, LLC*, No. 2020-06 (Mass. Housing Appeals Comm.) (*MVP Mystic*) and *Matter of Medford and DIV Fellsway, LLC*, No. 2020-07 (Mass. Housing Appeals Comm. Oct. 10, 2023) (*DIV Fellsway*);²

¹ On May 30, 2023, DHCD became the Executive Office of Housing and Livable Communities, pursuant to G.L. c. 23B, as amended by Chapter 7 of the Acts of 2023.

² In June of 2023, MVP and the Board entered into settlement discussions and subsequently filed a Stipulation whereby the Board agreed to withdraw its assertion of safe harbor (for the MVP Project only) and MVP agreed to a remand before the Board with a revised plan. On June 24, 2022, the Presiding Officer dismissed the MVP matter with prejudice leaving only the DIV matter (HAC NO. 2020-07) to be resolved.

therefore, the parties filed a Joint Motion to Stay the Proceedings which was allowed on October 9, 2020.

The summary decision in *DIV Fellsway* determined that the City of Medford had not achieved the asserted general land area minimum safe harbor.

The conference of counsel in this matter was held on October 31, 2023. At the conference, the parties agreed that the summary decision resolved issues identical to those presented in this case and discussed the possibility of filing a joint stipulation that would resolve this matter, preserve the parties' rights on appeal, and provide for remand to the Board.

On January 5, 2024, the parties each filed motions for approval of their proposed orders. Following a conference with the parties on March 13, 2024, on March 22, 2024, Combined Properties, Inc. (Combined) filed its assent to the Board's motion and proposed order. Upon review of the Board's assented-to motion and proposed order, I find the following:

1. The material facts are the same as the facts in the *DIV Fellsway* decision, except for the date of the comprehensive permit application in this matter, June 18, 2020. This is not a material difference.
2. The legal issues identified in the *DIV Fellsway* decision are the applicable legal issues in this matter.
3. Based on the foregoing assented-to motion, proposed order, and stipulations by the parties, consistent with *DIV Fellsway*, I find and rule that the Committee's conclusion therein with regard to the Board's claim of safe harbor applies to this matter. Accordingly, the undisputed facts show that the City of Medford has not achieved the general land area minimum safe harbor.³
4. The Board does not waive its rights to appeal the safe harbor determination in this matter. Pursuant to 760 CMR 56.03(8)(c), "[a]ny appeal to the courts of the Committee's ruling

³ Since this Interlocutory Ruling does not "finally determine the proceedings," a presiding officer has the authority under 760 CMR 56.06(7)(e)2 to rule on it without consulting with the full Committee. *See Matter of Stoneham and Weiss Farm Apts., LLC*, No. 2014-10, slip op. at 2 n.2 (Mass. Housing Appeals Comm. May 26, 2015), *aff'd sub nom, Town of Stoneham Zoning Bd. of Appeals v. Housing Appeals Comm., et al.*, Middlesex Super. Ct. No. 2181CV00818 Aug. 4, 2022.

[on an interlocutory appeal] shall not be taken until after the Board has completed its hearing and the Committee has rendered a decision on any subsequent appeal.”

Accordingly, the City of Medford has not demonstrated that it has achieved a safe harbor under the general land area minimum, and the assented to motion for stipulation and order of remand is allowed.

This matter is remanded for hearing on the comprehensive permit application. The Board shall conduct a public hearing in accordance with the time requirements in 760 CMR 56.05(3) and 56.03(8).

Housing Appeals Committee,



Shelagh A. Ellman-Pearl, Chair
Presiding Officer

March 27, 2024