

MINUTES

MODERATOR'S COMMITTEE ON ZONING FAR

January 25, 2016

Brookline Town Hall – Room 408

In attendance: Members: Richard Benka (chair), Linda Hamlin, Marian Lazar, M K Merelice, Lee Selwyn. Also: Michael Yanovitch, Deputy Building Commissioner.

1. The meeting was called to order by the chair at 7:05 PM.
2. The minutes of January 6, 2016 were unanimously approved.
3. The Committee discussed a draft “Summary of Possible FAR Options” dated 1/22/16 (attached), that was prepared by Lara Curtis Hayes of the Planning Department with input from Mr. Yanovitch and from Jay Rosa and Maria Morelli of the Planning Department.
 - Mr. Yanovitch stated that there were 2,500 building permits last year and 2,000 the previous year, but that a significant number were not controversial as “hot button topics.” Mr. Benka noted Mr. Yanovitch’s estimate the prior meeting that 90% or more of new houses [there are about 25 single-family homes built each year] were built out to 150% of FAR (100% of the allowable FAR with an additional 50% “unfinished”) and Dr. Selwyn explained that since the 150% provision of Section 5.22 is as-of-right, and “unfinished” space is excluded from the FAR calculation, abutters did not have any grounds to protest.
 - Ms. Hamlin expressed the opinion that the 150% should not be as of right, although requiring a special permit would create more work for the Planning Board and the ZBA. Mr. Yanovitch opined that developers would shy away from projects that required special permits.
 - Mr. Selwyn suggested that we consider combining a special permit requirement with tweaking the definition of “attic.”
 - With regard to the definition of “basement,” the Committee noted that discrepancy between the definition in the Zoning By-Law and the Building Code. In the Zoning By-Law, a “basement” is defined as space that is below grade level at any point, no matter how minimally, while the state Building Code states that a basement is considered a “story above grade plane” in a number of circumstances, for example, if the floor above the “basement” is more than 12 feet above the finished ground level at any point, or if the floor above is more than 6 feet above the finished ground level for more than 50% of the

building perimeter. A wood frame building under the Building Code can be only 3 stories.

- Issues on Columbia Road were noted, particularly with regard to the amount of required parking and asphalt.
 - Mr. Yanovitch noted that we are not a “site plan review” community, which would look at the location of a building, at buffers, and so on.
 - One option might be requiring a special permit for any building with a gross floor area of, for example, over 6,000 square feet. Dr. Selwyn stated his belief that developers would build the extra unfinished space under our current definition, and then argue about a special permit later.
 - Wayland, Needham, Wellesley, Norwood, Walpole and Foxboro were given as examples of situations where size is regulated by height, setbacks, and so on rather than by FAR. Would such regulations be a “fit” for Brookline? Ms. Hamlin indicated that those communities had houses that were way too big for small lots.
 - Mr. Yanovitch suggested that height could be regulated based on the district and the side yard setback. For examples, different districts have different setbacks (e.g., 10, 15 and 20 feet). The height could be the actual setback of the property plus 10 feet, with a 35 foot maximum. For example, if the actual side yard setback was 10 feet, the building could be 20 feet high, but if there were a 20 foot side yard setback the building could be 30 feet high. Currently, oversized lots in S-7 districts can pose a real problem, because of the small required 7.5 foot setback.
 - Dr. Selwyn discussed the desirability of a mechanism to ensure conformity with other houses in the neighborhood, pointing to one example of a house that received a variance to go to 220% of the allowable FAR on a 6,000 square foot lot in an S-10 zone. The allowed floor area was 193% of FAR, with the rest of the space deemed “uninhabitable.”
 - Dr. Selwyn feels that it is necessary to focus on bulk from the beginning, while retaining some flexibility.
 - Ms. Lazar suggested that the 150% option could apply for basements, but not attics.
4. Mr. Selwyn discussed his conversations with the Assessor regarding FAR information that can be extracted from the Assessor’s database.

