

Chronology of Red Cab Zoning

- **1922 – GENERAL BUSINESS PURPOSES**
 - Maximum 60 feet or 5 stories or higher if the walls of the building are setback a distance two-thirds the height of the building.

- **1962 – INDUSTRIAL SERVICES**
 - Zoned I-1.0 (FAR of 1.0, 60' maximum height, 20' front setback, 10+L/10 for rear, and H+L/6 if over 40 ft).

- **1989 - BROOKLINE DEVELOPMENT COMMITTEE** appointed by Selectmen in 1989
 - Originally looked at two development corridors: south side of Commonwealth Ave & eastern portion of Boylston Street
 - After hearing concerns of local residents, Committee agreed to look at development opportunities throughout the entire town.

- **1990 – 1992 TOWN-WIDE TASK FORCE**
 - Town Meeting voted funding in September 1990 for study
 - Study went from 1991 through September 92
 - Over 60 community meetings.
 - Consultants met with Town Departments & Commissions, including Public Works, Preservation, & Conservation
 - Neighborhood Task Force Members just for Boylston Street included 41 people, including John Bassett, Tom Nally, David England, Frances Shedd Fisher, Linda Hamlin
 - Potential development areas included all land currently zoned commercial or industrial, large tracks of land zoned residential (many of which were public or institutional ownership)
 - Properties evaluated according to criteria: potential net financial gain to Town; potential enhancement of physical/human environment; impacts on urban design character, housing & neighborhoods, historic districts, public open space, and traffic; and development feasibility
 - 12 priority areas identified, including Commonwealth Ave & Boylston St. corridors, a series of locations along Harvard St., the western end of Boylston St. near Chestnut Hill Mall, the municipal transfer station off Newton Street, the Brookline Hospital, the Bournewood Hospital and the MBTA yards near Cleveland Circle.
 - One of these areas was Boylston Street, from Cypress to Washington, which was 12.7 acres of land zoned as Industrial I-1.0.
 - Noted that “new development could enhance urban design character” and that commercial financial benefits were annual tax revenues over \$1M
 - Red Cab site noted to be moderately good for development

- Design Guidelines included not exceeding 45; within 50' of residential property line; 20' rear setback; 70' height or less, but minimum of 45' at the Boylston Street sidewalk edge
 - Compromise warrant article passed at Fall 1992 TM
- **FALL 1992 TM – MORE DISCUSSION WAS NEEDED**
 - Goal of zoning change because areas were “zoned in a manner which was attracting development which was very incompatible with the character of the town. For example, the current industrial zoning on Boylston Street between Washington Street and Cypress Street has continued to attract uses which detract from the character of this important “gateway” area to Brookline Village and generate only a fraction of the tax revenues that more attractive development projects would generate.”..... “In many instances where lower FARs (FAR 1) have shaped development – the result has been an unattractive suburban strip pattern of development with predominantly single story commercial buildings surrounded by large parking areas. In addition to their generally unattractive urban design character, these predominantly auto-oriented retail businesses generate very significant levels of traffic in the town’s neighborhoods and produce relatively low tax revenues.”
 - Selectmen & PB voted yes (with some changes), Advisory voted on two small areas, but not on the others. Advisory did not vote favorably for Boylston area nor reduced parking requirements.
 - Development Committee withdrew articles that were not voted favorably by Advisory
- **FALL 1993 TM – COMPROMISE!**
 - Refers to several neighborhood task force meetings between '92 and '93 Town Meetings
 - Planning Board Recommendation refers to “Citizen Petition for map changes”, and Planning Board agreed to incorporate Bassett’s G-1.0 at Lincoln as part of compromise to comprehensive rezoning
 - Advisory report noted that the majority was persuaded to support the citizens’ petition for Boylston because it: (1) was better to have the entire Cameron Street area residential; and (2) was better to not upzone the Lincoln school and the Brigham Surgical Group buildings
 - Guideline attached to TM article stated that “Guideline related to Red Cab property is still under discussion”, but that buildings should not exceed 45' within 50' of an adjacent residential property line
 - Boylston area upzoning passed TM unanimously with 1 abstention.

- **2006-2009**

- Leggat McCall contacted EDAB in May 2006
- Joint EDAB & neighborhood meeting with 50 residents, ending in applause
- 2007 Town meeting vote to allow Selectmen to sell Town-owned parcel at end of Kerrigan Place
- Agreement for Tax Certainty
- Permitting commenced
- 2008 - Following Design Advisory Team (DAT) work, Planning Board sent team back to DAT for further refinement
- RFP for Town-owned parcel & permitting of Legatt-McCall plan
- Approved by Planning Board & Board of Appeals
- Special permit and appeal occurred in September; suit dropped April 15, 2009

- **2010**

- 2010 - special permit expired March 15, 2010
- Warrant Article 14 passed with sunset provision added via Advisory Committee

Zoning Item		Pre-1993 Zoning I-1.0	Post 1993-Zoning G-2.0	Warner Amendment G-2.0	2010 Temporary Zoning G-1.0
Max. Floor Area Ratio (FAR)		1.0	2.0	2.0	1.0
Allowable Uses (as of right or by special permit)		Multifamily, entertainment center, retail, office, auto uses (excluding car wash), research labs, mortuary, industrial uses.	2- and 3- family, multifamily, life care facilities, lodging and hotel, entertainment center, health club, retail, office, auto uses (excluding car wash and outdoor auto sales/rentals), research labs (excluding biolabs), mortuary.		
Maximum Height (feet)	Without Public Benefits	40	45	40	N/A
	With Public Benefits	N/A	60' only where 50' from centerline of railroad tracks or Boylston Street Playground.	55' only where bldg is at least 64' from the MBTA property line. ¹	
Minimum Setbacks ² (feet)	Front ³	20	0		
	Side	0			
	Rear ⁴	10 + L/10			
	From MBTA Tracks	N/A		30 ⁵	
Parking – Residential	Per 1 bdrm unit	1.6 spaces	2 spaces		
	Per 2+ bdrm unit	1.8 spaces	2.3 spaces		
Parking – Commercial	Public Assembly	1 space per 4 seats	1 space per 5 seats		1 space per 4 seats
	Institutional	1 space per 450 sq ft	1 space per 550 sq ft		1 space per 450 sq ft
	Grnd Flr Retail/Gen Office	1 space per 200 sq ft	1 space per 350 sq ft		1 space per 200 sq ft
	2 nd Flr Retail/Gen Office	1 space per 400 sq ft	1 space per 600 sq ft		1 space per 400 sq ft
	Medical Office	1 space per 200 sq ft	1 space per 250 sq ft		1 space per 200 sq ft
	Industrial	1 space per 800 sq ft			
Warehouse/Other	1 space per 1200 sq ft				

¹ Further, the massing of this additional height can be no wider than 194 feet in length.

