

**WARRANT ARTICLE EXPLANATIONS
FILED BY PETITIONERS FOR THE
NOVEMBER 14, 2023
FIRST SPECIAL TOWN MEETING**

ARTICLE 1

Submitted by: Select Board

This article is inserted in the Warrant for every Town Meeting in case there are any unpaid bills from a prior fiscal year that are deemed to be legal obligations of the Town. Per Massachusetts General Law, unpaid bills from a prior fiscal year can only be paid from current year appropriations with the specific approval of Town Meeting.

ARTICLE 2

Submitted by: Human Resources

This article is inserted in the Warrant for any Town Meeting when there are unsettled labor contracts. Town Meeting must approve the funding for any collective bargaining agreements.

ARTICLE 3

Submitted by: Select Board

CONSENSUS PLAN WARRANT ARTICLE SUMMARY

I. Executive Summary

This warrant article would enable the Town of Brookline to comply with Massachusetts General Law Chapter 40A, Section 3A, *Multi-Family Zoning As of Right in MBTA Communities* (the “MBTA Communities Act,” “MBTA-CA,” or the “Act”) while creating opportunities for the construction of additional housing units for a variety of household income levels in a manner that preserves the nature of the communities in which such housing might be built. This warrant article:

- creates a new overlay zoning district to permit as-of-right development of multi-family dwelling units within existing multi-family (“M”) zoning districts;
- amends the Emerald Island Overlay District to incentivize multi-family units;
- allows for significant new development of affordable units at a Brookline Housing Authority (“BHA”) property on Walnut and High Streets;
- amends the Affordable Housing By-Law so that it can be enforced without a special permit; and
- creates a new zoning district to permit as-of-right development of multi-family dwelling units along Harvard Street.

The many rezoning proposals that make up the facets of this warrant article were developed through the efforts of numerous individuals and committees, as detailed further below. The Select

Board identified elements of those proposals it believed most closely reflected the desires of the community, modified them as appropriate, and combined them into this framework, aiming to achieve broad community consensus in complying with the MBTA-CA.

“Consensus” is not universal endorsement; it is an agreement reached by compromise and an understanding of the realities of the community. Both those who seek accelerated housing development in Brookline and those who seek a reduction in such development will find elements of this plan that they may not agree with. But the Select Board developed it by listening to those advocates’ underlying concerns and attempting to synthesize their proposed solutions, to the extent possible, in this warrant article.

In short, this article aims to put Brookline on the path to an inclusive, sustainable and affordable future in which the many aspects of the community that make it such a desirable place to live are preserved or enhanced.

II. Requirements of the Act

MBTA-CA: The MBTA Communities Act mandates that all communities served by the MBTA (except Boston) “shall have a zoning by-law that provides for at least one district of reasonable size in which multifamily housing (defined to include buildings with three or more dwelling units) is permitted as of right” and that the district shall “have a minimum gross density of 15 units per acre” and be located “not more than 0.5 miles” from an MBTA stop. The state has promulgated guidelines offering definitions of terms like “reasonable size” and detailing how communities should comply with the law’s mandate.

“As of right” means that a community cannot deny permits to build based on subjective requirements (like a special permitting process). Neutral rules of general applicability, however, such as demolition delays and design guidelines, are permitted. Communities can use site plan and design review processes to ensure those rules are being followed. This warrant article uses design guidelines developed via a robust community-centered process to ensure any new development under the revised Zoning Bylaw (“ZBL”) will be designed to residents’ standards.

Brookline Requirements Under the MBTA-CA: Brookline is defined as a “Rapid Transit” MBTA community and is required to provide zoning capacity for 6,990 units in a multi-family district of at least 41 acres. The capacity threshold represents 25% of the Town’s total dwelling units. The deadline for adoption of the ZBL amendment is December 31, 2023.

Multi-Family Zoning – Theoretical Capacity vs. Reality: Under the MBTA-CA compliance model, land is treated as vacant, with no credit or penalty for multi-family units that have already been built. The as-of-right theoretical capacity is determined by zoning parameters that do not require a special permit such as minimum lot size, floor area ratio (FAR), building height, setbacks, open space, and parking requirements. Conversely, the Act does not require that any units actually be built once the zoning is in place; it merely requires communities to meet the theoretical capacity targets via a formula the state has developed.

The Department of Planning and Community Development (“DPCD”) estimates that the passage of this warrant article may, eventually, lead to approximately 955-1,540 additional net new

housing units in the coming decades, of which at least 207-262 (17%) will be reserved for people of low to moderate incomes. This is far fewer than the theoretical maximum of 6,990 but still a robust yet sustainable growth in housing stock.

III. Procedural History of the Plan's Development

Consensus Plan: DPCD's initial approach was to satisfy the MBTA-CA by making tweaks to the number of units that automatically require a special permit, removing geographical areas that automatically trigger a special permit, reducing parking requirements, or allowing some two-family districts to allow three units. The Select Board charged staff to pursue zoning amendments that would actually incentivize additional units, so the Department shifted efforts towards ongoing zoning analysis for the Harvard Street corridor in order to meet the minimum theoretical unit threshold requirements. During Select Board meetings about this topic, some residents voiced concerns only one option for compliance was being offered, which led to the Select Board appointing a MBTA-CA Multi-Family Permitting Committee to find options with the MBTA-CA and opportunities to incentive through zoning the construction of additional multi-family units. In parallel, the Select Board authorized hiring an expert form-based zoning developer and facilitator to develop the Harvard Street plan in conjunction with the community. Both the Committee and the Planning Department have been updating the Select Board on their progress on a monthly basis. As a result of this work, this Warrant Article proposes to use the M-District+ Proposal to comply technically with the MBTA-CA and the Harvard Street Proposal to generate the kind of sustainable housing growth at multiple price points in forms commensurate with what the community has designed.

M-District+ Plan: The Committee evaluated multiple options for compliance with the MBTA-CA including zoning amendments for the two-family (T) districts, accessory dwelling units, and other areas currently zoned for commercial and mixed-use. An analysis of zoning capacity resulted in the Committee's decision to focus on the Town's M Districts as the vehicle to achieve MBTA-CA compliance. The "M-District+" proposal includes three elements: (1) a zoning overlay district incorporating certain multi-family ("M") zoning districts to comply with the legal requirements of the MBTA-CA; (2) overlay provisions with allowances for increased density to facilitate "as-of-right" redevelopment of the BHA property at Walnut and High Streets; and (3) an amendment to the Emerald Island Special District ("EISD") zoning to permit a broader range of multi-family housing units to be developed. Items (2) and (3) are the "+" of the "M-District+" caption.

M-District - Core Proposal: The M-District plan incorporates two fundamental provisions. First, it retains all existing dimensional requirements of the ZBL for the applicable multi-family districts (i.e., M-1.5, M-2, and M-2.5) including maximum FAR, building height, minimum setbacks, and open space. Second, it allows applicants to apply for a Site Plan Review process administered by the Planning Board instead of a discretionary Special Permit design review procedure. Site Plan Review incorporates objective architectural design standards formulated to ensure that new construction is compatible with existing streetscapes. The M-District overlay also includes a lower minimum parking ratio (1.0 per unit, except 0.5 per studio unit) and requires a Special Permit for development projects over 30,000 square feet. A consultant's analysis of the core proposal indicated that it would likely result in 0-500 units of net new housing being developed.

Walnut - High Property: The proposed overlay district would amend the zoning regulations for the BHA site located at Walnut and High Streets to facilitate a substantial as-of-right redevelopment of this property. The zoning would increase maximum FAR and building heights and reduce minimum setbacks and on-site parking requirements. The zoning amendment accommodates a redevelopment program that would include an estimated 175 to 225 total dwelling units, a significant increase over the existing 100 units. All units would be either new construction or (if any existing units were retained rather than replaced) totally renovated, and fully ADA compliant, thus increasing both the quality and quantity of affordable housing provided at the property. Maximum building height would be directed to the north side of the site fronting on Walnut Street to minimize the shadow impacts of new development. Redevelopment of this site under as-of-right zoning would provide substantial benefits over forcing the BHA to pursue a Comprehensive Permit under MGL Chapter 40B including a shorter permitting period, greater cost certainty, and improved funding opportunities.

Emerald Island Special District (EISD): The EISD is located between Brookline Avenue and River Road. The EISD zoning overlay was adopted by Town Meeting in 2016 and allowed bonus height for various commercial and residential uses. The permitted types of residential development are limited to micro units, live-work units, and senior units. To date only the Hilton Garden Inn has been developed under this overlay zoning; no residential development has occurred in the past six years. The proposed amendment would allow units without age or size restrictions as a permitted use to the overlay provisions thereby expanding the opportunity to meet a wider range of the residential market demand. Redevelopment in this area would still face challenges of parcel assembly and easement constraints but the proposed zoning modification could unlock potential for 80 to 115 new dwelling units in an initial development phase.

Harvard Street Proposal: The Harvard Street Proposal, developed with the participation of approximately 300 community members over the course of 40+ meetings, incentivizes new housing at a variety of price points along a major commercial corridor in a sustainable way by capping building height at four stories, requiring variance in facades, and increasing the affordable housing income cap for developers who agree to build out ground-floor commercial space for their tenants. It requires any new multi-family development in the new districts to have affordable housing built on-site, regardless of size. It places a maximum cap on residential as-of-right parking spaces at 1.0/unit, but developers can apply to have that increased to 2.0, and the Select Board specifically instituted a minimum parking space requirement of 0.5/unit (though this can be lowered or eliminated by special permit). It is estimated that 800 new units designed to standards that the community set could result from the plan.

Compliance and Site Plan Review: An analysis by RKG Associates, Inc. and Innes Associates Ltd., confirmed that the M-District+ Plan on its own exceeds the theoretical unit threshold required by the MBTA-CA. Additionally, these consultants have been working with staff to ensure the language of both the M-District+ Plan and the Harvard Street Proposal meets all requirements of the MBTA-CA. The Metropolitan Area Planning Council is separately preparing a market study to demonstrate that our Affordable Housing requirements do not impede multi-family development, as required by the MBTA-CA. The state is expected to confirm the proposed By-Law amendments, including Site Plan Review standards conforms to MBTA-CA by early November. All new construction is still required to meet applicable provisions in the Town's

General By-Laws, including Articles 5.2 Preservation Commission Demolition Delay, Article 5.9 - Energy Codes, Article 8.26 - Stormwater Management and Article 8.41 -Tree Preservation.

Housing Choice: “Housing Choice” under M.G.L. c.40A, sec.5, provides that zoning amendments allowing “as-of-right” multi-family or mixed-use development in eligible locations can be adopted by a simple majority vote, rather than a two-thirds vote, at Town Meeting. Although the Guidelines under the MBTA Communities Act explicitly permit Site Plan Review with objective design standards including architectural design as an element of “as of right” zoning under that Act, the Attorney General’s Office has informed the Town that it will be interpreting the terms “as of right” for purposes of “Housing Choice” differently. Thus, design standards such as those included in the M-District+ Plan or such as those included in Form Based Zoning under the Harvard Street plan will likely require a 2/3 vote of Town Meeting.

Additional information and resources are available through the Town’s website at www.brooklinema.gov/2044.

CONSENSUS PLAN WARRANT ARTICLE EXPLANATION

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I. INTRODUCTION

A. Background

In 2021, Massachusetts adopted the MBTA-CA, which requires communities served by public transit – except Boston - to create at least one zoning district of reasonable size near such transit where multifamily housing (3+ units) is allowed to be built “as of right.” “As of right” means that the community cannot impose discretionary review like a special permit process, though it can require compliance with rules of general applicability like demolition delays, design standards, and site plan reviews. Additionally, the Act requires that the district shall “have a minimum gross

density of 15 units per acre” and be located “not more than 0.5 miles” from an MBTA stop. The Act directed the Department of Housing and Community Development (“DHCD”; now called the Executive Office of Housing and Livable Communities, or “EOHLC”) “to promulgate guidelines to determine if an MBTA community is in compliance with this section.”

Under DHCD Guidelines Brookline is defined as a “Rapid Transit” MBTA community and is required to provide the theoretical capacity for 6,990 units in a multi-family zoning district of at least 41 acres. The deadline for adoption of the Zoning Bylaw (ZBL) amendment is December 31, 2023 requiring action by Town Meeting in November or December. The M-District+ plan was formulated to bring Brookline into compliance with the MBTA-CA by the State deadline.

The MBTA-CA is a broad statutory mandate that was not fine-tuned for various communities within the MBTA service area. Thus, for Rapid Transit communities, the multi-family unit as-of-right capacity requirement was set at 25% of a municipality’s total housing units in 2020, regardless of the percentage of already-existing multi-family units, existing density or land availability. Under the MBTA-CA compliance model, land is treated as vacant, with no credit or penalty for multi-family units that have already been built. Theoretical capacity is determined by as-of-right zoning regulations including factors such as floor area ratio (FAR), building height, setbacks, open space, and parking requirements.

In addition, the MBTA-CA Guidelines issued by DHCD impose limitations that make compliance particularly challenging for mixed-use transit-oriented areas. Until a change on August 17, 2023, when the prohibition was somewhat relaxed, the Guidelines prohibited municipalities from mandating any commercial use in compliant districts, even first-floor retail, or other commercial uses, in existing commercial corridors. The Guidelines do not allow communities to limit the size of residential units, thus precluding a requirement for smaller units that might be more affordable than the larger units that have become popular with developers catering to Baby Boomer “empty nester” demand. The MBTA-CA, in short, is not about affordable housing or housing production; it is about making multi-family permitting easier.

The initial approach from DPCD was to satisfy the MBTA-CA by making tweaks to the number of units that automatically require a special permit, removing geographical areas that automatically trigger a special permit, reducing parking requirements, or allowing some two-family districts to permit as-of-right three units.

Pursuant to the Select Board’s charge to pursue zoning amendments that would incentivize additional units, DPCD pivoted towards an ongoing zoning analysis for the Harvard Street commercial corridor that could potentially meet the minimum theoretical unit capacity requirements. This resulted in the proposed rezoning of 63 acres along the Harvard Street corridor.

In early February of 2023, the Select Board authorized hiring an expert form-based zoning developer and facilitator to develop the Harvard Street plan in conjunction with the community, and that process began in earnest. At the same time, the Select Board emphasized to the state how certain aspects of the MBTA-CA, such as its refusal to allow commercial-use mandates, were counterproductive for Brookline.

As the community-centered development of the Harvard Street Proposal proceeded, members of the community expressed interest in seeing whether alternatives for compliance with the MBTA-CA existed and what form such alternatives might take, and filed a Warrant Article to create a Moderator’s Committee to do so. The Select Board addressed that interest by creating the MBTA-CA Multifamily Permitting Committee, charging it with “[d]evelop[ing] at least two solutions” for compliance that would “likely incentivize at least net 699 new housing units [being] constructed.”

The “M-District+” solution was developed by a volunteer “MBTA-CA Multi-Family Permitting Committee” (the “Committee”) consisting of Chair Richard Benka, Rick Fredkin, Carol Gladstone, Ken Lewis, Linda Olson Pehlke, David Pollak, Katha Seidman, and Neil Wishinsky. The “M-District+” proposal includes three elements: (1) a zoning overlay district incorporating certain multi-family (or “M”) zoning districts to comply with the legal requirements of the MBTA Communities Act; (2) a portion of that overlay district with allowances for increased density to facilitate “as-of-right” redevelopment of the Brookline Housing Authority (BHA) property at Walnut and High Streets; and (3) an amendment to the Emerald Island Special District (ESID) zoning overlay to permit a broader range of multi-family housing units to be developed. Items (2) and (3) are the “+” of the “M-District+” caption. Redevelopment of the BHA property within the Walnut-High Overlay District will include 100% affordable and 100% ADA compliant housing units.

The Harvard Street Proposal, developed with the participation of approximately 300 community members over the course of 40+ meetings, incentivizes new housing at a variety of price points along a major commercial corridor in a sustainable way by capping building height at four stories, requiring variance in facades and roofs to prevent “canyonization,” and increasing the affordable housing income cap for developers who agree to build out ground-floor commercial space for their tenants. Even excluding the largest parcels, it is estimated that 800 new units designed to standards that the community set could result from the original version of the plan. But the community has continually raised concerns that the MBTA-CA’s strictures regarding commercial space are a potential deal-breaker.

As such, this Consensus Proposal would use the M-District+ Proposal to comply technically with the MBTA-CA and the Harvard Street Proposal to generate the kind of sustainable housing growth at multiple price points in forms commensurate with what the community has designed.

B. The August 17, 2023 MBTA-CA Guideline Revisions

On August 17, 2023, the State, through the EOHLC, announced a revision to the MBTA-CA Guidelines. These revisions permit, in addition to as-of-right multi-family development as provided in the original version of the Guidelines, a new category of so-called “mixed-use development districts.” Such districts would be subject to several specific limitations in addition to the limitations already imposed by the Act. Commercial (i.e., non-residential) uses can now be mandated in such districts, but such uses would be limited to the ground floor of buildings and can be “no more than thirty-three percent of the floor area of a building, lot, or project.” Minimum parking requirements for any non-residential uses are prohibited. The location of the mixed-use district needs to be pre-approved by the State prior to a vote of the municipality’s legislative body.

And, finally, the residential unit capacity of the mixed-use development district can be no greater than 25% of the municipality's capacity mandate.

If used to comply with the Act, the multi-family areas meeting at least 75% of the municipality's capacity mandate would therefore continue to be subject to the original MBTA-CA provisions, including the absence of the ability to require commercial use, even on the first floor.

II. THE M-DISTRICT+ PLAN

A. Committee Proceedings

The Committee was appointed at the end of April 2023 and held sixteen public meetings through the spring and summer. These meetings included public hearings on the three elements of the M-District+ proposal which were held on July 18th (M-District Overlay), August 14th (Emerald Island Special District modifications) and August 15th (Walnut-High (BHA) Overlay District). In addition, members of the Committee worked with representatives of the Brookline Housing Authority, Housing Advisory Board and Planning Board to refine its proposals. Significant analytical and drafting work was performed by Committee members. Critical staff support was provided by the DPCD Director, Kara Brewton.

The Committee considered a variety of options before settling on the M-District+ proposal. It considered zoning changes that would have allowed as-of-right multi-family development in commercial areas other than Harvard Street. These included lower Beacon Street near St. Mary's Street, Beacon Street near Summit Avenue, the Washington Square area, Commonwealth Avenue between Crowninshield and Pleasant St. and areas along Boylston Street. Including these commercial zones posed the problem that no commercial uses could be required and would have diverted the Committee's time and focus.

The Committee also considered rezoning existing two-family (T) districts to permit an additional unit, thus allowing three units on each property and potentially meeting the requirements of the MBTA-CA. However, there are only about 1,100 properties that could add units in the T-Districts, so that the maximum capacity yield would be less than 3,300 units, well below the 6,990-unit capacity required for MBTA-CA compliance. In addition, three-unit buildings would not be subject to the Town's inclusionary zoning by-law requiring affordable units. And, finally, the Committee was advised that allowing Accessory Dwelling Units (ADUs) with limited unit sizes as the third unit – as opposed to a blanket rezoning from two-family to three-family – would not satisfy the Act as this zoning amendment would be merely an extension of existing development and thus not increase capacity for new development as contemplated by the MBTA-CA.

