



MINUTES

BOARD OF SELECTMEN TUESDAY, NOVEMBER 15, 2016 BROOKLINE HIGH SCHOOL ROOM 209

Present:

Selectman Neil Wishinsky, Selectman Nancy Daly,
Selectman Benjamin J. Franco, Selectman Nancy S.
Heller, Selectman Bernard W. Greene

OPEN SESSION

Question of whether the Board of Selectmen shall enter into Executive Session for the purpose of discussing strategy with respect to litigation in the matter of Town of Brookline et al v. MassDevelopment et al.

In Open Session- the Chair must state the purpose for Executive Session, stating all subjects that may be revealed without compromising the purpose for which the Executive Session was called.

The Chair then stated the reason(s) for the Executive Session:

To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

PROPOSED EXECUTIVE SESSION LITIGATION

For the purpose of discussing strategy with respect to litigation in the matter of Town of Brookline et al v. MassDevelopment et al.

On motion it was,

Voted to enter into Executive Session.

Roll Call: Aye: Wishinsky, Daly, Franco, Heller, Greene

ANNOUNCEMENTS/UPDATES

Selectmen to announce recent and/or upcoming Events of Community Interest.

Selectman Greene stepped out at 6:00 p.m. to speak at the pre-Town Meeting Peace Vigil in the High School cafeteria.

PUBLIC COMMENT

Public Comment period for citizens who requested to speak to the Board regarding Town issues not on the Calendar.

Up to fifteen minutes for public comment on matters not appearing on this Calendar shall be scheduled each meeting. Persons wishing to speak may sign up in advance beginning on the Friday preceding the meeting or may sign up in person at the meeting. Speakers will be taken up in the order they sign up. Advance registration is available by calling the Selectmen's office at 617-730-2211 or by e-mail at sorsini@brooklinema.gov. The full Policy on Public Comment is available at <http://www.brooklinema.gov/376/Meeting-Policies>

MISCELLANEOUS

Approval of miscellaneous items, licenses, vouchers, and contracts.

Question of approving the minutes of November 9, 2016.

This agenda item was postponed.

CALENDAR

Review and potential vote on Calendar Items

BUILDING DEPARTMENT – PERSONNEL

Question of authorizing the filling of the Local Building Inspector (GN-12) vacancy in the Building Department.

Building Commissioner Dan Bennett stated that this position is available due to a recent resignation.

On motion it was,

Voted to authorize the filling of the Local Building Inspector (GN-12) vacancy in the Building Department.

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller
Absent: Bernard Greene

FIRE DEPARTMENT – PERSONNEL

Question of offering conditional employment to the following applicants for positions as Fire Fighters:

Aaron Cecil
Stephen Chin
Matthew McMahon
Grayson Russell
James Goff
Seth Mucha-Kangas
David Heavey

Town Administrator Mel Kleckner noted that Chief Ward has a relative that is in this group's training program, and he has recused himself from the hiring process. That candidate is not in this current list, but may appear on a future list.

On motion it was,

Voted to offer conditional employment to the following applicants for positions as Fire Fighters:

Aaron Cecil
Stephen Chin
Matthew McMahon
Grayson Russell
James Goff
Seth Mucha-Kangas
David Heavey

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller
Absent: Bernard Greene

HOLIDAY PARKING WAIVER

Economic Development Director Kara Brewton appeared to request a waiver of metered parking fees on behalf of local merchants and merchant associations for the following events in support of visiting, supporting, and shopping in Brookline business and commercial districts:

November 26, 2016 for Small Business Saturday (all day)
December 1, 2016 for First Light Festival (5-8pm)

Economic Development Director Kara Brewton reviewed the parking areas and the national Small Business Saturday, an event to promote local shopping.

On motion it was,

Voted to approve a waiver of metered parking fees on behalf of local merchants and

merchant associations for the following events in support of visiting, supporting, and shopping in Brookline business and commercial districts:

November 26, 2016 for Small Business Saturday (all day)
December 1, 2016 for First Light Festival (5-8pm)

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller
Absent: Bernard Greene

BOARDS AND COMMISSIONS - APPOINTMENTS

Question of making appointments/reappointments to the following Boards, Commissions, and Committees:

Conservation Commission
9th School at Baldwin Project Oversight Committee

Conservation Commission

On motion it was,

Voted to appoint Pamela Harvey to a full member of the Conservation Commission for a term ending August 31, 2019 or until a successor can be appointed.

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller
Absent: Bernard Greene

9th School at Baldwin Project Oversight Committee

Town Administrator Kleckner noted that they have not received the PTO candidates yet for membership review.

This agenda item was held.

WARRANT ARTICLES

Question of reconsidering the Board's vote on the following Warrant Articles for the November 15, 2016 Special Town Meeting:

Article 4	Tobacco
Article 22	FAR

Article 4 Tobacco

Selectman Daly stated that a Tobacco Control Committee has already been assembled and met. They have received this revised motion from the petitioner and support it. She noted that the Selectman have previously voted to refer this Article to Committee.