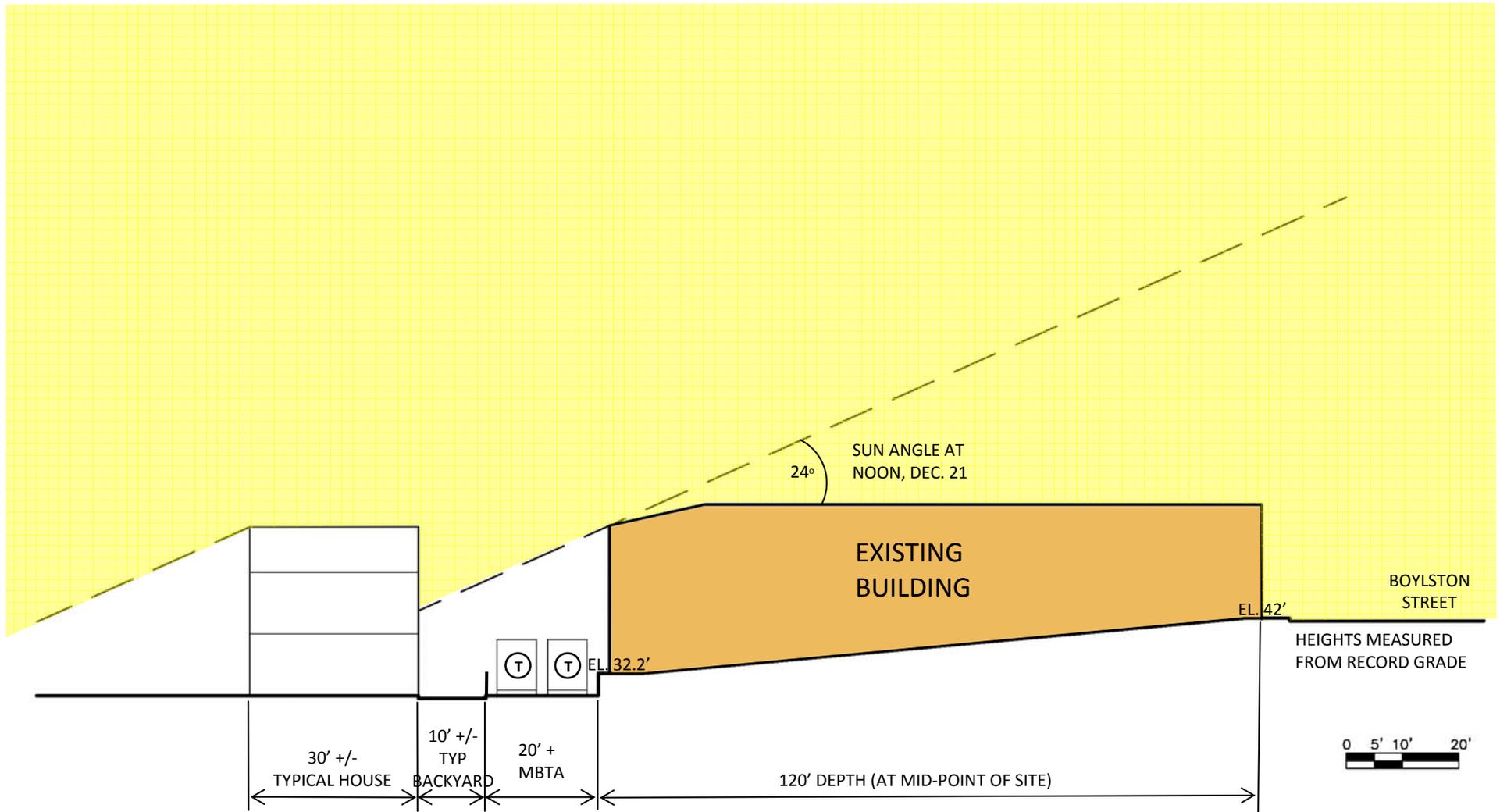
² Note that all setbacks can be reduced by special permit.

³ Entrance to garage or covered vehicular passageway facing street to which it has access shall be at least 20' from street lot line.

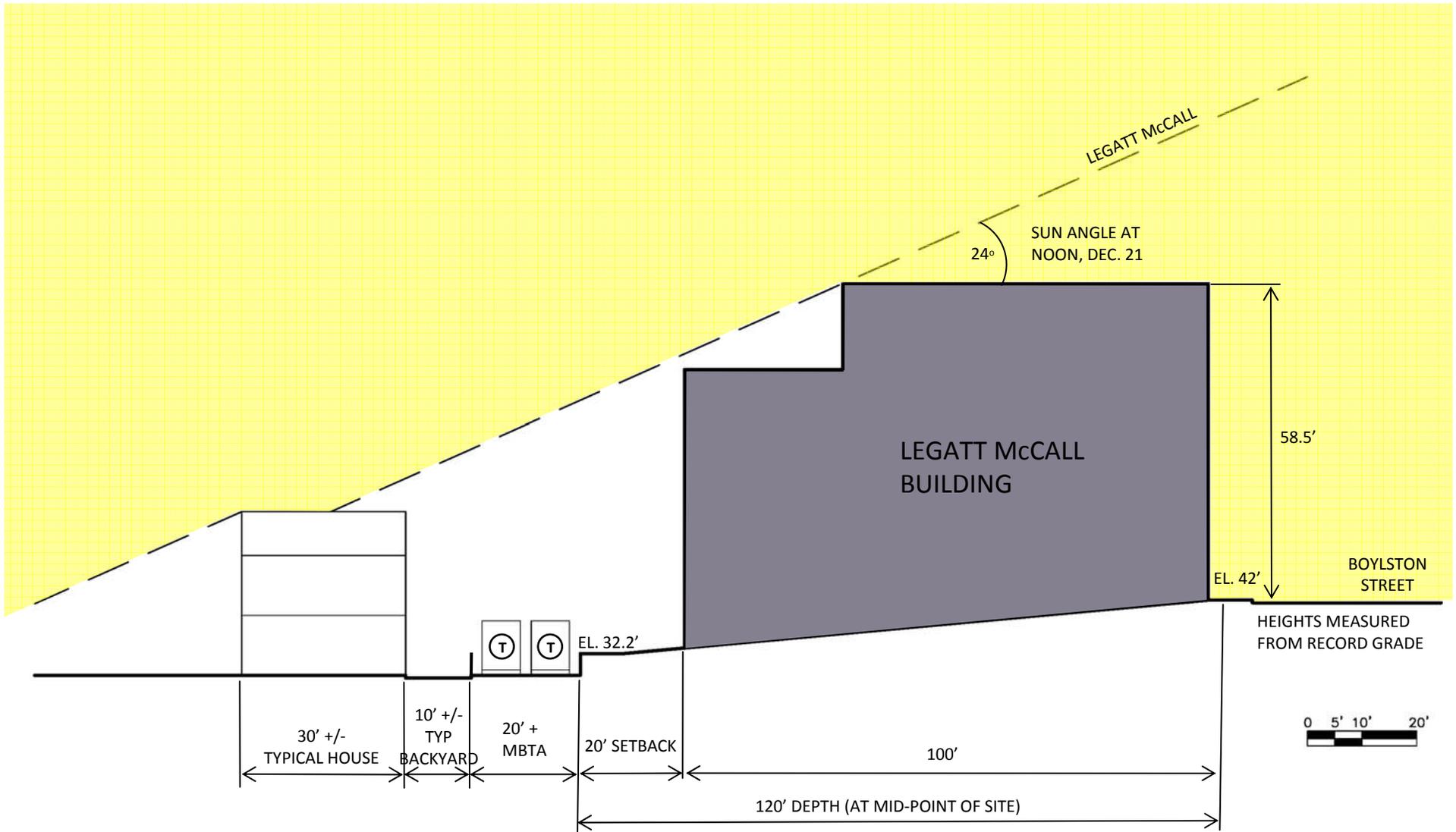
⁴ L is the length of the building facing the rear lot line. See Sec. 5.40 for uneven heights or alignments, where portions of the building can encroach this setback.