This led the Committee to focus on the Town's M Districts as the vehicle for MBTA-CA compliance. The Committee recommends this approach, with the incorporation of objective design standards as outlined more fully below. In addition, the Committee recommends zoning changes that would facilitate redevelopment of the Brookline Housing Authority site on Walnut and High Streets and permit a wider range of multi-family unit types within the Emerald Island Special District between Brookline Avenue and River Street, as also explained below.

B. The Core M-District Zoning Overlay

1. Geographic Boundaries.

As noted, the Town's General and Local Business zoning districts nor the two-family T-Districts would on their own meet the requirements for compliance with the MBTA-CA. Consequently, the Committee focused on the Town's M-Districts for the core of its proposal. (M-Districts within the existing ZBL range from M-1.0 to M-2.5 with the numerical reference being the maximum floor area ratio (FAR) permitted on parcels within the district.) The Committee's "first cut" included all

of the M-District parcels in the Town that are located within one-half mile of an MBTA stop. That proposal was submitted to RKG Associates. RKG reported that, using an assumption of one parking space per unit and existing zoning dimensional requirements, the selected M-District parcels would provide a multi-family capacity of approximately 16,000 units, far in excess of the requirement of 6,990 units.

Accordingly, the Committee scaled back the geographical area of the proposed overlay zoning district in a manner responsive to comments and concerns that had been articulated during its process. First, it removed certain areas within the National Register District along Beacon Street, addressing concerns about impacts on historic structures. Second, it removed M-1.0 districts, addressing concerns about impacts that as-of-right zoning might have on demolition risks in areas now characterized by “house-style” buildings. At the same time, this change addressed two other concerns. It removed from the M-District several commercial properties (e.g., 637 Washington Street and Kurkman’s Market on Cypress Street) as well as a few other iconic structures (e.g., the “Dutch House” on Netherlands Road and pre-Civil War properties on Linden Street).

RKG’s subsequent analysis of these revised boundaries, utilizing the further site plan review standards outlined below, resulted in a calculated capacity for MBTA-CA compliance of 8,182 units, still well above the Town’s mandated requirement of 6,990 units. It would thus theoretically be possible to remove further areas from the proposed core M-District by amendment, though the capacity impact of any further geographic changes would need to be determined.

2. Objective Design Standards

The potential legal background regarding “as-of-right” zoning and design standards is discussed in more detail in the “Legal” section below. A key feature of the proposed M-District overlay is that a property owner who opts for “as-of-right” approval would not be subject to discretionary design review but would have to meet objective design standards addressing site plan requirements and standards of architectural design. The property owner would also have to comply with the other non-discretionary provisions of the Zoning By-Law as well as provisions of the Town’s General By-Laws.

State law dictates that under “as-of-right” approval a special permit with discretionary review cannot be required in the designated MBTA-CA zoning district. Thus, the provisions of Zoning By-Law Sections 5.09.2.a (major corridor), b (attached dwellings in groups of 3 or more), d (4 or more units), m (Coolidge Corner Design Overlay District), and o (property deemed historically significant by the Preservation Commission) providing for discretionary design review, with ultimate determination by the Zoning Board of Appeals, could not be imposed in the proposed M-District.

However, in place of discretionary design review, the Town under the MBTA-CA can impose objective design standards that would be applied under Site Plan Review, with the Planning Board determining whether the objective standards have been met. While there is likely to be little short-term development in the core M-Districts, the Committee is sensitive to the fact that Town Meeting has sought to ensure that new construction in neighborhoods will be in keeping with existing streetscapes.¹ Thus, the objective design standards recognize the architectural fabric of

¹ Town Meeting has recently demonstrated such concerns in the passage of Warrant Article 13 at the November 2022 Special Town Meeting, providing for design review where a stay of demolition has been ordered but not removed by the Preservation Commission, and Warrant Article 16 at the May 2023 Annual Town Meeting, providing for design standards in T-5(NH) zones.

the Town's existing multi-family neighborhoods and seek architectural sensitivity for any future "as-of-right" development.

In addition, while there cannot be discretionary design review under the MBTA-CA Guidelines, "as-of-right" development must continue to comply with other non-discretionary provisions of the Zoning By-Law as well as the Town's General By-Laws. Thus, as stated in the Guidelines, such a development must "comply with applicable dimensional regulations." Therefore, an "as-of-right" project in the core M-District areas will be governed by the existing Zoning By-Law dimensional requirements for maximum building height; maximum floor area ratio; minimum front, side, and rear yard setbacks; and minimum open space. New construction within the overlay district (or anywhere in Town) would still be required to meet provisions in the Town's General By-Laws, including but not limited to Articles 5.2 - Preservation Commission Demolition Delay, 5.9 - Energy Codes, 8.26 - Stormwater Management, and 8.41 - Tree Preservation.

Finally, a property owner cannot "double dip." An applicant cannot take advantage of "as of right" site plan review and simultaneously seek a special permit, variance or other relief from applicable zoning standards. Any request to deviate from the existing standards would remove a project from "as-of-right" review.

The Committee has included only one exception to this rule, and that relates to parking. The M-Districts meeting the MBTA-CA standard for proximity to transit stations are within the Town's Transit Parking Overlay District (T-POD). The M-District proposal provides that no more than one off-street space per dwelling unit may be required, or 0.5 for studio units. This relaxes the T-POD requirements for any redevelopment that does not add units.² Moreover, the M-District proposal explicitly allows an "as-of-right" applicant to seek a reduction in the required off-street parking under Section 6.02.1.b of the Zoning By-Law, removing that section from the prohibition against "double dipping." It should be noted that seeking a discretionary permit under Section 6.02.1.b is not mandatory; it would be the applicant's choice and is not required. The option to seek such relief from parking requirements would thus be permissible under the MBTA-CA.

The objective design standards under site plan review control architectural design, as explicitly permitted by the MBTA-CA Guidelines. A range of permissible building styles are permitted in the M-District, consistent with existing building types and dimensional requirements in the zoning districts. Four-Story Apartment Buildings (as well as smaller building styles) are allowed, but in accordance with prevailing architectural design the façade material must be either natural or cast stone, stucco, brick, or terracotta tiles.

While flat and mansard roof styles are permitted in addition to sloping styles (gable, gambrel, and hip), any flat or mansard roof must have a cornice meeting minimum dimensional requirements at the top of the façade. In addition, brick and terracotta buildings must have window sills and lintels of natural or cast stone or precast concrete, with brick buildings also permitting brick set in a pattern different from that of the façade wall cladding. Brick facades must be divided by horizontal string courses of stone, cast stone or precast concrete. There are corresponding design standards for clapboard buildings. Entrances must be sited toward the street, or in the case of courtyard

² Without this amendment, the T-POD parking requirement where dwelling units are not added is 1.0 spaces for a studio, 1.4 spaces for a one-bedroom unit, and 2.0 spaces for dwelling units with 2 or more bedrooms. With the addition of dwelling units, the T-POD requirement is 0.5 space per studio and 1.0 space for other units.

buildings, toward the courtyard open to the street, so that buildings do not turn their backs on the public way.

The objective architectural design standards permitted under the MBTA-CA Guidelines are designed to allay concerns within M-District neighborhoods that “as-of-right” permitting without discretionary design review or “guardrails” could lead to new buildings with flat wall panels, “punched” windows, and little to no detailing, all inconsistent with existing streetscapes.

The Committee did include one further protection by requiring design review for large apartment buildings (greater than 30,000 square feet) in the core M-District. This restriction was incorporated into the RKG calculation of theoretical capacity under the M-District+ Plan.

C. Walnut-High Overlay District (BHA)

One of the two complementary zoning districts incorporated in the M-District+ Plan is the proposed Walnut-High Overlay District. This district encompasses an area of approximately 14 acres roughly bounded by High Street, Route 9, and Pond Avenue, incorporating the Brook House, condominium units on Juniper Street, and the BHA property at Walnut and High Streets. The provisions of the proposed overlay district would apply only to parcels with frontage on both Walnut and High Streets; these include the BHA property and the Town-owned parcel occupied by Fire Station #1.

The BHA site encompasses approximately 2.62 acres. Existing improvements comprise approximately 97,123 square feet in four buildings that were originally constructed in 1962. The buildings are a mix of garden style, townhouse, and high-rise apartments. They include an eight-story building fronting on High Street and three two-story buildings fronting on Walnut and Juniper Streets.

The existing buildings have a total of 100 dwelling units. Seventy-six percent (76%) of the units are occupied by families and twenty-four (24%) of the units are occupied by seniors. Second-floor units in the garden apartments fronting on Walnut Street are accessed through an exterior stair and do not meet current Americans with Disability (ADA) standards. Only five existing units are wheelchair accessible.

The proposed overlay district would amend the zoning regulations for the BHA site to facilitate a substantial as-of-right redevelopment of this property. The overlay zoning would allow maximum building heights of 60 to 80 feet (depending on right-of-way frontage), a maximum FAR of 2.5, reduced setbacks, and a minimum parking ratio of 0.1 spaces per unit. A summary of the proposed changes to the ZBL Table of Dimensional Requirements and Transit Parking Overlay District requirements are shown on Exhibit A.

The Committee believes that this zoning overlay would be MBTA-CA compliant, meeting criteria for as-of-right multi-family development of sufficient density (> 15 units per acre) within a contiguous subdistrict area of sufficient size (> 5 acres) and located within one-half mile of an MBTA stop. The additional height, FAR, and reduced parking are tied to the requirement that units would be 100% affordable. The percentage of affordable units is well beyond the State’s 10% baseline allowance, but the affordability would be the decision of the property owner, the BHA, and not imposed by the Town.

The amended dimensional regulations would accommodate a redevelopment program that is anticipated to include approximately 175 to 225 total dwelling units, a substantial increase from the existing 100 dwelling units. All units would be either new construction or totally renovated, and fully ADA compliant, thus increasing both the quality and quantity of affordable housing provided at the property.

The total number of dwelling units and the unit mix will be impacted by three to-be-determined factors: the cost-benefit of renovating or replacing the existing eight-story building at 22 High Street; the occupancy mix between families and seniors; and lower on-site parking ratios that should enable a higher percentage of the building area to be used for residences rather than structured parking.

The anticipated redevelopment program would feature buildings sited in proximity to High, Walnut, and Juniper Streets around a large central landscaped courtyard. Maximum building height would be directed to the north side of the site fronting on Walnut Street to minimize the shadow impacts of new development. According to the BHA, mid-rise buildings are the preferred scale to stay below requirements of the Massachusetts High Rise Building Code.³

As with the rest of the M-District+, the objective design standards that apply to the BHA property address wall cladding materials, roof types, façade articulation, fenestration, the orientation of principal entrances, and tree canopy.

The development of affordable housing units on the BHA property would not be delayed by constraints that apply to many parcels in Brookline's business districts, including acquiring site control or assembly of multiple parcels. Moreover, the large 2.62-acre BHA site would permit phased redevelopment to accommodate relocation of existing residents into affordable units on site.

Redevelopment of this site under as-of-right zoning would provide substantial benefits over forcing the BHA to pursue a Comprehensive Permit under M.G.L. c. 40B. First, it would provide the BHA's architect and engineering design team with clear directives in the form of objective design standards and flexible dimensional and parking requirements. Second, it would formally incorporate the Planning Board, which is comprised of experienced architects and landscape architects, in the site plan and design review process in lieu of the Zoning Board of Appeals. Third, it will likely significantly reduce the permitting period and discretionary permitting risk, thus providing greater certainty of construction and financing costs. Fourth, it would increase the fair market value of the BHA's land for the purpose of calculating its contribution to project financing. Finally, adoption of this as-of-right up-zoning would send a strong signal to federal and state housing agencies of broad Town support for expansion at the BHA site, a key factor in the scoring

³ Thus, while the overlay district would allow a maximum height of 80 feet only along Walnut Street (and Route 9), the high-rise building code is triggered at 70 feet. Even if the BHA utilized the full 80-foot height, the building height would be less than the Brook House (12 stories), 2 Brookline Place (8 stories), the Hilton Garden Inn (9 stories), and the existing overlay districts for Two Brookline Place (115 feet) and the Emerald Island (85 feet to 110 feet).

of competitive funding applications. All of these factors will assist BHA as it seeks multiple sources of funding for the redevelopment.

The proposed zoning amendments will provide relief to promote a significant near-term increase in the number and quality of affordable housing units in Brookline. The Committee strongly recommends inclusion of these provisions as part of the M-District+ Plan.

D. EISD Zoning Amendment

The Emerald Island Special District (EISD) was passed by Town Meeting in 2016. This zoning overlay allowed bonus height for only three types of residential development – micro units, live-work units, and senior units. It was anticipated at that time there would be sufficient market demand for smaller dwelling units in this corridor given its proximity to the Longwood Medical Area. However, while the overlay district resulted in the development of the Hilton Garden Inn hotel, no residential development has occurred in the past six years.

After consultation with property owners and developers in the area, the Committee recommends an amendment to the Emerald Island Special District to allow the full range of multi-family housing (i.e., units without age or size restrictions) as a permitted use. While there would still be hurdles to redevelopment, including parcels occupied by established businesses and a drainage easement that divides the district, it has been estimated by the Department of Planning & Community Development that the proposed zoning modification could unlock short-term redevelopment potential for 80 to 115 new dwelling units.

It should be noted that parcels in the Emerald Island Special District would not comply with the MBTA-CA on their own because the overlay zoning requires that at least 70% of street frontage be devoted to non-residential uses (the same problem as MBTA-CA compliance in commercial areas). Nevertheless, the fact that the core M-District Plan and the Walnut-High provisions satisfy the MBTA-CA makes possible other zoning changes, such as at Emerald Island and Harvard Street, that can incentivize housing units without conforming to MBTA-CA Guidelines.⁴

All other aspects of the Emerald Island Special District rezoning, which passed Town Meeting with overwhelming support in 2016, remain unchanged.

III. HARVARD STREET ZONING

⁴ Three other plans were considered by the Committee. The Committee did not vote on or recommend revisions to the Harvard Street plan, in view of the fact development of that plan was in the hands of the Planning & Community Development Department and their consultant Opticos, a national leader in form-based code. At the very end of its deliberations, the Committee was presented with a plan for development of approximately 100 housing units on properties bounded by Hammond, Heath and Sheafe Streets in the Chestnut Hill Village area. After a public hearing, the Committee voted not to recommend action on the plan since it had been received too late for the Committee to thoughtfully consider it. The Committee, as noted in text, also considered that possibility of adding a third unit in existing two-family (T) districts. While that would not provide MBTA-CA compliance, the Committee does note that the Housing Advisory Board and DPCD plans to propose changes encouraging the development of Accessory Dwelling Units (ADUs) in both single-family and T-Districts at the Spring 2024 Annual Town Meeting.

New zoning is proposed for the Harvard Street Main Street Corridor to replace the existing zoning. The new zoning is not an overlay district.

A. Description of District Boundary

As shown in the warrant article, the Harvard Street Main Street Corridor encompasses a majority but not the entirety of the parcels in Brookline Village Commercial National Register District (which includes some parcels on Washington Street, Station Street, Kent Street, and Webster Place) up through Coolidge Corner, JFK Crossing, and beyond to the Verndale cross-street with the following **exceptions**:

- 7, 9, 11, 17, 21 Kent Street (house-scale buildings in a general business district)
- 11 Pierce Street (Health Department)
- 50 School Street (Pierce School)
- 155 Harvard Street (2+-acre site of supermarket)
- The “100% Corner at Beacon Street: 279 Harvard Street, 1310 Beacon Street, 1319 Beacon Street, 1324 Beacon Street, 1329 Beacon Street
- 314 Harvard Street (“The Arcade”)
- 523 Harvard Street (2+-acre site of clothing retailer)

B. Overall Design Intent: Placemaking to reinforce historic main street district

Originally built circa 1663⁵ as a connection between Boston and Cambridge, Harvard Street today links three urban corridors:

- The state highway, Route 9/Boylston Street, to the south;
- densely developed Commonwealth Avenue in the vicinity of the Boston University campus to the north;
- and at its center it intersects with historic Beacon Street, redesigned by Frederick Law Olmsted in 1886 to expand what was originally a country road to a wide boulevard,

⁵Staff gratefully acknowledges the research assistance Ken Liss, Director of the Brookline Historical Society, who provided the “Early Records of Muddy River” as a source. According to Mr. Liss, these records were extracted from Boston Records, as this was 43 years before the hamlet of Muddy River, a part of Boston, became the independent town of Brookline. The road was authorized in November 1662 to be laid out in February 1663.

enabling the construction what was then the nation's second largest electric trolley line (and oldest in operation today).⁶

As a major connector in the public-transit grid, Harvard Street boasts intersections with three major branches of the Green line network: The Riverside branch at Brookline Village, the Cleveland Circle branch at Coolidge Corner and Beacon Street, and the Boston College branch on Commonwealth Avenue. Coursing along Harvard is the Route 66 bus, the Commonwealth's second busiest bus route connecting Nubian Square in Roxbury with Harvard Square in Cambridge.

However, Harvard Street's most valued characteristic is its pedestrian-oriented environment.

Identified as the general purveyor of goods and services to nearby residents, Harvard Street knits three defined highly walkable commercial neighborhoods: Brookline Village from Station to School Streets, Coolidge Corner from Webster to Babcock Streets, and J.F.K. Crossing from Stedman to Thorndike Streets. Main Street in character, Harvard Street's origins as a commercial district began in Brookline Village. Originally rural, Brookline Village was the first area of Brookline, at the time entirely farmland, to develop in the late 1870s as a mixed-use commercial center, with shops on the ground floor and residences on the upper three floors. Designated in the 1970s, the Brookline Village Commercial District is in the National Register of Historic Places, honoring the materials and superb artisanship of the architects and builders who constructed these Classical Revival structures.

This richly complex mix of uses in close proximity gives Harvard Street its quintessential Main Street character—where storefronts close to the public way are a focal point in this mixed-use pedestrian-oriented environment with housing choices within a short walking distance of established retail, food, and service uses. This pattern is a successful example of the walkable neighborhoods to which transit-oriented policies aspire, and which north Brookline well exemplifies.