Some highlights in this motion:

- The age to purchase tobacco products is raised to 21.
- The minimum price for cigars would be \$2.50 each.
- Flavored tobacco or e-cigarette products are limited to retail tobacco stores (Brookline has one retail establishment)

Selectman Daly said that these provisions are in-line with neighboring communities. The Tobacco Control Committee will incorporate this Article into their recommendations.

On motion it was,

Voted 4-0 to reconsider Article 4.

Roll Call:

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller

Absent: Bernard Greene

On motion it was,

Voted 4-0 Favorable Action on Article 4 as revised by the petitioner as Supplement No. 1.

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller

Absent: Bernard Greene

Selectman Greene returned 6:25

Article 22 FAR

Chairman Wishinsky stated that the Board previously voted favorable action on this Article as proposed by the petitioners. There have been some concerns raised about the zoning districts.

Selectman Heller added that there appears to be a difference of opinion in the interpretation of the Article; the Building Inspector's interpretation differs from others who have reviewed it in relation to "T" districts.

Petitioner Richard Benka explained that the best way to clarify the Article's intent was to divide it into two separate votes.

From explanation:

What the First Vote does not include is By-Law changes that would eliminate the application of the Section 5.22 exemptions (which allow buildings at 120%, 130% or, now, even 150% of the

otherwise-allowable FAR) in T, F and M districts. The Second Vote, if approved, would eliminate those Section 5.22 exemptions in T, F and M districts. The divided vote poses the issue if Town Meeting wishes to address the T, F and M issue separately.

This would not prevent anyone from finishing attics; it would address large newly created unfinished space that would be pushed over the proposed FAR limit if they were finished. Also considered was non-conformity for existing dwellings.

Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

“Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed as of right in S and SC Districts provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section”:

Mr. Benka supports vote 2.

On motion it was,

1. Voted 5-0 to reconsider Article 22.

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller, Bernard Greene

On motion it was,

2. Voted 5-0 To divide the votes for Article 22.

Aye: Neil Wishinsky, Nancy Daly, Benjamin Franco, Nancy Heller, Bernard Greene

3. Voted 5-0 Favorable Action on

FIRST VOTE –

That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs):

A. By amending Section 5.09.2 (Design Review, Scope) as follows:

2. Scope.

In the following categories all new structures and outdoor uses, exterior alterations, exterior additions, and exterior **modifications or** changes, including exterior demolitions, which require a building permit from the building department under the Building Code, shall require a special permit subject to the community and environmental impact and design review procedures and

standards hereinafter specified. Exterior alterations, exterior additions and exterior changes **(except as provided below)**, including fences, walls, and driveways, to residential uses permitted by right in S, SC, T, and F districts; signs as regulated in §§ 7.02, and 7.03; and regulated facade alterations as defined and regulated in §7.06 shall be exempt from the requirements of this section.

....
j. any exterior addition **or exterior modification** for which a special permit is requested pursuant to §5.22

....
n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.

B. By amending Section 5.09.3.c.4 (Procedure, Photographs) as follows:

4. Photographs – Photographs show the proposed building site and surrounding properties, and of the model (if required). Applications for alterations, **modifications** and additions shall include photographs showing existing structure or sign to be altered and its relationship to adjacent properties.

C. By amending Section 5.09.4.c (Design Review Standards, Relation to Streetscape) as follows:

c. Relation of Buildings to the Form of the Streetscape and Neighborhood—Proposed development shall be consistent with the use, scale, **massing, height,** yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area, **including existing abutting buildings and existing buildings that conform to the zoning by-law on lots of similar size in the neighborhood.** The Board of Appeals may require modification in massing, **scale, height, setbacks** or design so as to make the proposed building more consistent with the form of **such existing buildings and** the existing streetscape, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination.

Examples of changes that may be required include addition of bays or roof types consistent with those nearby; alteration of the **massing, scale, setbacks and** height of the building to more closely match **such** existing buildings **and the existing streetscape**, or changes to the fenestration. The street level of a commercial building should be designed for occupancy and not for parking. Unenclosed street level parking along the frontage of any major street as listed in paragraph 2., subparagraph a. of this section is strongly discouraged. Otherwise, street level parking should be enclosed or screened from view.