⁵ At least 50% of the area within this setback must be landscaped open space.

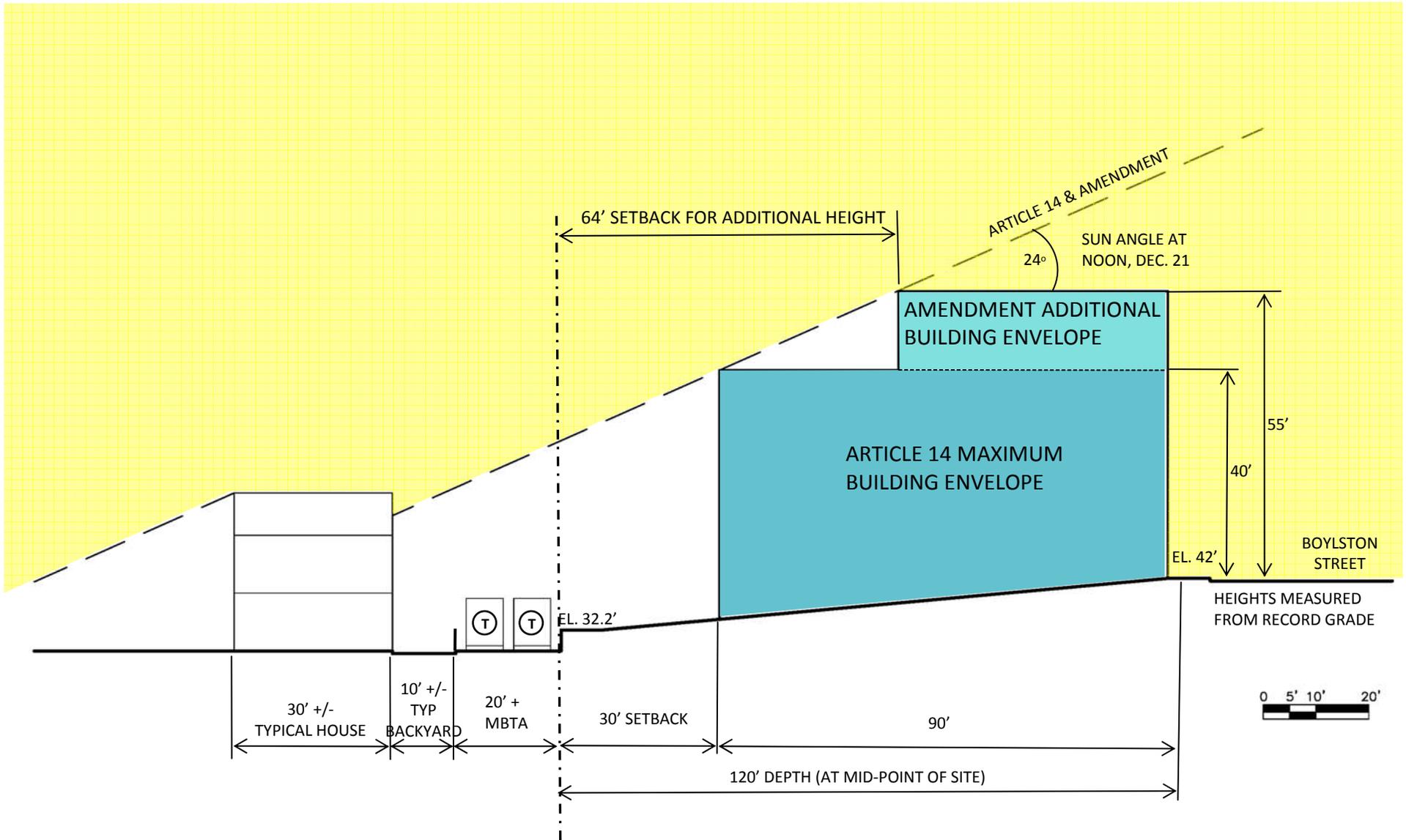
EXISTING BUILDING NORTH TO SOUTH PROFILE



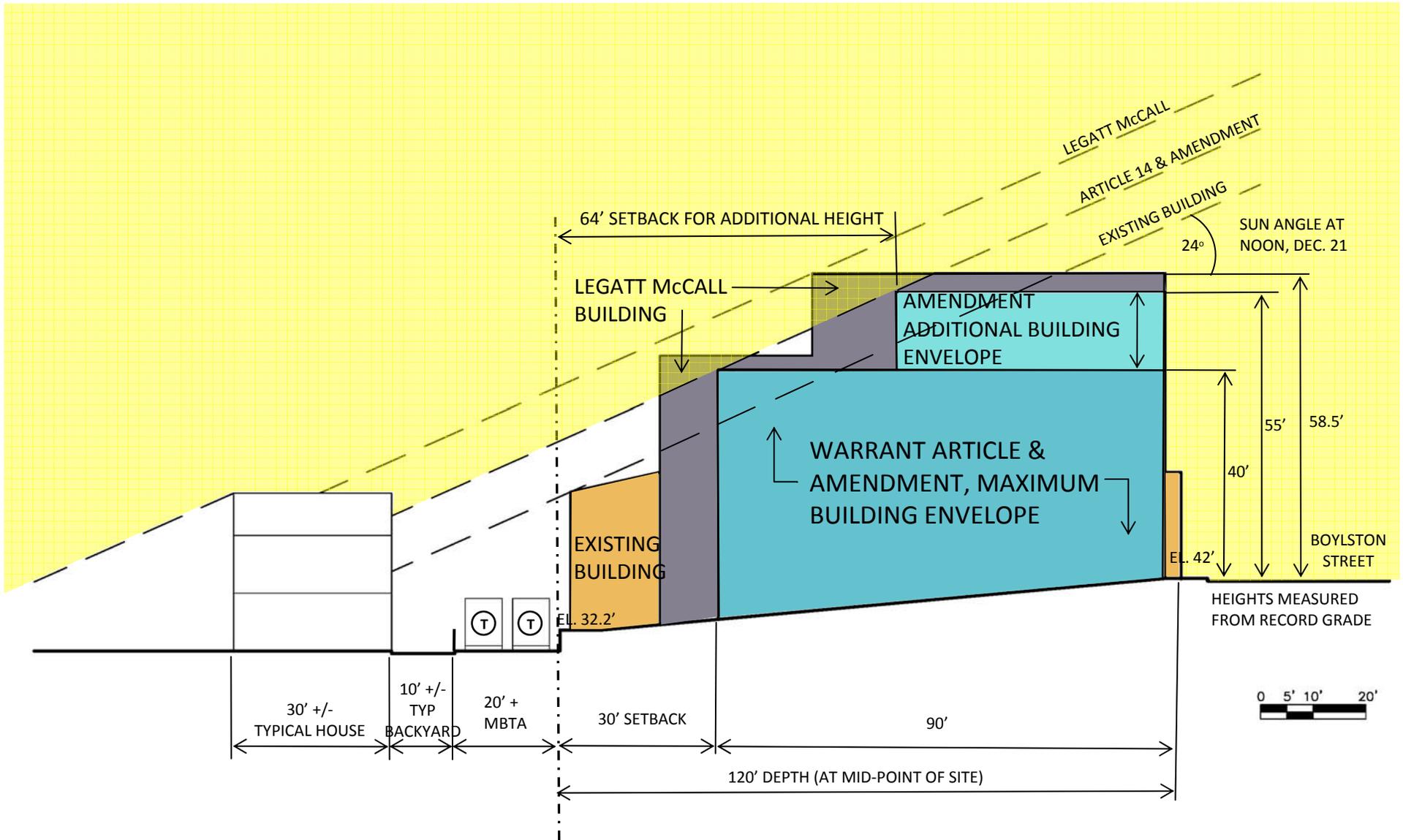
LEGATT McCALL BUILDING NORTH TO SOUTH PROFILE