As the Regulatory Division's Harvard Street Study analyzed, the current zoning is disconnected from the prevailing and valued development pattern—neither protecting its character-defining qualities nor enabling its success to be replicated on lots that have the capacity for commercial and housing growth. Specifically, the current zoning requirements lack any design standards, necessary for both desirable design outcomes and legally defensible design-review decisions. Moreover, these cherished historic assets, which provide housing over retail, could not be built today under the current zoning: Despite maximum allowed heights ranging from 40 feet to 45- and 50-feet, impractical floor-area ratios and suburban open-space requirements, for example, relegate half of Harvard Street properties to one- and two-stories, effectively precluding additional multi-unit housing altogether. Harvard Street has evidence of successful retail thriving at these height limits;

⁶ Cynthia Zaitzevsky, "Frederick Law Olmsted: A Preliminary Study of His Public Projects" Proceedings of the Brookline Historical Society. Fall 1977, pp. 42-65. (Brookline Public Library: [Brookline Room])

974.45 B77hn and posted to High Street Hill Association website: https://highstreethill.org/?page_id=1276#introduction

however, when retail is less successful, or when the landlord wishes to offer competitive leasing terms to attract local and unique businesses, the restrictive zoning in place precludes owners from developing their properties to add complementary uses, such as much-needed housing, that provide another source of revenue as a buffer in down-market cycles.

The foundation for this zoning approach was the Harvard Street context itself and a wide range of community stakeholders:

1. Objective documentation of specifications of each block's exemplary qualities by Planning Department staff in the two-year Harvard Street Study.
2. Four phases of community workshops facilitated by a premier form-based zoning consultant, Opticos Design, and extensive community engagement to identify desirable design outcomes and prohibit or deter conditions not desired for replicating
3. Placed-based zoning approach to reinforce those desired qualities in objective design standards that can be measured, rather than left to more subjective interpretation

The key outcomes of the Harvard Street placemaking project are:

- Capping height at four stories, enough to be economically feasible for mixed uses, but not so lucrative that a property owner with successful retail would be tempted to demolish indiscriminately
- Requiring buildings to be closer to the sidewalk, characteristic of prime pedestrian streets
- Requiring active ground floor design standards to enhance pedestrian-staying activities like shopping, browsing, socializing
- Maintaining ground-floor heights of 15 feet and doubling the minimum depth of commercial uses to 30 feet for functional retail
- Customizing frontage types unique to Harvard Street's subareas to enhance variety along the streetscape and to accommodate different user experiences such as courtyard eateries and interactive open spaces

This approach ensures that the three core business districts—Brookline Village, Coolidge Corner, and JFK Crossing—benefit equitably from the design standards crafted to highlight their unique frontage types and to allow a range of businesses from small shops to large anchors, as well as a mix of active and more passive uses. Furthermore, it enhances the connectivity in those segments of Harvard Street that lie between the core business districts and are currently more auto-oriented, by prohibiting new curb cuts and automotive service uses in favor of uses that enhance the pedestrian and shopping experience.

As a whole, Harvard Street will benefit from a coherent plan that not only reinforces its physical identity and variety but also enables growth of both residential and commercial uses that sustain its very function as a Main Street district.

C. Form-Based Zoning Approach

Form-based zoning takes the vision of the built environment that the community desires and sets forth measurable design standards to match that vision. It encourages less separation among uses for more walkability. The proposed zoning relies on a form-based zoning approach to offer more predictability in design outcomes, essential for projects that would be permitted by right.

In contrast, conventional zoning separates uses so that zones are either residential or commercial or office—the antithesis of the walkable, transit-oriented main street districts like Harvard Street, where a mix of uses in close proximity encourages pedestrian activity.

Conventional zoning also relies on performance metrics such floor area ratio that have the semblance of scientific precision but in fact do not ensure predictable design outcomes. The lack of objective design standards means that developers are inclined to maximize the building envelope with little relationship to the existing context.

A third drawback of conventional zoning is the emphasis on proscribing, or prohibiting, certain conditions without prescribing desired outcomes—frustrating abutters, who do not understand the intent for their neighborhoods, and applicants, who have no insight into planning their projects, which may mean an arduous design review process that contributes to housing production costs.

Section 11-A.04 provides a quick guide to planning a project under the proposed form-based zoning: (1) determine the maximum building envelope, (2) connect the building to the public realm through frontage types, and (3) design the building using massing techniques to avoid monolithic blocks. For example:

- Maximum building setbacks, unlike minimum yard setbacks, prescribe building placement for a consistent street wall, closer to the sidewalk in this case. Instead of one maximum overall height, the standards prescribe the minimum height for functional commercial ground floors and as well as setbacks on upper floors at the rear to give abutters more access to sky and light. These details matter and are challenging if not impossible to negotiate if not codified in zoning.
- Frontage types, such as shopfronts, forecourts, and projecting porches, help distinguish different subareas to add variety to the pedestrian experience.
- Architectural standards will help facilitate the integration of contemporary architectural styles into the existing historic fabric. For example, use of projecting bays and corner elements are options for shaping building volumes in a way that bridges traditional and contemporary styles with common massing and façade articulation principles.

For a comparison a height and setbacks in the current zoning and the proposed zoning, see Exhibit B.

D. New Zoning Districts

The proposed zoning for the Harvard Street Main Street Corridor consists of three main zones and two subzones as follows. The new zoning would replace the Local Business, General Business, and Multifamily districts that currently span parcels in the Harvard Street Main Street Corridor.

Main Street (H-MS)

- Ground-floor commercial mandated
- Ground-floor commercial incentive available
- Residential allowed
- Medium-to-large building footprints
- Four-story height max, mostly attached or nearly attached buildings, flat or Mansard roofs
- No more than 5 feet front setback max for at least 80% of front facade
- Allowed frontage types are closest to public way such as shopfront and common entry
- More active retail uses and smaller size shops
 - Sub-zone Main Street Open (H-MS-O)
 - Same building form as H-MS
 - Allows both active and passive uses
 - Ground-floor commercial incentivized

Main Street Transitional (H-MST)

- Ground-floor commercial incentive available
- Residential allowed
- Medium-to-large building footprints
- Four-story height max, mostly attached or nearly attached buildings, flat or Mansard roofs
- No more than 10 feet front setback max for at least 65% of front facade
- Expands allowed frontage types allow for more front yard activity such as forecourt and dooryards
- A range of passive and active uses, including large and small store sizes.
 - Sub-zone Main Street Transition Limited (H-MST-L)
 - Same building form as H-MST but commercial is prohibited
 - This zone is not applied to any areas on the latest proposed zoning map but is included in regulation as a potential future option

Main Street Neighborhood (H-MSN)

- Ground-floor commercial incentivized
- Residential allowed
- Small to medium footprints, detached house-scale buildings
- 2.5-stories max, sloped roof forms
- Deeper landscaped front setbacks

E. Integrated Town Goals

Because main streets in general are richly complex, any discussion of their regulations involves a heady mix of significant policy topics from preservation to economic development to affordable housing and more. The Harvard Street project was an opportunity not only to better implement adopted Town goals but to integrate them in a way that enhances reciprocal benefits. In response to community stakeholders who sought concise fact sheets to understand how the new zoning treats key policy issues, staff created series of one-page summaries for Accessibility, Affordable Housing and Equity, Ground-Floor Commercial, Neighborhood Character, Preservation, Sustainability, and Parking and Mobility. The fact sheets can be downloaded here: <https://bit.ly/45M2KGz>

Below are highlights of ways the proposed zoning implements a variety of policy areas, using the mnemonic device P.L.A.C.E.S as a tool to discuss these key topics.

P	Preservation and Neighborhood Character <ul style="list-style-type: none">▪ Form-based zoning reinforces existing building envelopes to deter demolition▪ Standards for active ground floor uses maintains storefronts as the focal point of the district▪ Specialized architectural standards for the Brookline Village National Register District
	Parking and Mobility <ul style="list-style-type: none">▪ Would require a minimum parking 0.5 spaces per dwelling unit and a max of 1 space per dwelling.▪ Allowed to reduce or eliminate minimum by special permit▪ Allowed to exceed maximum up to 2 spaces max per dwelling unit by special permit
L	Local Business
A	Affordable Housing <ul style="list-style-type: none">▪ Would mandate that all affordable housing be located on-site▪ Would provide for subsidized workforce housing by expanding affordable housing income limits as part of a ground-floor commercial incentive
	Accessibility <ul style="list-style-type: none">▪ Would require compliance with ADA and State accessibility standards for ground floor commercial access▪ Would ensure that each accessible unit would have an accessible parking spaces (if occupant needs one)
C	Commercial Growth <ul style="list-style-type: none">▪ Housing is facilitated by not mandated in each project. This means that 100% commercial buildings are allowed.
E	Racial and Social Equity <ul style="list-style-type: none">▪ Facilitating functional zoning means opportunities to apply inclusionary zoning on every project with residential use. Inclusionary zoning is a foundational way of integrating racial and social diversity to avoid segregation.
S	Sustainability <ul style="list-style-type: none">▪ Sets forth new sustainable site standards to mitigate heat island impacts take place in the corridor, enhance tree canopy, and introduce low impact development technique to manage stormwater runoff.

F. Evidence of How the Community Shaped Zoning

Community members had profound impact in shaping regulations that affect their neighborhoods.

Community Concern	Zoning Solution
Sufficient parking: residential use	Allows 2 parking spaces max per unit by Special Permit (1 parking max per unit by right). Select Board requires minimum of 0.5/unit, though this may be reduced or eliminated by Special Permit.
Sufficient parking: retail employees and caregivers	Allows Shared Parking provision by right for complementary uses (private parking only)
Sufficient parking: accessible units	Requires ADA parking space for each ADA unit
Loss of on-street parking	Prohibits new curb cuts on Harvard, subject to DPW review; requires driveways set back 40 ft from Harvard; parking areas set back 30 ft min from Harvard.
Accessible storefronts	Requires demonstration of ADA compliance for access
2-family zone access to light + sky	Requires 10 ft rear setback + additional 10 ft fourth floor rear step-back (typical lots) abutting T, F, M districts on lots 100 feet or deeper.
Merging Harvard lot with 2-family lot	Eliminates district boundary loophole in Article 3
Gaping garage entrances	Requires garage doors
Desire for varied retail uses	Updates Table of Uses for contemporary use
Sufficient ground floor retail depth	Doubles the required min depth for GF commercial use to 30 feet x 60% of frontage
Preserve 19 th century buildings	Specialized arch standards for 4-story Brookline Village NRD. Limits “Autrefois” block to 2.5-story form
Intensity of trash production + rodent control	Requires trash storage enclosed in building footprint or, if outdoors, in locked enclosures

G. Table of Uses and Commercial Mandates and Incentives

The Table of Uses has been streamlined in a more concise format for easier navigation, especially for prospective retailers exploring opportunities in Brookline. Because the current table of uses (Table 4.07) has been completely streamlined, a “track changes” version of that table for comparison with the proposed table of uses is not possible, though an annotated version will be available for the public.

H. Site Plan and Design Review

An enhanced Site Plan and Design Review process specific to the Harvard Street Main Street Corridor would establish the Planning Board as the review authority providing a public process for the review of by right projects. (The Board of Appeals remains the authority to grant special permits and variances.)

Because site plan review is not a provision of M.G.L.c.40A (the Zoning Act), but a creation under Home Rule, case law advises that the procedures for the site plan review mimic those required for the special permit, especially by affording the applicant the right to a public hearing before the board issuing the decision.

Site plan and design review is not discretionary; it is used to shape a project not deny it. Although regulating private land requires the zoning to feature clear and unambiguous language in any case, this obligation is especially critical for site plan and design review. The benefit of form-based zoning is the relative clarity it provides through measurable, objective design standards for legally defensible decisions and conditions that mitigate impact.

In fact, the State of California has now mandated that municipalities incorporate objective design standards (form-based zoning) in local zoning as a strategy for addressing the housing crisis by streamlining the permitting process.

The Site Plan and Design Review bylaw for the Harvard Street Main Street Corridor integrates the following components for which there are both enforceable standards and general criteria for review:

Historic resources; building design and placement; open space; sustainable site and building design; landscaping; accessibility, inclusive design; and pedestrian safety; parking and mobility; stormwater, tree canopy, and low impact development; outdoor lighting and screening; emergency access and safety; environmental health; and impact mitigation on public ways and infrastructure.

I. Benefits and Safeguards

A summary of community concerns addressed during the due diligence process is in the table below.

Risk Scoped	Assessment or Safeguard
Non-compliance with design intent	Site Plan and Design Review expands Planning Board authority on by right projects, ensures public hearings
No non-luxury, subsidized housing	New zoning est. 800 new units. STM lowered on-site affordable threshold 20 to 11 units. Reciprocal benefits with GFC incentive would create subsidized workforce housing. Tested with financial proforma for feasibility.
Racial segregation	Feasible not theoretical application of IZ means all residential projects will be mixed-income, fundamental to integrating racial/social diversity
Displacement of businesses	4-story max height is the sweet spot. Anything taller could tempt landlord with lucrative retail to redevelop.
Loss of ground floor retail to residential	Professional proforma by EDAB confirms GF retail is highest and best use: Mandate or incentive NOT necessary. Redundant financial incentive that increases value of each unit by \$150,000 makes GF retail a certainty. Doubled the min depth of ground floor retail to 30 feet.
Competition for public parking	Town prohibits overnight parking on-street and >2 hours. Professional parking demand analysis (2022) places demand between 0.3 and 0.7 per unit—anything less is developer's risk. New zoning would allow Shared Parking for caregivers, etc.

Risk Scoped	Assessment or Safeguard
Impact of pollutants into groundwater; stormwater runoff	Sustainable site standards (flexible menu of options for compact urban areas) makes mitigation practical
Heat island impact, land surface temperatures in enviro justice areas	Sustainable site standards (flexible menu of options for compact urban areas) make mitigation practical
More pollution from cars	Parking max of 1 space / unit. Sec. 6.05 requires 1.1 bike sp/unit Sec. 6.10 requires 100% EV readiness infrastructure
No room for trees	Rear yard setbacks abutting two-family provide landscape opportunities. Flexible menu supports Tree Fund
Narrow sidewalks	Any shallow front yard setbacks required pavers. Fences allowed but not encouraged. Some Frontage types would enable cafe seating areas.
No means to extract mitigation funds	As long as Site Plan Review bylaw stipulates reasonable conditions, mitigation is still possible on by right projects
Demolition of historic structures or existing housing stock	Height is capped at 4 stories to match height of existing buildings. Architectural standards will ensure sensitive renovations to limit loss of cultural assets

IV. AFFORDABLE HOUSING BY-LAW AMENDMENTS

Objectives of the amendments to Section 4.08, Affordable Housing Requirements include:

- (i) removing the requirement for a special permit solely to administratively comply with the affordable housing requirements for projects with four or more units (necessary to comply with the MBTA-CA Guidelines);
- (ii) inserting into the By-Law existing processes with regards to how deed-restricted affordable units and/or payment options are secured;
- (iii) clearly stating rental affordable units shall be for household incomes that do not exceed 50% of the Area Median Income (AMI) and owner-occupied units shall be for household incomes that do not exceed 80% AMI (unless alternatives are explicitly allowed);
- (iv) clarifying the difference between Cash in Lieu of Units options for developments with fewer than 11 units from other Alternative Requirements that would still require a special permit with a positive recommendation from the Housing Advisory Board and Planning Board; and
- (v) general editing for clarity, numbering, and formatting.

A draft of the above amendments were discussed and agreed to by the Housing Advisory Board (HAB) at their August 2, 2023 meeting. The incentive for developers in the Harvard Street Main Street Corridor zoning district to build out ground floor commercial space for their tenants in exchange for increasing on-site affordable unit income limits to 80% AMI for rental units and 100% for owner-occupied units was discussed and agreed to by HAB at an earlier meeting on June 7, 2023. The intention was for DPCD staff, the Housing Advisory Board, and the Economic Development Advisory Board (EDAB) to develop the specifics of this option in the Affordable Housing Standards and Guidelines and new Ground Floor Commercial Incentive Standards and Guidelines.

The Select Board voted on August 15, 2023 that projects in the Harvard Street Main Street Corridor zoning district shall located any required affordable units on-site and that the Cash in Lieu of Units option shall not be available for projects with fewer than 11 dwelling units in this district. Additionally, the Select Board voted that the Ground Floor Commercial Incentive Guidelines shall be recommended by the Economic Development Advisory Board and voted on by the Select Board. Additional amendments are included for Section 4.08 that incorporate these votes. EDAB and HAB will likely take up discussion of both of these Guidelines at their October meetings.

Finally, the MBTA-CA Guidelines state that any community requiring more than 10% of residential units as affordable units must work with a third party to conduct an economic feasibility analysis to demonstrate that the policy does not effectively prohibit multifamily development. DPCD staff is working with the Metropolitan Area Planning Council to complete this work, which will be submitted to the state as part of our pre-adoption review application. DPCD expects to hear back from the Massachusetts Executive Office of Housing and Livable Communities regarding MBTA-CA compliance prior to the Town Meeting vote, and will post any applications and decisions online at www.brooklinema.gov/2044.

V. LEGAL ISSUES

A. The Status of Objective Design Standards Under “As-Of-Right” Zoning

The MBTA-CA, enacted as M.G.L. c.40A, sec.3A, requires MBTA communities to create zoning districts where multi-family housing can be created “as of right.” The controlling MBTA-CA Guidelines define the statutory mandate to mean that the construction and occupancy of multi-family housing is allowed in the district “without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval.” In conformity with State law, the Committee’s M-District plan therefore makes “as-of-right” approval available to property owners within the M-District.

At the same time, the MBTA-CA Guidelines recognize “site plan review as a permissible regulatory tool, including for uses that are permitted as of right.” “Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building,⁷ and screening of adjacent properties.” It cannot “unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations.”

The site plan review included in the M-District plan does not include any required discretionary review by any Town body, but rather objective design standards that are consistent with the architectural context of existing M-District neighborhoods. These objective standards do not impose delay and permit architectural design and materials that are technologically and economically feasible and compliant with building, energy, and climate goals.

For example, a range of building types is allowed that includes the existing type and scale of existing buildings in the affected M-Districts. The number of permitted stories is consistent with applicable dimensional regulations for height. Building massing is consistent with most existing buildings in the M-Districts. Materials, fenestration, and other design standards were developed in consultation with architects on the Committee and Planning Board to include standards that are both technologically and economically feasible. The proposed M-District plan was reviewed by RKG Associates, Inc. and deemed to meet or exceed the requirements of MBTA-CA compliance (e.g., district area, density, dwelling unit capacity, dimensional requirements, parking requirements, etc.).

As another example, in the case of clapboard buildings, the design standards allow not only wood clapboard, but also, in recognition of current technology, durable composite materials (such as Hardie Board). The same is true of molding materials. Stucco, brick, and terracotta tiles (the latter added at the request of architects on the Planning Board) are permitted on the larger 3-story and 4-story apartment buildings and have proven to be demonstrably feasible options for 21st century developers in Brookline. For instance, terracotta tiles together with detailing were used on 1140 Beacon Street, and brick has been used not only on market-rate

⁷ See also Osberg v. Planning Bd. of Sturbridge, 44 Mass. App. Ct. 56, 57 (1997) (cited in the MBTA-CA Guidelines) (“communities have introduced [site plan review] into their zoning by-law as a means of controlling the aesthetics and environmental impacts of land use.”)

buildings (e.g., 1160 Beacon Street) but also successfully on multiple buildings proposed and developed under Chapter 40B (e.g., 455 Harvard Street, 500 Harvard Street). The standards also permit a choice of stone, cast stone or precast concrete as materials for detailing for brick buildings, and in response to suggestions from the architects on the Planning Board, expanded the range of permissible cornice materials to include GFRG (Glass Fiber Reinforced Gypsum) or GFRC (Glass Fiber Reinforced Concrete).

