



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

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

To: Zoning Boards of Appeals and Applicants of Proposed Chapter 40B Projects
From: Louis Martin, Associate Director
Subject: Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8) and Extended Deadline for DHCD Decisions During COVID-19 State of Emergency
Date: May 18, 2020

Electronic Submission of Safe Harbor Assertions and Challenges Pursuant to 760 CMR 56.03(8)

Due to the COVID-19 State of Emergency and COVID-19 Order No. 21, “Extending the Closing of Certain Workplaces and the Prohibition of Gatherings of More than 10 People,” which includes closure of DHCD offices, DHCD is requesting that notice of “safe harbor” assertions by Zoning Boards of Appeals (“Boards”) and responsive challenges by Comprehensive Permit applicants (“Applicants) pursuant to 760 CMR 56.03(8)(a), including supporting documentation and required copies to DHCD and parties, be submitted electronically to ensure timely receipt. DHCD will deem such notice submitted electronically by the regulatory deadlines under 760 CMR 56.03(8)(a) to have been provided in accordance with these regulatory deadlines.

While hard copies should continue to be mailed to DHCD at 100 Cambridge Street, Suite 300, Boston MA 02114, notice/copies with supporting documentation must be provided electronically to DHCD by the regulatory deadlines. Due to large file sizes, electronic submissions to DHCD for General Land Area Minimum (GLAM) safe harbor assertion matters are to be uploaded to an electronic folder that will be created by DHCD for the matter. In order for either party to access and upload documents to this folder, the party must notify DHCD, via email to DHCDGLAMsubmission@mass.gov, of the matter and the e-mail address by which the party wishes to receive a weblink enabling folder access. File sizes up to 15 GB may be uploaded. Electronic submissions to DHCD for other types of safe harbor assertions are to be sent to phillip.demartino@mass.gov. Hard copies of all submissions should also continue to be sent by mail between the parties in addition to being sent electronically. In addition to following the Technical Instructions of the General Land Area Minimum Guidelines (Appendix A, available at <https://www.mass.gov/service-details/guidelines-for-calculating-general-land-area-minimum>) for Board submittals, documentation submitted electronically should be provided in a searchable format and in color where color is relevant.

NOTE: submissions are limited to a Board’s initial safe harbor assertion and the Applicant’s responsive challenge; in rendering a decision, DHCD will not take into account rebuttals, replies, or other supplemental submissions except for submission of new evidence when there is a question of fact as to whether procedural requirements were met. Such limited review is consistent with the regulatory provisions under 760 CMR 56.03(8)(a), which do not provide for a Board rebuttal or supplemental

responses by either party, as well as the regulatory intent to provide for an expedited (30 day) DHCD review prior to a party's interlocutory appeal before the HAC pursuant to 760 CMR 56.03(8)(b).

Extended Deadline for DHCD Decisions Pursuant to 760 CMR 56.03(8)

Pursuant to COVID-19 Order No. 17, "Order Suspending State Permitting Deadlines and Extending the Validity of State Permits," the requirement for DHCD decisions to be issued within 30 days under 760 CMR 56.03(8)(a) has been suspended, and any failure by DHCD to issue a decision within the 30 days shall not be deemed a determination or a constructive approval in favor of a Board. The running of the 30 days for a DHCD decision shall resume 45 days after the termination of the State of Emergency.