D. By amending Sections 5.22.1.a, 5.22.1.b and 5.22.1.c (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, General Provisions) as follows:

- a. Any expanded unit (individual residential units subject to an increase in gross floor area as per this Section) shall not be eligible to be subsequently divided into multiple units. **If the limitations set forth in this paragraph 1, subparagraph a, or the limitations in paragraph 2 regarding separate dwelling units, should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.**
- b. Insofar as practicable, the additional floor area allowed pursuant to this Section shall be located and designed so as to minimize the adverse impact on abutting properties and ways, and interior conversions shall be considered preferable to exterior additions. **Any exterior additions or modifications shall further comply with the provisions of §5.09, including §5.09.4.c, §§ 9.03 to 9.05, and this Section. The limitations and standards set forth in such provisions shall also guide the Zoning Board of Appeals in determining under G.L. c.40A, §6 whether a change, extension or alteration is substantially more detrimental to the neighborhood than an existing nonconforming use.**
- c. Additional floor area shall be allowed pursuant to this Section only if the Certificate of Occupancy for the original construction was granted at least ten years prior to the date of the application for additional gross floor area under this section or if there is other evidence of lawful occupancy at least ten years prior to the date of such application. **In the case of the substantial demolition of a structure or of an increase in the number of units, the time period prior to such demolition or unit increase shall not be counted toward the required ten-year waiting period, and the ten-year waiting period shall be deemed to commence with the grant of a new Certificate of Occupancy after such demolition or unit increase. As used in this paragraph 1, subparagraph c, “substantial demolition” shall mean the act of pulling down, destroying, removing or razing a structure or a significant portion thereof, by removing one or more sides of the structure, or removing the roof, or removing 25% or more of the structure.** If the limitation set forth in this paragraph 1, subparagraph c should be found to be invalid, § 5.22 shall be deemed null and void in its entirety, and no increase in gross floor area shall be allowed pursuant to § 5.22.

E. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as-of-right~~, provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

a. Any exterior modifications that are made to the structure to accommodate the conversion shall be subject to **the procedures, limitations, and conditions specified in §5.09, §§9.03 to 9.05, and this Section.** ~~the façade and sign design review process as provided in §7.06, paragraph 1 of the Zoning Bylaw.~~ No exterior modifications made under the provisions of this subparagraph may project above the ridge of the roof nor project beyond the eaves.

b. Any increase in gross floor area through such basement or attic conversion shall be limited such that the total resulting gross floor area of the building(s) after such conversion is no more than **130%** ~~150%~~ of the total permitted in Table 5.01 (the “permitted gross floor area”).

F. By amending Sections 5.22.3.a., 5.22.3.a.1 and 5.22.3.a.2 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, **§§9.03 to 9.05**, and this Section for an existing residential building which meets the following basic requirements:

- 1) The existing building(s) is located on a lot (or part of a lot) in a district with a permitted maximum floor area ratio no greater than 1.5.
- 2) The existing building contains at least one residential unit but no more than ~~four~~ **two** total units. For the purpose of this paragraph 3, subparagraph (a)(2), total units shall be defined to include all residential dwellings, offices, and commercial spaces within the building.

G. By amending Section 7.06.1.c (Regulated Façade Alterations) as follows:

~~Conversion of attic or basement space in Single-Family and Two-Family Residential Dwellings where exterior modifications beyond that required by the State building code are made.~~

4. On motion it was,
SECOND VOTE --

VOTED: That the Town amend the Brookline Zoning By-Law as follows (additions appear as underlined bold text; deletions appear with strike-throughs; changes from First Vote are shaded):

H. By amending Section 5.22.2 (Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units, Conversion of Attic or Basement Space) as follows:

2. Conversion of Attic or Basement Space in Single-Family and Two-Family Residential Dwellings.

Conversions of attics or basements to habitable space for use as part of an existing single- or two-family dwelling, not as a separate dwelling unit, and effectively increasing the gross floor area of the dwelling, shall be allowed ~~as of right~~ **in S and SC Districts** provided the following conditions are met in addition to the conditions set forth in paragraph 1 of this Section:

I. By amending Sections 5.22.3.a.1 (Special Permit for Exceeding Gross Floor Area for Residential Dwellings) as follows:

a. The Board of Appeals may allow, by special permit, a maximum gross floor area greater than permitted gross floor area for an existing residential building(s) on a single lot, subject to the procedures, limitations, and conditions specified in §5.09, ~~§9.03 to~~ **9.05**, and this Section for an existing residential building which meets the following basic requirements:

1) The existing building(s) is located on a lot (or part of a lot) in ~~a~~ **an S or SC District** with ~~a permitted maximum floor area ratio no greater than 1.5.~~

J. By amending Section 5.22.3.b.2 as follows:

~~In all T, F, M-0.5, M-1.0, and M-1.5 Districts, a special permit may be granted for an increase in floor area that is less than or equal to 20% of the permitted gross floor area, whether it be for an exterior addition, interior conversion, or a combination of the two. The total increase in floor area granted by special permit for all applications made under this paragraph 3, subparagraph (b)(2), or any prior version of Section 5.22, shall not exceed 20% of the permitted gross floor area.~~

[WARRANT ARTICLES](#)

[Further review and possible reconsideration of the Board's vote on Warrant Articles for the November 15, 2016 Special Town Meeting.](#)

No other Articles taken up.

There being no further business, the Chair adjourned the meeting at 6:45 p.m.

ATTEST