In accordance with the ability of design standards to address “environmental impacts,” the M-District+ plan introduces “tree canopy” standards in accordance with the Town’s Urban Forest Climate Resiliency Master Plan.

There was significant discussion on the Committee regarding fenestration standards. The original proposal was to require traditional multi-pane sash (single-hung or double-hung) windows to be consistent with the existing window styles that predominate in the M-Districts. In response to comments by the Committee’s architect that other window types would be more energy efficient and more consistent with modern codes, those more stringent requirements were eliminated. Similarly, a requirement that glass have 88% transmissibility was eliminated as overly prescriptive for a residential district, replaced only by the requirement that glass not be tinted, reflective or colored. Also, in response to architectural commentary and to facilitate energy code compliance, the range of the combined window and door square footage as a proportion of a facade was set at a broad 20% to 70%.

In addition, under the M-District plan, an applicant is given the express right to opt for discretionary design review rather than utilizing as-of-right site plan review. The base zoning is thus always available to an owner or developer.

During the Committee’s public hearing, some commenters criticized the design guidelines as focusing on “traditional” rather than “contemporary” architectural design to allay neighborhood concerns and facilitate passage of the zoning overlay district by Town Meeting. In response to these comments, a section was added giving the Select Board (with advice from the Planning Board and others and after a public hearing) authority to issue design guidelines for materials and designs associated with “contemporary” architecture.

But even without that provision, the Guidelines make clear that it was permissible for the Town to address “architectural design” and even “aesthetics” through site plan review and non-discretionary design standards. The standards in this case are objective and do not impose delay or technological or economic infeasibility, satisfying the operative legal touchstones under the Guidelines.

The warrant article thus complies with MBTA Communities Act, and the requisite multi-family “as-of-right” capacity exists within 0.5 miles of MBTA subway stations.

B. Severability

The objective design standards have not simply been drafted to comply with the explicit provisions of the MBTA-CA Guidelines. They also reflect a careful balance between two goals: first, allaying neighborhood concerns about intrusive architectural design and thus seeking to ensure approval by Town Meeting, and, second, utilizing standards that are technologically and likely economically feasible.

As-of-right permitting is thus part of a “package” that includes the objective design standards. If those standards were removed, the balance of the package would collapse and as-of-right development could proceed without the guardrails that were intended to be in place. That would not only flout the MBTA-CA Guidelines but also the intent of Town Meeting.

Thus, the M-District+ package includes the following severability clause:

Severability. If any provision of this Section 5.06.4.o is found to be invalid by a court of competent jurisdiction, the remainder of Section 5.06.4.o shall not be affected but shall remain in full force, provided, however, that Sections 5.06.4.o.2 and 5.06.4.o.3 shall be considered an integrated whole, and if any part of these Sections are invalidated by a court of competent jurisdiction or otherwise, the entire Section 5.06.4.o shall expire and no longer be in effect six months following such decision. The invalidity of any provision of this Section 5.06.4.o shall not affect the validity of the remainder of the Brookline Zoning By-Law.

As drafted by the Committee, this provision is a compromise. If some or all of the design standards were somehow found invalid, the Town would have six months to revise the overlay district zoning before it expired and became null and void. Thus, the Town would not immediately be thrown into non-compliance with the MBTA-CA. On the other hand, the provision would not become an unlimited “blank check” to developers to proceed without either discretionary design review or objective design standards, because, absent Town Meeting action, the “as-of-right” zoning in Section 5.06.4.o would expire after six months.

C. Definition of “Family”

The Committee considered the appropriate definition of “Family” for purposes of the proposed M-District+ Zoning By-Law amendment. A definition that restricted the number of unrelated college students was discussed but deemed impractical and potentially in violation of fair housing laws. Ultimately, the Committee adopted the following definition which eliminates language from the existing ZBL definition:

~~FAMILY --- One or more persons, including domestic employees, occupying a dwelling unit and living as a single, non-profit housekeeping unit; provided, that a group of five or more persons who are not within the second degree of kinship, as defined by civil law, shall not be deemed to constitute a family.~~

The simplified definition of “Family” would apply Town-wide as it is a change proposed by the Select Board to the Base Zoning By-Law and not a revision specific to either the Harvard Street or to the M-District zoning proposals.⁸

⁸ The Committee, in its 2-3-2 vote, rejected the following additional proviso: “provided, however, that occupancy of a Dwelling Unit by more than four unrelated college or university students shall not be permitted.” The Committee decision was based in part on the suggestion of Town Counsel that the proviso could violate fair housing law. The purpose of the proviso was to minimize displacement of families (both traditional and non-traditional) by groups of college and university students.

EXHIBIT A
Details for Walnut-High Area in Overlay District

Overlay District Dimensional Requirements				Existing Zoning By-Law	
Building Fronting On:				Combined Site with Public Benefits	M-2.0
Dimensional Requirement (1)	Walnut St.	Juniper St.	High St.		
Maximum Floor Area Ratio (2)	N/A	N/A	N/A	2.5	2.0
Maximum Building Height (3) (4)	80	60	60	N/A	50
Setbacks Lot Lines (5)					
Lot Line - Front Yard	5	10	10	N/A	15' + (H/10)
Lot Line - Side Yard	10	10	10	N/A	(H+L)/6
Lot Line - Rear Yard	25	25	25	N/A	Minimum 30'
Setbacks Site Interior (6) (7)					
Interior - Side Yard	25	25	25	N/A	(H+L)/6
Interior - Rear Yard	25	25	25	N/A	Minimum 30'
Landscaped Open Space					
As % Total Gross Floor Area	N/A	N/A	N/A	10%	10%

Footnotes:

- (1) Existing Zoning By-Law (ZBL) Requirements: Section 5.01 - Table of Dimensional Requirements
- (2) Public Benefit Incentives (PBI) - ZBL Section 5.21 allows maximum FAR of 2.5 in non-buffer areas
- (3) PBI - ZBL Section 5.32 allows maximum building height of 60' in buffer areas (applicable to BHA site)
- (4) PBI height bonus does not apply to affordable housing but could be achieved with site improvements
- (5) H = Building height per ZBL Section 5.3; L = Length of wall parallel to lot line
- (6) Interior building setbacks ZBL Section 5.03 Spacing of Residential Buildings on the Same Lot
- (7) Interior site setbacks should not apply to temporary phased construction

Overlay Walnut-High Street District Minimum Parking Ratio Per Unit

Zoning	Studio	1-Bedroom	2-Bedroom	3-Bedroom +
T-POD (1)	1.0	1.4	2.0	2.0
T-POD with Increased Dwelling Units	0.5	1.0	1.0	1.0
T-POD with Special Permit	0.0	0.0	0.0	0.0
Proposed Overlay Requirements for 100% Affordable Units	0.1	0.1	0.1	0.1

Footnotes:

(1) Transit Parking Overlay District (T-POD) requirements per ZBL Section 6.02.2.i.

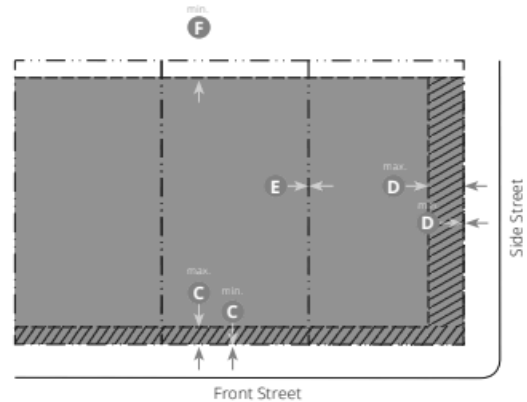
EXHIBIT B**Harvard Street Main Street Corridor: Comparison of Current Zoning and Proposed Zoning
(Height and Setbacks)****CURRENT Zoning: Setbacks**

	Front Yard Setback Min	Side Street Setback Min (Not regulated as such; treated as another Front Yard)	Side Yard Setback Min	Rear Yard Setback Min
Local Business L				
• Commercial Only	10 feet	See Front Setback	0	0
• Residential with Comm.	10 feet	See Front Setback	10' + (L/10')	30 feet
General Business G-2.0 General Business G-1.75				
• Commercial Only	0	See Front Setback	0	10' + (L/10')
• Residential with Commercial < 40' tall	15 feet	See Front Setback	10' + (L/10')	30 feet
• Residential with Commercial >40' tall	15' + (H+10')	See Front Setback	(H+L)/6'	at least 30 feet or (H+L)/6, whichever is greater
Multifamily 2.0 Other dwelling structure				
• < 40' tall	15 feet	See Front Setback	10' + (L/10')	30 feet
• >40' tall	15' + (H/10')	See Front Setback	(H+L)/6'	at least 30 feet or (H+L)/6, whichever is greater
Multifamily 1.0 Other dwelling structure	15 feet	See Front Setback	10' + (L/10')	30 feet

PROPOSED Zoning: Setbacks

Main Street and Main Street Open: H-MS / H-MS-O p. 10

D. Building Placement	
Setbacks	
Primary Building	
Front (Facade Zone)	0 ft min.; 5 ft max. C
Side Street (Facade Zone)	0 ft min.; 10 ft max. D
Side	0 ft min. E
Rear	F
Abutting T, F, M, or MS Districts	10 ft min.; 5 ft min. lots <100 ft deep
Abutting G or L Districts	5 ft min.
Abutting an Alley	2 ft min.
Accessory Structure	
Rear	5 ft min.
Building Facade	
Facade Zone	Front St. Side St.
Facade Zone Defined by Primary Building	80% min. 60% min.
Facade Design & Building Massing	
All building Facades shall be designed in compliance with Chapter 11-4 (Massing, Facade Articulation and Architectural Elements Standards).	

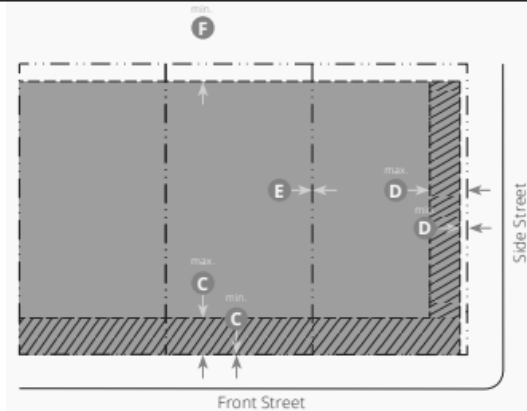


Key

- ROW/ Lot Line
- Setback Line
- Buildable Area
- Acc. Structures Only
- Facade Zone

Main Street Transitional and Transitional Limited: H-MST / H-MST-L p. 14

D. Building Placement	
Setbacks	
Primary Building	
Front (Facade Zone)	0 ft min.; 10 ft max. C
Side Street (Facade Zone)	2 ft min.; 10 ft max. D
Side	0 ft min.; 5 ft max. E
Rear	F
Abutting T, F, M, or MS Districts	10 ft min.; 5 ft min. lots <100 ft deep
Abutting G or L Districts	5 ft min.
Abutting an Alley	2 ft min.
Accessory Structure	
Rear	5 ft min.
Building Facade	
Facade Zone	Front St. Side St.
Facade Zone Defined by Primary Building	70% min. 60% min.
Facade Design & Building Massing	
All building Facades shall be designed in compliance with Chapter 11-4 (Massing, Facade Articulation and Architectural Elements Standards).	



Key

- ROW/ Lot Line
- Setback Line
- Buildable Area
- Acc. Structures Only
- Facade Zone

Main Street Neighborhood: H-MSN p. 18

Main Street Neighborhood: H-MSN p. 18			
D. Building Placement			
Setbacks			
Primary Building			
Front (Facade Zone)	15 ft min.; 25 ft max.	C	
Side Street (Facade Zone)	15 ft min.; 25 ft max.	D	
Side	6 ft min.	E	
Rear	20 ft min.	F	
Accessory Structure			
Rear	5 ft min.		
Building Facade			
Facade Zone	Front St.	Side St.	
Facade Zone Defined by Primary Building	50% min.	50% min.	
Facade Design & Building Massing			
All building Facades shall be designed in compliance with Chapter 11-4 (Massing, Facade Articulation and Architectural Elements Standards).			

Key

- ROW/ Lot Line
- Setback Line
- Buildable Area
- Acc. Structures Only
- Facade Zone

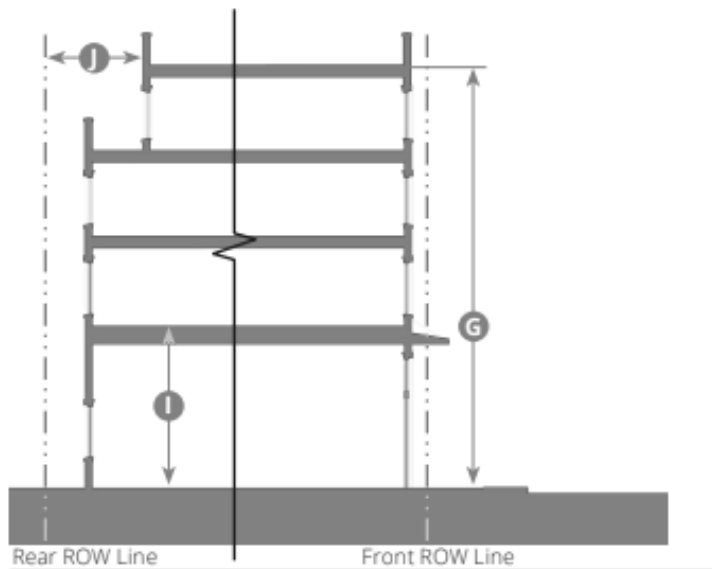
Current Zoning: Height

Harvard Street Zoning Height Limits	All Residential Use	All Commercial Use	Mixed Uses
L- 1.0	<i>Not allowed</i>	40 feet	40 feet
G-1.75 G-2.0	<i>Not allowed</i>	45 feet	45 feet Per Sec. 5.07 use M-2.0 zoning for side- and rear-yard setback and usable open requirements, but M-2.0's 50-foot max height allowance is not extended to mixed uses.
M-2.0	50 feet	<i>Not allowed</i>	<i>Not allowed</i>
M-1.0	40 feet	<i>Not allowed</i>	<i>Not allowed</i>

PROPOSED ZONING: Height

See excerpts below:

Main Street Zone (H-MS and subzone H-MS-O)



Key

--- ROW Line

E. Building Form

Height

Primary Building

Stories	4 stories max.	
To Top Highest Eave or lower ridge of Mansard roof ¹	48 ft max.	G
Floor-to-Floor (Ground Floor)	15 ft min.	I

Roof Form

Flat or Mansard Allowed	See Section 11-4.07
-------------------------	---------------------

Roof Mounted Elements

Height	10 ft max.
--------	------------

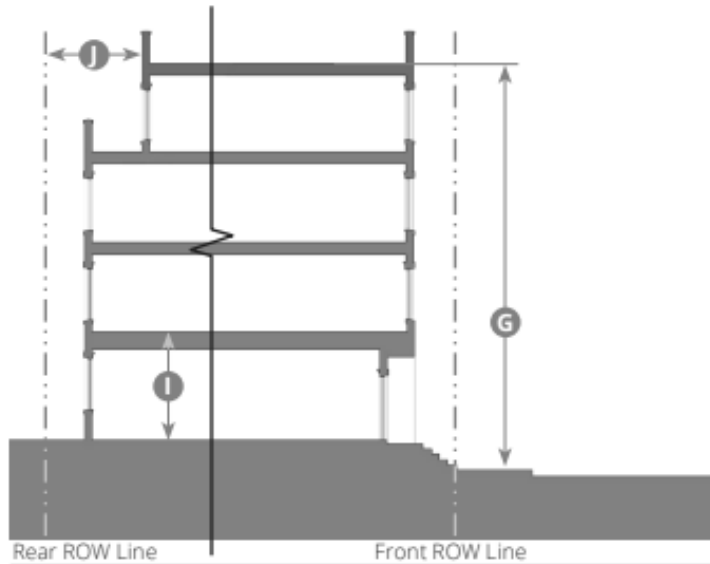
Adjacency Requirements

Stepback at Rear Parcel Line

Abutting T or F District		I
Parcels < 100' deep or	none required	
Parcels >= 100' deep	Within 20 ft of property line; 3 stories & 35 ft in height max.	
Abutting L, G, or M District	none required	
Abutting an Alley	none required	

¹ See Section 11-10.02 for means of measurement of height.

Main Street Transitional Zone (H-MST and subzone H-MST-L)



Key

--- ROW Line

E. Building Form

Height

Primary Building

Stories	4 stories max.	
To Top Highest Eave or lower ridge of Mansard roof ¹	48 ft max.	G
Floor-to-Floor (Ground Floor)	15 ft min.	I

Roof Form

Flat or Mansard Allowed	See Section 11-4.07
-------------------------	---------------------

Roof Mounted Elements

Height	10 ft max.
--------	------------

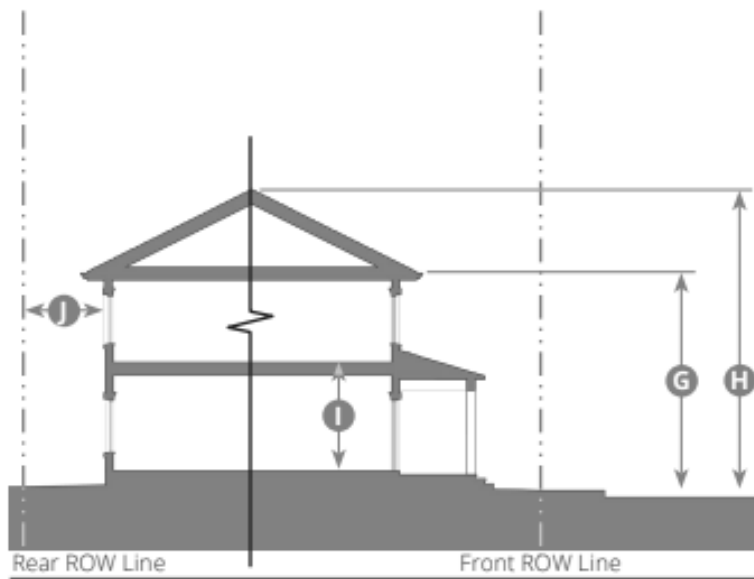
Adjacency Requirements

Stepback at Rear Parcel Line

Abutting T or F District		J
Parcels < 100' deep or	10 ft min.	
Parcels >= 100' deep	Within 20 ft of property line; 3 stories & 35 ft in height max.	
Abutting L, G, or M District	none required	
Abutting an Alley	none required	

¹ See Section 11-10.02 for means of measurement of height.

