PLANNING BOARD
Linda K. Hamlin, Chairman
Steven A. Heikin, Clerk
Robert Cook
Blair Hines
Sergio Modigliani
Matthew Oudens
Mark J. Zarrillo

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BROOKLINE PLANNING BOARD HEARING MINUTES
ON WARRANT ARTICLES
Selectman's Hearing Room, Brookline Town Hall
October 19, 2016 – 8:15 a.m.

Board Present: Linda Hamlin, Robert Cook, Blair Hines, Sergio Modigliani and Mark Zarrillo

Staff Present: Polly Selkoe, Karen Martin, Mike Yanovitch, Dan Bennett

Guests: Dick Benka, Petitioner, Moderators Committee on FAR

Chair Linda Hamlin called the meeting to order at 8:20 am.

ZONING AMENDMENT WARRANT ARTICLES

Warrant Article 22: FAR

Ms. Hamlin described that this hearing was continued because the Board needed more information from Building Department's perspective. The Building Department staff was also asked to attend to clear up questions on comments made at the original hearing by Cindy Stumpo. Ms. Hamlin stated she is worried about the Building Department's enforcement of the provisions of this article and wants to hear Mr. Yanovitch's opinion on how they could enforce it.

Mr. Yanovitch stated that the FAR issue is in the T districts and that the last 25 houses that were built were researched and found to have no issues related to the issues brought up by this article. The main issues noted by the Building Department are found in subparagraph "n". First is the clause "where such space substantially …" Mr. Yanovitch explained that most developers go around the By-Law and not through it. He explained that the Building Commissioners will need to interpret what substantial means every time.

Mr. Hines asked how this proposal compared to Mr. Selwyn's original FAR proposal.

Mr. Yanovitch stated that the Building Department would have issues with paragraph "n". He also stated that the uniformity issue was raised by Jesse Gellar, chair of the ZBA, who believed that the article would prescribe certain remedies for some single-family homes but different ones for others. Attics of large size are the largest issue.

Mr. Modigliani asked why attics are a main concern of the committee. Mr. Benka explained that the issue does involve both basements and attics and the mass that both can add to a house. He also explained that most properties in town are not built out especially in S districts.

Mr. Modigliani disagrees with this interpretation. He asked to further understand the "substantially" clause which would involve an initial determination by the Building Department. He asked Mr. Yanovitch what kinds of other subjective judgments the Building Department makes daily and how the determination being requested here under the "substantially" clause differs.

Mr. Yanovitch referred to interpretations regarding building codes, finishes and demolition as areas where judgment is used. He believes that there are different interpretations based on who is doing the interpretation – a contractor is going to feel differently than a neighbor on the outside and both will argue their own side.

The Board discussed the definition of "built out".

Mr. Hines stated that part of this has to do with bulk and the concern bulk causes for neighbors. He believes the conditions of attics are very different than those of basements. He believes we should tailor attic requirements vs. basement requirements as well as different conditions for basements that are completely underground vs. those that have an exposed wall along a hillside.

Mr. Yanovitch responded that this concept had been discussed where having six feet out of the ground for more than 50% of the total square footage would count as a story. But he isn't sure the committee latched onto this idea.

Mr. Benka pointed out the inconsistency of the definition of basement compared to the state building code, but mentioned how changing the definition would create new non-conformities for many homeowners.

Mr. Modigliani stated that the bulk is impacted by the height. He is not sure that attic control is useful. Brookline is a hilly community – many basements are exposed on one side. He recalled that Mr. Yanovitch mentioned that the committee focused on T-5 districts and asked how this affects them?

Mr. Yanovitch explained that there is currently a conflict in the By-Law regarding bonuses. This article would eliminate bonuses for T, F, and M districts, so that conflict would be eliminated.

Mr. Benka stated that he doesn't think the issue only affects T districts – it is an issue that cuts across all districts. T districts are an issue due to the high FAR. The committee didn't see its charge as rewriting zoning for T districts.

Mr. Modigliani explained that Mr. Selwyn had focused on 305 Reservoir and that he possibly did not realize that the property was under the purview of the Preservation Commission who had ultimate say and control over the design.

Ms. Selkoe asked if you could now not finish an entire basement or attic under this proposal due to the reduction from 150% to 130% of FAR?

Mr. Benka replied that the reduction is an option Town Meeting could vote for.

Mr. Modigliani pointed out that 99.8% of housing stock in Brookline is existing with only about .2% new construction. He asked if anyone has been able to quantify the houses that have bypassed the By-Laws with regards to attic/basement conversions.

Mr. Yanovitch responded that there are about 25 new homes and that Mr. Benka and Marilice went and researched each.

Mr. Benka explained that in some areas of town a bulky house is okay while in other areas a bulky house is not okay.

Mr. Hines stated that he can appreciate that the concern is bigger and bigger buildings. He can see how limiting to the 130% of FAR or limiting to FAR would be useful. Why not just allowed a greater FAR? When you exceed FAR, you would be considered too big and no bonuses allowed.