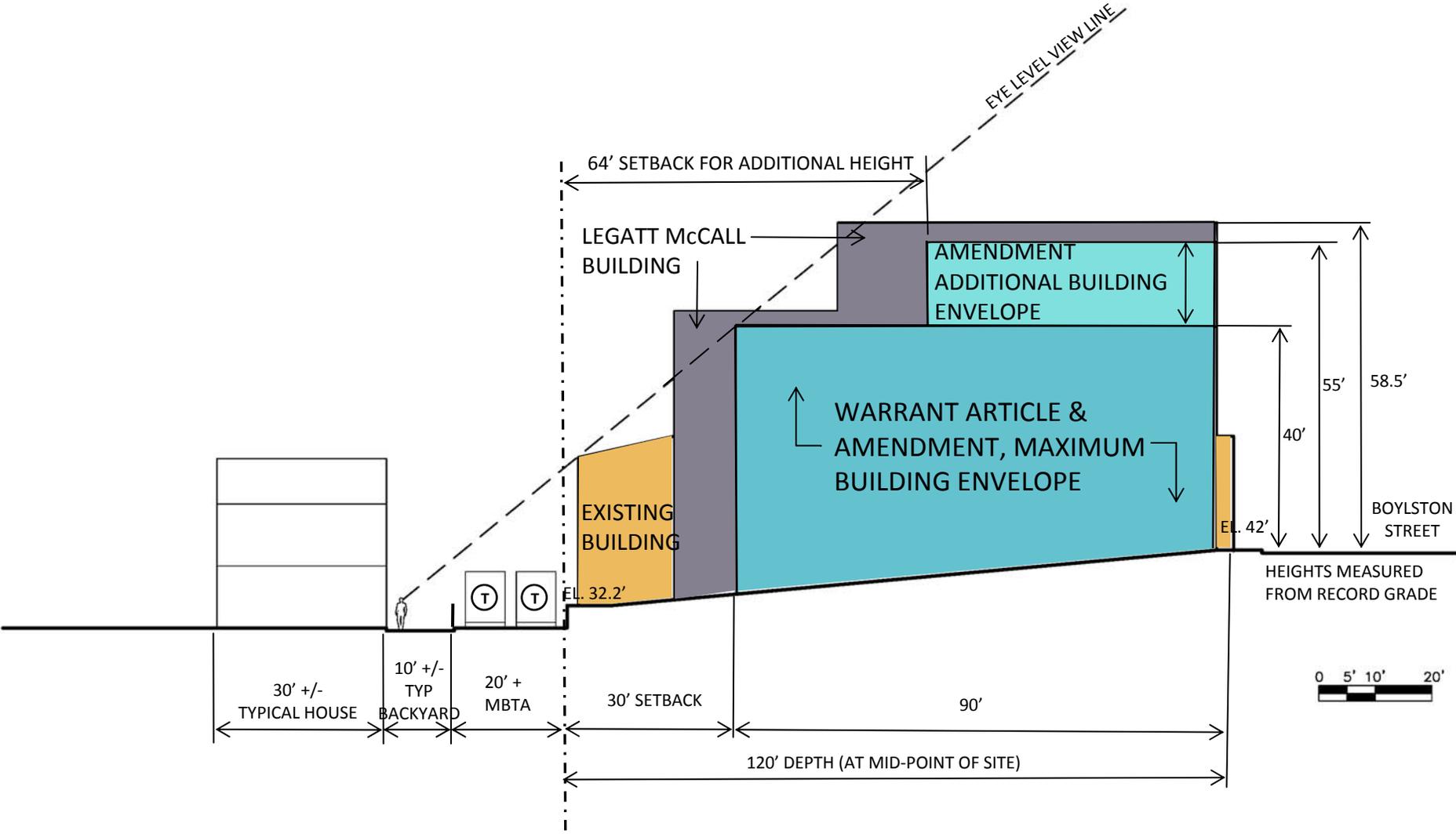
ARTICLE 14 & AMENDMENT NORTH TO SOUTH PROFILE



SHADOW COMPARISON



EYE LEVEL VIEW COMPARISON



ARTICLE 14

FOURTEENTH ARTICLE

To see if the Town will amend the Zoning By-Law as follows:

- I. With respect to the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline:
 - 1. Create a new zoning district designated G-1.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline.

- II. With respect to a ZONING MAP CHANGE:
 - 1. Change the Zoning Map to reflect the new G-1.0 (DP) as described in this Article.

- III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01 – CLASSIFICATION OF DISTRICTS, insert the following new number 8:
 - 8. G-1.0 (DP) Davis Path (Refer to §5.06, Special District Regulations)

- IV. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add a new line in the Table after G-1.0 for the new district G-1.0 (DP) as follows:

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ² (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	FRONT ^{1,6}	Side ²	Rear	Landsc.	Useable ¹³
G-1.0 (DP)	Any Structure or Principal use (dwelling-footnote 5)	None ⁴	1.0	N/A	None	40	N/A	N/A	None	None	10+L/10	See §5.06	None

- V. With respect to ARTICLE V - DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add a new paragraph e. under Special Districts, to read as follows:
 - e. Davis Path General Business District G-1.0 (DP)
 - 1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.
 - 2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

PETITIONER’S ARTICLE DESCRIPTION

The intent of this Article is to correct the Town Zoning By-Laws in order to adequately protect the Emerson Garden and historical White Place neighborhoods. It has been

demonstrated that the current G-2.0 zoning is not sufficient protection for the small, residential area. Additionally, Article 1, section 1 of the Zoning By-Laws requires greater protection for the neighborhoods than that afforded by the current G-2.0 zoning.