Harvard Main Street Neighborhood Zone (H-MSN)



Key

--- ROW Line

E. Building Form

Height

Primary Building

Stories	2.5 stories max.	
To Top Highest Eave ¹	24 ft max.	G
Overall Height	35 ft max	H
Floor-to-Floor (Ground Floor)	10 ft min.	I

Roof Form

Sloped Roof Allowed	See Section 11-4.07
---------------------	---------------------

Roof Mounted Elements

Height	10 ft max.
--------	------------

Adjacency Requirements

Stepback at Rear Parcel Line

Abutting any District	none required	J
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¹ See Section 11-10.02 for means of measurement of height.

ARTICLE 4

Submitted by: Select Board

This warrant article is a fallback proposal designed to allow the Town of Brookline to pass rezoning compliant with Massachusetts General Law Chapter 40A, Section 3A, *Multi-Family Zoning As of Right in MBTA Communities* (the “MBTA Communities Act,” “MBTA-CA,” or the “Act”) in the event that the Consensus Plan outlined in the previous warrant article fails to pass.

This article removes the Harvard Street element of the Consensus Plan, leaving the following components intact:

- Creating a new overlay zoning district to permit as-of-right development of multi-family dwelling units within existing multi-family (“M”) zoning districts;
- Amending the Emerald Island Overlay District to incentivize multi-family units;
- Creating a new overlay district to allow for significant new development of affordable units at a Brookline Housing Authority (“BHA”) property on Walnut and High Streets; and
- Amending the Affordable Housing By-Law so that it can be enforced without a special permit.

Please refer to the descriptions in the previous warrant article of each of these facets of the rezoning.

To repeat: the Select Board has placed this on the warrant solely for contingency purposes. If the Consensus Plan passes, there will be no need to move this article.

ARTICLE 5

Submitted by: Linda Olson Pehlke1, TMM17, Susie Roberts, TMM17, Nancy Heller, TMM8

Purpose: This warrant article would create a new overlay zoning district to permit as-of-right development of multi-family dwelling units within existing multi-family (“M”) zoning districts that would enable the Town of Brookline to comply with MGL Section 3A Multi-Family Zoning As of Right in META Communities (the “META Communities Act,” “META-CA,” or the “Act”).

MBTA-CA: The MBTA Communities Act mandates that all communities served by the MBTA (except Boston) “shall have a zoning by-law that provides for at least one district of reasonable size in which multifamily housing (defined to include buildings with three or more dwelling units) is permitted as of right” and that the district shall “have a minimum gross density of 15 units per acre” and be located “not more than 0.5 miles” from an MBTA stop. The Act directed the Department of Housing and Community Development (“DHCD”) “to promulgate guidelines to determine if an MBTA community is in compliance with this section.”

Brookline Requirements Under the MBTA-CA: Brookline is defined as a "Rapid Transit" MBTA community and is required to provide zoning capacity for 6,990 units in a multi-family district of at least 41 acres. The capacity threshold represents 25% of the Town's total dwelling units. The deadline for adoption of the Zoning Bylaw (ZBL) amendment is December 31, 2023.

Multi-Family Zoning- Theoretical Capacity vs. Reality: Under the MBTA-CA compliance model land is treated as vacant, with no credit or penalty for multi-family units that have already been built. Theoretical capacity is determined by as-of-right zoning regulations including factors such as minimum lot size, floor area ratio (FAR), building height, setbacks, open space, and parking requirements. Brookline currently has approximately 19,000 multi-family units representing about 67% of its housing stock.

MBTA-CA Multi-Family Permitting Committee: The Conunittee was formed by the Select Board in April 2023 and charged with finding options for compliance with the MBTA-CA and opportunities to incentive through zoning the construction of additional multi-family units. The Conunittee was formed in response to concerns over the proposed Harvard Street corridor proposal.

M-District+ Plan: The Conunittee evaluated multiple options for compliance with the MBTA-CA including zoning amendments for the two-family (T) districts, accessory dwelling units, and other areas currently zoned for commercial and mixed-use. An analysis of zoning capacity resulted in the Committee's decision to focus on the Town's multi-family (M) Districts as the vehicle to achieve MBTA-CA compliance. The "M-District+" proposal includes three elements:

(1) a zoning overlay district incorporating certain multi-family ("M") zoning districts to comply with the legal requirements of the MBTA-CA; (2) overlay provisions with allowances for increased density to facilitate "as-of-right" redevelopment of the Brookline Housing Authority (BHA) property at Walnut and High Streets; and (3) an amendment to the Emerald Island Special District (ESID) zoning to permit a broader range of multi-family housing units to be developed. Items (2) and (3) are the "+" of the "M-District+" caption. An analysis by RK.G Associates, Inc., a compliance consultant for the State, confirmed that the M-District+ Plan met or exceeded all requirements of the MBTA-CA. The area covered by the as-of-right overlay was subsequently reduced to enhance historic preservation and address demolition concerns in neighborhoods with smaller house style apartment buildings.

M-District - Core Proposal: The M-District plan incorporates two fundamental provisions. First, it retains all existing dimensional requirements of the Zoning By-Law (ZBL) for the applicable multi-family district (i.e., M-1.5 to M-2.5) including maximum FAR and building height and minimum setback and open space requirements. Second, it replaces discretionary Special Permit design review procedures (no longer allowed under the MBTA-CA) with a Site Plan Review process administered by the Planning Board. Site Plan Review incorporates objective architectural design standards formulated to ensure that new construction is compatible with existing streetscapes. The M-District overlay also includes a lower minimum parking ratio (1.0 per unit, except 0.5 per studio unit) and requires a Special Permit for large development projects over 30,000 square feet. New construction within the overlay district would also be required to meet applicable provisions in the Town's General By-Laws, including Articles 5.2 Preservation Commission Demolition Delay, Article 5.9 - Energy Codes, Article 8.26 - Stormwater Management and Article 8.41 - Tree Preservation.

Walnut High Overlay District: This proposed overlay district would amend the zoning regulations for the BHA site located at Walnut and High Streets to facilitate a substantial as-of-right redevelopment of this property. The zoning would increase maximum FAR and building heights and reduce minimum setbacks and on-site parking requirements. The zoning amendment accommodates a redevelopment program that would include an estimated 175 to 225 total dwelling units, a significant increase over the existing 100 units. All units would be either new construction or (if any existing units were retained rather than replaced) totally renovated, and fully ADA compliant, thus increasing both the quality and quantity of affordable housing provided at the property. Maximum building height would be directed to the north side of the site fronting on Walnut Street to minimize the shadow impacts of new development.

Redevelopment of this site under as-of-right zoning would provide substantial benefits over forcing the BHA to pursue a Comprehensive Permit under MGL Chapter 40B including a shorter permitting period, greater cost certainty, and improved funding opportunities.

Emerald Island Special District (EISD): The EISD is located between Brookline Avenue and River Road. The EISD zoning overlay was adopted by Town Meeting in 2016 and allowed bonus height for various commercial and residential uses. The permitted types of residential development are limited to micro units, live-work units, and senior units. To date only the Hilton Garden Inn has been developed under this overlay zoning; no residential development has occurred in the past six years. The proposed amendment would add studio units and units with bedrooms as a permitted use thereby expanding the opportunity to meet a wider range of the residential market demand. Redevelopment in this area would still face challenges of parcel assembly and easement constraints but the proposed zoning modification could unlock potential for 80 to 115 new dwelling units in an initial development phase.

Housing Choice: "Housing Choice" under M.G.L. c.40A, sec.5, provides that zoning amendments allowing "as-of-right" multi-family or mixed-use development in eligible locations can be adopted by a simple majority vote, rather than a two-thirds vote, at Town Meeting.

Although the Guidelines under the MBTA Communities Act explicitly permit Site Plan Review with objective design standards including architectural design as an element of "as of right" zoning under that Act, the Attorney General's Office has informed the Town that it will be interpreting the terms "as of right" for purposes of "Housing Choice" differently. Thus, design standards such as those included in the M-District+ Plan or such as those included in Form Based Zoning under the Harvard Street plan will continue to require a 2/3 vote of Town Meeting.

A more detailed description of the M-District+ Plan process and proposed zoning amendments is provided below.

I. INTRODUCTION

- A. Background
- B. The August 17, 2023 MBTA-CA Revisions
- C. Committee Proceedings

II. THEM-DISTRICT+ PLAN

- A. The Core M-District Zoning Overlay
 - I. Geographic Boundaries.
 - 2. Objective Design Standards
- B. Walnut-High Overlay District (Brookline Housing Authority)
- C. Emerald Island Zoning Amendment

III. LEGAL ISSUES

- A. The Status of Objective Design Standards Under "As-Of-Right" Zoning
- B. Severability
- C. Definition of "Family"

I. INTRODUCTION

A. Background

The "M-District+" solution was developed by a volunteer "MBTA-CA Multi-Family Permitting Committee" (the "Committee") consisting of Chair Richard Benka, Rick Fredkin, Carol Gladstone, Ken Lewis, Linda Olson Pehlke, David Pollak, Katha Seidman, and Neil Wishinsky.

The "M-District+" proposal includes three elements: (1) a zoning overlay district incorporating certain multi-family (or "M") zoning districts to comply with the legal requirements of the MBTA Communities Act; (2) a portion of that overlay district with allowances for increased density to facilitate "as-of-right" redevelopment of the Brookline Housing Authority (BHA) property at Walnut and High Streets; and (3) an amendment to the Emerald Island Special District (ESID) zoning overlay to permit a broader range of multi-family housing units to be developed. Items (2) and (3) are the "+" of the "M-District+" caption. Redevelopment of the BHA property within the Walnut-High Overlay District will include 100% affordable and 100% ADA compliant housing units.

The MBTA Communities Act mandates that all communities served by the MBTA-except Boston - "shall have a zoning by-law that provides for at least one district of reasonable size in which multifamily housing is permitted as of right" and that the district shall "have a minimum gross density of 15 units per acre" and be located "not more than 0.5 miles" from an MBTA stop. The Act directed the Department of Housing and Community Development ("DHCD"; now called the Executive Office of Housing and Livable Communities, or "EOHLC") "to promulgate guidelines to determine if an MBTA community is in compliance with this section." Multi-family housing is defined in the MBTA-CA to include buildings with three or more dwelling units.

Under DHCD Guidelines Brookline is defined as a "Rapid Transit" MBTA community and is required to provide the theoretical capacity for 6,990 units in a multi-family zoning district of at least 41 acres. The deadline for adoption of the Zoning Bylaw (ZBL) amendment is December 31, 2023 requiring action by Town Meeting in November or December. The M-District+ plan was formulated to bring Brookline into compliance with the MBTA-CA by the State deadline.

The MBTA-CA is a broad statutory mandate that was not fine-tuned to account for existing development patterns in various communities within the MBTA service area. Thus, for Rapid Transit communities, the multi-family unit as-of-right capacity requirement was set at 25% of a municipality's total housing units in 2020, regardless of the number of already-existing multi-family units, existing density or land availability. Consequently, Brookline (66.8% actual multi-family units in 2020), Chelsea (69.4%) and Cambridge (71.9%) have the same 25% capacity mandate as Newton (19.5% actual multi-family units) and Milton (10.8 %). Under the MBTA-CA compliance model, land is treated as vacant, with no credit or penalty for multi-family units that have already been built. Theoretical capacity is determined by as-of-right zoning regulations including factors such as floor area ratio (FAR), building height, setbacks, open space, and parking requirements.

In addition, the MBTA-CA Guidelines issued by DHCD impose limitations that make compliance particularly problematical for mixed-use transit-oriented areas. Until a change on August 17, 2023, when the prohibition was slightly relaxed, the Guidelines prohibited municipalities from mandating any commercial use, even first-floor retail, or other commercial uses, in existing commercial corridors. The Guidelines do not allow communities to limit the size of residential units, thus precluding a requirement for smaller units that might be more affordable than the larger units that have become popular with developers catering to Baby Boomer "empty nester" demand. And, without a State-approved third-party financial feasibility analysis, the Guidelines do not allow municipalities to apply inclusionary zoning requirements more demanding than the 10% DHCD standard. The MBTA-CA, in short, is not about affordable housing; it is about making multi-family permitting easier.

The initial approach from the Town's Department of Planning & Community Development (P&CD) was to satisfy the MBTA-CA by making tweaks to the number of units that automatically require a special permit, removing geographical areas that automatically trigger a special permit, reducing parking requirements, or allowing some two-family districts to permit as-of-right three units.

Pursuant to the Select Board's charge to pursue zoning amendments that would incentivize additional units, P&CD pivoted towards an ongoing zoning analysis for the Harvard Street commercial corridor that could potentially meet the minimum theoretical unit capacity requirements. This resulted in the proposed up-zoning of 63 acres along the Harvard Street corridor from Commonwealth Avenue on the north to Route 9 on the south. The proposed district excluded buildings located at the

intersection of Beacon and Harvard Streets but included a 15-acre multi-family area southeast of Steams Road to satisfy the requirement for dwelling unit capacity.

A number of concerns were raised regarding the impacts of the Harvard Street plan, which led to Warrant Article 24 being filed at the Annual (Spring) 2023 Town Meeting. This article sought a

Moderator's Committee to develop alternatives to the Harvard Street plan, so that Town Meeting would have options to move forward with alternatives that would achieve compliance with the Act. Warrant Article 24 led to the appointment of the Committee by the Select Board.

A. The August 17, 2023 MBTA-CA Guideline Revisions

On August 17, 2023, the State, through the EOHLC, announced a revision to the MBTA-CA Guidelines. These revisions permit, in addition to as-of-right multi-family development as provided in the original version of the Guidelines, a new category of so-called "mixed-use development districts." Such districts would be subject to several specific limitations in addition to the limitations already imposed by the Act. Commercial (i.e., non-residential) uses can now be mandated in such districts, but such uses would be limited to the ground floor of buildings and can be "no more than thirty-three percent of the floor area of a building, lot, or project." Minimum parking requirements for any non-residential uses are totally prohibited. The location of the mixed-use district would have to be pre-approved by the State prior to a vote of the municipality's legislative body. And, finally, the residential unit capacity of the mixed-use development district can be no greater than 25% of the municipality's capacity mandate.

If used to comply with the Act, the multi-family areas meeting at least 75% of the municipality's capacity mandate would therefore continue to be subject to the original MBTA-CA provisions, including the absence of the ability to require commercial use, even on the first floor.

B. Committee Proceedings

The Committee was appointed at the end of April 2023 and held sixteen public meetings through the spring and summer. These meetings included public hearings on the three elements of the M- District+ proposal which were held on July 18th (CM-District Overlay), August 14th (Emerald Island Special District modifications) and August 15th (Walnut-High (BHA) Overlay District). In addition, members of the Committee worked with representatives of the Brookline Housing Authority, Housing Advisory Board and Planning Board to refine its proposals. Significant analytical and drafting work was performed by Committee members. Critical staff support was provided by the Director of Planning & Community Development, Kara Brewton.

The Committee considered a variety of options before settling on the M-District+ proposal. It considered zoning changes that would have allowed as-of-right multi-family development in commercial areas other than Harvard Street. These included lower Beacon Street near St. Mary's Street, Beacon Street near Summit Avenue, the Washington Square area, Commonwealth Avenue between Crowninshield and Pleasant St. and areas along Boylston Street. Including these commercial zones posed the problem that no commercial uses could be required and would have diverted the Committee's time and focus. Even after the August 17, 2023 revisions, the State ban on required commercial uses would apply to areas that represent 75% of capacity, as discussed above.

The Committee also considered rezoning existing two-family (T) districts to permit an additional unit, thus allowing three units on each property and potentially meeting the requirements of the MBTA-CA. However, there are only about 1,100 properties that could add units in the T-Districts, so that the maximum capacity yield would be less than 3,300 units, well below the 6,990-unit capacity required for MBTA-CA compliance. In addition, three-unit buildings would not be subject to the Town's inclusionary zoning by-law requiring affordable units. And, finally, the Committee was advised that allowing Accessory Dwelling Units (ADUs) with limited unit sizes as the third unit - as opposed to a blanket rezoning from two-family to three-family - would not satisfy the Act as this zoning amendment would be merely an extension of existing development and thus not increase capacity for new development as contemplated by the MBTA-CA.

This led the Committee to focus on the Town's multi-family (M) Districts as the vehicle for MBTA-CA compliance. The Committee recommends this approach, with the incorporation of objective design standards as outlined more fully below. In addition, the Committee recommends zoning changes that would facilitate redevelopment of the Brookline Housing Authority site on Walnut and High Streets and permit a wider range of multi-family unit types within the Emerald Island Special District between Brookline Avenue and River Street, as also explained below.

II. THE M-DISTRICT+ PLAN

A. The Core M-District Zoning Overlay

1. Geographic Boundaries.

As noted, neither the Town's General and Local Business zoning districts that currently require commercial use on the first floor nor the two-family T-Districts would on their own meet the requirements for compliance with the MBTA-CA. Consequently, the Committee focused on the Town's M-Districts for the core of its proposal. (M-Districts within the existing ZBL range from M-1.0 to M-2.5 with the numerical reference being the maximum floor area ratio (FAR) permitted on parcels within the district.) The Committee's "first cut" included all of the M-District parcels in the Town that are located within one-half mile of an MBTA stop. That proposal was submitted to RKG Associates. RKG reported that, using an assumption of one parking space per unit and

existing zoning dimensional requirements, the selected M-District parcels would provide a multi-family capacity of approximately 16,000 units, far in excess of the requirement of 6,990 units. Accordingly, the Committee scaled back the geographical area of the proposed overlay zoning district in a manner responsive to comments and concerns that had been articulated during its process. First, it removed certain areas within the National Register District along Beacon Street, addressing concerns about impacts on historic structures. Second, it removed M-1.0 districts, addressing concerns about impacts that as-of-right zoning might have on demolition risks in areas now characterized by "house-style" buildings. At the same time, this change addressed two other concerns. It removed from the M-District several commercial properties (e.g., 637 Washington Street and Kurkman's Market on Cypress Street) as well as a few other iconic structures (e.g., the "Dutch House" on Netherlands Road and pre-Civil War properties on Linden Street).

RGK's subsequent analysis of these revised boundaries, utilizing the further site plan review standards outlined below, resulted in a calculated capacity for MBTA-CA compliance of 8,182 units, still well above the Town's mandated requirement of 6,990 units. It would thus theoretically be possible to remove further areas from the proposed core M-District by amendment, though the capacity impact of any further geographic changes would need to be determined.⁹

2. Objective Design Standards

The potential legal background regarding "as-of-right" zoning and design standards is discussed in more detail in the "Legal" section below. A key feature of the proposed M-District overlay is that a property owner who opts for "as-of-right" approval would not be subject to discretionary design review but would have to meet objective design standards addressing site plan requirements and standards of architectural design. The property owner would also have to comply with the other non-discretionary provisions of the Zoning By-Law as well as provisions of the Town's General By-Laws.