Mr. Yanovitch explained that this article's intent is to apply this only to new homes which raises the uniform district issue. He believes the 130% reduction is a good start.

Mr. Benka pointed out the chart in the article that combines Assessors database with zoning districts. It shows that in S-7 districts, there are more than 600 homes already over 100% of FAR. He stated that the Special Permit review would allow discretion.

Mr. Modigliani stated that there is a lot of sensitivity here, but the number of instances seems low and that no issues were seen in the 25 homes reviewed.

Mr. Benka replied that even one house can affect the entire neighborhood.

Mr. Modigliani asked about staff being provided to assist with the additional caseload to be added by the new Special Permits required by this article. Mr. Benka replied that only 10 to 16 new single-family homes are added per year. The Board discussed the potential increase in case load and the increased use of staff and volunteer boards. Mr. Yanovitch explained that he believes at least 75% of developers do not want to apply for a Special Permit and would design the project to avoid the process.

Ms. Hamlin stated that she believes bonuses should not be allowed by right.

Mr. Zarrillo stated that one thing that bothers him is the lack of examples. He has drawn some of his own examples. He would eliminate the basement requirements because they don't affect bulk. He is not in favor of this article because it is too complex and offers no examples. He believes it needs to be studied as to what would be allowed under each section of the article.

Ms. Selkoe pointed out that the Board has not yet addressed the second part of paragraph "n".

Mr. Yanovitch stated that the Building Department thinks this article is a step in the right direction. The Building Department would approve of the article except for the language in "n" which needs to be cleaned up to make it enforceable. One issue is the reference to conforming structures in the neighborhood. Right now, nearly all buildings are non-conforming in some way. Also, how can the Board of Appeals determine future conditions for each home?

Mr. Modigliani asked what amendments the Building Commissioners would suggest. He argues that "substantially habitable" is clearer than "substantially detrimental".

The Board discussed the existing consequences for violations against the By-Law.

Ms. Hamlin asked if Mr. Benka's appearance before other boards has raised any areas that weren't substantially covered. Mr. Benka replied that the Zoning By-Law Committee had no substantive changes.

Ms. Hamlin stated that this is a very complicated solution to a problem. It discourages people from following it. She wonders about enforcement and if it makes sense and is readable. The big question, she believes, is that benefits should not be by right. She also believes this article points to problems in other areas of town that should be addressed such as T districts. It points to the bigger issue with FAR. She is worried enough about the details that she would vote No Action.

Mr. Modigliani stated that he also has concerns. He suggests that another option is a referral that asks for more work to be done. This is the body that understands the implications of the article the most.

Mr. Zarrillo stated that examples are needed. He believes a group needs to study what needs to happen in the T-5 districts, for example, and to see what additions – 30%, 50% - to various sized houses would create different outcomes. He also supports separating attic additions from basement additions.

Mr. Cook questioned if this is the perfect being the enemy of the good and suggested letting the article operate as is and seeing what happens.

Mr. Modigliani raised the point that we are all focused on T-5 and T-6 districts which were originally changed to encourage attached row houses. He would personally not vote in favor of no action and would probably vote to refer.

Mr. Zarrillo stated that the article is not simplifying the issue but instead makes it more complex due to all the exceptions. We need to examine the reasons for doing this.

Mr. Hines agrees this is very complicated. He would like the Planning Board report to have a positive reflection. He believes the Special Permit process is appealing but seems cumbersome. The current 150% bonus seems excessive. He would like to see a positive affirmation but also feels the article needs refinement, clean up and simplification.

Mr. Modigliani questioned if referral would lead to a better outcome. He believes he raised potential implications that were not addressed. He made a motion to refer the article back to the committee for revision.

Mr. Cook seconded the motion.

Mr. Hines commented that he wants to make sure referring the article doesn't get it killed. He believes a new Moderator's Committee would be re-appointed. He would like to see specific concerns noted for the committee. He is in favor if the article is to come back with changes.

The Board voted 5-0 to recommend a referral back to the Moderator's Committee on FAR for revisions.

Mr. Cook wants to make sure the Board offers specific recommendations on what should be revised.

Ms. Hamlin stated that this is a planning issue. How do towns address these issues of houses that are out of scale? She thinks our zoning code needs overhauling. It is not serving us right now and this specific topic is a pinch point.

Mr. Hines stated he wants to know the Board's thoughts on 2 issues. One is the change from as-of-right additions to Special Permit and the second is the reduced bonus from 50% to 30%.

Ms. Selkoe asked about a prior idea to ask the Attorney General to discuss possible options for different conditions for old houses vs. new houses that would still conform under the uniformity clause.

Ms. Hamlin stated she would prefer to see this language parsed down to 5 sentences or less.

Mr. Hines stated that he is worried a referral will kill the article and that a new committee would re-write it entirely. He believes an attorney is needed to consider any unintended consequences or parse down the language appropriately.

Mr. Benka explained the options for Town Meeting to hold separate votes.

The Board discussed that the Planning Board report will be updated to reflect the concerns. Ms. Selkoe will resend an updated report to the Board for review.

The meeting was adjourned at 10:15 am.