PLANNING BOARD REPORT AND RECOMMENDATION

This article is being submitted by Citizen Petition and proposes to change the zoning of the parcels located at 111 Boylston Street, 10-12 Kerrigan Place and the Town-owned parcel between those two lots, by reducing the allowed FAR of 2.0 to 1.0 (and therefore removing the ability to participate in Public Benefit Incentives for additional height or FAR), reducing the allowed height to 40', and creating an overlay district, called G-1.0 (DP), with a minimal dimensional requirement for the yard setback of the building from the MBTA property line of 30 feet, and requiring that 50% of this yard be landscaped open space. In 1993, Town Meeting rezoned these properties from I-1.0 to G-2.0, thus acknowledging that for redevelopment to occur, greater density would need to be allowed. At this time, a shadow study was completed to show that the greater density would have minimal impact on White Place, compared to existing shadows. The 2005-2015 Comprehensive Plan designated this area as an appropriate location for development and an opportunity to enhance the Route 9 corridor streetscape and provide a greater tax base to the Town.

In 2008, the Planning Board gave a favorable recommendation and the Board of Appeals approved special permits for a commercial development for this site. The proposed building was three stories, with a recessed fourth story, and underground parking for 265 cars. The proposed building was setback 20 to 47 feet from the MBTA tracks and was heavily landscaped. An abutter appealed the Board of Appeals approval but subsequently withdrew it when it appeared the development was not going forward. Recently, a requested one year time extension from the developer was withdrawn, meaning that the special permit approvals will expire on April 15, 2010. Any future project would be required to begin anew the review and approval process.

The Planning Board believes that halving the FAR for these sites is not appropriate and would be a disincentive to new development. Rather, design guidelines addressing setbacks, landscaping, building design and number of required parking spaces should be further evaluated to ensure greater protection to the White Place neighborhood. Replacing the dilapidated and vacant Red Cab building with a new development will speed the revitalization of this area and greatly enhance the appearance of Boylston Street.

Therefore, the Planning Board unanimously recommends NO ACTION on Article 14 and that further study of the site be undertaken to evaluate appropriate design guidelines to minimize the impact on White Place while allowing appropriate redevelopment.

SELECTMEN'S RECOMMENDATION

The Board of Selectmen plans on taking a vote on Article 14 at its May 11 meeting. A recommendation will be included in the Supplemental mailing that will be sent out the weekend before Town Meeting.

ADVISORY COMMITTEE'S RECOMMENDATION

BACKGROUND:

This article is being submitted by Citizen Petition and proposes to change the zoning of the parcels located at 111 Boylston Street, 10-12 Kerrigan Place and the Town-owned parcel between those two lots, by reducing the allowed FAR of 2.0 to 1.0 (and therefore removing the ability to participate in Public Benefit Incentives for additional height or FAR), reducing the allowed height to 40', and creating an overlay district, called G-1.0 (DP), with a minimal dimensional requirement for the yard setback of the building from the MBTA property line of 30 feet, and requiring that 50% of this yard be landscaped open space. In 1993, Town Meeting rezoned these properties from I-1.0 to G-2.0, thus acknowledging that for redevelopment to occur, greater density would need to be allowed. At that time, a shadow study was completed to show that the greater density would have minimal impact on White Place, compared to existing shadows. The 2005-2015 Comprehensive Plan designated this area as an appropriate location for development and an opportunity to enhance the Route 9 corridor streetscape and provide a greater tax base to the Town.

In 2008, the Planning Board gave a favorable recommendation and the Board of Appeals approved special permits for a commercial development for this site. The proposed building was three stories, with a recessed fourth story, and underground parking for 265 cars. The proposed building was setback 20 to 47 feet from the MBTA tracks and was heavily landscaped. An abutter appealed the Board of Appeals approval but subsequently withdrew it when it appeared the development was not going forward. Recently, a requested one year time extension from the developer was withdrawn, meaning that the special permit approvals will expire on April 15, 2010. Any future project would be required to begin anew the review and approval process.

DISCUSSION:

The Advisory Committee heard a summary of the subcommittee hearing testimony and heard directly from a number of petitioners and a representative of EDAB. The following summarizes that information:

In Support of Article 14, a number of petitioners, including residents of White Place, utilizing software provided by the prior developer of the property, visually outlined the effect

(largely shadow and massing) of the proposed development that had been previously approved.

Petitioners noted that, in their view, the Town now had the opportunity to get development on the parcel “right” since the proponent of the prior permitted project was not seeking an extension to their previously granted permit. The presentation demonstrated that, at the current setback of twenty feet (and a FAR of 2.0), there was significant shadow on the parcel, especially in the winter months. They noted that in addition to the height of the then proposed structure, the current required setback (twenty feet), and the use by the proponent of the pathway (instead of Boylston Street) as frontage made the effects more pronounced. When questioned, petitioners could not demonstrate what the shadow effect of an FAR 1.0 development (as proposed in Article 14) would be.

Petitioners noted that while some have suggested that their proposal may constitute “spot zoning”, actually the zone was created in 1993, and its current zoning (2.0) for this parcel is greater than the allowed FAR of surrounding parcels.

The Planning Department in addressing the article noted that while the surrounding parcels were zoned with FAR 1.0, a number of properties in the area had greater FAR due to their status as non-conforming buildings. The department’s spokesperson did agree that the shadow effect of the prior approved development was an issue.

A member of the Planning Board testified that the Board had recommended “No Action” on the Article, but that the Board had sympathy for the White Place neighborhood given the demonstrated shadow effect. The member also noted that because “above ground” parking did not count against FAR (unlike the zoning in Coolidge Corner where “above ground” parking is included in FAR calculation), the massing situation was heightened. In restating the Planning Board’s position, he noted that the Planning Board believes that halving the FAR for these sites is not appropriate and would be a disincentive to new development. Rather, design guidelines addressing setbacks, landscaping, building design and number of required parking spaces should be further evaluated to ensure greater protection to the White Place neighborhood. Replacing the dilapidated and vacant Red Cab building with a new development will speed the revitalization of this area and greatly enhance the appearance of Boylston Street. The Planning Board felt that further study of the site be undertaken to evaluate appropriate design guidelines to minimize the impact on White Place while allowing appropriate redevelopment.

The property owner testified that her family had owned the parcel since the mid 1970’s, and that she hoped to find a developer who could bring an appropriate economic development to the property that would be of benefit to the Town.

A member of the Economic Development Advisory Board testified that while EDAB had sympathy for the abutters’ points of view, the parcel was an important development opportunity for the Town, and the petitioners’ proposal had the effect of making development on the parcel uneconomical.

There was broad discussion between the petitioners, neighbors, Planning Board and Planning Department representatives, the property owner and the members of the Subcommittee.