State law dictates that under "as-of-right" approval a special permit with discretionary review cannot be required in the designated MBTA-CA zoning district. Thus, the provisions of Zoning By-Law Sections 5.09.2.a (major corridor), b (attached dwellings in groups of 3 or more), d (4 or more units), m (Coolidge Corner Design Overlay District), and o (property deemed historically significant by the Preservation Commission) providing for discretionary design review, with ultimate determination by the Zoning Board of Appeals, could not be imposed in the proposed M-District.

However, in place of discretionary design review, the Town under the MBTA-CA can impose objective design standards that would be applied under Site Plan Review, with the Planning Board determining whether the objective standards have been met. While there is likely to be little short-term development in the core M-Districts, the Committee is sensitive to the fact that Town Meeting has sought to ensure that new construction in neighborhoods will be in keeping with existing streetscapes.¹⁰ Thus, the objective design standards recognize the architectural fabric of

⁹ The Committee believes that including a larger geographic area in the warrant article and then later reducing that geographic area by amendment prior to the final vote of Town Meeting, if desired, would be "within scope." The reduced geographic area would be encompassed within the larger original "as-of-right" geographic area.

¹⁰ 2 Town Meeting has recently demonstrated such concerns in the passage of Warrant Article 13 at the November 2022 Special Town Meeting, providing for design review where a stay of demolition has been ordered but not

the Town's existing multi-family neighborhoods and seek architectural sensitivity for any future "as-of-right" development.

In addition, while there cannot be discretionary design review under the MBTA-CA Guidelines, "as-of-right" development must continue to comply with other non-discretionary provisions of the Zoning By-Law as well as the Town's General By-Laws. Thus, as stated in the Guidelines, such a development must "comply with applicable dimensional regulations." Therefore, an "as-of-right" project in the core M-District areas will be governed by the existing Zoning By-Law dimensional requirements for maximum building height; maximum floor area ratio; minimum front, side, and rear yard setbacks; and minimum open space. New construction within the overlay district would also be required to meet provisions in the Town's General By-Laws, including but not limited to Articles 5.2 - Preservation Commission Demolition Delay, 5.9 - Energy Codes, 8.26 - Stormwater Management, and 8.41 - Tree Preservation.

Finally, a property owner cannot "double dip." An applicant cannot take advantage of "as of right" site plan review and simultaneously seek a variance or other relief from applicable zoning standards. Any request to deviate from the existing standards would remove a project from "as-of-right" review.

The Committee has included only one exception to this rule, and that relates to parking. The M-Districts meeting the MBTA-CA standard for proximity to transit stations are within the Town's Transit Parking Overlay District (T-POD). The M-District proposal provides that no more than one off-street space per dwelling unit may be required, or 0.5 for studio units. This relaxes the T-POD requirements for any redevelopment that does not add units.¹¹ Moreover, the M-District proposal explicitly allows an "as-of-right" applicant to seek a reduction in the required off-street parking under Section 6.02.1.b of the Zoning By-Law, removing that section from the prohibition against "double dipping." It should be noted that seeking a discretionary permit under Section 6.02.1.b is not mandatory; it would be the applicant's choice and will not be required for any applicant. The option to seek such relief from parking requirements would thus be permissible under the MBTA-CA.

The objective design standards under site plan review control architectural design, as explicitly permitted by the MBTA-CA Guidelines. A range of permissible building styles are permitted in the M-District, consistent with existing building types and dimensional requirements in the zoning districts. Four-Story Apartment Buildings (as well as smaller building styles) are allowed, but in accordance with prevailing architectural design the facade material must be either natural or cast stone, stucco, brick, or terracotta tiles.

While flat and mansard roof styles are permitted in addition to sloping styles (gable, gambrel, and hip), any flat or mansard roof must have a cornice meeting minimum dimensional requirements at the top of the facade. In addition, brick and terracotta buildings must have window sills and lintels of natural or cast stone or precast concrete, with brick buildings also permitting brick set in a

removed by the Preservation Commission, and Warrant Article 16 at the May 2023 Annual Town Meeting, providing for design standards in T-5(NH) zones.

¹¹ Without this amendment, the T-POD parking requirement where dwelling units are not added is LO spaces for a studio, 1.4 spaces for a one-bedroom unit, and 2.0 spaces for dwelling units with 2 or more bedrooms. With the addition of dwelling units, the T-POD requirement is 0.5 space per studio and 1.0 space for other units.

pattern different from that of the facade wall cladding. Brick facades must be divided by horizontal string courses of stone, cast stone or precast concrete. There are corresponding design standards for clapboard buildings. Entrances must be sited toward the street, or in the case of courtyard buildings, toward the courtyard open to the street, so that buildings do not turn their backs on the public way.

The objective architectural design standards permitted under the MBTA-CA Guidelines are designed to allay concerns within M-District neighborhoods that "as-of-right" permitting without discretionary design review or "guardrails" could lead to new buildings with flat wall panels, "punched" windows, and little to no detailing, all inconsistent with existing streetscapes. The Committee did include one further protection by requiring design review for large apartment buildings (greater than 30,000 square feet) in the core M-District. This restriction was incorporated into the RKG calculation of capacity under the M-District+ Plan.

B. Walnut-High Overlay District (Brookline Housing Authority)

One of the two complementary zoning districts incorporated in the M-District+ Plan is the proposed Walnut-High Overlay District. This district encompasses an area of approximately 14 acres roughly bounded by High Street, Route 9, and Pond Avenue, incorporating the Brook House, condominium units on Juniper Street, and the Brookline Housing Authority (BHA) property at Walnut and High Streets. The provisions of the proposed overlay district would apply only to parcels with frontage on both Walnut and High Streets; these include the BHA property and the Town-owned parcel occupied by Fire Station #1.

The BHA site encompasses approximately 2.62 acres. Existing improvements comprise approximately 97,123 square feet in four buildings that were originally constructed in 1962. The buildings are a mix of garden style, townhouse, and high-rise apartments. They include an eight-story building fronting on High Street and three two-story buildings fronting on Walnut and Juniper Streets.

The existing buildings have a total of 100 dwelling units. Seventy-six percent (76%) of the units are occupied by families and twenty-four (24%) of the units are occupied by seniors. Second-floor units in the garden apartments fronting on Walnut Street are accessed through an exterior stair and do not meet current Americans with Disability (ADA) standards. Only five existing units are wheelchair accessible.

The proposed Walnut-High Overlay District would amend the zoning regulations for the BHA site to facilitate a substantial as-of-right redevelopment of this property. The overlay zoning would allow maximum building heights of 60 to 80 feet (depending on right-of-way frontage), a maximum FAR of 2.5, reduced setbacks, and a minimum parking ratio of 0.1 spaces per unit. A summary of the proposed changes to the ZBL Table of Dimensional Requirements and Transit Parking Overlay District requirements are shown on Exhibit A.

The Committee believes that this zoning overlay would be MBTA-CA compliant, meeting criteria for as-of-right multi-family development of sufficient density (> 15 units per acre) within a contiguous subdistrict area of sufficient size (> 5 acres) and located within one-half mile of an

MBTA stop. The units would be 100% affordable, well beyond the State's 10% baseline allowance, but the affordability would be the decision of the property owner, the BHA, and not imposed by the Town.

The amended dimensional regulations would accommodate a redevelopment program that is anticipated to include approximately 175 to 225 total dwelling units, a substantial increase from the existing 100 dwelling units. All units would be either new construction or totally renovated, and fully ADA compliant, thus increasing both the quality and quantity of affordable housing provided at the property.

The total number of dwelling units and the unit mix will be impacted by three to-be-determined factors: the cost-benefit of renovating or replacing the existing eight-story building at 22 High Street; the occupancy mix between families and seniors; and lower on-site parking ratios that should enable a higher percentage of the building area to be used for residences rather than structured parking.

The anticipated redevelopment program would feature buildings sited in proximity to High, Walnut, and Juniper Streets around a large central landscaped courtyard. Maximum building height would be directed to the north side of the site fronting on Walnut Street to minimize the shadow impacts of new development. Mid-rise buildings are the preferred scale to stay below requirements of the Massachusetts High Rise Building Code.¹²

As with the rest of the M-District+, the Walnut-High Overlay District includes objective design standards that address wall cladding materials, roof types, facade articulation, fenestration, the orientation of principal entrances, and landscaped open space requirements (including, where applicable, application of the Brookline Tree Preservation By-Law).

The development of affordable housing units on the BHA property would not be delayed by constraints that apply to many parcels in Brookline's business districts, including acquiring site control or assembly of multiple parcels. Moreover, the large 2.62-acre BHA site would permit phased redevelopment to accommodate relocation of existing residents into affordable units on site.

Redevelopment of this site under as-of-right zoning would provide substantial benefits over forcing the BHA to pursue a Comprehensive Permit under M.G.L. c. 40B. First, it would provide the BHA's architect and engineering design team with clear directives in the form of objective design standards and flexible dimensional and parking requirements. Second, it would formally incorporate the Planning Board, which is comprised of experienced architects and landscape architects, in the site plan and design review process in lieu of the Zoning Board of Appeals. Third, it would significantly reduce the permitting period thus providing greater certainty of construction and financing costs. Fourth, it would increase the fair market value of the BHA's land for the purpose of calculating its contribution to project financing. Finally, adoption of this as-of-right

¹² Thus, while the overlay district would allow a maximum height of 80 feet only along Walnut Street (and Route 9), the high-rise building code is triggered at 70 feet. Even if the BHA utilized the full 80-foot height, the building height would be less than the Brook House (12 stories), 2 Brookline Place (8 stories), the Hilton Garden Inn (9 stories), and the existing overlay districts for Two Brookline Place (115 feet) and the Emerald Island (85 feet to 110 feet).

up-zoning would send a strong signal to federal and state housing agencies of broad Town support for expansion at the BHA site, a key factor in the scoring of competitive funding applications. All of these factors will assist BHA as it seeks multiple sources of funding for the redevelopment.

The proposed Walnut-High Overlay District will provide zoning relief to promote a significant near-term increase in the number and quality of affordable housing units in Brookline. The Committee strongly recommends inclusion of this overlay district as part of the M-District+ Plan.

A. Emerald Island Special District Zoning Amendment

The Emerald Island Special District (EISD) was passed by Town Meeting in 2016. This zoning overlay allowed bonus height for only three types of residential development - micro units, live-work units, and senior units. It was anticipated at that time there would be sufficient market demand for smaller dwelling units in this corridor given its proximity to the Longwood Medical Area. However, while the overlay district resulted in the development of the Hilton Garden Inn hotel, no residential development has occurred in the past six years.

After consultation with property owners and developers in the area, the Committee recommends a small amendment to the Emerald Island Special District to allow the full range of multi-family housing (i.e., studio units and units with bedrooms) as a permitted use. While there would still be hurdles to redevelopment, including parcels occupied by established businesses and a drainage easement that divides the district, it has been estimated by the Department of Planning & Community Development that the proposed zoning modification could unlock short-term redevelopment potential for 80 to 115 new dwelling units.

It should be noted that parcels in the Emerald Island Special District would not comply with the MBTA-CA on their own because the overlay zoning requires that at least 70% of street frontage be devoted to non-residential uses (the same problem as MBTA-CA compliance in commercial areas). Nevertheless, the fact that the core M-District Plan and the Walnut-High Overlay District satisfy the MBTA-CA makes possible other zoning changes, such as at Emerald Island, that can incentivize housing units without conforming to MBTA-CA Guidelines.¹³

All other aspects of the Emerald Island Special District rezoning, which passed Town Meeting with overwhelming support in 2016, remain unchanged.¹⁴

¹³ Three other plans were considered by the Committee. The Committee did not vote on or recommend revisions to the Harvard Street plan, in view of the fact development of that plan was in the hands of the Planning & Community Development Department and an outside consultant. At the very end of its deliberations, the Committee was presented with a plan for development of approximately 100 housing units on properties bounded by Hammond, Heath and Sheafe Streets in the Chestnut Hill Village area. After a public hearing, the Committee voted not to recommend action on the plan since it had been received too late for the Committee to thoughtfully consider it. The Committee, as noted in text, also considered that possibility of adding a third unit in existing two-family (T) districts. While that would not provide MBTA-CA compliance, the Committee does note that the Housing Advisory Board will apparently propose changes encouraging the development of Accessory Dwelling Units (ADUs) in both single-family and T-Districts at the Spring 2024 Annual Town Meeting.

¹⁴ While the zoning change now proposed for Emerald Island has the sole effect of facilitating multi-family housing, the underlying zoning overlay does require first-floor non-residential use. Although the zoning change now proposed may qualify for a majority vote under Housing Choice, it would seemingly be prudent to vote the Emerald Island zoning change separately and seek a 2/3 vote.

III. LEGAL ISSUES

A. The Status of Objective Design Standards Under "As-Of-Right" Zoning

The MBTA-CA, enacted as M.G.L. c.40A, sec.3A, requires MBTA communities to create zoning districts where multi-family housing can be created "as of right." The controlling MBTA-CA Guidelines define the statutory mandate to mean that the construction and occupancy of multi-family housing is allowed in the district "without the need for a special permit, variance, zoning amendment, waiver, or other discretionary approval." In conformity with State law, the Committee's M-District plan therefore makes "as-of-right" approval available to property owners within the M-District. Zoning By-Law requirements that would empower the Planning Board or Zoning Board of Appeals to exercise discretion to withhold approval of development are explicitly no longer applicable, in conformance with State Law.

At the same time, the MBTA-CA Guidelines recognize "site plan review as a permissible regulatory tool, including for uses that are permitted as of right." "Site plan approval may regulate matters such as vehicular access and circulation on a site, architectural design of a building,⁷ and screening of adjacent properties." It cannot "unreasonably delay a project nor impose conditions that make it infeasible or impractical to proceed with a project that is allowed as of right and complies with applicable dimensional regulations."¹⁵

The site plan review included in the M-District plan does not include any required discretionary review by any Town body, but rather objective design standards that are consistent with the architectural context of existing M-District neighborhoods. These objective standards do not impose delay and permit architectural design and materials that are technologically and economically feasible and compliant with building, energy, and climate goals.

For example, a range of building types is allowed that includes the existing type and scale of existing buildings in the affected M-Districts. The number of permitted stories is consistent with applicable dimensional regulations for height. Building massing is consistent with most existing buildings in the M-Districts. Materials, fenestration, and other design standards were developed in consultation with architects on the Committee and Planning Board to include standards that are both technologically and economically feasible. The proposed M-District plan was reviewed by RKG Associates, Inc. and deemed to meet or exceed the requirements of MBTA-CA compliance (e.g., district area, density, dwelling unit capacity, dimensional requirements, parking requirements, etc.).

As another example, in the case of clapboard buildings, the design standards allow not only wood clapboard, but also, in recognition of current technology, durable composite materials (such as

¹⁵ The Town has been informed that the Attorney General's Office is interpreting "as of right" for the purposes of "Housing Choice" under M.G.L. c.40A, sec.5 in a manner inconsistent with the application of "as of right" zoning under the MBTA-CA. Thus, while the inclusion of objective design standards regulation architectural design is permissible under the MBTA-CA Guidelines, it will apparently require a 2/3 vote rather than a simple majority vote under "Housing Choice."

Hardie Board). The same is true of molding materials. Stucco, brick, and terracotta tiles (the latter added at the request of architects on the Planning Board) are permitted on the larger 3-story and 4-story apartment buildings and have proven to be demonstrably feasible options for 21st century developers in Brookline. For instance, terracotta tiles together with detailing were used on 1140 Beacon Street, and brick has been used not only on market-rate buildings (e.g., 1160 Beacon Street) but also successfully on multiple buildings proposed and developed under Chapter 40B (e.g., 455 Harvard Street, 500 Harvard Street. The standards also permit a choice of stone, cast stone or precast concrete as materials for detailing for brick buildings, and in response to suggestions from the architects on the Planning Board, expanded the range of permissible cornice materials to include GFRG (Glass Fiber Reinforced Gypsum) or GFRC (Glass Fiber Reinforced Concrete).

In accordance with the ability of design standards to address "environmental impacts," the M-District+ plan introduces "tree canopy" standards in accordance with the Town's Urban Forest Climate Resiliency Master Plan.

There was significant discussion on the Committee regarding fenestration standards. The original proposal was to require traditional multi-pane sash (single-hung or double-hung) windows to be consistent with the existing window styles that predominate in the M-Districts. In response to comments by the Committee's architect that other window types would be more energy efficient and more consistent with modern codes, those more stringent requirements were eliminated. Similarly, a requirement that glass have 88% transmissibility (used for Harvard Street storefront windows) was eliminated as overly prescriptive for a residential district, replaced only by the requirement that glass not be tinted, reflective or colored. Also, in response to architectural commentary and to facilitate energy code compliance, the range of the combined window and door square footage as a proportion of a facade was set at a broad 20% to 70%.

In addition, under the M-District plan, an applicant is given the express right to opt for discretionary design review rather than utilizing as-of-right site plan review. The base zoning is thus always available to an owner or developer.

During the Committee's public hearing, some commenters criticized the design guidelines as focusing on "traditional" rather than "contemporary" architectural design to allay neighborhood concerns and facilitate passage of the zoning overlay district by Town Meeting. In response to these comments, a section was added giving the Select Board (with advice from the Planning Board and others and after a public hearing) authority to issue design guidelines for materials and designs associated with "contemporary" architecture.

But even without that provision, the Guidelines make clear that it was permissible for the Town to address "architectural design" and even "aesthetics" through site plan review and non-discretionary design standards. The standards in this case are objective and do not impose delay or technological or economic infeasibility, satisfying the operative legal touchstones under the Guidelines.

The warrant article thus complies with MBTA Communities Act, and the requisite multi-family "as-of-right" capacity exists within 0.5 miles of MBTA subway stations.

B. Severability

The objective design standards have not simply been drafted to comply with the explicit provisions of the MBTA-CA Guidelines. They also reflect a careful balance between two goals: first, allaying neighborhood concerns about intrusive architectural design and thus seeking to ensure approval by Town Meeting, and, second, utilizing standards that are technologically and economically feasible.

As-of-right permitting is thus part of a "package" that includes the objective design standards. If those standards were removed, the balance of the package would collapse and as-of-right development could proceed without the guardrails that were intended to be in place. That would not only flout the MBTA-CA Guidelines but also the intent of Town Meeting.

Thus, the M-District+ package includes the following severability clause:

Severability. If any provision of this Section 5.06.4.o is found to be invalid by a court of competent jurisdiction, the remainder of Section 5.06.4.o shall not be affected but shall remain in full force, provided, however, that Sections 5.06.4.o.2 and 5.06.4.o.3 shall be considered an integrated whole, and if any part of these Sections are invalidated by a court of competent jurisdiction or otherwise, the entire Section 5.06.4.o shall expire and no longer be in effect six months following such decision. The invalidity of any provision of this Section 5.06.4.o shall not affect the validity of the remainder of the Brookline Zoning By-Law.

As drafted by the Committee, this provision is a compromise. If some or all of the design standards were somehow found invalid, the Town would have six months to revise the overlay district zoning before it expired and became null and void. Thus, the Town would not immediately be thrown into non-compliance with the MBTA-CA. On the other hand, the provision would not become an unlimited "blank check" to developers to proceed without either discretionary design review or objective design standards, because, absent Town Meeting action, the "as-of-right" zoning in Section 5.06.4.o would expire after six months.