- The Assessor's records show finished area and lot size, allowing a calculation of FAR. The records do not, however, show the zoning district, so the allowable FAR cannot be readily calculated. The Assessor is working with Mr. Fehrenbach to see whether GIS data could be used to import the zoning district into the Assessor's database, which would then allow a comparison of the allowable FAR and the existing FAR as calculated.
 - The Assessor's database establishes finished space by looking at the first (and second) floors and then applying a percentage to the "attic" space above to indicate the finished portion of that "attic" space. A separate entry is made for finished basement space. The Assessor tracks building permits.
 - Mr. Benka opined that the "finished space" shown by the Assessor would, if anything, understate the amount of actual finished space in the building, since if the Assessor overstated the finished space a homeowner would be likely to appeal in order to reduce taxes.
 - Ms. Hamlin indicated that in her experience, the square footage of the lot was off, sometimes overstating and sometimes understating the size of the lot.
 - Mr. Yanovitch indicated that the amount of finished basement space tends to be overstated by the Assessor.
5. The Committee discussed further research that would be pursued before the next meeting. In order for meeting time to be used efficiently, the research will be undertaken prior to scheduling the Committee's next meeting:
- Follow through with the Assessor on the inclusion of zoning district data in the Assessor's database, to permit calculation of permissible FAR and comparison with the Assessor's FAR information for the property.
 - Utilize the Assessor's database in a longitudinal analysis by, for example, seeing what has happened to houses at five-year intervals. Has finished area increased over time, and by how much in relationship to the allowable FAR?
 - Attempt to determine whether density is greater in relation to allowable FAR in particular zoning districts, and whether permit activity is greater in particular zoning districts or areas.
 - Pursue the distinction drawn in a 2009 Hingham zoning case, where the Hingham Board of appeals noted that the Attorney General in 2003 struck down Brookline's date-based

by-law allowing conversion of basement or attic space in habitable space only for buildings that were in existence as of a certain date, but in 2004 approved a Falmouth date-based by-law permitting conversion of family dwellings to office space in residential districts only for buildings that were in existence as of 1980. The Attorney General's approval was based on the fact that there had been little, if any, building in the residential district since 1980 and thus, as applied, the by-law amendment would not create an inconsistency with the uniformity provisions of G.L. c. 40A, § 4. Mr. Yanovitch will check with Falmouth officials to get the history of that town's by-law amendment, prior to a possible meeting by Committee members with the Attorney General's office.

- Photograph some of the new houses built over the last couple of years to see how they compare to abutting houses.

The meeting was adjourned.

PRELIMINARY - DRAFT FOR DISCUSSION

Summary of Possible FAR Options

1/22/2016

Possible Zoning Change	Pros	Cons
Require SP for 150% FAR for attics and basements	<ul style="list-style-type: none"> straightforward zoning text change requiring a SP makes the process less "automatic," possibly discouraging developers from constructing large unfinished spaces 	<ul style="list-style-type: none"> may not affect building large unfinished attics & basements, esp. if SP becomes routine makes the process more burdensome for homeowners, esp. if the exterior changes are minimal adds to ZBA case load
Delete subsection allowing 150% FAR attic/basement conversions, thereby reverting back to the existing 130% clause for interior conversions by special permit	<ul style="list-style-type: none"> straightforward zoning text change may reduce the extent of new unfinished basement/attic space constructed 	<ul style="list-style-type: none"> may not be sufficient enough for existing homes (requires analysis)
Increase 10 year waiting period to 20 years	<ul style="list-style-type: none"> straightforward zoning text change makes construction of unfinished areas less profitable / harder to sell because of a longer waiting period 	<ul style="list-style-type: none"> may not discourage the construction of large unfinished areas may encourage the illegal finishing of space
Allow 150% for basement conversions but not attics	<ul style="list-style-type: none"> large unfinished attics are more impactful on the bulk of the structure – this would discourage them 	<ul style="list-style-type: none"> may have difficulty with defining "basement" space could discourage the construction of pitched roofs, which are thought more attractive
Leave FAR section alone and require "large house" design review by the Planning Board for houses over a certain square footage threshold, i.e. 6,000 s.f. (counting unfinished basements and attics) in S and T districts (possibly have different house sizes for different districts)	<ul style="list-style-type: none"> focuses the issue on the real concern: <i>new</i> large homes 	<ul style="list-style-type: none"> creates an additional layer of review for by-right projects adds a layer of complexity to zoning by-law question of how to determine threshold for review question of whether should apply to S, SC and T districts
Create new dimensional restrictions, such as a lot coverage maximum or a limit to the number of stories	<ul style="list-style-type: none"> addresses the bulk of structures compared to a lot's size provides predictability 	<ul style="list-style-type: none"> may need extensive analysis to determine an appropriate ratio, limit, etc.