A number of Subcommittee members suggested that given neighborhood concerns as demonstrated by the modeling software and surrounding zoning, the Article was warranted. Specific discussion was given to the basic framework of the Town's zoning, and the importance held in it to a development that was consistent with surrounding neighborhoods and buildings.

Various participants noted that a FAR of 1.0 would not allow (economically) an appropriate use of the parcel.

Others noted that (1) including above ground parking in the FAR calculation, and (2) establishing greater setbacks might resolve the problems presented, but that such changes would be in all likelihood beyond the scope of the article. It was noted that the Planning Department had requested \$50,000 to study these various questions, but given the Town's fiscal constraints, those funds have not been committed, so the studies the Planning Department needed to provide informed advice were not available.

There was then discussion as to whether, given the general view, that there were legitimate issues presented related to setbacks and shadow, and since the current project proponents right to build the development had lapsed, a short term imposition of the petitioners' zoning proposal (with a clear and definitive sunset provision) might not provide an opportunity for all the stakeholders to achieve consensus. The subcommittee stated that this would be its recommendation.

A representative of EDAB stated that he supported the intent of Article 14 to reduce the proposed building's shadow impact on the abutting residential neighborhood, but does not support a moratorium because that would freeze development on the parcel and would create uncertainty for developer. He suggested that a 2.0 FAR development could generate an additional \$400,000 in property taxes for the town and a moratorium would delay that, and that an FAR below 2.0 would not be financially feasible. Instead, he proposed a new article that would: 1) establish a 40 foot height maximum and a 30 foot rear setback; 2) keep the FAR at 2.0; 3) with Public Benefits allow a height of 55 feet along Boylston Street, and limiting the height of that one story to minimize the shadow impact and required Design Guidelines to minimize the effect on White Place and the Boylston Street Playground.

The EDAB representative presented a drawing which presented a December 21st (noon) shadow model that showed that that smaller and set back additional floor would not produce shadows greater than a FAR 1.0 building. On questioning as to whether the same shadow impact would exist at 9am or 3pm on the same day, the representative stated that he had not done such a study.

RECOMMENDATION:

The modeling of the proposed project at 111 Boylston St which represented a maximum build out at the current zoning had a real impact on committee members and showed that current zoning is too dense for the site given its context. The committee heard a suggestion

that the Planning Board learned lessons from the project which will result in revised design guidelines for future projects. It also heard that EDAB may have designed a solution but that given timing, a full shadow study had not occurred. However, even with revised design guidelines, current zoning will permit the massing which will dwarf the buildings on White Place and impose shadows that will keep White Place in darkness for a good portion of the year.

The committee heard sympathy for the abutters from the Planning Department, Planning Board and from members of EDAB but also heard that it wasn't possible to get the zoning "right" without a zoning study and certainly not within the time frame necessary to implement for this town meeting and not within the confines of the zoning proposal before us. The committee is therefore proposing an effective development moratorium in this zoning district until after the 2011 Annual Town Meeting. This will provide the time necessary for the Planning Department, EDAB and the Planning Board to study what is the correct FAR, setbacks and parking requirements for the site which allow for an economically viable project that will be a better fit given the site's context. The fact that the development at 111 Boylston St. will not proceed as previously permitted provides us with an opportunity to really study what lessons are to be learned and get it right.

The vehicle for imposing the moratorium is to accept the petitioners proposed change in the zoning, under which EDAB has determined that an economically driven development project is not possible but have it sunset after the Spring 2011 Town Meeting. This should provide sufficient time for the appropriate study and process to occur to get the zoning right. The language proposed below takes the petitioner's proposal and reworks it based on drafting input from the Planning Department a bit so that it better fits into the zoning bylaw with the suggested sunset. The substance of the petitioner's proposal is unchanged.

The Advisory Committee voted 18-1-3 to accept the subcommittee recommendation and recommended FAVORABLE ACTION on amended Article 14. (Changes to the petitioners' article are shown in the italicized words in the vote below and the related reorganization is shown in the markup thereafter):

VOTED: That the Town amend the Zoning By-Law to create a new zoning district designated G-1.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline, by:

<u>G-1.0</u> <u>(DP)</u> ¹⁸	Any structure or principal use (dwelling-footnote 5)	none ⁴	1.0	N/A	none	40	N/A	N/A	none	none	10+L /10	See Sec 5.06	none ₅
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and the following footnote at the bottom of Table 5.01:

“18. See Section 5.06(4)(e), Special District Regulations. G-1.0 (DP) district shall be in effect until August 1, 2011. After that date, the district shall cease to be in effect and its line shall be removed from Table 5.01”

5. Amend Section 5.06, Special District Regulations by adding a new paragraph 5.06.4.e. as follows:

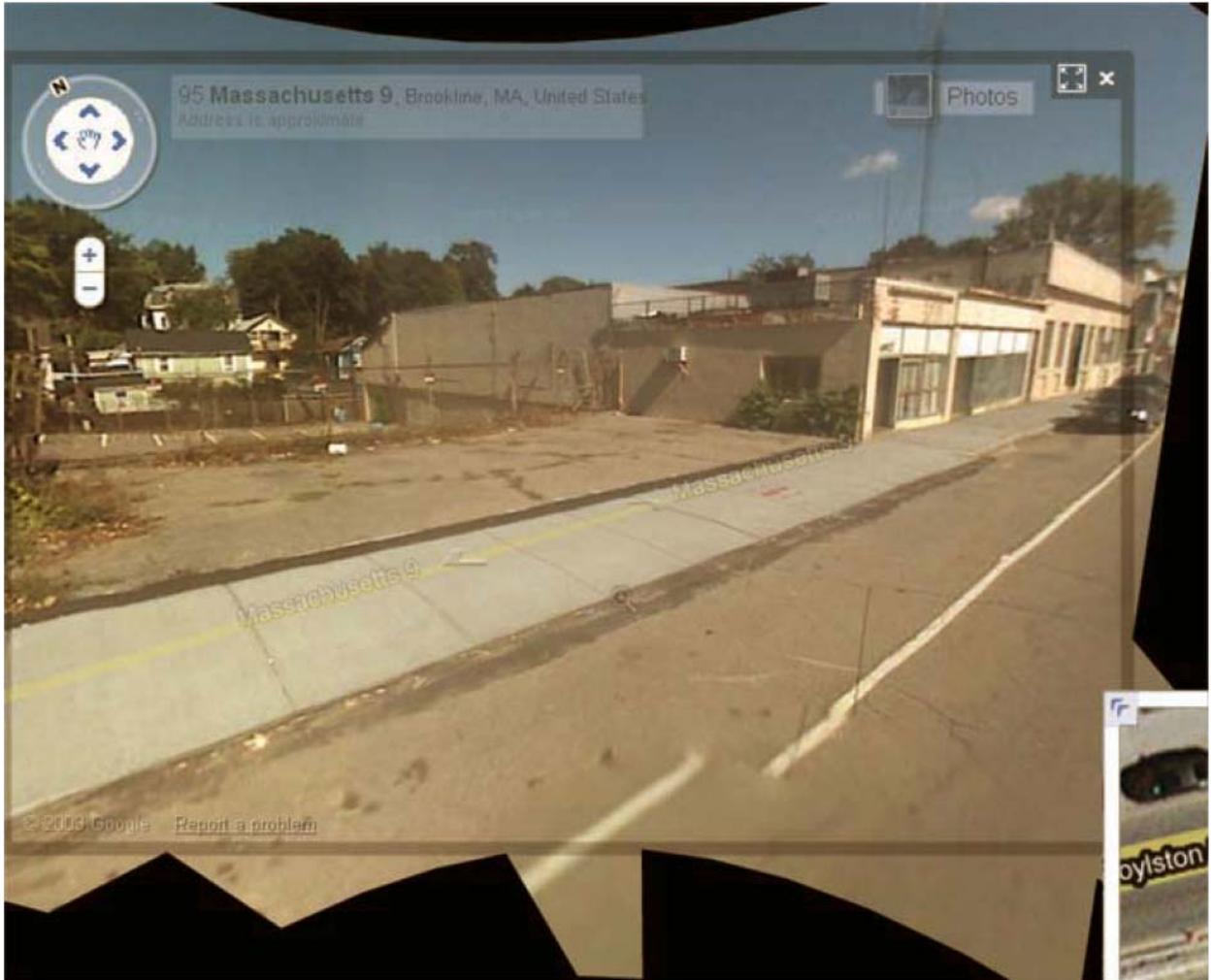
“e. Davis Path General Business District G-1.0 (DP)