C. Definition of "Family"

The Committee considered the appropriate definition of "Family" for purposes of the proposed M-District+ Zoning By-Law amendment. A definition that restricted the number of unrelated college students was discussed but deemed impractical and potentially in violation of fair housing laws. Ultimately, the Committee adopted the following definition which eliminates language from the existing ZBL definition:

FAMILY --- One or more persons ~~including domestic employees,~~ occupying a dwelling unit and living as a single, non-profit housekeeping unit; ~~provided that a group of five or more persons who are not within the second degree of kinship, as defined by civil law, shall not be deemed to constitute a family.~~

The simplified definition of "Family" would apply Town-wide as it is a change proposed by the Select Board to the Base Zoning By-Law and not a revision specific to either the Harvard Street or to the M-District zoning proposals.¹⁶

EXHIBIT A

Walnut-High Overlay District

Overlay District Dimensional Requirements						
Building Fronting On:				Combined Site	Existing ZBL M-2.0	
Dimensional Requirement (1)		Walnut St.	Juniper St.	High St.		
Maximum Floor Area Ratio (2)		N/A	N/A	N/A	2.5	2.0
Maximum Building Height (3) (4)		80	60	60	N/A	SO
Setbacks Lot Lines (5)						
Lot line - Front Yard		5	10	10	N/A	15' + (H/10)
Lot Line - Side Yard		10	10	10	N/A	(H+L)/6
Lot Line - Rear Yard		25	25	25	N/A	Minimum 30'
Setbacks Site Interior (6) (7)						
Interior - Side Yard		25	25	25	N/A	(H+L)/6
Interior - Rear Yard		25	25	25	N/A	Minimum 30'
Landscaped Open Space						
As% Total Gross Floor Area		N/A	N/A	N/A	10%	10%

Footnotes:

(1) Existing Zoning By-Law (ZBL) Requirements: Section 5.01- Table of Dimensional Requirements

(2) Public Benefit Incentives (PBI) - ZBL Section 5.21 allows maximum FAR of 2.5 in non-buffer areas

(3) PBI - ZBL Section 5.32 allows maximum building height of 60' in buffer areas (applicable to BHA site)

(4) PBI height bonus does not apply to affordable housing but could be achieved with site improvements

¹⁶ The Committee, in its 2-3-2 vote, rejected the following additional proviso: "provided, however, that occupancy of a Dwelling Unit by more than four unrelated college or university students shall not be permitted." The Committee decision was based in part on the suggestion of Town Counsel that the proviso could violate fair housing law. The purpose of the proviso was to minimize displacement of families (both traditional and non-traditional) by groups of college and university students.

(5) H = Building height per ZBL Section 5.3; L = Length of wall parallel to lot line

(6) Interior building setbacks ZBL Section 5.03 Spacing of Residential Buildings on the Same Lot

(7) Interior site setbacks should not apply to temporary phased construction

Overlay Walnut-High Street District Minimum Parking Ratio Per Unit

Zoning	Studio	1-Bedroom	2-Bedroom	3-Bedroom +
T-POD (1)	1.0	1.4	2.0	2.0
T-PODwith Increased Dwelling Units	0.5	1.0	1.0	1.0
T-PODwith Special Permit	0.0	0.0	0.0	0.0
Proposed Walnut-High Overlay District Requirements	0.1	0.1	0.1	0.1

Footnotes:

(1) Transit Parking Overlay District (T-POD) requirements per ZBL Section 6.02.2.i.

ARTICLE 6

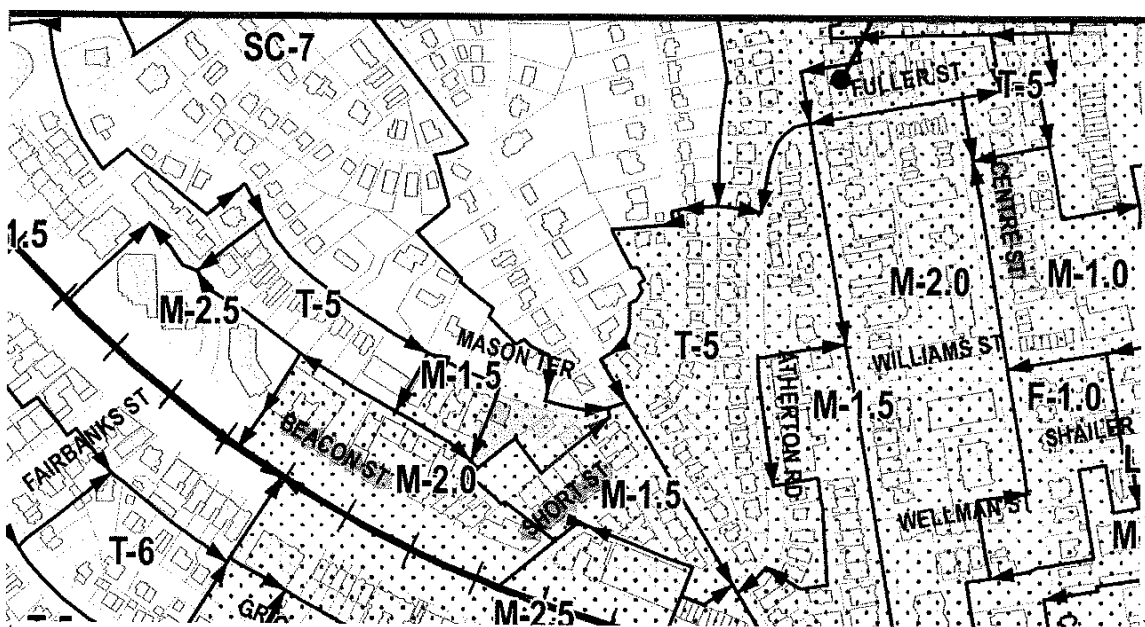
Submitted by: Shira Fischer, TMM-11, Lisa Shatz, TMM-11, Katherine Jungreis, David Pomeranz, Abigail Jungreis, and Jacob Meskin

The purpose and intent of the above article proposing a zoning map amendment for the properties at 99, 111 & 117 Mason Terrace are multi-faceted, with the primary goals being: 1) zoning consistency and 2) the ability to add additional housing to the neighborhood in Brookline. The primary petitioners desire to support the move of their son and new daughter-in-law to Brookline by allowing the couple to build a dwelling on their oversized lot. However, due to the current abnormal and restrictive zoning of their property, they have been told by the Town that adding another unit would not be possible without a zoning amendment to remedy the zoning abnormality in their area. This amendment would remedy that abnormality and would allow for additional building on those lots, consistent with the ones they border.

Addendum:

1) Zoning Map

Highlighted area indicates the area of 99, 111 & 117 Mason Terrace in which the article intent is to rezone.



2) Table detailing the change in dimensional requirements between the two zones:

Key changes include reductions in lot size minimums, minimum yard and open space requirements while at the same time increasing the FAR and height maximum requirements.

Bold italicized text indicates the proposed M-1.5 zone requirements.

Table of Dimensional Requirements		LOT SIZE MINIMUM (Sq. ft.)	FLOOR AREA RATIO MAXIMUM	LOT WIDTH MINIMUM (feet)	HEIGHT MAXIMUM (feet)	MINIMUM YARD (feet)			OPEN SPACE (% of gross floor area)		PBI NB ONLY	PBI B	PBI NB
DISTRICT	USE						Front	Side	Rear	Landsc.	Usable		
	1-family detached dwelling	7,000 -> 4,000	0.35 -> 1.5	65 -> 40	35 -> 35	N/A	20 -> 15	7.5 -> 7.5	30 -> 30	10% -> 10%	30% -> 20%	NA	NA
	Converted 1-family detached dwelling -> 2-family detached dwelling	7,000 -> 5,000	0.5 -> 1.5	65 -> 45	35 -> 35		20 -> 15	7.5 -> 10	30 -> 30	10% -> 10%	30% -> 20%	NA	NA

ARTICLE 7

Submitted by: Select Board

This article would petition the Massachusetts Legislature to allow Brookline to offer discounted water and sewer rates for seniors and individuals with low incomes.

When the revised water/sewer rate structure for FY2020 was reviewed with the Select Board, the potential of expanding the availability of the discount offered to senior water uses was explored. It was explained at that time that the Town would need special legislation passed at the state level in order provide the discount then recommended by the Water and Sewer Director.

Accordingly, a warrant article seeking to authorize such a home rule petition was put on the November 2019 Town Meeting warrant and passed via voice vote. For unknown reasons, the Legislature never received the petition and did not act on it. The time for it to do so has now expired, and so Town Meeting now must pass a new warrant article if it wishes to authorize the program.

This version of the petition is almost identical to the version that passed Town Meeting in 2019, except to the extent that it further authorizes the creation of separate rates for income-eligible residents as well as seniors. The program through which such a rate system would be administered does not yet exist. It will be developed by the Water and Sewer Division in consultation with a citizens' working group. The Select Board would ultimately have the authority to determine the specific discount(s) offered, which would be voted during the annual rate setting process.

Since passage of special acts offered via home rule petitions is typically a process that takes longer than a year, it is important to send this to the Legislature now so that the program that will be developed can begin as soon as possible after approval by the Select Board.

ARTICLE 8

Submitted by: Director of Finance and Council on Aging Director

The Town's successful Senior Citizen Property Tax Work-Off Program currently allows 35 residents over the age of 60 years to reduce their real estate taxes by a maximum of \$1,500 annually, provided they meet certain income requirements. This article would expand the program by allowing a maximum senior citizen tax exemption based on 125 hours worked in a year, for a new maximum real estate tax bill reduction of \$1,875 based on the current Massachusetts minimum wage. The Senior Citizen Property Tax Work-Off Program provides needed tax relief to seniors living on fixed incomes, while also providing the Town with skilled workers for specific tasks.

ARTICLE 9

Submitted by: Deputy Town Administrator and Director of Finance

The Town's Finance Department currently consists of four Divisions: Accounts (the Comptroller's Office), Assessing, Purchasing, and Treasury, with the responsibility of processing weekly payroll for all of the Town's 3,670 employees residing with the Treasury Division's Payroll Subdivision. This subdivision performs a critical function, with all of the Town's departments relying on it to operate smoothly themselves. The level of knowledge, experience, and skill necessary to ensure payroll is completed in a timely and accurate manner, while also complying with the myriad state and federal laws governing its operation, indicates that the leader of this group should be on par with other Division Heads, both in terms of position and pay.

ARTICLE 10

Submitted by: Select Board

The Ridley School project is complete and there is a surplus in the project budget. This article allows the Town to redirect funds already borrowed to a project for any purpose for which a loan may be incurred for an equal or longer period of time than that for which the original loan was issued. The article also allows the Town to rescind the remaining authorized but unissued amount.

ARTICLE 11

Submitted by: Select Board

The Board is filing this at the request of Committee members to add the word "Act" to the Community Preservation Committee.

ARTICLE 12

Submitted by: Select Board, on behalf of the Town Clerk

This Article would change the Town's General Bylaws to give the Town Clerk the ability to make non-substantive corrections to the General and Zoning Bylaws. Non-substantive changes could only go into effect after both the Select Board and Advisory Committee were given notice of the change, and no objection was raised within 30 days.

As part of a codification project to update the Town's Bylaws and post them online, staff from the Town Clerk's office and the Planning Department have identified many instances where clerical errors, typos, and incorrect numberings have made their way into the Bylaws. Inconsistencies create confusion and uncertainty within the General and Zoning Bylaws.

Some examples of these errors include:

- Inconsistent spelling of the term "bylaw" or "by-law"
- Repetitive numbers for articles and sections of the Bylaws
- Incorrect references to other sections of the Bylaws, or to State laws
- Incorrect usage of punctuation
- Inconsistent numbering and lettering of sections and subsections

Currently, these errors can only be fixed by a subsequent vote of Town Meeting. Passing this Warrant Article would allow the Town Clerk to make non-substantive corrections to the General and Zoning Bylaws through a less cumbersome process, with changes being reviewed by the Select Board and Advisory Committee.

The Town Clerk's office, in consultation with Town Counsel, will be drafting a Town Clerk Style Guide for Town of Brookline Bylaws. This guide would be provided to Town Meeting Members and other individuals who are drafting bylaw changes, to ensure consistency across the bylaws. It will also serve as a guide for the non-substantive changes the Town Clerk could make under this Article.

ARTICLE 13

Submitted by: David Gacioch, TMM-14 (corresponding petitioner); Miriam Aschkenasy, Select Board Member and TMM-AL; Rob Daves, TMM-4; Dr. Asa Sevelius, Principal; the School Committee

This warrant article asks Town Meeting to consider renaming the Heath School in honor of trailblazing musician and longtime Brookline resident, Roland Wiltse Hayes. The School Committee and co-petitioners propose the name "Roland Hayes School" following a two-year public process in the Heath School community that resulted in the selection of Roland Hayes as the school's preferred new name through a vote by students, families, and staff in June 2023. More detail on that process is below.



Why rename the school?

This process arose from the discovery that the Heath School's unofficial and indirect namesake, the Heath family (wealthy landowners in Brookline in the 18th and 19th Centuries), had enslaved at least four human beings to work on the family's farm and in their home before slavery was outlawed in Massachusetts. The four people known to have been enslaved by the Heath family were named Primus, Kate, Ben Boston, and Dinah.

According to [research conducted by Hidden Brookline](#) (founded and led by Dr. Barbara Brown), assisted by Brookline Historical Society President Ken Liss, in 1841, the Town of Brookline chose Heath as the name for an existing road that "stretched from the Worcester turnpike or Boylston Street by Mr. Heath's to the Newton line" (present day Heath Street, which runs roughly parallel to and just south of Route 9). In 1847, the school on that road changed its name from the "Middle District School" to the more specific "Middle District School on Heath Street." For a number of years, teachers at the school boarded with the Heath family, who reportedly prized their companionship (according to a Heath family descendant, Mrs. Thomas Dobler, in the 1905 Brookline Historical Society Proceedings). A few decades later, the school shortened its name to the Heath School, a name it continues to carry today, even after moving from its original location on Heath Street to its present-day location north of Route 9 on Eliot Street. In short, Heath Street was so named because it passed through the Heath family's lands and the Heath School subsequently was so named because it was at that time located on Heath Street—but the school had additional, informal connections to the Heath family.

More information is available here: <https://hiddenbrookline.weebly.com/heath-the-school--the-family.html>

Why choose Roland Hayes?

As written by the Heath School's Student Renaming Committee:

Roland Hayes was born in 1887 to farmers in Curryville, GA. He first learned how to sing by attending church as a child. Hayes' voice impressed many people. With only five years of schooling, he was admitted to Fisk University where he joined the famous Fisk Jubilee Singers.

Hayes believed in himself and his ability. When the Fisk singers performed in Boston, Hayes chose to remain here for further voice training, becoming renowned for his vocal talents. At the beginning some orchestras and concert halls would not let him perform, because he was Black. By the 1920's, he had become one of the best classical tenors in the world. In his sold-out concerts, he sang different kinds of music; audiences were amazed when he sang songs from Italy, Germany, and France. Hayes was proud of being Black, so he always included African-American folk songs and spirituals in his programs.



Hayes believed that music was crucial to understanding and expressing yourself. During his tours, he would also try to find time to visit local schools and meet with musical students. Hayes encouraged them to incorporate their cultures and histories into their singing. He performed his last concert at 85 in Cambridge, MA.

He and his family lived in Brookline for many years.

Did You Know? Hayes was the first African-American soloist to appear with the Boston Symphony Orchestra in 1923.

Quote: "The beauty of what could be done with the voice just overwhelmed me." - Roland Hayes

Additionally:

Roland Hayes's father, William Hayes, died when Roland was 11 years old. His mother, Fanny Hayes, worked as a tenant farmer to raise her seven children—on a plantation on which she formerly had been enslaved. Years later, Hayes bought that plantation.

Roland Hayes began touring in the US and internationally in the late 1910s and early 1920s. His performances with the Boston Symphony Orchestra and Aeolian Hall in London were instrumental in breaking the color barrier in the music community.

For his first Boston Symphony Hall concert, after being denied other opportunities to perform, Hayes raised funds to rent the hall and orchestra, printed and sold his own tickets, and did his own promotion—including spending weeks calling random names in the phone book to encourage people to come to the concert. His entrepreneurial hard work paid off with a successful performance.

While touring in England, Hayes was summoned before the king and queen for a command performance. In Weimar Republic Berlin, he won over a hostile audience that had begun his concert with minutes of sustained booing. For his performances, Hayes received enthusiastic praise and won the NAACP Spingarn Medal for outstanding achievement by an African American in 1924.

In 1948, Hayes published a collection of spirituals known as *My Songs; Aframerican Religious Folk Songs Arranged and Interpreted*. Hayes played a key role in introducing African-American spiritual music to broader audiences.

Hayes lived in Brookline, on Allerton Street (on High Street Hill, near Olmsted Park), for nearly 50 years. Brookline declared June 3, 1967 Roland Hayes Day. At a Town Hall ceremony that day, Hayes (then 80 years old) said: "My career has demanded a great deal of travel. When I look at a map of the world, certain cities have significance—Nashville, Chattanooga, Louisville, Boston, London, Paris, Moscow. I was making interesting discoveries about these places and their people. Then in 1925 I discovered Brookline... No other place in the world has been so happy for me."

Roland Hayes died in 1977. In 2016, the Town posthumously dedicated a plaque in his honor and memory outside of his longtime Allerton Street home.

Sources (and for more information):

- https://en.wikipedia.org/wiki/Roland_Hayes
- <https://www.wqxr.org/story/trailblazing-singer-roland-hayes-turned-struggles-triumphs/>
- <https://radiolab.org/podcast/vanishing-harry-pace-episode-5>
- <https://www.wickedlocal.com/story/brookline-tab/2016/06/15/town-dedicates-memorial-to-roland/27652721007/>

How was Roland Hayes chosen as the new school name?

In 2021, the Heath School started the process of discussing its name and deciding to move forward with renaming. Two years later, after a robust, community-engaged process, in June 2023, the Heath School community (students, parents/caregivers, and faculty/staff) voted among four amazing finalists for a new school namesake: Ruth Batson, Ellen & William Craft, Roland Hayes, and John Woodrow Wilson. Hayes was the clear winner of that vote.

Those four finalists were selected by a Student Renaming Committee over the course of Spring 2023 from a longer list of nominees submitted by members of the school community and the broader public in late 2022.

This was the culmination of a two-year, transparent, public conversation and process to learn about the history of the Heath School's name, to discuss and decide whether or not it should be changed, and to select a new name for the school. Much more information about that process can be found here: <https://www.brookline.k12.ma.us/domain/938>

The School Committee voted unanimously in June 2023 to support renaming the Heath School as the Roland Hayes School.