1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.

2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

3. Note: G-1.0 (DP) district shall be in effect until August 1, 2011. After that date, the district shall cease to be in effect and this section 5.06.4.e. shall be removed from the Zoning Bylaw.”





ARTICLE 14

BOARD OF SELECTMEN'S SUPPLEMENTAL RECOMMENDATION

Article 14 is a petitioned article that would downzone several parcels on the north side of Route Nine east of Davis Path. These parcels – 10-12 Kerrigan Place, 111 Boylston Street, and land owned by the Town in between – would be rezoned into a new special district called the “G-1.0 (DP)”, or Davis Path, special district. This rezoning would do the following:

- Reduce the allowed maximum Floor Area Ratio (FAR) from 2.0 to 1.0
- Reduce the allowed maximum height to 40 feet, with no option for an increase with public benefit incentives
- Require a setback of 30 feet from the MBTA tracks on the north side of the district, with an additional requirement that 50% of that area be landscaped.

This rezoning is in response to a proposed development of the area that many neighbors felt was too high and too massive. That proposed development raised concerns about shadow impacts and visual impacts to residents on White Place. While the petitioners acknowledged that a 1.0 FAR may be lower than is necessary to protect the neighborhood, they felt they had a limited time to draft a warrant article and submit it to Town Meeting. The petitioners have stated they are open to a higher allowed Floor Area Ratio as long as they feel shadow and massing impacts addressed.

Following the submission of this initial article, two proposed amendments have been brought forward. One amendment – as recommended by the Advisory Committee – would reformat the article slightly, but also would add a sunset provision. Under this proposed amendment, the parcels would revert to the existing zoning in August, 2011. The idea behind this amendment would be to provide time for a more permanent solution to the issues raised to be developed.

The other amendment – developed by TMM Don Warner, who also serves on the Economic Development Advisory Board – would retain the existing 2.0 Floor Area Ratio, retain the warrant article's 40' height limit and 30' setback from the MBTA tracks, but would also permit an additional 15' of height with public benefits if set back 64' from the MBTA tracks and no longer than 194' in length. This amendment would also mandate the Planning Board to create design guidelines for the district.

While these proposed zoning changes have been debated, the owners of the largest parcel affected by this rezoning – 111 Boylston Street – submitted a Preliminary Subdivision Plan for their parcel. As long as a Definitive Subdivision Plan is submitted in seven months, the existing zoning is frozen on this larger parcel for about eight years.

The Board of Selectmen discussed the original warrant article and the proposed amendments at length. The Board wants to make sure that the White Place neighbors do not bear an unreasonable shadow or massing impact from any development on these parcels. On the other hand, these parcels are some of the largest remaining sites for possible commercial development that might help the Town fund its schools and other services going forward.

Since the petitioners have expressed their support for the Advisory Committee language, the Board did not vote on the original warrant language. However, the Board did take the following votes:

- Don Warner amendment (failed 1-2-1)

DeWitt – No
Daly – No
Mermell – Yes
Benka – abstain

- Daly amendment (FAR of 1.5) to Advisory Committee vote (failed 2-1-1)

DeWitt – Yes
Daly – Yes
Mermell – No
Benka – abstain

- Advisory Committee vote (failed 1-2-1)

DeWitt – Yes
Daly – No
Mermell – No
Benka – abstain

Regardless of what happens with the zoning, the Board feels that there needs to be a thoughtful and detailed study that will resolve the multiple variables affecting appropriate redevelopment of this site. For this reason, the Board voted unanimously to appoint a Davis Path Special District Zoning Study Committee, whose charged is to review and analyze current conditions, zoning and parking requirements, design guidelines, shadow studies, and other land use planning tools such as transit oriented development. The Study Committee is to report back, at or before the November 2011 Town Meeting, with recommendations for zoning amendments to create a Special District under Sec. 5.06 of the Zoning By-Law that would permit appropriate development while mitigating impacts on adjacent neighborhoods and historic districts. The membership is as follows: Selectman, Advisory Committee, Planning Board, Zoning By-Law Committee, EDAB, and four Community Representatives.

ARTICLE 14

Amendment Offered by Donald A. Warner, TMM Prec-13

Moved: That the Town amend the Zoning By-Law:

~~I. With respect to the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline:~~

~~1. to create a new zoning district designated G-12.0 (DP) to define the zoning of the parcels of land located at 111 Boylston Street, 10-12 Kerrigan Place and the parcel between these addresses owned by the Town of Brookline., by:~~

~~II. With respect to a ZONING MAP CHANGE:~~

~~2. Change the Zoning Map to reflect the new G-1.0 (DP) as described in this Article.~~

1. Amending the map as shown to add a new G-2.0 (DP) district consisting of the properties currently zoned G-2.0 south of the Green Line and north of Boylston Street between (but not including) Davis Path and 99 Boylston Street:



~~III. With respect to ARTICLE III, ESTABLISHMENT OF ZONING DISTRICTS, SECTION 3.01—CLASSIFICATION OF DISTRICTS, insert the following new number 8:~~

2. **Amend Section 3.01 (Classification of Districts) by adding a new 3.01.2.c.8 as follows:**

~~“8.)~~ G-~~12.0~~ (DP) Davis Path (Refer to ~~§Sec.~~ 5.06, Special District Regulations)

3. ~~IV. With respect to ARTICLE V – DIMENSIONAL REQUIREMENTS, SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS, add-~~ **Table Of Dimensional Requirements by adding a new line in the Table after G-~~12.0~~ for the new district G-~~12.0~~ (DP) as follows:**