Additional information:

This warrant article is brought for similar reasons as Warrant Article 23 in 2018 Annual Town Meeting (under which Town Meeting, by a vote of 171-19, with 14 abstentions, changed the name of the Edward Devotion School to the Coolidge Corner School and initiated a process to select a new, permanent name for the school) and Warrant Article 26 in Fall 2019 Town Meeting (under which Town Meeting, by a vote of 195-15, with 13 abstentions, renamed the Coolidge Corner School the Florida Ruffin Ridley School after that process was completed). It has been, and continues to be, the will of Town Meeting, as reflected by those and other votes, that individuals who held other human beings in bondage generally should not be honored with schools and other public buildings bearing their names. To continue to name any Brookline school after an enslaver (even indirectly) would violate the core values of equity, respect, and inclusion that the Public Schools of Brookline strive to impart to our students.

The Heath School name presently honors no one and we now know that it is closely associated with the practice of slavery in colonial and post-Revolution Brookline—a practice that modern

Brookline condemns. This is an opportunity to rename the school after an accomplished, long-time member of the Brookline community who is worthy of recognition: Roland Hayes.

ARTICLE 14

Submitted by: Shira H. Fischer

This article would ban the sale of mammals, birds, reptiles, and amphibians in pet shops within The Town. Importantly, it only applies to pet shops, not breeders or animal shelters. It would, however, allow pet shops to partner with animal shelters in order to display animals for adoption, so long as the pet shop does not make any income off of the adoption of said animals. As such, this bylaw will foster the more humane treatment of animals within The Town: not only by shifting the market away from inhumane shops that source animals from irresponsible breeders, but also by encouraging consumers to source animals from responsible breeders, and animal shelters.

Pet shops typically obtain animals from large-scale commercial breeders (in the case of puppies, often referred to as “puppy mills”) that often have many violations of the federal Animal Welfare Act. Across the board, pet stores claim they don’t source from puppy mills and tell customers they get animals from “responsible breeders.” In reality, pet stores do not have the option to obtain dogs from responsible breeders because responsible breeders do not sell puppies to pet stores. Doing so is disallowed in most breed club’s code of ethics.

Most breeding dogs spend their entire lives in cramped, stacked wire cages, without exercise, socialization, or adequate vet care, and sometimes in extreme temperatures for prolonged periods. Females are bred early and often. Dogs are not required to be vaccinated from highly infectious and deadly diseases.

When they are no longer able to reproduce, dogs are often abandoned or inhumanely euthanized.

Even complying with all USDA requirements, animals can be kept in extremely inhumane conditions. In fact, the USDA itself makes clear that its standards for certification are merely survival standards—minimum requirements to keep dogs alive—that the USDA strongly encourages breeders to exceed. In reality, many fail to even meet these minimal standards. The vast majority of these violators never face any meaningful consequences and the agency often continues to renew their licenses regardless of how many violations they have incurred.

A disturbing example of this comes from the Hunte Corporation, a big-business puppy broker (acts as a middleman and sells animals from breeders to pet shops). The Missouri Department of Natural Resources found Hunte to be in violation of state environmental laws because it was disposing over 1,000 pounds of deceased animals every year.

Birds and cold-blooded animals bred for the pet trade lack even these minimal legal protections. Completely unregulated under the Animal Welfare Act, suppliers of these species focus on the bottom line.

Cold- or warm-blooded, regulated or not, animals that are a part of the pet industry suffer. High mortality rates are often more cost-effective than improving conditions for animals. The industry

has even argued that a 70 percent mortality rate is industry standard (see Journal of Applied Animal Welfare Science, 17:308-321, 2014).

This is not something we can allow in our town. A number of other towns and cities including Cambridge and Lexington have already enacted similar legislation, which has been approved by the Attorney General. As the number of cities and towns where pet shops can sell animals shrinks, we need to ensure that Brookline does not become a safe haven for these abhorrent practices.

ARTICLE 15

Submitted by: Shira H. Fischer

This article would prohibit the use of certain wild animals including elephants, monkeys, and zebras in traveling animal acts such as circuses and carnivals. It will not apply to non-mobile permanent institutions such as zoos. The purpose of this article is to protect animals from the abuse, neglect, and mistreatment that is so common in traveling animal acts.

These animals often endure abusive training and prolonged confinement in poorly ventilated and cramped trailers for up to 50 weeks a year. Their use also poses risks to public health and safety. Over the years, numerous people, including many children, have been injured by these wild animals used in circuses and traveling shows.

The federal Animal Welfare Act (AWA) falls short in effectively regulating circuses, particularly when it comes to training sessions where the most severe abuses occur. The AWA's minimal standards allow facilities to comply with federal law while subjecting animals to grossly inhumane conditions. The USDA's Inspector General has documented the poor enforcement of these already weak standards. State law does not go much further than prohibiting excessive beating, a minimal standard which is practically impossible to enforce during private training sessions.

Wild animals in circuses do not willingly perform tricks—they are forced to do so out of fear. Trainers resort to physical abuse, including beatings, to coerce animals into executing challenging tricks on command. Many circus tricks, such as headstands and hind-leg stands, involve repetitive and unnatural movements that put immense strain on the animals' muscles and joints, leading to severe, long-term injuries. The tools used in their training, such as bullhooks, electric prods, whips, and chains, also cause pain and inflict injuries.

Recognizing the limitations of federal and state regulations, municipalities across the country have taken the lead in addressing circus animal abuse. In Massachusetts, fourteen municipalities—Northampton, Amherst, Wilmington, Mendon, Braintree, Cambridge, Quincy, Pittsfield, Plymouth, Provincetown, Revere, Somerville, Topsfield, and Weymouth—have implemented various restrictions on the use of wild animals in circuses and traveling shows.

As the number of towns where these shows can travel to shrinks, it's important that we ensure that Brookline will not, and can not become a destination along the routes of traveling animal acts, and a haven for such practices.

ARTICLE 16

Submitted by: Alec Lebovitz (TMM-8), Kimberley Richardson (TMM-2), and Jonathon Card

Many Brookline residents are facing an affordability crisis, largely driven by the high and rising cost of housing. The median monthly payment for rental units in Brookline was \$2,452 in 2020¹⁷, which was more than twice the national median monthly rental payment of \$1,163 and greater than surrounding communities including Cambridge, Somerville, Newton, and Boston.¹⁸ A 2023 analysis of Zillow listings in Brookline found that median open-market apartment monthly rental payment had risen to \$3,900, which would require a household income of over \$140,000 to support without the occupants being cost burdened.¹⁹ As of March 2023, Brookline's average monthly rental payment of \$2,775 was the fourth highest among all Massachusetts communities, trailing only Cambridge, Watertown, and Medford.²⁰

Defined as spending more than 30% of annual household income on housing costs, an alarming number of Brookline renters are considered housing burdened. In 2022, over 45% of Brookline renters were classified as housing burdened, and 23% of renters were considered severely housing burdened (spending more than 50% of annual income on rental costs).²¹ Due to the existing racial disparities in income and wealth in Brookline, Black, Latin, and Asian residents are disproportionately likely to be housing burdened.²²

While affordability is an issue confronting both homeowners and renters in Brookline, renters are more economically vulnerable to rising housing costs for several reasons. For example, nearly 90% of mortgages issued in the United States are fixed rate mortgages, guaranteeing stable monthly payments for property owners.²³ Additionally, homeowners are able to accrue equity, and thereby wealth, through the appreciation in value of their property. However, renters in Brookline have little certainty when it comes to predicting potential annual increases in rental rates and they have no legal or contractual protection from economic shocks and extreme or capricious rate hikes. The economic disruption of COVID-19 provides a recent example; after a short-term reduction of average rental rates in the Brookline-Newton market in 2020, average rents increased by approximately 8% and 4% in 2021 and 2022, respectively.²⁴ This leaves renters in Brookline and across the Commonwealth uniquely vulnerable to rapid housing cost increases and, ultimately, housing displacement.

¹⁷ See 2023 *Understanding Brookline Report* from Brookline Community Foundation: <https://brooklinecommunity.org/wp-content/uploads/2023/06/BCF-Economic-Inequality-Report-June-2023.pdf>

¹⁸ See aggregated data from 2022 American Community Survey: <https://www.towncharts.com/Massachusetts/Housing/Brookline-CDP-MA-Housing-data.html>

¹⁹ 2023 *Understanding Brookline Report*: <https://brooklinecommunity.org/wp-content/uploads/2023/06/BCF-Economic-Inequality-Report-June-2023.pdf>

²⁰ See Apartment Advisor analysis from March, 2023: <https://www.boston.com/real-estate/renting/2023/03/10/in-depth-look-mass-rental-market-march/>

²¹ See aggregated data from 2022 American Community Survey: <https://www.towncharts.com/Massachusetts/Housing/Brookline-CDP-MA-Housing-data.html>

²² 2023 *Understanding Brookline Report*: <https://brooklinecommunity.org/wp-content/uploads/2023/06/BCF-Economic-Inequality-Report-June-2023.pdf>

²³ National Mortgage Statistics: <https://www.bankrate.com/mortgages/mortgage-statistics/>

²⁴ See 2023 draft Housing Production Plan: <https://www.brooklinema.gov/DocumentCenter/View/39925/DRAFT-Brookline-Housing-Plan-2023-v2-HAB>

This affordability crisis facing renters demands responsiveness from all levels of government, including at the municipal level. One such strategy that has been employed by Brookline and other neighboring communities in the past has been the adoption of local rent control policies and tenant protection bylaws and regulations. Federal restrictions on rent increases were implemented across the Commonwealth in 1942 as a war-time price stability measure overseen by the federal Office of Price Administration. These federal price controls on rental rates in Massachusetts remained in place until 1953, when it was replaced by a state law authorizing communities to adopt local option rent control measures from 1953 – 1956.²⁵

After the sunset of local rent control in 1956 and consistently high annual rent increases during the 1960s, the Massachusetts Legislature passed Chapter 843 of the Acts of 1970, which authorized the optional adoption of local rent control for communities with populations greater than 50,000 people.²⁶ In September, 1970 Town Meeting adopted Chapter 843 locally and passed an additional local bylaw, which together established rent controls for certain multifamily dwellings in Brookline and established a Rent Control Board to implement the new bylaws.²⁷ In addition to limiting annual rent increases for eligible units, these local rent regulations exempted a number of multifamily properties, including owner-occupied dwellings, hotel rooms, and newly constructed units.²⁸

Local option rent control remained legal under Chapter 843 until the passage of a 1994 referendum that prohibited the regulation of rents for nearly all privately owned dwellings and nullified active rent control bylaws in Brookline, Boston, and Cambridge. While the referendum passed statewide by a 2.6% margin, voters in Brookline voted in opposition to the proposal by a margin of 12%.²⁹

However, recent years have seen increasing support for re-introducing rent control options for municipalities in the Greater Boston region. In March 2023, the Boston City Council voted 11-2 in favor of submitting a home rule petition to the General Court requesting permission to enact local rent stabilization and tenant protection policies, including the ability to regulate rent increases.³⁰ During the same month, the Somerville City Council voted to approve the drafting of a rent stabilization home rule petition, and the Cambridge City Council voted 8-1 to endorse the passage of the Tenant Protection Act,³¹ a piece of pending state legislation that would give municipalities the ability to adopt local option rent stabilization and tenant protection policies.³²

²⁵ See Pioneer Institute's *A History of Rent Control Policy in Massachusetts* Report from 2023: https://pioneerinstitute.org/economic_opportunity/a-history-of-rent-control-policy-in-massachusetts/

²⁶ Ibid.

²⁷ *Brookline Annual Report 1970*, pg. 254 - 255

²⁸ See Pioneer Institute's *A History of Rent Control Policy in Massachusetts* Report from 2023: https://pioneerinstitute.org/economic_opportunity/a-history-of-rent-control-policy-in-massachusetts/

²⁹ See Secretary of the Commonwealth 1994 – Statewide – Question 9 Official Results: https://electionstats.state.ma.us/ballot_questions/view/5877/

³⁰ See Boston.com article on Boston HRP Passage: <https://www.boston.com/news/real-estate/2023/03/08/boston-city-council-passes-rent-control-plan/#:~:text=Councilors%20voted%2011%2D2%20to,Boston%2C%20or%20some%20185%2C000%20dwellings.>

³¹ See H. 1304 – An Act Enabling Local Options for Tenant Protections: <https://malegislature.gov/Bills/193/H1304>

³² See Cambridge Day article on Somerville and Cambridge legislative activity: <https://www.cambridgeday.com/2023/03/16/somerville-seeks-rent-stabilization-home-rule-while-cambridge-affirms-the-right-to-discuss-it/>

This article is a home rule petition that seeks authorization from the General Court for Brookline to establish a rent stabilization program and to implement new protections for tenants by bylaw and local regulation. If passed into law, Brookline would be authorized to adopt a local bylaw that restricts annual rental rate increases for units in certain multifamily dwellings. The rental rate of eligible units would be limited to an annual increase of 3% plus the inflation rate of the previous year, up to a maximum potential increase of 7%.

Exemptions from this policy would be available for small landlords that reside in a dwelling of four or fewer units, non-profit and university-owned housing, public housing units and units occupied by Section 8 voucher recipients, hotel or motel rooms, and housing constructed or significantly renovated in the last 15 years. Additionally, the initial rate established when a unit is put on the rental market, converted to a rental unit, or when new tenants take occupancy of a units would not be subject to any new restrictions. Taken together, these provisions ameliorate potential disincentives to new housing construction or investment that could be incidentally created by a new rent stabilization bylaw while still providing new stability for resident renters against displacement.

The home rule petition would also allow Brookline to adopt new tenant protection bylaws and regulations to further insulate vulnerable renters against eviction and displacement. One such measure would be the adoption of a bylaw prohibiting local evictions without the findings from the Housing Court establishing that the tenant at risk of eviction has either failed to pay due rent, violated a relevant provision of state law, damaged their unit of residence, allowed illegal activities in the unit, breached their rental agreement, or refused the owner reasonable access to the unit. Additionally, the home rule petition would permit Brookline to establish bylaws creating new protections for tenants facing the demolition, or conversion to condominiums, of their building of residence. Specifically, Brookline would be authorized to require the notification of such residents and the implementation of relocation plans or payments for affected renters.

ARTICLE 17

Submitted by: Moderator's Committee on PFAS (Jesse Hefter, TMM 14; Anita Johnson, TMM 8; Alisa Jonas, TMM 16, Chair;* John Kleschinsky, DPH; Clint Richmond, TMM 6) *primary contact

The May 2022 Annual Town Meeting Warrant included Article 22 entitled "Fluorinated Chemicals Reduction By-Law," which called for regulating the sale of fluorinated chemicals at select retailers in the Town. Because of the difficulties that would be encountered in implementing the law , Town Meeting referred the article to a Moderator's Committee to consider other options and approaches that the Town could take to reduce the public's exposure to PFAS in the near term.

The Committee was established in August 2022 and has met about 1-2 times per month. The Committee's activities have included researching which measures have been taken nationwide and which resources are available for purchasers to make informed decisions regarding the presence

of PFAS in products they are purchasing. The Committee also held meetings with outside experts and with Town Departments that might be using PFAS.

The Committee discovered that numerous states have enacted laws to ban the sale of products containing PFAS within a variety of categories, such as carpeting, furnishings, baby supplies, personal care products and cosmetics. The State of Maine enacted legislation to prohibit the sale of any product containing PFAS effective in the year 2030. What the Committee was not able to identify is any municipality that has banned the sale of such products to consumers, presumably for similar reasons that Town Meeting referred Article 22 to a Moderator's Committee – the difficulty of implementation and enforcement at the municipal level, particularly at this time, when it is difficult for individual sellers to identify PFAS-containing products.

At the same time, the Committee discovered that several town departments have already taken measures to reduce the purchase and use of PFAS-containing products. The Town's School Food Services Department has been particularly aggressive in seeking to minimize the use of PFAS-containing products; and following the Fire Department Chief's meeting with the Committee, he almost immediately took action by purchasing Class B fire-fighting foam that is free of PFAS. Other department heads who had been less aware of PFAS were receptive to purchasing adjustments to reduce PFAS exposure, and the Town's Chief Procurement Officer has discussed working with departments to locate suppliers and manufacturers that are both aware of the issue and have taken action to eliminate the chemical from their product lines.

Harvard University's Office of Sustainability has already done a lot of work in identifying such manufacturers, and the University generally makes purchasing decisions that factor in whether or not PFAS, and other toxic chemicals, are present in the products purchased. Given their knowledge in this area, their Office of Sustainability is eager to provide assistance to the Town in this area.

Given what the Committee has learned – that there are tools available for the Town to change its purchasing practices; that some departments have already taken such steps; and that there is an interest and willingness on the part of Town Departments, and, in particular, the Purchasing Department, to move forward in this area – the Committee determined that providing Town Meeting support for action at the Town level would ensure ongoing progress. This resolution, rather than a by-law, is a legislative first step to reduce exposure to the public at a time when it is still a challenge to eliminate all products that contain PFAS.

At the State level, House Bill 2197/Senate Bill 39 is being considered during this legislative session. The bill would ban the sale to consumers of PFAS-containing products in many different categories of goods. While a similar bill failed to move out of committee during the last session, this bill may have more momentum: Massachusetts is not only not a leader in this area, but is now behind many other states at a time when the harms associated with PFAS are receiving an increasing amount of scrutiny - and an increasing number of successful lawsuits by consumers. To encourage the State to follow the path taken by others, the resolution urges the Town to support action at the State level, and, in particular, Bill H.2197/S.39.

In summary, the resolution asks the Town to strive to eliminate fluorinated chemicals from the products it purchases and to support further state action, including passage of Bill H.2197/S.39.

If the resolution passes, the Town will be leading by example with respect to products that contain fluorinated chemicals.

For more extensive discussion of what has been summarized in this Explanation, the Committee's preliminary Report can be read as part of the Combined Reports for the May 2023 Town Meeting, pages 582-655. <https://www.brooklinema.gov/DocumentCenter/View/42185/Combined-Reports-May-2023-Annual-Town-Meeting-with-Supplements-060623?bidId=>

For more details on the committee, see its official webpage at <https://www.brooklinema.gov/2405/PFAS-Moderators-Committee>

ARTICLE 18

Submitted by: Jonathan Margolis, TMM7, Neil R. Gordon, TMM1

Discussions about the form and organization of Brookline's government ebb and flow from time to time. Recently, there has been more discussion and debate on the subject, and proponents of change have become more vocal.

If a change in the form or organization of Brookline government is warranted, there are many and varied paths that could be followed, and even more permutations of form and organization from which to choose.

The choices are many, but we fear that the general level of knowledge about most of them is relatively low. At the same time, democratic government, faced with potentially significant change, depends upon a knowledgeable electorate.

This warrant article calls for the Moderator to appoint a committee for the purpose of reviewing, evaluating, and reporting on available forms and structures of government, so that, depending on the nature of any proposed change, Town Meeting and/or voters can make decisions with enough information to do so knowledgeably.

ARTICLE 19

Any reports from Town Officers and Committees are included under this article in the Combined Reports. Town Meeting action is not required on any of the reports.