SECTION 5.01 TABLE OF DIMENSIONAL REQUIREMENTS							PBI ¹¹		MINIMUM YARD ³ (feet)			OPEN SPACE (% of gross floor area)	
DISTRICT	USE	LOT SIZE MINIMUM (sq. ft.)	FLOOR AREA RATIO MAXIMUM	PBI ¹¹ NB ONLY	LOT WIDTH ⁴ MINIMUM (feet)	HEIGHT ⁹ MAXIMUM	B	NB	Front ^{1,6}	Side ^{2,7}	Rear ⁸	Lands c.	Usable ¹³
							G- 12.0 (DP) ¹⁸	Any structure or principal-use (dwelling-footnote 5)	none ⁴	1-0 <u>2.0</u>	N/A	none	40

18. Note: See Section 5.06(4)(e). Special District Regulations.

~~V. With respect to ARTICLE V – DIMENSIONAL REQUIREMENTS, SECTION 5.06, SPECIAL DISTRICT REGULATIONS add~~

4. **Amend Section 5.06, Special District Regulations by adding a new paragraph e. under Special Districts, to read 5.06.4.e. as follows:**

~~“e.~~ Davis Path General Business District G-~~12.0~~ (DP)

1. The Minimum Yard Setback from the property line bordering the MBTA train tracks shall be 30 feet.
2. No less than 50% of this Minimum Yard Setback shall be devoted to landscaped open space.

3. Any additional height above 40 feet permitted under Section 5.31 (Public Benefit Incentives) shall be setback at least 64 feet from the property line bordering the MBTA train tracks and in no case shall be more than 55 feet in height.

4. Any portion of the building permitted under Section 5.31 (Public Benefit Incentives) shall not be longer than 194’.

5. The Planning Board shall adopt updated design guidelines for the G-~~2.0~~ (DP) district that delineate acceptable design for buildings in this district that will minimize shadow impacts on residences along White

Place and encourage a design and use of materials which will soften the north and west elevations to be more compatible with the abutting residences and Boylston Street Playground.

TO: Town Meeting Members
FR: Economic Development Advisory Board (EDAB)
RE: Proposed Warner Amendment to Warrant Article 14 – Red Cab Site Down Zoning

EDAB unanimously recommends favorable action on the amendment offered by Town Meeting and EDAB member Donald Warner, AIA, LEED-AP, for Warrant Article 14.

Background: The Red Cab site (AKA 111 Boylston), 10-12 Kerrigan Place, and an adjacent Town-owned parcel comprise a development site of approximately 35,318 SF. The site is currently zoned “G-2”, which was approved by Town Meeting in 1993. At this location, G-2 zoning provides for a maximum Floor Area Ratio (FAR) of 2.0 by right, a maximum building height of 45 feet by right, and up to 60 feet with public benefits. The development company Legatt McCall received a Special Permit for a 70,000 SF 3.5 story medical office building from the ZBA in September 2008. The Special Permit was appealed by local neighbors. Forced by the filing of Article 14 and the potential down zoning of the impacted parcels, the owner of 111 Boylston (the larger parcel east of Kerrigan Place) filed a Preliminary Subdivision Plan to freeze the current zoning.

Warrant Article 14: Article 14 proposes to reduce the FAR to a maximum of 1.0, eliminate the height bonuses for public benefits, reduce the maximum building height to 40 feet, and increase the rear (MBTA side) set-back to a minimum of 30 feet. The Advisory Committee has recommended adding a sunset clause which would reinstate the current zoning as of August 2011.

Warner Amendment: The amendment proposed by Don Warner would keep the FAR at 2.0, keep the expanded 30-foot setback from the MBTA property, and increase the building set-back for upper floors to 64 feet from the MBTA property, such that the shadow impact on adjacent White Place would be nearly identical to a new building meeting Article 14 standards (see attached graphic). The Warner Amendment also eliminates the sunset clause.

Rationale: Several factors are behind EDAB’s endorsement of the Warner Amendment:

- **Existing Conditions:** The Red Cab site is an unattractive and under-utilized property. Given its size and proximity to public transportation, it is one of the very few sites in Brookline able to accommodate significant commercial development. Redevelopment of the site will have positive impacts on adjacent property along the Route 9 corridor, and serve as a key link between Brookline Village and the Cypress Street commercial area.
- **Financial Feasibility:** It is simply not financially feasible to redevelop the site with an FAR restriction of 1.0. An FAR of 1.0 (identical to the existing building) would not provide sufficient rentable square footage to support the cost of the substantial site improvements, a new building and underground parking. Worse yet, under Brookline’s zoning by-law, any FAR below 1.5 would trigger significantly higher parking ratios per square foot—requiring more parking for less building. These restrictions would limit development of the site to a small, one-story, automobile-oriented retail use (such as a Dunkin Donuts or fast-food outlet)—or, more likely, force consideration of alternative development scenarios not limited by market conditions.
- **Alternative Development Scenarios—the Dover Amendment and Chapter 40-B:** Down zoning the site to effectively eliminate a financially feasible market rate development would invite alternative development options, such as a facility owned and occupied by a non-profit hospital or university, or Chapter 40-B affordable housing. Under the Dover Amendment, non-profit institutions are largely exempt from municipal zoning regulations. Eliminating real estate taxes and by-passing local zoning will make the site more attractive to hospitals and universities, especially given its proximity to the LMA. Chapter 40-B affordable housing development also enables the developer to by-pass most local zoning restrictions.
- **Loss of Tax Revenue:** The Leggatt McCall proposal included a long term tax agreement with the Town to provide for real estate tax payments *regardless of the ownership and occupancy*. As a result, development of the site under either the existing zoning or the Warner Amendment provisions would result in an increase in commercial property tax of approximately \$400,000 per annum. By contrast, a Dover Amendment development would result in little or no tax revenue. The loss of tax revenue impacts the entire Town, not just one neighborhood.
- **Shadow Impacts:** The issue of shadows on White Place is a legitimate one—but Article 14 is not the only way to address it. Key provisions of the Warner Amendment are the 30’ rear set back from the MBTA property line, the upper-floor set back restriction of 64 feet, and size limitation of the upper- floor. The resulting shadows would be essentially the same as those cast by the smaller building allowed under Article 14. A genuine win-win outcome is available under the Warner Amendment.

- **Land Use Planning in Brookline:** Zoning is a legal tool to implement the Town's long-term Comprehensive Plan. Using Town Meeting to amend the zoning ordinance in response to a specific project proposal sets a terrible precedent for future development, and it fundamentally undercuts the Town's planning and permitting process. The Warner Amendment effectively addresses the shadow and massing concerns addressed in Article 14 but maintains the financial viability of the project and its tax benefits for the Town.

In summary, the Warner Amendment provides a fair and sensible compromise between the FAR required for new development and legitimate neighborhood concerns. By way of background, Mr. Warner is a Town Meeting member from Precinct 13 and has been a member of EDAB for 15 years. He is a registered architect with over 30 years experience in the planning and design of commercial buildings, with a specialty in medical facilities. He has been a LEED Accredited Professional since 2005.

We strongly encourage Town Meeting members to approve the Warner Amendment to Article 14.
